

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
ANN ARBOR

THOMAS E. PEREZ, Secretary of Labor,)
United States Department of Labor,)

Plaintiff,)

v.)

Civil Action No.: 5:15-cv-14310

MIN & KIM INC., d/b/a)
SEOUL GARDEN OF ANN ARBOR,)
a Michigan corporation,)
KOUNWOO HUR, an individual,)
and SUNG HEE KIM, an individual)

Defendants.)

COMPLAINT

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor, brings this action to enjoin Defendants, **MIN & KIM INC.**, d/b/a **SEOUL GARDEN OF ANN ARBOR**, a Michigan corporation, **KOUNWOO HUR**, an individual, and **SUNG HEE KIM**, an individual (hereinafter "Defendants"), from violating the provisions of sections 7, 11, and 15 of the Fair Labor Standards Act of 1938, as Amended (29 U.S.C. § 201 et seq.) (hereinafter "the Act"), pursuant to section 17 of the Act; and to recover unpaid overtime compensation owing to Defendants' employees together with an equal additional amount as liquidated damages, pursuant to section 16(c) of the Act.

I

Jurisdiction of this action is conferred upon the court by sections 16(c) and 17 of the Act and 28 U.S.C. § 1345.

II

(A) Defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** is and, at all times hereinafter mentioned, was a Michigan corporation with an office and place of business located in 3125 Boardwalk Dr., Ann Arbor, MI 48108, within the jurisdiction of this Court, and at all times hereinafter mentioned, was engaged in the operation of a Korean and Japanese restaurant and related activities.

(B) Defendant **KOUNWOO HUR** is and, at all times hereinafter mentioned, was the President and 49% shareholder of the corporate defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** and was engaged in business within Michigan at the address identified above in sub-paragraph II(A). Defendant **KOUNWOO HUR** acted directly or indirectly in the interest of the corporate defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** in relation to its employees, including, but not limited to, responsibility for the pay and employment practices of the corporate Defendant and was an individual employer within the meaning of section 3(d) of the Act.

(C) Defendant **SUNG HEE KIM** is and, at all times hereinafter mentioned, was the Secretary and 51% shareholder of the corporate defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** and was engaged in business

within Michigan at the address identified above in sub-paragraph II(A). Defendant **SUNG HEE KIM** acted directly or indirectly in the interest of the corporate defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** in relation to its employees, including, but not limited to, responsibility for the pay and employment practices of the corporate Defendant and was an individual employer within the meaning of section 3(d) of the Act.

III

Defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** is and, at all times hereinafter mentioned, was engaged in related activities performed through unified operation or common control for a common business purpose, and, at all times hereinafter mentioned, was an enterprise within the meaning of section 3(r) of the Act.

IV

Defendant **MIN & KIM INC., d/b/a SEOUL GARDEN OF ANN ARBOR** is and, at all times hereinafter mentioned, was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act, in that said enterprise at all times hereinafter mentioned had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that enterprise had an annual gross volume of sales made or business done of not less than \$500,000.

V

Defendants repeatedly violated the provisions of sections 7 and 15(a)(2) of the Act by employing employees, who in workweeks were employed in an enterprise engaged in commerce, within the meaning of the Act, as aforesaid, for workweeks longer than 40 hours without compensating said employees for their employment in excess of 40 hours per week during such workweeks at rates not less than one and one-half times the regular rate at which they were employed. Defendants paid hourly employees a flat day rate or half-day rate for their shifts, resulting in a failure to properly count and properly compensate hours worked in excess of 40 in a workweek.

VI

Defendants, employers subject to the provisions of the Act, repeatedly violated the provisions of sections 11 and 15(a)(5) of the Act in that they failed to make, keep, and preserve adequate and accurate records of employees and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 C.F.R. Part 516, in that records fail to show an actual record of hours worked by employees. Defendants records failed to keep employees' general information and did not record hours worked, instead only recording whether employees worked a full day, half-day, or did not work. Defendants also did not record hourly rates for employees.

VII

Since at least September 11, 2013, Defendants repeatedly violated the aforesaid provisions of the Act. A judgment which enjoins and restrains such violations and includes the restraint of any withholding of payment of overtime compensation found by the court to be due to present and former employees under the Act is expressly authorized by section 17 of the Act.

WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendants as follows:

(A) For an Order pursuant to section 17 of the Act, permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them from prospectively violating the Act;

(B) For an Order:

1. pursuant to section 16(c) of the Act, finding Defendants liable for unpaid overtime compensation due Defendants' employees and for liquidated damages equal in amount to the unpaid compensation found due their employees listed in the attached Exhibit A (additional back wages and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint); or, in the event liquidated damages are not awarded,

2. pursuant to section 17, enjoining and restraining the Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants, from withholding payment of unpaid overtime compensation found to be due their employees and pre-judgment interest computed at the underpayment rate established by the Secretary of the Treasury, pursuant to 26 U.S.C § 6621;

(C) For an Order awarding Plaintiff the costs of this action; and

(D) For an Order granting such other and further relief as may be necessary

and appropriate.

Date: December 11, 2015

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Brooke E. Worden
BROOKE E. WORDEN
Trial Attorney

Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Rm. 844
Chicago, IL 60604
Telephone: (312) 353-1218
Facsimile: (312) 353-5698
E-mail: Worden.Brooke.E@dol.gov
Bar Number 6299672 (IL)

Attorneys for Plaintiff, **Thomas E. Perez,**
Secretary of Labor,
United States Department of Labor

BARBARA L. McQUADE

United States Attorney

PETER A. CAPLAN

Assistant U.S. Attorney

211 W. Fort Street, Ste. 2001

Detroit, MI 48226

(313) 226-9784

P-30643

Email: peter.caplan@usdoj.gov