UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLAUDIA WILLIAMS, f/k/a CLAUDIA GAYLE,	:	23 Civ. 6661 (PKC) (LKE)
Plaintiff,	:	
- against -	:	
HARRY'S NURSES REGISTRY, INC. and HARRY DORVILIER,	:	
Defendants.	:	

PLAINTIFF'S TRIAL MEMORANDUM OF LAW

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Preliminary Statement

Defendants having defaulted in this action, the trial previously set for April 14, 2025, has been converted to an inquest. Plaintiff Claudia Williams respectfully submits this Trial Memorandum of Law setting forth relevant authorities and facts pertaining to her damages.

I. Injunctive relief

A. Applicable Law

The Fair Labor Standards Act provides for a private right of action to seek injunctive relief for violation of the anti-retaliation provisions of the Act.

> [I]t [is] unlawful for any person … to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter
>
> ***
>
> Any employer who violates the provisions of section 215(a)(3) … of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) or 218d of this title …. An action to recover the liability prescribed in the preceding sentences may be maintained against any employer … in any Federal or State court of competent jurisdiction by any one or more employees ….

29 U.S.C. §§ 215(a)(3), 216(b).

Similarly, the Labor Law authorizes a private action for injunctive relief.

> No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee … because such employee has made a complaint to … the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter.

> ***
>
> An employee may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section … and to order all appropriate relief, including enjoining the conduct of any person or employer ….

N.Y. Labor Law § 215(1)-(2).

B. Relief Sought

Ms. Williams seeks a permanent injunction enjoining Defendants and their owners, 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 Fair Labor Standards Act and New York Labor Law. Dkt. No. 1 Prayer for Relief ¶ 1. Specifically, she seeks an injunction enjoining Defendants to delete all retaliatory Internet and social media posts pertaining to Plaintiff. *Id.* ¶ 2. As is discussed in Section I(D) below, Plaintiff asks this Court to retain jurisdiction to enforce the permanent injunction.

C. The Preliminary Injunction and Compliance Therewith

On December 20, 2023, this Court issued a preliminary injunction requiring Defendants to remove Plaintiff's personal identifiable information ("PII") appearing on Defendants' website: www.harryhomecare.com, from posting or otherwise publishing this PII on any public forum or reproducing it in any similar manner, and from otherwise disclosing it unless required or permitted by law. Dkt. No. 36. One week later, Defendants' then-attorney certified compliance with that injunction. Dkt. No. 38. Nine months later, this Court found by clear and convincing evidence that Defendants were in contempt of that injunction. Minute Order 9/13/24. The preliminary injunction was expanded to preclude Defendants from posting Plaintiff's current or

expired license or any other documents containing Plaintiff's PII online, including but not limited to on any streaming or social media platforms, on YouTube, on any of Defendants' websites, or anywhere else on the internet. *Id.*

This Court also determined that Defendants had committed perjury in an attempt to conceal their wrongdoing. *Id.*

Although Defendants appear to have complied thereafter with the expanded injunction, a number of retaliatory posts not containing Ms. Williams's PII remain online:

- https://youtu.be/fUR61zSVAa0?si=CZmTCyfekqbtQw-y (An Examination of Claudia Gayle: Assumed Identity, Discrepancies, and Alleged Fraudulent Activities)
- https://www.youtube.com/watch?v=EddUDix5TI0 (Harry's Nurses Registry Inc. – A Tale of Fraudulent Schemes)
- https://www.youtube.com/watch?v=1RI0oC1yR0Y (Identity Theft Part IV)

In addition, these posts are available (for a fee) at https://hnrlawlibrary.com/:

- CLAUDIA GAYLE or Ghost Checks received from Harry's Nursing Registry Inc. along with District Court Affidavit and Attorney's Fees and Cost
- Affidavit by Mr. Michael Morgan on "Claudia Gayle" Fake ID, Different Name, and Assumed Identity!
- Gayle v. Harry's Nurses Registry, Inc.
- Fake ID, Different Name and Assumed Identity!

It should be noted that the posts listed above are neither criticisms of rulings by this and other Courts nor criticisms of Ms. Williams's attorney (many such posts continue to exist) but rather statements that Ms. Williams is a fraudster who procured her identification documents and nursing license unlawfully.

D. Defendants' Refusal to Remediate the Publication of PII *Pendente Lite* and Contempt for this Court's Orders Justify Retention of Jurisdiction to Ensure Compliance with the Permanent Injunction Sought

Following Defendants' representation that an accidental data breach caused the post-injunction public posting of Plaintiff's PII, Defendants were ordered to hire a third-party data

privacy firm to review all of Defendants' publications and media materials in any format to ensure that no individual's PII was being publicly disclosed in any format or medium. Minute Order 9/13/24. Defendants failed to comply with the deadline to do so; the Court *sua sponte* extended that deadline. Minute Order 9/30/24.

The report ultimately docketed

> indicate[d] that more PII may be identified in Defendants' "image files containing text, such as scanned documents converted to jpg or png image files" and that "[d]ata mining the site is the only way to conclusively determine which of the image files contain PII." (Dkt. 83-1 at 3.) Defendants are directed to arrange for the completion of that work and file a status report with the Court as to the work's completion within thirty days--that is, by Thursday, December 12, 2024.

Minute Order 11/12/24. The Court granted Defendants' request to extend that deadline to January 10, 2025.

At a status conference on January 16, 2025, Defendants admitted that the work had not been completed because they had failed to sign the retainer agreement with the data mining firm despite outgoing defense counsel's repeated requests that they do so. The Court warned Mr. Dorvilier that failure to comply with the twice-extended deadline for the previously ordered data mining report would result in monetary sanctions against him and ordered Defendants to complete the data mining to ensure that no person's personal identifiable information is contained in the website files by March 14, 2025. Minute Order 1/17/2025.

Defendants defaulted rather than comply with that Order. It is respectfully submitted that Defendants' manifest recalcitrance and attempts to circumvent the letter and spirit of this Court's directives augur continued attempts to retaliate against Ms. Williams, and that those foreseeable attempts will require expeditious response. Plaintiff accordingly asks this Court to retain

jurisdiction for the purpose of entertaining future motions to sanction Defendants for contempt and/or to coerce compliance.

II. Labor Law Liquidated Damages

A. Applicable Standards

An award of liquidated damages is mandatory under New York law.

> The court shall have jurisdiction to restrain violations of [Section 215]… and to order all appropriate relief, … ordering payment of liquidated damages.… Liquidated damages shall be calculated as an amount not more than twenty thousand dollars. The court shall award liquidated damages to every employee aggrieved under this section, in addition to any other remedies permitted by this section.

N.Y. Labor Law § 215(2)(a).

Neither the Labor Law nor any reported case prescribes a method for determining the amount of liquidated damages in a particular case. Eastern District courts have considered the blameworthiness of defendants' conduct as well as the availability of back pay as a remedy for retaliatory termination. *E.g., Brito v. Marina's Bakery Corp.*, 2022 U.S. Dist. LEXIS 53351, 2022 WL 875099 at *23 (E.D.N.Y. Mar. 24, 2022) (KAM) (MMH) (awarding $20,000 against defaulting defendant where plaintiff alleged egregious conduct); *Jones v. Pawar Bros. Corp.,* 2023 U.S. Dist. LEXIS 170688 at * 10, 2023 WL 6214213 (PKC) (SJB) (awarding only back pay with interest); *Isigi v. Dorvilier* (FB) (SMG)*,* 2018 U.S. Dist. LEXIS 42991 at * 15-16 (E.D.N.Y. Mar. 14, 2018) (awarding $5000 "[i]n light of the limited magnitude of the impact upon plaintiff"), *recommendation adopted*, 2018 U.S. Dist. LEXIS 55940 (E.D.N.Y. Apr. 2, 2018), *aff'd*, 795 Fed. Appx. 31 (2d Cir. 2019).

In *Isigi*, the plaintiff was a nurse who brought claims identical to those of Claudia Gayle (as Ms. Williams was known prior to her current marriage) against these Defendants. 2018 U.S.

Dist. LEXIS 42991 at * 4-6. Ms. Isigi was a current employee of Defendants at the time she filed suit. *Id* at * 14. After being served with process, Defendants withheld Ms. Isigi's paycheck notwithstanding her repeated demand for payment, which constituted a constructive discharge. *Id.* That is, Defendants are repeat violators of the anti-retaliation clauses of the FLSA and New York Labor Law.

In this case, Ms. Williams's identity has not actually been stolen (to her knowledge). She accordingly has no economic damages attributable to Defendants' acts of retaliation. It is respectfully submitted that an award of $20,000 liquidated damages is appropriate.

B. Compliance with Procedural Requirements

A retaliation plaintiff cannot recover damages unless, at or before commencement of the action, she served notice of the action on the New York attorney general. Lab. L. § 215(2)(b). Plaintiff alleges in her Complaint that she did so. Dkt. No. 1 ¶ 25. Defendants' default operates as an admission of that allegation.

III. Emotional Distress

The near-unanimous weight of authority within the Second Circuit is that the FLSA authorizes an award of damages for emotional distress in retaliation cases. *Greathouse v. JHS Sec., Inc.*, 2015 U.S. Dist. LEXIS 154388 at * 8 (S.D.N.Y. Nov. 13, 2015); 29 U.S.C. § 216(b) (employee may obtain "legal . . . relief as . . . appropriate"). "Pinning dollar amounts to suffering is inherently subjective, and peculiarly within the province of the jury." *In re Brooklyn Navy Yard Asbestos Litigation*, 971 F.2d 831, 853 (2d Cir. 1992) *(citing Zimmerman v. N.Y.C. Health & Hosps. Corp.*, 91 A.D.2d 290, 294-95, 458 N.Y.S.2d 552 (1983)). In the Second Circuit, emotional distress awards can generally be grouped into three categories:

> "[Ga]rden-variety," "significant" and "egregious." In "garden variety" emotional distress claims, the evidence of mental

> suffering is generally limited to the testimony of the plaintiff, who describes his or her injury in vague or conclusory terms, without relating either the severity or consequences of the injury. Such claims typically lack extraordinary circumstances and are not supported by any medical corroboration. "Garden variety" emotional distress claims generally merit $30,000 to $125,000 awards. "Significant" emotional distress claims differ from the garden-variety claims in that they are based on more substantial harm or more offensive conduct, are sometimes supported by medical testimony and evidence, evidence of treatment by a healthcare professional and/or medication, and testimony from other, corroborating witnesses. Finally, "egregious" emotional distress claims generally involve either "outrageous or shocking" discriminatory conduct or a significant impact on the physical health of the plaintiff. In "significant" or "egregious" cases, where there is typically evidence of debilitating and permanent alterations in lifestyle, larger damage awards may be warranted.

Olsen v. County of Nassau, 615 F. Supp. 2d 35, 46 (E.D.N.Y. 2009). This flexible framework does not impose upper limits on damage awards, however. For example, in *Flannigan v. Vulcan Power Group, LLC*, 642 Fed. App'x 46, 50, 53 (2d Cir. 2016) ($300,000 award of compensatory damages; Labor Law sales commission and retaliation case), the jury credited the plaintiff's testimony that the subpoenas served by defendants on her clients caused her clients to "ask[] what is this all about," which "did affect [her] business" and "painted [her] out to look like a bad person." *Id.* at 53. In addition, she testified that she had to "go in and explain [herself]" to her clients, who wanted to know why she "was involved in this litigation" and asked her "why is this Vulcan disrupting our business." She testified that this was "awkward," "upsetting," and "very damaging." *Id.* Ms. Flannigan presented no psychiatric or other evidence beyond her own testimony; she presented no evidence of economic harm to her business. *Id.*

Ms. Williams is expected to testify, and her witnesses are expected to corroborate, that her discovery that Defendants had published her PII to anyone with an internet connection, and persistent refusal to ensure that that PII had been scrubbed, caused her emotional distress

manifesting in several ways: numbness followed by anger, disgust, upset stomach, anxiety, withdrawal, stress and heart palpitations.

IV. Punitive Damages

A. Applicable Standards

As noted, the FLSA provides that "any employer who violates the provisions of [the anti-retaliation provisions] shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes [there]of." 29 U.S.C. § 216(b). Punitive damages are appropriate where, as here, Defendants' retaliation was done "with malice or with reckless indifference" to acts that caused the complained-of injury in order to "punish Defendants for wanton and reckless or malicious acts and thereby to discourage Defendants and other people or companies from acting in a similar way in the future." *Jones*, 2023 U.S. Dist. LEXIS 170688 at * 14.

The requirement of knowledge or reckless indifference "pertain[s] to the employer's knowledge that it may be acting in violation of federal law." *Farias v. Instructional Systems Inc.*, 259 F.3d 91, 102 (2d Cir. 2001). Thus, in order to qualify for FLSA punitive damages, a plaintiff must "present evidence that the employer . . . retaliated . . . against him with conscious knowledge it was violating the law, or that it engaged in egregious or outrageous conduct from which an inference of malice or reckless indifference could be drawn." *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 573 (2d Cir. 2011) (internal quotation marks omitted).

Under New York law, "the standard for conduct warranting an award of punitive damages 'has been variously described but, essentially, it is conduct having a high degree of moral culpability which manifests a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard." *Flannigan*, 642 Fed. App'x at 53-54 (affirming $900,000 punitive

damage award for "egregious conduct and malicious abuse of the judicial process" in NYLL unpaid sales commission and retaliation claim).

B. Defendants Had Actual Knowledge that their Conduct Violated the Law

In this case, as discussed in Section II above, Defendants had actual knowledge that retaliation against an FLSA plaintiff is unlawful. In any event, this Court observed in the context of the preliminary injunction that Defendants engaged in egregious or outrageous conduct from which an inference of retaliatory animus could be drawn. It is respectfully submitted that those same facts, viewed in conjunction with Defendants' contumacious litigation conduct, suffice to permit an inference of malice or reckless indifference.

Defendants, by their default, have also admitted the facts that form the predicate for punitive damages liability: that they had actual knowledge that publication of Ms. Williams's PII is wrongful and that they willfully violated the prohibitions of FLSA and Labor Law retaliation by posting that PII for retaliatory reasons. Dkt. No. 1 ¶¶ 16, 19, 24.

C. This Court May Award Punitive Damages In the Absence of Evidence of Defendants' Financial Condition

A court is required to consider the defendant's financial circumstances in determining an award of punitive damages "no matter how egregious the underlying conduct." *Patterson v. Balsamico*, 440 F.3d 104, 121 (2d Cir. 2006). In this case, Plaintiff sought discovery of Defendants' financial condition. Plaintiff moved to compel discovery between the time the corporate defendant defaulted and the time the individual defendant defaulted. This Court ruled that

> Plaintiff requests that the Court compel Defendant Dorvilier to produce documents responsive to a request for production regarding Defendants' assets and earnings. The Court defers ruling on this request until after the March 21, 2025 deadline for

> Defendant Dorvilier to file a letter indicating whether he intends to represent himself going forward. (See 3/11/25 Dkt. Order; Pl.'s Ltr., Dkt. 92 at 1-2.) Should the trial go forward, the Court will determine liability and then, as necessary, address the punitive damages discovery issue that Plaintiff raises.

Minute Order Mar. 14, 2025.

Defendants' default does not enable them to avoid the imposition of punitive damages. As noted, they defaulted in lieu of complying with Plaintiff's demand for punitive damages discovery (which also deprived the Court of necessary information). They cannot be heard now to invoke the requirement to afford due consideration to a defendant's financial condition. That is, a defendant cannot leverage its own default to seek a litigation advantage at a damages inquest. Accordingly, in *Brito*, Judge Matsumoto awarded punitive damages after observing that the defaulting defendants "did not put forward any evidence indicating that they would be financially incapable of shouldering significant punitive damages." 2022 U.S. Dist. LEXIS 53351 at * 77.

D. Proportionality of Compensatory and Punitive Awards

The Supreme Court has established "guideposts" for an award of punitive damages, including "(1) the degree of reprehensibility of the tortious conduct; (2) the ratio of punitive damages to compensatory damages; and (3) the difference between this remedy and the civil penalties authorized or imposed in comparable cases." *Lee v. Edwards*, 101 F.3d 805, 809 (2d Cir. 1996). The Supreme Court advised that "[p]erhaps the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). A court should

> consider whether the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated

> actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 419 (2003)\ (internal citation omitted).

The Supreme Court has "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award." *Id*. at 424 (internal citation omitted). While declining to offer a "bright-line ratio which a punitive award cannot exceed," the Supreme Court has advised that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id*. at 425.

This case is such an outlier. Where, as here, the compensable injury was relatively small but the reprehensibility of the defendant's conduct was great, the ratio of a reasonable punitive award to the small compensatory award will necessarily be very high. *Payne v. Jones,* 711 F.3d 85, 102 (2d Cir. 2012); *State Farm*, 538 U.S. at 425 ("ratios greater than those we have previously upheld may comport with due process where a particularly egregious act has resulted in only a small amount of economic damages") (internal quotation marks omitted); *Lee*, 101 F.3d at 811 ("in a § 1983 case in which the compensatory damages are nominal, a much higher ratio can be contemplated…. [T]he use of a multiplier to assess punitive damages is not the best tool"). In *Lee*, the jury awarded $1 compensatory damages and $200,000 punitive damages. The Court of Appeals remitted the punitive damages award to $75,000. *Id.* "But 75,000 to 1 was an appropriate ratio on those facts. In such cases, the large size of the ratio has no necessary bearing on the appropriateness of the amount of punitive damages." *Payne*, 711 F.3d at 103.

Dated: Yardley, Pennsylvania
April 10, 2025

Respectfully submitted,

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