

(“FLSA”), 29 U.S.C. §§ 215(a)(3), 216. Greathouse alleged that his employer retaliated against him in violation of section 215(a)(3) when he orally complained to his employer that he had not received the pay he was due. The District Court’s ruling against Greathouse turned on our decision in Lambert v. Genesee Hospital, 10 F.3d 46 (2d Cir. 1993), which held that making an informal oral complaint to a supervisor did not amount to “fil[ing a] complaint” and therefore was not protected by the statute. We now conclude that the Supreme Court’s decision in Kasten v. Saint-Gobain Performance Plastics Corp., 131 S. Ct. 1325 (2011), which held that an oral complaint can serve as a predicate to an FLSA retaliation claim, casts doubt on the continued validity of our ruling in Lambert. Accordingly, we overrule Lambert insofar as Kasten has not already done so. We VACATE the judgment of the District Court, and REMAND the cause for further proceedings consistent herewith.

VACATED AND REMANDED.

Judge KORMAN concurs in part and dissents in part in a separate opinion.

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10
11
12 SUSAN L. CARNEY, *Circuit Judge*:

13 In this appeal, we consider the effect of the Supreme Court's decision in
14 Kasten v. Saint-Gobain Performance Plastics Corp., 131 S. Ct. 1325 (2011), on our
15 1993 decision in Lambert v. Genesee Hospital, 10 F.3d 46 (2d Cir. 1993),
16 concerning what constitutes "fil[ing a] complaint" under the anti-retaliation
17 provision of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 215(a)(3).

18 Section 215(a)(3) makes it unlawful "to discharge or in any other manner
19 discriminate against any employee because such employee has filed any
20 complaint . . . related to" FLSA's provisions. In Lambert, we read section
21 215(a)(3) to require that an employee pursuing a claim for unlawful retaliation
22 have done more than voice an equal pay complaint to a supervisor. 10 F.3d at
23 55-56. To serve as a predicate for an FLSA retaliation claim, we held, a complaint

1 must be “formal[ly]” filed, see id. – a condition that we have subsequently
2 interpreted to require (1) a written complaint, that is (2) filed with a government
3 agency.¹

4 In its 2011 decision in Kasten, however, the Supreme Court held that the
5 section’s pivotal phrase – “filed any complaint” – encompasses oral as well as
6 written complaints, so long as the complaint is “sufficiently clear and detailed for
7 a reasonable employer to understand it, in light of both content and context, as
8 an assertion of rights protected by the statute and a call for their protection.” 131
9 S. Ct. at 1335. To the extent, then, that Lambert turned on the oral nature of the
10 complaint made by the employee, Kasten rejected Lambert’s analysis. The
11 Kasten Court refrained, however, from addressing the second factor on which
12 the Lambert analysis hinged: that the complaint must be directed to a
13 government agency, not merely to a supervisor in the ranks of the defendant
14 employer. Kasten, 131 S. Ct. at 1336. Although Kasten itself arose in the context

¹ See, e.g., Nicolaou v. Horizon Media, Inc., 402 F.3d 325, 328 (2d Cir. 2005) (explaining that in Lambert, “this Court held that Section [2]15(a)(3) . . . does not apply to retaliation taken in response to internal complaints, as opposed to retaliation occurring after an employee has cooperated with an investigation brought by a regulatory agency”); see also Parilla v. Salt & Pepper on 33rd St. Inc., No. 12 Civ. 6382 (AKH), 2013 WL 4536628, at *3 (S.D.N.Y. Apr. 8, 2013) (“In [Lambert], the Second Circuit found that two requirements had to be met in order for [section 215(a)(3)] to apply: 1) the complaint must have been a formal, written complaint; and 2) the complaint must have been made to a government agency, not to an employee’s supervisor.”).

1 of an oral complaint made to an employer, not a government agency, the Kasten
2 Court declined to address specifically whether retaliation for a complaint made
3 to an employer is actionable. See id. at 1336.

4 Kasten overrules Lambert's requirement that an employee seeking section
5 215(a)(3)'s protections file a written complaint. As we discuss below, Kasten also
6 casts doubt on Lambert's second requirement: that, for an employee's complaint
7 to fall within the protections of section 215(a)(3), it be made to a government
8 agency. Indeed, we not long ago characterized Kasten (albeit in a footnote) as
9 effecting an "abrogation of our precedent in this area." Kuebel v. Black & Decker
10 Inc., 643 F.3d 352, 358 n.3 (2d Cir. 2011). Lambert's holding in this respect is at
11 odds, moreover, with the weight of authority in our sister circuits, and with the
12 consistently held position of the two authorities charged with section 215(a)(3)'s
13 enforcement: the Secretary of Labor and the Equal Employment Opportunity
14 Commission ("EEOC").

15 Therefore, today, we overrule Lambert to the extent it holds that section
16 215(a)(3) requires an employee to have filed a complaint with a government
17 agency as a predicate for an FLSA retaliation claim.² We conclude that an

² The panel's opinions have been circulated to all active members of this Court prior to filing. See

1 employee may premise a section 215(a)(3) retaliation action on an oral complaint
2 made to an employer, so long as – pursuant to Kasten – the complaint is
3 “sufficiently clear and detailed for a reasonable employer to understand it, in
4 light of both content and context, as an assertion of rights protected by the statute
5 and a call for their protection.” 131 S. Ct. at 1335. Accordingly, because the
6 District Court denied Greathouse damages on his claim for retaliatory discharge
7 based entirely on Lambert’s rule, we vacate the judgment insofar as it relied on
8 Lambert and remand the cause for further proceedings consistent with this
9 opinion.

11 FACTUAL AND PROCEDURAL BACKGROUND

12 We recite the facts as found by the Magistrate Judge in a report and
13 recommendation that was adopted by the District Court. See Greathouse v. JHS
14 Sec., Inc., No. 11 Civ. 7845 (PAE) (GWG), 2012 WL 3871523 (S.D.N.Y. Sept. 7,
15 2012), *adopted by* 2012 WL 5185591 (S.D.N.Y. Oct. 19, 2012). Because both
16 defendants defaulted, the Magistrate Judge properly accepted as true the well-
17 pleaded factual allegations of Greathouse’s complaint regarding liability, and

Shipping Corp. of India v. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 67 & n.9 (2d Cir. 2009).

1 provided for further proceedings to determine the appropriate damage award.

2 See SEC v. Razmilovic, 738 F.3d 14, 19 (2d Cir. 2013).

3 From September 2006 through October 14, 2011, plaintiff Darnell
4 Greathouse worked as a security guard for defendant JHS Security Inc. ("JHS").
5 Greathouse considered defendant Melvin Wilcox, the president and part-owner
6 of JHS, to be his "boss." Greathouse, 2012 WL 3871523, at *2. During the course
7 of his employment with JHS, Greathouse was the victim of a number of
8 improper employment practices, including non-payment and late payment of
9 wages, and improper payroll deductions. Although Wilcox repeatedly told
10 Greathouse that he would receive his outstanding paychecks, those checks never
11 arrived.

12 On October 14, 2011, Greathouse complained to Wilcox that he had not
13 been paid in several months. Wilcox responded, "I'll pay you when I feel like it,"
14 and, without warning, drew a gun and pointed it at Greathouse. Greathouse,
15 2012 WL 3871523, at *2. Greathouse understood that response as ending his
16 employment with JHS.

17 About two weeks later, Greathouse filed his complaint in the United States

1 District Court for the Southern District of New York. In addition to various
2 FLSA and New York Labor Law (“NYLL”) claims related to his missing and
3 improperly reduced wages,³ he alleged that Wilcox and JHS (through Wilcox)
4 had effectively discharged him in retaliation for his October 14th complaint,
5 thereby violating section 215(a)(3) and the NYLL.

6 Several months later, after neither defendant appeared or filed an answer,
7 the clerk of court entered defaults against both. The District Court then referred
8 the matter to a magistrate judge to evaluate Greathouse’s claims for damages.
9 The Magistrate Judge issued a Report and Recommendation in September 2012,
10 recommending that the District Court enter a damages award in the total amount
11 of \$30,658.50, plus prejudgment interest, for Greathouse’s claims for unpaid
12 overtime, unpaid wages, improper deductions, and liquidated damages under
13 the NYLL. Greathouse, 2012 WL 3871523, at *12.

14 As to the retaliation claim, however, the Magistrate Judge concluded that
15 Lambert barred an award because Greathouse had not filed a complaint with any
16 government agency or other prosecutorial authority, but had merely confronted

³ Section 216, “Penalties,” provides that an employee may sue an employer to recover legal or equitable relief, including the payment of lost wages, “as may be appropriate to effectuate the purposes of section 215(a)(3) . . .” 29 U.S.C. § 216(b). New York Labor Law does essentially the same. See N.Y. Lab. Law § 663 (McKinney 2011).

1 his employer in person to demand his missing wages. The Magistrate Judge
2 recognized that, under the Supreme Court’s holding in Kasten, an oral complaint
3 may serve as a predicate for an FLSA retaliation claim. The Magistrate Judge
4 correctly acknowledged, however, that Kasten did not overturn Lambert insofar
5 as we held there that a complaint made *to a supervisor* is not a complaint “filed”
6 under section 215(a)(3).

7 Greathouse filed objections to the Magistrate Judge’s report in the District
8 Court, contesting, *inter alia*, the Magistrate Judge’s finding that Greathouse was
9 not entitled to damages for his FLSA retaliation claim. The District Court
10 rejected Greathouse’s objection on this issue, agreeing with the Magistrate Judge
11 about the continued import of Lambert. The District Court subsequently
12 adopted the Magistrate Judge’s conclusions, subject only to two minor
13 exceptions not relevant here, and the District Court entered default judgment.⁴

14 On appeal, Greathouse argues primarily that, in light of Kasten, we should
15 overrule what remains of Lambert and squarely hold that FLSA prohibits
16 retaliation against employees who complain orally to their employers about

⁴ These concerned the accounting for certain unlawful payroll deductions and unpaid wages, which marginally affected the amount of the District Court’s award for liquidated damages under the NYLL. [A.95-96, 98]

1 perceived FLSA violations. Because defendants defaulted in the District Court
 2 and never filed an appearance in this Court, we appointed *pro bono* counsel to
 3 argue, as *amicus curiae* in support of defendants, that the Supreme Court's
 4 decision in Kasten did not abrogate our holding in Lambert and that the Lambert
 5 rule with respect to intra-company complaints should survive. The two
 6 administrative authorities charged with administering FLSA – the EEOC and the
 7 Secretary of Labor – filed *amicus* briefs in support of Greathouse's position.⁵

8

9 DISCUSSION

10 Section 215(a)(3) forbids “any person” from “discharg[ing] or in any other
 11 manner discriminat[ing] against any employee because such employee has *filed*
 12 *any complaint* or instituted or caused to be instituted any proceeding under or
 13 related to this chapter” 29 U.S.C. § 215(a)(3) (emphasis added). As
 14 described above, the Supreme Court held in Kasten that FLSA's anti-retaliation
 15 provision “includes oral as well as written complaints.” 131 S. Ct. at 1329. The
 16 Court overruled Lambert and our precedent following Lambert to the extent that
 17 Lambert required an employee to have filed a written complaint to claim FLSA's

⁵ Counsel for the Secretary also participated in oral argument.

1 protections. Id. at 1330 (citing Lambert as a contrary decision). But the Kasten
 2 Court expressly declined to address the question whether an employer's
 3 retaliation for an intra-company complaint is actionable under FLSA.⁶ Id. at
 4 1336.

5 It is difficult to ignore, however, that the complaint at issue in Kasten was
 6 lodged not with a government agency, but with an employer. See id. at 1340-41
 7 (Scalia, *J.*, dissenting). Although slightly different concerns animated the Court's
 8 discussion in Kasten, an interpretation that excludes clearly stated complaints
 9 from protection because they were made to the employer instead of a
 10 government agency would run counter to the broadly remedial purpose that the
 11 Kasten Court instructed FLSA serves. See id. at 1334. So, although we recognize
 12 that the Court has not yet ruled on this precise question, we conclude that its
 13 ruling in Kasten must be read as casting serious doubt on the second component
 14 of our ruling in Lambert.

15 **A. Our Holding in *Lambert***

16 In Lambert, three female employees alleged that their employer, Genesee
 17 Hospital (the "Hospital"), retaliated against them in violation of the Equal Pay

⁶ It explained that the issue was not before the Court, since the defendant employer had failed to mention the point in its opposition to the petition for certiorari. Id. at 1336.

1 Act of 1963 (“EPA”), 29 U.S.C. § 206(d), a statute that amended FLSA. 10 F.3d at
2 50. Two of the plaintiffs, Janine Lambert and Eva Baker, alleged that they
3 complained to their departmental supervisor and to a member of the Hospital’s
4 employee-affairs department about Baker’s salary, which in their view was
5 unfairly lower than that of a male employee in the department (Francis Dupre),
6 whose responsibilities were substantially equivalent to Baker’s. Id. at 51.

7 About one year after Lambert and Baker complained, the supervisor
8 selected Dupre to manage the department. Id. Citing that incident and others,
9 Lambert, Baker, and one of their female colleagues sued the Hospital, their
10 supervisor, and Dupre, alleging that Dupre’s promotion over Baker was made in
11 retaliation for Lambert and Baker’s complaints to their supervisor about Baker’s
12 unequal pay. Id. This, they contended, violated the EPA and section 215(a)(3).⁷

13 The district court assumed that plaintiffs’ allegations stated a retaliation
14 claim under section 215(a)(3), Lambert, 10 F.3d at 56, and the case proceeded to
15 trial, where a jury found for plaintiffs on their retaliation claim as well as on their
16 equal pay claim, id. at 51-52. After trial, however, the district court granted

⁷ The EPA amended FLSA and is codified under the same chapter. An employer’s retaliation for filing EPA complaints, like retaliation for filing FLSA complaints, is analyzed under section 215(a)(3). See Lambert, 10 F.3d at 55.

1 defendants' motion for judgment notwithstanding the verdict. Id. at 52.

2 Plaintiffs appealed the resulting dismissal.

3 On appeal, we held that the district court erred in granting judgment to
4 defendants on plaintiffs' retaliation claim because defendants had waived their
5 legal argument. Id. at 54. Nonetheless, we dismissed plaintiffs' section 215(a)(3)
6 claim, on our own accord, for failure to state a claim. Id. at 56. We determined
7 that the plain language of section 215(a)(3) – to “file[] any complaint” – “limits
8 the cause of action to retaliation for filing formal complaints, instituting a
9 proceeding, or testifying, but does not encompass complaints made to a
10 supervisor.” Id. at 55. Because plaintiffs premised their claim on “simply oral
11 complaints to a supervisor,” they had not stated a claim for retaliation under
12 section 215(a)(3). Id. at 55-56.

13 The Lambert court's conclusion – that an employee pursuing a claim for
14 unlawful retaliation must do more than voice an equal pay complaint to a
15 supervisor to invoke section 215(a)(3)'s protections – is contrary to the weight of
16 authority in our sister circuits, even more so now than when Lambert was
17 decided. Indeed, the First, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and

Eleventh Circuits have all held that section 215(a)(3) protects employees from retaliation for their complaints made to employers, and the Sixth Circuit has assumed, without significant discussion, that complaints to an employer are covered by section 215(a)(3).⁸ The EEOC has long maintained the position that the Act protects employees who make such intra-company complaints.

B. The Supreme Court's Holding in *Kasten*

Nearly two decades after Lambert was decided, after these developments in other circuits and application of Lambert within our own, the Supreme Court granted certiorari in Kasten to resolve a “conflict among the Circuits as to whether an oral complaint is protected” by section 215(a)(3). 131 S. Ct. at 1330. The question there arose from an employee’s oral complaints to his shift

⁸ See Minor v. Bostwick Labs., Inc., 669 F.3d 428, 432 (4th Cir. 2012) (holding that “remedial purpose of the statute requires that it protect from retaliation employees who file intracompany complaints”); Kasten v. Saint-Gobain Performance Plastics Corp., 570 F.3d 834, 838 (7th Cir. 2009), overruled on other grounds, 131 S. Ct. 1325 (2011) (concluding internal complaints protected under plain language of § 215(a)(3)); Hagan v. Echostar Satellite, L.L.C., 529 F.3d 617, 626 (5th Cir. 2008) (adopting “majority rule” that internal complaints are protected because “it better captures the anti-retaliation goals” of FLSA); Lambert v. Ackerley, 180 F.3d 997, 1005 (9th Cir. 1999) (en banc) (holding that section 215(a)(3) protections “extend[] to employees who complain to their employer”); Valerio v. Putnam Assocs. Inc., 173 F.3d 35, 43 (1st Cir. 1999) (Campbell, J.) (concluding that “animating spirit of the [FLSA] is best served by a construction of § 215(a)(3) under which the filing of a relevant complaint with the employer no less than with a court or agency may give rise to a retaliation claim”); EEOC v. Romeo Cmty. Sch., 976 F.2d 985, 989-90 (6th Cir. 1992); EEOC v. White & Son Enters., 881 F.2d 1006, 1011 (11th Cir. 1989) (stating that unofficial complaints to an employer “constitute an assertion of rights protected under the statute”); Love v. RE/MAX of Am., Inc., 738 F.2d 383, 387 (10th Cir. 1984) (concluding that section 215(a)(3) applies to “the unofficial assertion of rights through complaints at work”); Brennan v. Maxey’s Yamaha, Inc., 513 F.2d 179, 181 (8th Cir. 1975) (concluding that a complaint to company president “was an act protected from reprisals” under section 215(a)(3)).

1 supervisor and to other employees that their employer was violating FLSA by
2 failing to compensate them for time spent donning and doffing their work-
3 related protective gear. Id. at 1329-30. The Seventh Circuit had affirmed
4 summary judgment for the employer, ruling that FLSA does not protect oral
5 complaints. Id. at 1330.

6 Deciding that the statutory phrase “filed any complaint,” read in isolation,
7 is “open to competing interpretations,” id. at 1330-31, the Supreme Court looked
8 to FLSA’s basic objectives for interpretive guidance. It also examined the range
9 of meanings that the words “filed” and “complaint” and the phrase “filed any
10 complaint” could bear and gave “a degree of weight” to the views of the agencies
11 charged with enforcing FLSA – the Department of Labor and the EEOC, which
12 argued for a broad reading of the section, one protective of employees. Id. at
13 1335.

14 The Court concluded that “only one interpretation is permissible”: an oral
15 complaint is protected by FLSA’s anti-retaliation provision if the complaint is
16 “sufficiently clear and detailed for a reasonable employer to understand it, in
17 light of both content and context, as an assertion of rights protected by the statute

1 and a call for their protection.” Id. at 1331, 1335. Despite framing the inquiry by
 2 reference to what a “reasonable *employer*” would understand, id. at 1335
 3 (emphasis added), the Court nevertheless expressly declined to address the
 4 logically prior question whether FLSA applies, in the first instance, to complaints
 5 made directly to employers, rather than to government agencies. Id. at 1336. It is
 6 to that question that we now turn.

7 C. Looking Anew at the Statutory Language: “Filed Any Complaint”

8 Both impelled and guided by Kasten, we now look anew at the statutory
 9 interpretation question that we addressed of our own accord in Lambert, but that
 10 the Kasten Court did not resolve: does section 215(a)(3) prohibit retaliation
 11 against employees for oral complaints made to employers?

12 1. The phrase “filed any complaint” admits of more than one 13 meaning

14
 15 A statute generally “should be enforced according to its plain and
 16 unambiguous meaning.” United States v. Livecchi, 711 F.3d 345, 351 (2d Cir.
 17 2013). The “plainness or ambiguity of statutory language is determined by
 18 reference to the language itself, the specific context in which that language is
 19 used, and the broader context of the statute as a whole.” Robinson v. Shell Oil

1 Co., 519 U.S. 337, 341 (1997). If we determine that a statutory provision is
2 ambiguous, we then turn to canons of statutory construction for assistance in
3 interpreting the statute. See Daniel v. Am. Bd. of Emergency Med., 428 F.3d 408,
4 423 (2d Cir. 2005).

5 In Lambert, we determined that the plain language of section 215(a)(3)
6 prohibited only “retaliation for filing *formal* complaints, instituting a proceeding,
7 or testifying.” Lambert, 10 F.3d at 55 (emphasis added). But when we look again
8 at section 215(a)(3), with the benefit of Kasten and the readings of our sister
9 circuits, we now conclude that the statutory language is not as plain and
10 unambiguous as it seemed when Lambert was decided. See Kasten, 131 S. Ct. at
11 1330-31 (stating that section 215(a)(3) “may be open to competing
12 interpretations”). As the Supreme Court explained, “even if the word ‘filed,’
13 considered alone, might suggest a narrow interpretation limited to writings, the
14 phrase ‘*any* complaint’ suggests a broad interpretation that would include an
15 oral complaint.” Id. at 1332.

16 Guided by this discussion, we must reevaluate the distinction drawn in
17 Lambert and its progeny between “formal” complaints to government agencies

1 and “informal” complaints to supervisors. First, we observe that the text of the
 2 statute does not provide that a complaint must be filed “formally,” or exclude
 3 from its protections those complaints that are filed “informally.” In short: it
 4 does not use either word. Nor does it expressly direct that, to be protected, a
 5 complaint must be filed with a government agency or any particular entity.⁹
 6 Second, even if the word “filed,” considered alone, might seem to contemplate
 7 lodging a complaint with a governmental body, the word’s context counsels
 8 against a narrow reading: as the Supreme Court reasoned, the phrase “*any*
 9 complaint” suggests an expansive reading, one that could include complaints
 10 filed with or expressed to an employer.

11 Citing Justice Scalia’s dissent in Kasten, 131 S. Ct. at 1337 (Scalia, J.,
 12 dissenting), *amicus curiae* in support of defendants argues that the phrase “filed
 13 any complaint” clearly and unambiguously refers *only* to complaints made to
 14 government agencies, because every other use of the word “complaint” in FLSA
 15 refers to a governmental filing. See 29 U.S.C. § 216(b) (explaining that the right

⁹ In full, subsection 3 of section 215(a) provides that it is unlawful for any person:

(3) 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, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

1 to bring certain actions “shall terminate upon the filing of a complaint by the
 2 Secretary of Labor”); id. § 216(c) (explaining that the statute of limitations for an
 3 action for unpaid wages commences “on the date when the complaint is filed”);
 4 id. § 218c(b) (setting forth the “Complaint procedure” by which one may “seek
 5 relief” by filing a complaint with the Department of Labor). *Amicus* also
 6 contends that the phrase “fil[ing a] complaint” is not commonly used to describe
 7 the act of complaining to an employer.

8 But, as our sister circuits have recognized, the phrase “filed any
 9 complaint” may also plausibly be interpreted to include intra-company
 10 complaints. The accepted definition of “to file,” as the First Circuit has noted,
 11 may include an employee’s submission of a written letter of complaint to an
 12 employer: the concept is “sufficiently elastic to encompass an internal complaint
 13 made to a private employer with the expectation the employer will place it on
 14 file among the employer’s official records.” Valerio v. Putnam Assocs. Inc., 173
 15 F.3d 35, 41-42 (1st Cir. 1999) (Campbell, J.).¹⁰ And, filing work-related grievances

¹⁰ We also agree with the Fourth Circuit that the phrase “filed any complaint” is “correctly considered separately from the remainder of § 215(a)(3).” Minor, 669 F.3d at 436. As noted above, FLSA’s anti-retaliation provision protects an employee who has “filed any complaint *or* instituted or caused to be instituted any proceeding . . . *or* has testified or is about to testify in any such proceeding.” 29 U.S.C. § 215(a)(3) (emphasis added). As the Fourth Circuit concluded, by phrasing section 215(a)(3) in the disjunctive, “Congress has indicated its intent that we consider each of these categories of protected

1 with employers is a common practice in many workplaces. See, e.g., Lambert v.
 2 Ackerley, 180 F.3d 997, 1004 (9th Cir. 1999) (en banc) (noting that “any
 3 complaint” is clearly broad enough to encompass complaints made to employers,
 4 and highlighting the widespread practice of “filing” grievances and complaints
 5 with unions and employers before commencing other internal or external
 6 proceedings). In addition, “filed any complaint” must be examined in context,
 7 contrasting it with the neighboring phrase, “instituted any proceeding”: to avoid
 8 rendering one or the other surplusage, we may construe the first to contemplate
 9 a communication (such as an intra-company complaint seeking a change in
 10 company practice) that does not ordinarily trigger a “proceeding” (such as an
 11 adjudicatory process).¹¹

12 In light of these competing interpretations, we conclude that the statutory
 13 phrase “filed any complaint” is variable in meaning and does not
 14 unambiguously denote submission of complaints to government agencies alone.
 15 To interpret the language of the statute, then, we must apply traditional tools of

activity independently.” Minor, 669 F.3d at 436 (explaining that “‘terms connected by a disjunctive [should] be given separate meanings’” (quoting Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979))).

¹¹ As noted above, see supra note 8, other circuits have drawn similar conclusions about the reach of the phrase “filed any complaint.” See Minor, 669 F.3d at 432; Kasten, 570 F.3d at 838; Hagan, 529 F.3d at 626; Lambert, 180 F.3d at 1005; Valerio, 173 F.3d at 43; White & Son Enters., 881 F.2d at 1011; Love, 738 F.2d at 387; Brennan, 513 F.2d at 181.

1 statutory interpretation. These include looking to the purpose of FLSA, and
2 affording some degree of weight to the interpretations of the agencies charged
3 with enforcing it. See Minor v. Bostwick Labs., Inc., 669 F.3d 428, 436 (4th Cir.
4 2012) (concluding that “‘filed any complaint’ is ambiguous as to whether
5 intracompany complaints are protected activity under the FLSA,” and “mov[ing]
6 to other interpretive tools”).

7 **2. Statutory purpose**

8 Congress declared its intention in FLSA “to correct and as rapidly as
9 practicable to eliminate” labor conditions “detrimental to the maintenance of the
10 minimum standard of living necessary for health, efficiency, and general well-
11 being of workers,” without substantially reducing employment or earning
12 power. 29 U.S.C. § 202. To achieve this goal, FLSA sets forth minimum wage
13 standards, id. § 206, and establishes certain payroll practice requirements, id.
14 §§ 207, 211(c), among other mandates. Because the government cannot directly
15 monitor every employer’s payroll, FLSA also creates an enforcement mechanism
16 that relies in significant part on employees’ complaints. See Mitchell v. Robert
17 DeMario Jewelry, Inc., 361 U.S. 288, 292 (1960). Congress enacted

1 section 215(a)(3) to “prevent[] fear of economic retaliation from inducing
2 workers quietly to accept substandard conditions,” Kasten, 131 S. Ct. at 1333
3 (internal quotation marks omitted), and to foster an atmosphere protective of
4 employees who lodge such complaints.

5 We have repeatedly affirmed that “the remedial nature of the FLSA
6 warrants an expansive interpretation of its provisions so that they will have the
7 widest possible impact in the national economy.” Irizarry v. Catsimatidis, 722
8 F.3d 99, 110 (2d Cir. 2013) (internal quotation marks and alterations omitted);
9 Carter v. Dutchess Cmty. Coll., 735 F.2d 8, 12 (2d Cir. 1984) (same); see also
10 Zheng v. Liberty Apparel Co., 355 F.3d 61, 66 (2d Cir. 2003) (recognizing the
11 “remedial purpose” of FLSA). FLSA’s remedial goals counsel in favor of
12 construing the phrase “filed any complaint” in section 215(a)(3) broadly, to
13 include intra-company complaints to employers as well as complaints to
14 government agencies. See, e.g., Valerio, 173 F.3d at 43 (concluding that the
15 “remedial and humanitarian purposes of [FLSA] . . . would hardly be furthered
16 by a narrow reading of § 215(a)(3)” (internal quotation marks and citations
17 omitted)).

1 Prohibiting retaliation against employees who make internal complaints
2 furthers the purposes of FLSA by encouraging speedier and more efficient
3 resolution of employee grievances, and resolving FLSA-related issues before
4 employees have lost significant wages or other benefits. As the Supreme Court
5 cautioned in Kasten, limiting the protections of section 215(a)(3) to employees
6 who make complaints to government agencies “would discourage the use of
7 desirable informal workplace grievance procedures to secure compliance with
8 the Act.” 131 S. Ct. at 1334. Even before Kasten, the First Circuit opined that
9 “[b]y protecting only those employees who kept secret their belief that they were
10 being illegally treated until they filed a legal proceeding,” a narrow
11 interpretation of FLSA “would discourage prior discussion of the matter between
12 employee and employer, and would have the bizarre effect both of discouraging
13 early settlement attempts and creating an incentive for the employer to fire an
14 employee as soon as possible after learning the employee believed he was being
15 treated illegally.” Valerio, 173 F.3d at 43.

16 The protective purpose of FLSA, recognized and acted on by the Kasten
17 Court, counsels unmistakably in favor of adopting a reading of the statutory

1 phrase “filed any complaint” that includes lodging an internal complaint with an
 2 employer.

3 **3. Administrative interpretations**

4 We next examine another factor relevant to our analysis: the views of the
 5 EEOC and the Secretary of Labor, as the authorities charged with enforcing
 6 FLSA.¹² “The well-reasoned views of the agencies implementing a statute
 7 constitute a body of experience and informed judgment to which courts and
 8 litigants may properly resort for guidance” United States v. Mead Corp.,
 9 533 U.S. 218, 227 (2001) (internal quotation marks and brackets omitted). The
 10 weight appropriately afforded an agency interpretation that lacks the force of
 11 law – such as an agency manual or litigation document – depends upon “the
 12 thoroughness evident in its consideration, the validity of its reasoning, its
 13 consistency with earlier and later pronouncements, and all those factors which
 14 give it power to persuade, if lacking power to control.” Skidmore v. Swift & Co.,
 15 323 U.S. 134, 140 (1944). In Kasten, the Supreme Court ascribed “a degree of

¹² Congress has authorized the Secretary of Labor to enforce FLSA’s substantive provisions. 29 U.S.C. § 216(c). Like FLSA, the EPA was originally enforced by the Secretary of Labor, but in 1977, authority to enforce the EPA and jurisdiction over its regulations were transferred to the EEOC, an independent bipartisan commission chartered by Title VII of the Civil Rights Act, 42 U.S.C. § 2000e. See Reorganization Plan No. 1 of 1978, 5 U.S.C. App. § 1.

weight” to the views of the EEOC and the Secretary, finding them “reasonable” and “consistent with the Act,” and explaining that “[t]he length of time the agencies have held them suggests that they reflect careful consideration, not ‘*post hoc* rationalizatio[n].’” 131 S. Ct. at 1335 (quoting Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Automobile Ins. Co., 463 U.S. 29, 50 (1983)).

Since no later than 1998, the EEOC Compliance Manual – a document intended, among other things, to “provide[] guidance and instructions for investigating and analyzing claims of retaliation under the statutes enforced by the EEOC” – has provided that employees are protected from retaliation “if an individual explicitly or implicitly communicates to his or her employer or other covered entity a belief that its activity” is unlawful.¹³ 2 EEOC Compliance Manual, Section 8: Retaliation § 8-II(B)(1) (May 20, 1998).¹⁴

The agencies’ litigation positions on this question have also been consistent for decades. Both the Secretary and the EEOC have filed numerous briefs in the various Courts of Appeals maintaining that section 215(a)(3) prohibits retaliation

¹³ The Supreme Court has described the EEOC Compliance Manual as reflecting “a body of experience and informed judgment to which courts and litigants may properly resort for guidance” and thus “entitled to a measure of respect.” Fed. Express Corp. v. Holowecki, 552 U.S. 389, 399 (2008) (internal quotation marks omitted).

¹⁴ Available at <http://www.eeoc.gov/policy/docs/retal.pdf> (last visited Mar. 29, 2015).

1 against employees who complain to their employers about FLSA violations. See
 2 Minor, 669 F.3d at 439 (noting that “although it is not determinative, because the
 3 Secretary and the EEOC have consistently advanced this reasonable and
 4 thoroughly considered position, it adds force to our conclusion” (internal
 5 quotation marks and alterations omitted)). We are advised that this litigation
 6 position dates back to at least 1989 for the EEOC and 1999 for the Secretary. See
 7 Brief for the EEOC as *Amicus Curiae* at 2; Brief for the Secretary of Labor as
 8 *Amicus Curiae* at 27.

9 For the reasons relied on by the Supreme Court in Kasten as to the
 10 question of oral complaints, then, we find that the agencies’ longstanding,
 11 consistent interpretation provides additional support for the view that to “file[]
 12 any complaint” includes to submit a complaint to an employer.

13 **D. To “File[] Any Complaint” Encompasses Intra-Company**
 14 **Complaints**

15
 16 Based on the foregoing analysis, we conclude that section 215(a)(3) does
 17 not restrict its protections to employees who file formal, written complaints with
 18 government agencies. Consistent with FLSA’s text and remedial purpose, with
 19 the approach adopted in Kasten, and with Congressional design to encourage

1 workers to report potential violations without fear of reprisal, we construe the
2 phrase “file[] any complaint” as encompassing oral complaints made to
3 employers in a context that makes the assertion of rights plain. Our reading
4 derives support from the provision’s consistent, longstanding interpretation by
5 the agencies charged with its enforcement. It brings us in harmony, too, with the
6 decisions of the other Courts of Appeals to have considered the issue.¹⁵

7 Our reading is subject, however, to certain limitations. As observed in part
8 by the Kasten Court, whether the “fil[ing of a] complaint” – especially an oral
9 complaint delivered directly to an employer – constitutes an act protected by
10 FLSA is a context-dependent inquiry. In some circumstances, an employer may
11 find it difficult to recognize an oral complaint as one invoking rights protected
12 by FLSA. It seems to us inconsistent with Kasten to elevate a grumble in the
13 hallway about an employer’s payroll practice to a complaint “filed” with the
14 employer within the meaning of section 215(a)(3). Indeed, the Supreme Court
15 observed in Kasten that “the phrase ‘filed any complaint’ contemplates *some*
16 degree of formality,” 131 S. Ct. at 1334 (emphasis added), but described the level
17 of formality necessary in terms of the employer’s interests in knowing when it

¹⁵ See supra note 8.

1 need take care to avoid action that might be seen as retaliatory: “where the
2 recipient has been given fair notice that a grievance has been lodged and does, or
3 should, reasonably understand the matter as part of its business concerns,” id.

4 Recognizing the potential for ambiguity in oral communications, yet
5 desiring not to impair the enforcement framework adopted in the statute, the
6 Kasten Court explained that “a complaint is ‘filed’ [only] when a reasonable,
7 objective person would have understood the employee to have put the employer
8 on notice that the employee is asserting statutory rights under the Act.” Id. at
9 1335 (internal quotation marks and alterations omitted). The employee need not
10 invoke the Act by name, but, as the Court concluded, “[t]o fall within the scope
11 of the antiretaliation provision, a complaint must be sufficiently clear and
12 detailed for a reasonable employer to understand it, in light of both content and
13 context, as an assertion of rights protected by the statute and a call for their
14 protection.” Id. Defining the exact contours of that standard is beyond the scope
15 of this opinion, but it would, for example, exclude from the concept of “fil[ing a]

complaint” a mere passing comment.¹⁶ This limitation, applied with the statute’s remedial purpose in mind, informs and cabins our holding today.

We decline, however, to address here the question whether Greathouse’s complaint provided an adequate basis on which to enter a default judgment against his employer on his retaliation claim. The decision whether to enter default judgment is committed to the district court’s discretion, see City of New York v. Mickalis Pawn Shop, LLC, 645 F.3d 114, 131 (2d Cir. 2011), as is the decision whether to conduct a hearing before deciding the default judgment motion, see Finkel v. Romanowicz, 577 F.3d 79, 87 (2d Cir. 2009). See also Fed. R. Civ. P. 55(b)(2) (“The court may conduct hearings or make referrals . . . when, to enter or effectuate judgment, it needs to . . . conduct an accounting; . . . determine the amount of damages; . . . establish the truth of any allegation by evidence; or . . . investigate any other matter.”).¹⁷ We therefore remand the cause

¹⁶ The state of the record in Lambert was such that it is difficult to ascertain whether the complaint and the setting in which it was communicated satisfied the conditions that the Kasten majority identified as necessary to give the employer “fair notice that a grievance has been lodged.” Kasten, 131 S. Ct. at 1334. We note further that the complaints made to the supervisor in Lambert were particularly ill-documented and removed in time from the allegedly discriminatory action.

¹⁷ Judge Korman, concurring in part and dissenting in part, infra, highlights, among other passages, text from Trans World Airlines, Inc. v. Hughes, 449 F.2d 51 (2d Cir. 1971), rev’d on other grounds, 409 U.S. 363 (1973), in which this Court asserted that a “default ha[s] the effect of admitting or establishing that the acts pleaded in the complaint violated the [applicable] law[],” id. at 70. He suggests, on this basis and in light of defendants’ defaults, that the District Court was required to award

1 to the District Court for a ruling in the first instance on Greathouse's default
 2 judgment motion with respect to his claim for unlawful retaliation under FLSA.

4 CONCLUSION

5 In sum, we overrule what is left of our holding in Lambert v. Genesee
 6 Hospital, 10 F.3d 46 (2d Cir. 1993), and conclude, in accordance with all of our
 7 sister circuits to have addressed the issue, that section 215(a)(3) prohibits
 8 retaliation against employees who orally complain to their employers, so long as
 9 their complaint is "sufficiently clear and detailed for a reasonable employer to
 10 understand it, in light of both content and context, as an assertion of rights
 11 protected by the statute and a call for their protection." Kasten, 131 S. Ct. at 1335.
 12 We therefore VACATE the District Court's judgment insofar as it relied on
 13 Lambert, and REMAND the cause to the District Court to determine, in the first

Greathouse damages on his section 215(a)(3) retaliation claim, contending that the defaults conclusively established defendants' liability—and were not simply an admission to the well-pleaded allegations. But even if this passage from Trans World Airlines remains good law in light of this Court's subsequent jurisprudence, *see, e.g., Finkel*, 577 F.3d at 84 (The district court "is . . . required to determine whether [plaintiff's] allegations establish [defendant's] liability as a matter of law."), the Court in that case did not hold that a district court lacks discretion to investigate the basis for a plaintiff's claims before deciding whether to grant default judgment, *see generally* 10A Wright, Miller & Kane, Federal Practice & Procedure § 2684, at 28 ("The court has discretion to decide whether to enter a judgment by default, . . . and Rule 55(b)(2) empowers the district judge to hold hearings or 'order such references as it deems necessary and proper' to aid its execution of this discretion.").

1 instance, whether to grant Greathouse a default judgment on his retaliation claim
2 under section 215(a)(3), and if so, what damages, if any, Greathouse is entitled to
3 recover therefor.¹⁸

¹⁸ The District Court deemed Greathouse's NYLL retaliation claim waived because he did not request any related damages in his submissions to the Magistrate Judge. Greathouse, 2012 WL 5185591, at *6. Since Greathouse concedes that if he succeeds on his FLSA retaliation claim under 29 U.S.C. § 215(a)(3), he may not recover duplicative damages under the NYLL, we do not reach his NYLL claim here.