

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2016-

CA

CLAUDIO CALDERIN,

Plaintiff,

vs.

COVA, INC. d/b/a VERSAILLES CUBAN  
RESTAURANT, a Florida for-profit corporation; and  
LA CARRETA NO. II, INC., a Florida for-profit  
corporation; and the VALLS GROUP, INC., a Florida  
for-profit corporation,

Defendants.

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**COMPLAINT AND JURY TRIAL DEMAND**

Plaintiff CLAUDIO CALDERIN, through undersigned counsel, sue Defendants COVA, INC. d/b/a VERSAILLES CUBAN RESTAURANT, a Florida for-profit corporation, and LA CARRETA NO. II, INC., a Florida for-profit corporation, VALLS GROUP, INC. a Florida for-profit corporation and alleges as follows:

1. This is an action for unlawful retaliation in violation of the Florida Whistleblower Act, §448.101, *et seq.*, Fla. Stat. (“FWA”), specifically §448.102(3), Fla. Stat. Plaintiffs seek damages in excess of \$15,000.00, exclusive of interest, costs, and attorney’s fees.

2. Plaintiff CLAUDIO CALDERIN (“CALDERIN”) was at all relevant times a resident of Miami-Dade County, Florida, and is *sui juris*.

3. Defendant COVA, INC. d/b/a VERSAILLES CUBAN RESTAURANT (“VERSAILLES”) is, and at all relevant times was, a Florida for-profit corporation

authorized to do business, and doing business in Miami-Dade County, Florida. VERSAILLES was at all relevant times in the business of operating a restaurant located at 3555 S.W. 8<sup>th</sup> Street, Miami, Florida, serving Cuban cuisine in Miami, Florida, and was an “employer” as defined under the FWA in that it employed ten (10) or more employees during the relevant time frame.

4. Defendant LA CARRETA NO. II, INC. (“LA CARRETA”) is, and at all relevant times was, a Florida for-profit corporation authorized to do business, and doing business in Miami-Dade County, Florida. LA CARRETA was at all relevant times in the business of operating a restaurant located at 8650 Bird Road, Miami, Florida, serving Cuban cuisine in Miami, Florida, and was an “employer” as defined under the FWA in that it employed ten (10) or more employees during the relevant time frame.

5. Defendant VALLS GROUP, INC. (“VALLS GROUP”) is, and at all relevant times was, a Florida for-profit corporation authorized to do business, and doing business in Miami-Dade County, Florida. At all relevant times, VERSAILLES, LA CARRETA, and VALLS GROUP operated as and were an integrated and single employer enterprise with respect to CALDERIN in that they consistently and repeatedly operated the separate entities as a single employing unit, shared common management with the same officers and directors, had a common and overlapping ownership structure, regularly shared and exchanged management personnel, exercised common control over financial operations, had centralized control over labor relations and human resources, and had a centralized office and business location for corporate operations.

6. CALDERIN began his employment with VERSAILLES on or about January 14, 2010 in the position of food runner. Approximately a year later, CALDERIN

was promoted to the position of busboy, at a higher rate of pay, in which he worked for approximately five months. CALDERIN was then promoted to the position of waiter, again receiving an increase in his pay. In or about May 2012, CALDERIN received another promotion, this time to the more prestigious position of assistant manager, reporting at the time to morning shift General Manager, Jose “Pepe” Reyes (“Reyes”).

7. In or about the last quarter of 2012, Reyes was removed and replaced by a new morning shift General Manager, Rigoberto Hernandez (“Hernandez”). CALDERIN, as Assistant Manager, continued to report to Hernandez.

8. After the hiring of Hernandez and continuing through October 2013, CALDERIN was a witness to various instructions given to him and Hernandez by Felipe Valls, Sr. (“Valls Sr.”), the patriarch of the Valls family that owns and operates VERSAILLES, LA CARRETA, and VALLS GROUP. These instructions included, but were not limited to, orders to unjustifiably and discriminatorily demote, reduce the work hours, adversely change the work schedules, and adversely change the work stations of certain restaurant employees, in a deliberate and concerted effort to make working conditions for them so intolerable that they would quit their jobs. Hernandez voiced his objections to Valls and CALDERIN regarding Valls’ instructions and orders, and Hernandez refused to carry some out. CALDERIN, however, although morally disagreeing with the reasons for the actions ordered by the patriarch, fearing for the loss of his job, followed Valls’ instructions and regrettably implemented numerous adverse actions on various VERSAILLES’ employees.

9. In or about the last quarter of 2013 and into January 2014, CALDERIN first began to internally complain and object to what he observed as increasingly unsafe

and unsanitary conditions that existed at VERSAILLES, in particular its kitchen and food preparation surfaces, the kitchen equipment, and the plumbing. These unsafe and unsanitary conditions included, but were not limited to cockroaches in the desserts, human hair in the food, wire brush hairs in the rice, broken glass slivers in the croquettes, rotten, uncooked, cold, stale, and poorly presented foods. These complaints and objections were specifically made to Norberto Ferro (“Ferro”), the VERSAILLES director of sanitation and safety, and Antonio Robles (“Robles”) another member of Defendant’s management. CALDERIN also provided and personally showed to Ferro numerous photographs evidencing the unsafe and unsanitary conditions. Copies the photographs evidencing the unsafe and unsanitary conditions that CALDERIN observed and objected to are attached as Composite Exhibit “A”.

10. Commencing in or about November 2013 and continuing into early December, Hernandez lodged repeated internal complaints with VERSAILLES’ management and human resources regarding various improper and illegal actions being engaged in at VERSAILLES. In or about December 2013, shortly after he lodged his internal complaints, Hernandez was terminated, purportedly for making and/or authorizing excessive voids and discounts of customer checks, and for allegedly engaging in a sexual relationship with another male employee, a waiter named Adriam Mena (“Mena”). Mena also had internally complained to VERSAILLES about his mistreatment and was also terminated at or about the same time as Hernandez.

11. In or about the end of December 2013 and into the early part of January 2014, VERSAILLES’ and VALLS GROUP’s management, together with its outside attorney, Rey Velazquez (“Velazquez”), purportedly conducted an investigation into

Hernandez and Mena's complaints and their terminations. As part of this investigation, CALDERIN was interviewed by Velazquez and was asked several questions. Among the several questions posed, CALDERIN was asked these three very specific questions: (1) whether Valls Sr. had questioned CALDERIN about whether or not he knew that Hernandez and Mena had engaged in a sexual relationship; (2) whether Valls Sr. was ever disturbed that Hernandez and CALDERIN wore brightly colored shirts; and (3) whether CALDERIN had personally made any customer check voids for Mena. In response to these questions, CALDERIN confirmed: (1) that Valls Sr. had in fact questioned CALDERIN regarding Hernandez and Mena's alleged sexual relationship; (2) that Valls Sr. had in fact made derogatory comments about the brightly colored shirts worn by Hernandez and CALDERIN; and (3) that CALDERIN had indeed performed a large amount of check voids for Mena and many other employees of VERSAILLES as a result of the prevalent unsafe and unsanitary conditions that existed at VERSAILLES at the time. CALDERIN explained to Velazquez in detail the nature of the unsafe and unsanitary conditions at VERSAILLES that were causing the necessity to have numerous customer checks voided or discounted.

12. Shortly thereafter in January 2014, CALDERIN began to hear rumors from co-employees that he was going to "be removed or transferred from VERSAILLES". As a result of these rumors, CALDERIN met in January 2014 with Jeanette Valls-Edwards ("J. Valls") and Claudia Castano ("Castano"), VALLS GROUP's human resources directors, who were also the human resources directors of VERSAILLES, to address these rumors and to determine whether there were any problems with his work that were causing these rumors to be spread. J. Valls and

Castano categorically discarded these rumors as false and informed CALDERIN that there was no problem with his work. However, in response to CALDERIN's concerns, J. Valls and Castano curiously inquired whether CALDERIN was currently engaging in any sexual relations with any co-workers and handed him a copy of the company's purported sexual harassment policy.

13. Following CALDERIN's interview and his previous complaints to Ferro and Robles and his meeting with J. Valls and Castano, VERSAILLES took no corrective actions as to the obviously unsafe and unsanitary conditions CALDERIN had reported. However, based on information and belief, on or about January 21, 2014 the Florida Department of Business and Professional Regulation cited VERSAILLES with 52 safety violations, a number of which were deemed critical.

14. On or about February 5, 2014, CALDERIN was involuntarily transferred from his day time shift as assistant manager at VERSAILLES to a night shift assistant manager position at LA CARRETA. CALDERIN was thus transferred to a location further from his home substantially lengthening his commute, and to a more undesirable and inconvenient shift.

15. When CALDERIN began his employment as the night shift assistant Manager at LA CARRETA, and continuing thereafter, CALDERIN continued to raise numerous verbal and written objections to management concerning the adequacy of the training of certain key personnel, the mandatory and illegal locking of the kitchen's emergency exit door, unsafe and unsanitary conditions of many work and storage areas, the lack of cleanliness in the work and food preparation areas to prevent a plague of cockroaches, rats, or other pests that could adversely affect or cause health and safety

consequences to employees and patrons alike, the inadequate organization and handling of the food inventory, and the lack of an adequate cleaning crew or dedicated janitorial staff. CALDERIN documented some of the inadequacies via photographs that were shown to members of management. Copies of the photographs evidencing the unsafe and unsanitary conditions at LA CARRETA that CALDERIN observed and objected to are attached hereto as Composite Exhibit "B".

16. After he internally complained at LA CARRETA, , CALDERIN continued to experience an increased pattern of various negative and adverse employment actions against him, which included but were not limited to: excessive scrutinizing of his work, excessive micromanagement of his work, falsely accusations of theft occurring during his work shift, false accusations of him making false accusations of theft against other employee, false accusations of him of excessively arguing with employees, undermining of his authority and work-related decisions, and setting him up in numerous ways to fail. CALDERIN eventually confronted Fidel Quintanilla ("Quintanilla"), another manager, about the actions being taken against him, and Quintanilla informed him that "he had been instructed to report" CALDERIN's "every move" to the General Manager, Carlos Nodarse ("Nodarse"), thus confirming that CALDERIN had indeed been placed under excessive scrutiny and was being micromanaged. During this same time frame, other employees who engaged in substantially worse conduct or actual misconduct than CALDERIN were not subjected to similar excessive scrutiny, micromanagement, and false accusations.

17. As a result of the continuous mistreatment and what he perceived as an increasingly hostile work environment resulting from his prior complaints and objections

to illegal conduct and unsafe and unsanitary conditions, CALDERIN, on or about June 8, 2015, lodged with Castano of VALLS GROUP's human resources department, which was also the human resources department of VERSAILLES and LA CARRETA, a written, detailed internal complaint of what he perceived as retaliation and a hostile work environment. A copy of CALDERIN's internal complaint, the contents of which are incorporated herein, is attached as Exhibit "C".

18. By email dated June 29, 2015, a copy of which is attached as Exhibit "D", Castano acknowledged receipt of CALDERIN's complaint and requested to meet with him.

19. On July 2, 2015, CALDERIN met with Castano and her assistant to discuss his internal complaint. CALDERIN asked Castano if he could record the meeting, and Castano refused and cancelled the meeting. CALDERIN, by email dated July 2, 2015, a copy of which is attached as Exhibit "E", memorialized what had occurred at the meeting and asked that he be given all questions about his internal complaint in writing.

20. By email dated July 8, 2015, a copy of which is attached as Exhibit "F", Castano criticized and chastised CALDERIN about his conduct at the July 2, 2015 meeting, falsely accusing him, among other things, of not following the company's harassment policy and impeding and interfering with the investigation into his internal complaint. Castano also requested to meet with CALDERIN on either July 9 or 10, 2015.

21. By email dated July 9, 2015, a copy of which is attached as Exhibit "G", CALDERIN complained about Castano's unfair criticisms and accusations against him, and expressed his surprise that an investigation could not be commenced into his



complaint as he had provided an extremely detailed account of the events in his complaint. He nonetheless agreed to meet with Castano on July 10, 2015.

22. CALDERIN met with Castano on July 10, 2015. At this meeting, Castano provided CALDERIN with seven questions, the answers to which were, for the most part, detailed in his original complaint. By email dated July 14, 2015 to Castano, a copy of which is attached as Exhibit “H”, CALDERIN not only provided detailed answers to Castano’s questions, but also complained about the false accusations Castano had made in her July 2, 2015 email and her failure to properly and expeditiously investigate his complaint despite already having detailed factual information from him. CALDERIN also complained that the investigation was not impartial in that it was being conducted and overseen by implicated persons, including Castano and J. Valls. CALDERIN specifically identified Valls Sr., J. Valls, Castano, Robles, Velazquez, Nodarse, and Quintanilla and any others who were trying to set him up to fail as being implicated person. CALDERIN specifically requested that the investigation be further conducted by a neutral and unimplicated person.

23. By a second email dated July 14, 2015 to Castano, a copy of which is attached as Exhibit “I”, CALDERIN provided supplemental answers to some of Castano questions posed at the July 10, 2015 meeting.

24. On or about July 15, 2015, CALDERIN was informed by another employee, Maritza Llano (“Llano”), that Valls Sr. was looking for CALDERIN personally in the cafeteria. CALDERIN became concerned and distressed that Valls Sr., who he had specifically complained about and who CALDERIN had not spoken with for many months, wanted to meet with him. When CALDERIN met with Valls Sr., Valls Sr.

removed four \$100.00 bills from his pocket and stuffed them into the pocket of CALDERIN's shirt pocket. In addition, Valls Sr. called CALDERIN twice on CALDERIN's cellular phone, and, when CALDERIN did not pick up, called thereafter at the restaurant to speak directly with CALDERIN. When CALDERIN finally spoke with Valls Sr., Valls Sr. strangely directed CALDERIN to order four boxes of cigars for him.

25. By email dated July 16, 2015, a copy of which is attached as Exhibit "J", CALDERIN internally complained to Castano about the actions of Valls Sr., which he viewed as bribery not to pursue his prior internal complaints, and also as intimidation and retaliation for his prior internal complaints. In connection with his email, CALDERIN provided proof of Valls Sr.'s repeated phone calls to CALDERIN's cellular phone, and copies of the original four \$100 bills that Valls Sr. had given him. CALDERIN then returned the original four \$100 bills to Castano.

26. On July 17, 2015, Valls Sr.'s chauffeur, Juan Bido ("Bido"), appeared at the LA CARRETA restaurant to meet personally with CALDERIN. When CALDERIN was unavailable, Bido met with Llano and informed her that CALDERIN had return to Valls Sr. the \$400 that Bido claimed Valls Sr. had given to CALDERIN to buy cigars for Valls Sr. CALDERIN memorialized this event as a further act of retaliation in an email to Castano the same day, a copy of which is attached as Exhibit "K". In that email, CALDERIN informed Castano that he intend to hire an attorney and would be filing a charge of discrimination.

27. By email dated July 17, 2015, a copy of which is attached as Exhibit "L", Castano apologized that she had been busy handling other matters and not communicating with CALDERIN earlier. Castano also confirmed that she had received

all of the necessary documents from CALDERIN, that they were in the process of reviewing his complaint allegations, and that they would be back in contact with CALDERIN the following week.

28. By email dated July 24, 2015, a copy of which is attached as Exhibit “M”, Castano informed CALDERIN they had reviewed CALDERIN’s allegations and wanted to meet with CALDERIN on August 4, 2015 at 2:00 p.m. to discuss their findings.

29. On the night of July 31, 2015, Reyes, who was then a manager at La Carreta No. 1 restaurant, appeared at the restaurant and confronted CALDERIN. Reyes, who was visibly anxious, informed CALDERIN, among other things, that employees Reyes refused to specifically identify, were commenting that CALDERIN was suing the company, that he should not go crazy and maintain his job, that Hernandez who had brought suit against the company was not going to get any money, and that if he lost his job he would never be a manager again in any restaurant. CALDERIN, via email to Castano dated August 1, 2015, a copy of which is attached as Exhibit “N”, complained about Reyes’ conduct as being retaliatory, questioned the integrity of the investigation into his prior complaints, and demanded that the results of the investigation be given to him in writing.

30. By email dated August 17, 2015, a copy of which is attached as Exhibit “O”, Castano falsely accused CALDERIN of not cooperating in the company investigation into his numerous, detailed complaints; falsely accused him of not answering completely, in detail, and to human resources’ satisfaction the questions that Castano had previously posed; falsely accused him of avoiding answering questions that Castano allegedly had posed but in fact had not; falsely accused him of refusing to attend

or disrupting meetings with him; informed that the investigation was still ongoing due to his alleged failure to cooperate; and informed him that Reyes' was not speaking on behalf of the company or human resources when he went to meet with CALDERIN on July 31 2015.

31. By email dated August 18, 2015, a copy of which is attached as Exhibit "P", Castano, among other things, ordered CALDERIN to meet with her again on August 19, 2015 at 4:00 p.m.

32. By email to Castano dated August 19, 2015, at 3:10 p.m., a copy of which is attached as Exhibit "Q", in anticipation of his meeting with Castano, CALDERIN expressed his concerns and complained about Castano's false accusations against him regarding his failure to cooperate, demanded to receive the findings of the investigation as Castano had previously represented would be given to him back on August 4, 2015, and demanded the results of all of his prior documented internal complaints. CALDERIN confirmed that he would be at the meeting at the designated 4:00 p.m. time. He further complained that Castano's actions, including her repeated demand to meet with him, were further retaliation for his prior complaints. CALDERIN then showed up for the meeting but was informed by Nodarse via text message at 4:01 p.m. that the meeting had been cancelled. No explanation for the cancellation was given.

33. By email dated August 26, 2015, a copy of which is attached as Exhibit "R", Castano expressed disagreement with CALDERIN's position and ordered his appearance at yet another meeting the following Friday, August 28, 2015, at 2:30 p.m.

34. CALDERIN appeared for the meeting on August 28, 2015, at 2:30 p.m., and was made to sit for over half an hour without anyone attending to him. As a result, CALDERIN became frustrated and left the office.

35. By email to Castano dated August 28, 2015, a copy of which is attached as Exhibit "S", CALDERIN complained about Castano's conduct and lack of respect and consideration in repeatedly ordering him to attend meetings and then either unilaterally cancelling them leave him waiting without explanation. CALDERIN demanded that he be given the details and results of the investigation into his many internal complaints, complained that he was further being retaliated against, and indicated that he would go to a federal agency to formally complain.

36. By email dated August 31, 2015, a copy of which is attached as Exhibit "T", Castano expressed her disagreement with CALDERIN's position, accused CALDERIN of making self-serving statements, unjustifiably criticized CALDERIN with regard to the tone of his emails and internal complaints, accused CALDERIN again of his lack of cooperation in the investigation, and expressed that CALDERIN's internal complaints, which were supposedly still being investigated, were unfounded. Despite her expressed and biased prejudgment of CALDERIN's internal complaints, again ordered CALDERIN to appear at a meeting with her on September 2, 2015 at 4:00 p.m.

37. Due to the repeated and continuous acts of retaliation and the hostile work environment created against CALDERIN, which continued and worsened after CALDERIN internally complained to Defendants' human resources department, CALDERIN felt that he had no choice but to resign his employment. CALDERIN thus resigned his employment as of September 1, 2015 and was constructively discharged.

38. Subsequent to the termination of his employment, CALDERIN made efforts to secure new employment but was denied various employment opportunities as a result of false and disparaging statements made to the prospective employers by Defendants' management. By email dated October 23, 2015, a copy of which is attached as Exhibit "U", CALDERIN complained to Castano about this situation and the post-employment retaliation being committed against him.

39. All conditions precedent have been satisfied, waived, or otherwise excused.

40. CALDERIN has hired the undersigned attorneys to represent him in this suit, and have agreed to pay them a reasonable fee for their services.

**COUNT I – RETALIATION IN VIOLATION OF FWA**

41. CALDERIN re-alleges paragraphs 1 through 39 as if set forth fully herein.

42. The FWA, specifically Fla. Stat. §448.102(3), Fla. Stat., makes it unlawful for an employer such as Defendants to take any retaliatory personnel action against an employee because the employee has objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

43. CALDERIN objected to, and refused to participate in, the illegal conduct described hereinabove, and thus engaged in protected activity under the FWA. The conduct to which CALDERIN objected involved violations of the State of Florida and local laws and regulations for public health and safety applicable to restaurants, and the federal and state anti-discrimination and anti-retaliation.

44. Defendants as CALDERIN's employer engaged in unlawful retaliation against CALDERIN in violation of the FWA as specifically set forth hereinabove.

45. As a direct and proximate result of Defendants' unlawful retaliation, CALDERIN has suffered in the past, and will continue to suffer into the future, damages in the form of lost back pay and lost benefits, out of pocket pecuniary losses, and compensatory damages, including emotional distress, humiliation and loss of dignity.

46. CALDERIN is entitled to recover his costs, including his reasonable attorney's fees, per the FWA, §448. 104, Fla. Stat.

WHEREFORE, Plaintiff CALDERIN demands judgment against Defendants, jointly and severally, for the following relief:

A. A declaration that Defendants' conduct constitutes unlawful retaliation in violation of the FWA;

B. An award to Plaintiff of his lost back pay and lost benefits;

C. An award to Plaintiff of reasonable front pay if reinstatement is not feasible;

D. An award to Plaintiff of compensatory damages, including damages for emotional distress, humiliation, and loss of dignity;

E. An award to Plaintiff of his reasonable attorney's fees, expenses and other costs;

F. An award to Plaintiff of pre- and post-judgment interest;

G. An award of the increased tax consequences for any back pay and compensatory damages awarded; and

H. Such further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all issues so triable.

DATED this 11th day of January, 2016.

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