

JUDGE GARDINER

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
MONICA LINCANGO & GINA LOPEZ,

Plaintiffs,

-against-

PINQUIST TOOL & DIE COMPANY,
INC., RICHARD PINQUIST, AS CO-
OWNER, & VISHNU SHIWPRASHAD, AS
AIDER AND ABETTOR,

Defendants.
-----X

ECF Case

Civil Docket No.

COMPLAINT

Jury Trial Demanded

Plaintiffs Monica Lincango and Gina Lopez (collectively, "plaintiffs"), for their complaint, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are low-wage workers who worked for a combined 31 years for their former employers, Defendants Pinguist Tool & Die, Co., Inc. ("PT&D" or "the Company") and Richard Pinguist ("Pinguist") on the factory floor at PT&D. Plaintiffs' work included packing specialized metal parts for shipping and working on machines to produce these metal parts.

2. During the time they worked for the Company, plaintiffs endured persistent sex, racial, national origin and age-based harassment from their immediate supervisor, Defendant Vishnu Shiwprashad ("Shiwprashad"). For example, Shiwprashad grabbed plaintiffs' buttocks and tried to make plaintiffs look at or touch his genitals, and constantly made sexually explicit jokes and comments about the women in the factory. He also made degrading comments about Hispanics, for example, complaining that they were stupid and that their food was garbage and smelled bad. He also expressed his desire to fire all the women and hire younger, prettier women. The plaintiffs complained on multiple occasions to Pinguist about Shiwprashad's conduct, but Pinguist failed to take stop the harassment. Eventually, in January 2009 Shiwprashad fired the plaintiffs, along with every other female worker at the factory.

3. Plaintiffs bring this action against the Company under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000, *et seq.*, as amended ("Title VII"), and against the Company, Pinguist, and Shiwprashad, under the New York City Human Rights Law, N.Y.C. Admin. Code §§ 8-107, *et seq.* (NYCHRL).

4. Plaintiffs seek declaratory relief, compensatory damages for emotional distress, physical injury and suffering, back pay, front pay and punitive damages, together with reasonable attorney's fees, costs of this action, pre-and post-judgment interest, and other appropriate relief.

JURISDICTION, VENUE, AND JOINDER

5. The Court has jurisdiction over plaintiffs' Title VII claims pursuant to 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. §§ 1331, and 1343.

6. The Court has supplemental jurisdiction over plaintiffs' NYCHRL claims pursuant to 28 U.S.C. § 1367(a) because their city claims closely relate to the federal claims, arise from a common nucleus of operative facts, and form part of the same case or controversy.

7. Venue is proper in the United States District Court for the Southern District of New York pursuant to 42 U.S.C. § 2000e-5(f)(3) as the unlawful employment practices alleged below occurred in New York State.

8. Joinder of the plaintiffs' claims is proper under Rule 20 of the Federal Rules of Civil Procedure because their claims for relief arise out of related transactions and occurrences and create common questions of law and fact. Specifically, both plaintiffs suffered harassment at the hands of Shiwprashad during the same time period on the basis of their sex, national origin, race, and age during the course of their employment at the Company.

PROCEDURAL REQUIREMENTS

9. Plaintiffs have complied with all administrative prerequisites. Both plaintiffs filed timely charges with the EEOC on June 25, 2009. On February 21, 2013, the EEOC issued a determination of probable cause to each plaintiff. After conciliation failed, the EEOC issued to each plaintiff a Notice of Right to Sue dated August 30, 2013. Plaintiffs received the Notice of Right to Sue on October 28, 2013.

STATEMENT OF FACTS

Parties

10. Plaintiff Monica Lincango is a Hispanic woman of Peruvian origin. She was employed by the Company from 1995 until January 28, 2009, when she was fired. Lincango's job duties included packing specialized metal parts for shipping and using machines to produce metal parts. Throughout her employment, Shiwprashad was her immediate supervisor.

11. While employed by PT&D and during the majority of the pendency of proceedings before the EEOC, Lincango's legal name was Monica Leiva. On August 23, 2012, she changed her last name to Lincango.

12. Plaintiff Gina Lopez is a Hispanic woman of Ecuadorian origin. She was employed by the Company from 1992 to January 28, 2009, when she was fired. Lopez's job duties included packing specialized metal parts for shipping and using machines to produce metal parts. Throughout her employment, Shiwprashad was her immediate supervisor.

13. Defendant PT&D operates, and at all relevant times operated, a factory in Brooklyn, New York, making specialized metal parts. At all times relevant, the Company had more than fifteen employees and engaged in interstate commerce.

14. Defendant Pinguist is the President and co-owner of the Company. Upon information and belief, he became President in or around 1998, after his parents, the Company's previous owners, died. Pinguist's office was adjacent to the factory floor. As co-owner, Pinguist is liable as an employer under the NYCHRL, N.Y.C. Admin. Code § 8-107(l)(a).

15. Defendant Shiwprashad, is, and at all times since about 1994 was, the Plant Manager at the Company. He supervised all the factory workers and reported to Pinguist

beginning in or around 1998. Shiwprashad is liable as aider and abettor under the NYCHRL, N.Y.C. Admin. Code § 8-107(6).

The Plaintiffs' Employment at the Company

16. As stated above, plaintiff Gina Lopez began working for the Company in 1992; plaintiff Monica Lincango began working for the Company in September 1995.

17. Both plaintiffs worked full-time as factory workers, five days a week.

18. The plaintiffs split their time at the Company between working with machines that produced specialized metal parts such as steel door parts, building supplies and other items, and working in the packaging department, where they packed those specialized metal parts to prepare them for shipping to other parts of the country.

19. The work was physically demanding, but the plaintiffs were good at their jobs and were regarded by others as reliable workers. After they had gained some experience working at the Company Shiwprashad often asked them to help train newer employees and show them how to do the work.

20. Neither of the plaintiffs was ever disciplined for any reason during her employment at the Company.

21. Although it was not part of their job description to do so, plaintiffs were also responsible for doing domestic work in the factory, such as cleaning the bathrooms, microwave, refrigerator and water cooler, running errands such as picking up breakfast and lunch for Pinquist, and even walking and cleaning up after Pinquist's dog.

Facts Relating to Plaintiffs' Discrimination Claims

Sex-Based Harassment

22. Almost immediately after Shiwprashad became plaintiffs' supervisor, he began to subject plaintiffs to severe and pervasive sexual and racial harassment that created a workplace permeated by abuse. His harassing conduct continued throughout plaintiffs' employment despite both women's repeated complaints to Pinguist.

23. The sexual harassment included offensive physical touching, as well as sexual gestures and comments and abusive sex-based language. For example:

- a. Shiwprashad touched the buttocks of both women several times.
- b. He followed Lopez to the bathroom, unbuttoning his shirt so she could see his chest and stomach. On several other occasions he followed Lopez when she went into more isolated areas of the factory, grabbed her, and tried to force her to kiss him or touch his genitals.
- c. Several times Shiwprashad rubbed his body against Lopez as he passed by. As he did this he would laugh and say "excuse me, excuse me, junior is standing up," referring to his penis. Lincango also witnessed Shiwprashad call his penis "junior" many times.
- d. On several occasions, Shiwprashad asked Lincango to come to his desk, told her that he had work for her, and then rubbed his crotch while laughing. On other occasions, he called her to his desk and asked her to look at pornographic pictures in magazines or on his cell phone.
- e. He frequently asked both plaintiffs what kind of sexual positions they liked and if they liked oral sex and anal sex.

f. Shiwprashad made jokes about the plaintiffs and other women in the factory, saying that they were having affairs with men in the factory or with delivery workers. When plaintiffs and other female employees arrived at the factory looking tired, he told them they were tired because they had been up all night having sex.

g. Shiwprashad frequently made comments to both Lopez and Lincango about his genitals, including comments comparing his penis to different objects around the factory and comments describing the length of his penis.

h. On several occasions, Shiwprashad asked Lincango if her husband had a big penis. He frequently asked Lincango who "had the bigger d-ck," her first or second husband, and said she "needed a big d-ck" because she had "a big -ss."

i. In approximately 2006, when Lincango was pregnant, he accused her of cheating on her husband and repeatedly said that the baby belonged to another man.

j. On multiple occasions, Shiwprashad stood over a table where the plaintiffs were seated during the factory's 3:30 p.m. breaks and simulated oral sex on a banana.

k. Shiwprashad often made comments about plaintiffs' bodies and the bodies of other female workers. He made comments about Lincango's buttocks, saying that she had a "nice -ss" and a "big -ss." He took pictures of Lincango with his camera phone when she was bending over to pick up shipping boxes.

l. Shiwprashad frequently joked that Lopez was wearing a pad ¹¹¹ her underwear to make her buttocks look bigger.

m. Plaintiffs overheard Shiwprashad tell another worker, Rosa Lopez, that "her tits were too big for her to walk or work right" and that "she should go home

because her tits were too big." Lincango overheard Shiwprashad say out loud that Rosa had an ugly body.

n. Lincango also heard Shiwprashad tell Lopez's niece, Vanessa Cedeno, that she was sexy and that he was in love with her and that she reminded him of Lopez when she was younger and pretty.

24. Shiwprashad frequently singled out plaintiffs from other workers for intimidation, ridicule, and insult. He constantly addressed both Lincango and Lopez as "f-ing bitch." He instructed other workers not to help plaintiffs with their work by yelling, "don't help that f-ing lady," and he told other workers that plaintiffs were bad people.

25. Shiwprashad also treated women differently than men in terms of their work assignments. He required plaintiffs and other female employees to perform menial tasks unrelated to their actual job duties as factory workers, such as walking Pinquist's dog and sweeping the sidewalk outside the factory, even in inclement weather and even when such tasks interfered with their work production. He never asked male employees to walk Pinquist's dog and only occasionally asked them to sweep.

26. Pinquist also treated women differently than men in their work assignments. For example, Pinquist required plaintiffs and other women workers to wash the owners' dirty dishes, clean the microwave, refrigerator and water cooler, and pick up the owners' breakfast, lunch, snacks and coffee. Men were not asked to perform those types of tasks.

Harassment Based on Race and National Origin

27. In addition to sexual harassment, Shiwprashad frequently made harassing comments that degraded plaintiffs' national origin and race and created an atmosphere of racial hostility.

28. For example, he frequently called plaintiffs and other Hispanic employees "spies." He often said that all Hispanic women were "putas" (sluts) and "basura" (trash), that Hispanic people only thought about earning money, that his "people" were better than everybody else, and that Hispanic people were stupid and had "metal in their heads."

29. Shiwprashad frequently said that Hispanic food stunk and held his nose when he passed by the lunchroom when Hispanic employees were preparing or eating their lunch.

30. He said that Hispanic women did not respect their husbands because they dressed in "provocative" clothing and that the Hispanic female employees had gotten their jobs by having sex with the owner of the factory.

31. Shiwprashad also made fun of some of the factory workers who did not speak English, telling them that this was America and that they should speak English.

32. On many occasions, Shiwprashad harassed plaintiffs by screaming, "You f-ing Spanish bitch! Why are you so stupid! F-ing lady!"

Age-Based Discrimination

33. Shiwprashad also made hostile age-based comments to both women. In 2008 he said several times that he wanted to send all the "f-ing ladies" home and that he wanted to replace plaintiffs and the three other women who still worked at the factory with younger, prettier women. At that time, Lincango was 41 years old, and Lopez was 44 years old.

Plaintiffs' Complaints to Pinguist and the Company's Eventual Distribution of a Sexual Harassment Policy

34. From the time that plaintiffs were hired in 1992 and 1995 respectively until 2002, the Company had no policy regarding sexual or racial harassment. The Company never informed plaintiffs of their right to be free of harassment and never specified any procedures for complaining of such treatment. Nevertheless, throughout the 1990s, plaintiffs repeatedly

complained to Pinguist about Shiwprashad's sexual and racial harassment. Despite their complaints, the racial and sexual harassment continued.

35. In approximately 2002, plaintiffs told Pinguist that they and the other female employees were going to bring their complaints of harassment to the Department of Labor if he did not take their complaints seriously. The next day, Pinguist asked plaintiffs and three other women to meet with him individually. One by one, each woman went into Pinguist's office to discuss their sexual harassment complaints. Lincango told Pinguist about Shiwprashad's harassing conduct, including that he had touched her buttocks. Lopez complained about Shiwprashad's harassment as well, including that he Shiwprashad followed her around and tried to force her to kiss him and touch his genitals. Pinguist told plaintiffs that he would speak to Shiwprashad.

36. Upon information and belief, Pinguist told Shiwprashad of the women's complaints. A few days later, the Company distributed a written sexual harassment policy, which stated that employees could bring complaints of sexual harassment to the Office Manager. The policy made no reference to racial harassment.

37. The Office Manager at that time was a woman named Anne Marie, to whom plaintiffs had complained in the past about Shiwprashad, to no effect. Anne Marie shared an office with Pinguist and answered to him, and she had been present at the individual meetings between Pinguist and the plaintiffs when they complained about Shiwprashad. She had also been present many times before when plaintiffs had complained to Pinguist about Shiwprashad's harassment.

38. Although most of the Company's employees are native Spanish speakers with limited ability to read and write English, the sexual harassment policy was

written only in English, and the Company made no attempt to communicate its contents to the employees in Spanish. Neither Lincango nor Lopez could read or understand the written policy.

39. The Company's distribution of the sexual harassment policy did not change Shiwprashad's conduct. He continued to engage in the same kinds of severe and pervasive sexual harassment as before, and, because he was angry that they had complained, punished the plaintiffs by giving them harder work. Plaintiffs continued to regularly complain to Pinquist and Anne Marie about Shiwprashad's continuing sexual and racial harassment, but the Company did nothing to change his behavior.

40. Both plaintiffs considered leaving the job because of the persistent harassment, but neither of them could afford to lose their income because they needed to support their families.

41. Shiwprashad continued to subject the women to harassment until they were fired in January 2009.

Sex-Based Termination

42. On January 28, 2009, defendants fired plaintiffs, as well all the other women who worked in the factory, while retaining all but one of its male employees. Plaintiffs were qualified to perform the job duties of the male employees who were retained and had more seniority with the Company than most of the men who were retained.

43. Shortly after defendants fired all the women who worked in the factory, defendants hired new male employees to work in the factory. On information and belief, plaintiffs were as qualified or more qualified than these new male employees to perform the job duties of their position.

FIRST CLAIM FOR RELIEF

Discrimination under Title VII, 42 U.S.C. § 2000e-2(a)(1)

44. Plaintiffs repeat and reallege paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. By the acts and practices described above, Defendant PT&D discriminated against plaintiffs in the terms and conditions of their employment based their sex, race, and national origin in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1) by subjecting plaintiffs to a hostile work environment and by firing plaintiffs based on their sex.

46. Defendant PT &D knew that its actions constituted unlawful discrimination and/or showed reckless disregard for plaintiffs' statutorily protected rights.

47. As a result of Defendant PT&D's discriminatory acts, plaintiffs have suffered, are suffering and will continue to suffer irreparable injury, monetary damage, and other compensable damages.

SECOND CLAIM FOR RELIEF

Discrimination under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107(7)

48. Plaintiffs repeat and reallege paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. By the acts and practices above, defendants PT&D, Pinguist and Shiwprashad discriminated against plaintiffs in the terms and conditions of their employment on the basis of their sex, race, national origin and age, in violation of the New York City Human Rights Law, N.Y.C. Admin. Code § 8-107(7).

50. Defendants knew that its actions constituted unlawful discrimination and/or showed reckless disregard for plaintiffs' statutorily protected rights.

51. As a result of defendants' discriminatory acts, plaintiffs have suffered, are suffering and will continue to suffer irreparable injury, monetary damage, and other compensable damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment:

- a. declaring the acts and practices complained of herein to be violations of Title VII and the New York City Human Rights Law;
- b. directing defendants to make plaintiffs whole for all earnings and all benefits they would have received but for defendants' discriminatory treatment, including but not limited to, back pay, front pay and lost benefits;
- c. directing defendants to pay plaintiffs compensatory damages for emotional distress, physical injury and suffering;
- d. directing defendants to pay an additional amount as punitive damages for their willful and/or reckless disregard of plaintiffs' statutory rights;
- e. directing defendants to pay pre- and post-judgment interest;
- f. awarding plaintiffs reasonable attorney's fees and costs; and
- g. granting such other and further relief as this Court deems necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues of fact and damages stated herein.

Dated: November 27, 2013
New York, New York

Respectfully Submitted,

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