

Joshua B. Tackett
District Clerk
Navarro County, Texas
By *Carolyn Kilcrease Deputy*

CAUSE NO. D17-25705-CV

COLLIN STREET BAKERY, INC.,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	NAVARRO COUNTY, TEXAS
	§	
JOSE MANUEL SANTOYO,	§	
	§	
Defendant.	§	<u>13TH</u> JUDICIAL DISTRICT

PLAINTIFF COLLIN STREET BAKERY, INC.’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Collin Street Bakery, Inc. (“Plaintiff”) and files this its Original Petition against Jose Manuel Santoyo (“Defendant”) and in support thereof would respectfully show the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery pursuant to Texas Rule of Civil Procedure 190.3, Level 2.

II. CLAIM FOR RELIEF

2. Pursuant to Texas Rule of Civil Procedure 47(c)(2), Plaintiff seeks monetary relief of less than \$100,000 and non-monetary relief.

III. PARTIES AND PROCESS

3. Plaintiff is a Texas corporation duly authorized to do business in the State of Texas with its principal place of business located in Navarro County, Texas.

4. Defendant is an individual who may be served with process at 3430 County Square Dr., #1307, Carrollton, Texas 75006, or wherever he may be found.

IV. JURISDICTION AND VENUE

5. Jurisdiction is proper because the relief sought by Plaintiff is within the jurisdiction of this Court. Pursuant to Texas Civil Practice and Remedies Code Section 15.017, venue is proper in Navarro County, Texas, because Plaintiff resided in Navarro County, Texas, at the time its cause of action against Defendant accrued.

V. FACTS

6. Plaintiff has been in business for over one hundred twenty years serving customers through its retail stores, direct mail sales and internet sales. Plaintiff has the privilege of shipping its products to customers around the world and takes great pride in its excellent reputation with the public. Plaintiff's reputation is very important to Plaintiff's business.

7. In November 2012, Defendant applied for part-time, seasonal employment with Plaintiff at Plaintiff's call center located in Plaintiff's corporate offices in Corsicana, Texas. Defendant completed the Federal Government's Employment Eligibility Verification form ("I-9 Form") as part of Plaintiff's hiring process prior to being hired, as do all of Plaintiff's job applicants. Defendant represented to Plaintiff on his I-9 Form that he had a lawful permanent resident card and signed the I-9 Form, attesting under penalty of perjury that he was a "lawful permanent resident." Defendant also identified a Social Security Number on his I-9 Form. Upon presenting Plaintiff a copy of lawful permanent resident documentation, which he represented to be his, Defendant was hired by Plaintiff. Defendant worked in Plaintiff's call center from November 12, 2012 to December 18, 2012.

8. Defendant has made numerous untrue and unlawful statements about Plaintiff's hiring and employment practices throughout the past year, both to the media and on his personal Facebook page.

9. In early 2016, for example, Defendant told the Corsicana City Council that Plaintiff is “a company that hires undocumented immigrants,” claiming he knew this because he “was one of those immigrants that worked [at the] company.” These statements were recorded and published by audio and through direct quotation. A true and correct copy of the article publishing Defendant’s statements is attached hereto as Exhibit “A” and incorporated herein by reference.

10. On February 23, 2016, Defendant posted a false statement regarding Plaintiff’s hiring and employment practices on his personal Facebook page in an attempt to damage Plaintiff’s reputation. Specifically, Defendant stated that Plaintiff exploits its workers “by making them work long hours at starvation wages.” A true and correct copy of the relevant excerpt from Defendant’s Facebook page is attached hereto as Exhibit “B” and incorporated herein by reference.

11. On October 24, 2016, Defendant promoted his then-recent interview with the Texas Tribune on his Facebook page regarding his “personal experiences in the workforce prior to DACA,” under which Defendant maintains he received the authorization to work legally in the United States in 2013. A true and correct copy of the subject excerpt from Defendant’s Facebook page is attached hereto as Exhibit “C” and incorporated herein by reference.

12. On November 10, 2016, The Texas Tribune published an article containing Defendant’s untrue and unlawful statements. The article featured Defendant’s recollection about working for Plaintiff, claiming that Plaintiff “hired [Defendant] even though he was undocumented and at the time didn’t have DACA status.” A true and correct copy of the subject Texas Tribune article published on November 10, 2016 is attached hereto as Exhibit “D” and incorporated herein by reference. This same day, Defendant also shared and promoted the article on his Facebook page. A true and correct copy of the relevant excerpts from Defendant’s Facebook page demonstrating this post is attached hereto as Exhibit “E” and incorporated herein by reference.

The article was also later published by the Texas Tribune's Business Insider publication on November 13, 2016. A true and correct copy of the Business Insider article is attached hereto as Exhibit "F" and incorporated herein by reference.

13. On December 6, 2016, the Texas Tribune published yet another story featuring Defendant's untrue and unlawful statements regarding Plaintiff's hiring practices. Within the article, Defendant states that Corsicana "is a place that hires a lot of undocumented immigrants," claiming that he was hired by and worked for Plaintiff, among many other local franchises, when Plaintiff knew he was an undocumented worker. A true and correct copy of the December 6, 2016 Texas Tribune article is attached hereto as Exhibit "G" and incorporated herein by reference. Defendant also once again took to his Facebook page on December 6, 2016, promoting this second Texas Tribune article, including his untrue and unlawful statements regarding Plaintiff. A true and correct copy of the relevant excerpts from Defendant's Facebook page is attached hereto as Exhibit "H" and incorporated herein by reference.

14. Defendant's untrue and unlawful statements at issue wrongfully accuse Plaintiff of knowingly hiring him and other undocumented workers in violation of federal law. While Plaintiff chose not to act upon Defendant's first few untrue and unlawful statements at issue, expecting Defendant would simply stop making such statements, Defendant continues to make such erroneous statements for some reason, requiring Plaintiff to file this lawsuit to set the record straight. Defendant's aforesaid established pattern of defaming Plaintiff through his personal Facebook page posts and interviews with media outlets like The Texas Tribune must stop to protect Plaintiff's reputation.

15. Defendant's untrue and unlawful, malicious statements constitute allegations that Plaintiff has committed a crime because knowingly hiring "unauthorized aliens" is illegal under 8 U.S.C. § 1324a(a)(1)(A). Thus, Defendant's statements at issue constitute defamation per se.

16. Plaintiff has never knowingly hired an unauthorized worker. Plaintiff's hiring practices have always followed the government's "Employment Verification System" requirements set forth in the Immigration Reform and Control Act ("IRCA"). See 8 U.S.C. § 1324a(b). In this regard, Plaintiff performs the following tasks required by 8 U.S.C. § 1324a(b) before any potential employee is hired:

- i. the potential employee completes and signs an I-9 Form, attesting subject to the penalty of perjury that he or she is not an unauthorized alien and has the required documentation to legally work in the United States;
- ii. Plaintiff examines the required employment authorization verification document(s) set forth in 8 U.S.C. § 1324a(b)(1)(A)-(D), which the potential employee presents;
- iii. Plaintiff completes and signs the potential employee's I-9 Form confirming that it has verified the potential employee is not an unauthorized alien based on the I-9 Form completed by the potential employee and the required documentation presented by the potential employee;
- iv. Plaintiff retains the I-9 Form when the individual is hired; and
- v. Plaintiff complies in good faith with all requirements of 8 U.S.C. § 1324a(b).

See 8 U.S.C. § 1324a(b).

17. If Defendant was not legally authorized to work in the United States at the time Plaintiff hired him, Plaintiff did not know this to be true. Plaintiff took every step required by law prior to hiring Defendant. Plaintiff required Defendant to complete and execute an I-9 Form and provide the required documentation evidencing his legal authorization to work in the United States prior to being hired. Plaintiff reasonably relied upon said I-9 Form and the lawful permanent resident documentation Defendant provided to Plaintiff at that time. Plaintiff had no knowledge that Defendant was not legally authorized to work for Plaintiff. Thus, if Defendant was actually

an undocumented alien at the time Plaintiff hired him, Defendant must have provided Plaintiff with false documentation which represented that he was allegedly legally authorized to work in the United States. If Defendant indeed provided false documentation to Plaintiff, under penalty of perjury, then Defendant was the only person who “knowingly” committed a crime.

18. The United States Supreme Court has held that “[g]ood-faith compliance with IRCA’s I-9 document review requirements provides an employer with an affirmative defense if charged with a § 1324a violation.” *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582 (2011). Thus, Plaintiff’s good-faith compliance with the IRCA’s Employment Verification System establishes that Plaintiff did not hire Defendant knowing or being willfully blind to the fact that Defendant was really an unauthorized worker at the time.

19. Further, Defendant has falsely claimed that Plaintiff failed to comply with federal and state wage and hour laws regarding the wages paid to unidentified employees by allegedly forcing employees to work “long hours at starvation wages.” This erroneous statement clearly implies that Plaintiff has failed to pay its employees minimum wage and required overtime wages, in violation of the Fair Labor Standards Act and the Texas Minimum Wage Act. *See* 29 U.S.C. § 206; and Tex. Labor Code § 62.051. Said statement by Defendant also constitutes defamation per se.

VI. REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION

20. Pursuant to Texas Civil Practice and Remedies Code § 73.055, Plaintiff hereby demands that Defendant take the following actions: (1) retract and remove the subject February 23, 2016, October 24, 2016 and December 6, 2016 malicious, defamatory posts from his Facebook page; and (2) publish a new post on his Facebook page (a) admitting that his unlawful statements regarding Plaintiff’s employment practices made on his Facebook page and to The Texas Tribune

have no factual basis; and (b) confirming that he has no personal knowledge of Plaintiff knowingly hiring unauthorized workers. Plaintiff demands that this retraction and the related correction be published on Defendant's Facebook page in the same manner and medium as Defendant's original publications at issue. Plaintiff further demands that Defendant require The Texas Tribune and Business Insider to retract all of Defendant's untrue and unlawful remarks referenced herein which he made in articles published by The Texas Tribune on November 10, 2016 and November 13, 2016, as well as the article published by The Texas Tribune's Business Insider on November 13, 2016.

VII. CAUSE OF ACTION – DEFAMATION

21. Plaintiff incorporates the foregoing paragraphs by reference.

22. Defendant published false, defamatory remarks referring to Plaintiff on his Facebook page. Defendant also sought out and/or accepted opportunities to speak to the media whereupon he made additional false claims that Plaintiff hired him knowing that he was an undocumented worker.

23. Defendant's false, malicious Facebook posts and statements to The Texas Tribune are defamatory per se because they explicitly and unambiguously claim that Plaintiff committed a crime and violated federal and state wage and hour laws with the intent to cause injury to Plaintiff's reputation. Specifically, Defendant alleges that Plaintiff has knowingly employed unauthorized workers in violation of 8 U.S.C. § 1324a(a)(1); and failed to pay employees the requisite minimum wage in violation of 29 U.S.C. § 206; and Tex. Labor Code § 62.051.

24. Defendant made the subject defamatory, malicious statements knowing they were false. Defendant's intent was clearly to substantially injure Plaintiff's reputation in the community.

25. Plaintiff is entitled to damages because Plaintiff's reputation has been injured by Defendant's defamatory per se statements.

VIII. NOMINAL DAMAGES

26. As a result of Defendant's publication of his defamatory per se statements, Plaintiff is entitled to recover nominal damages in addition to retraction of the statements at issue.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Collin Street Bakery, Inc. requests that Defendant Jose Manuel Santoyo be cited to appear and answer herein; and that upon the trial of this lawsuit the Court enter Judgment against Defendant as follows:

(1) judgment against Defendant requiring the retraction of the subject aforementioned untrue and unlawful statements Defendant made to the media and posted on his Facebook page;

(2) judgment against Defendant for nominal damages to Plaintiff for making and publishing the subject defamatory, malicious statements;

(3) pre-judgment interest at the appropriate legal rate on the nominal damages awarded to Plaintiff;

(4) post judgment interest at the appropriate legal rate on the nominal damages awarded to Plaintiff until paid in full;

(5) cost of suit; and

(6) such other and further relief, both at law and in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

HIERSCHE, HAYWARD, DRAKELEY & URBACH, P.C.

By: /s/ Craig A. Harris

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