

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MASSACHUSETTS

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

Plaintiff, *

v. * CIVIL ACTION

INTERSHELL INTERNATIONAL *
CORPORATION, YIBING GAO-ROME, *
MONTE ROME, ULTIMATE ADVANCE *
CORP., and PHALLA CHHIT. *

Defendants. *

CIVIL ACTION

FILE NO.

COMPLAINT

Plaintiff Thomas E. Perez, Secretary of Labor, U.S. Department of Labor, brings this action to enjoin defendants from violating the provisions of Sections 7, 11, and 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U.S.C. Section 201), hereinafter called "the Act," and to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the Act.

I.

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act and by 28 U.S.C. Sections 1331 and 1345.

II.

Defendant Intershell International Corporation ("Intershell") is, and at all times hereinafter mentioned was, a corporation having an office and place of business at 9 Blackburn

Drive, Gloucester, Massachusetts 01930, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business, and elsewhere, in the operation of a seafood processing, packing, and distribution business. Intershell employs, and has employed during the period set forth below, both permanent employees and temporary employees. The permanent employees and the temporary employees, many of whom have worked regularly for Intershell, perform cutting, cleaning, and packing duties, work that is rote in nature and integral to Intershell's operations. They are, and have been, supervised by Intershell. Intershell has hired and fired both the permanent employees and the temporary employees, and has set their work schedules, and pay policies, including rate and method of compensation.

III.

Defendant Yibing Gao-Rome ("Gao-Rome") resides at 8 Choate Street, Essex, Massachusetts 01915, within the jurisdiction of this court, and is now, and at all times hereinafter mentioned was, the President, Treasurer, Secretary and Director of Intershell, and is its co-owner. Gao-Rome has hired and supervised both permanent and temporary employees. She is, and has been, during the time period set forth below, engaged in setting particular hours of work, rates of pay, and policies regarding pay, and her actions concerning pay policies affect the amounts of compensation received by employees, including temporary employees. During said period, she also took steps to have payroll information created which falsely portrayed the payment of an overtime premium to temporary employees. As such, she has actively managed, supervised and directed the day to day business affairs and operations of Intershell. She has acted at all times material herein directly and indirectly in the interest of Intershell in relation to its employees, including temporary employees, and therefore is and has been an employer of said employees, including temporary employees, within the meaning of the Act.

IV.

Defendant Monte Rome ("Rome") resides at 8 Choate Street, Essex, Massachusetts 01915, within the jurisdiction of this court, and is now, and at all times hereinafter mentioned was, the Chairman of Intershell, and is a co-owner of this corporation. Rome has hired and fired

employees. He has supervised workers, set particular hours of work, rates of pay, and policies regarding pay, and his actions concerning pay policies affect the amounts of compensation received by employees. He has employed both permanent employees and temporary employees, who have performed cutting, cleaning, and packing duties. The temporary employees, like the permanent employees, have been supervised by him, and many of them have worked regularly at Intershell . As such, he has actively managed, supervised and directed the day to day business affairs and operations of Intershell. He has acted at all times material herein directly and indirectly in the interest of Intershell in relation to its employees, including temporary employees, and therefore is, and has been, an employer of said employees, including temporary employees, within the meaning of the Act.

V.

Defendant Ultimate Advance Corp. (“Ultimate”) is, and at all times hereinafter mentioned was, a corporation having an office and place of business at 28 Aiken Avenue, Lowell, Massachusetts 01850, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business, and elsewhere, in the operation of a temporary employment agency/payroll service business.

Ultimate entered into a contract for services with Intershell on or about April 10, 2015. Ultimate represented in this contract that it was the employer of the temporary employees placed at Intershell’s facility. The contract provides in part that “AGENCY [Ultimate Advance Corp.] provided workers shall be considered solely as employees of AGENCY [Ultimate Advance Corp.] and shall not be considered to be employees of the CLIENT [Intershell International Corporation]. Any benefit required by law such as worker’s compensation or social security shall be the sole responsibility of AGENCY [Ultimate Advance Corp.]” At all times from April 10, 2015 to June 2016, Ultimate provided temporary workers solely to Intershell, and it paid wages to temporary workers placed at Intershell. Ultimate performed payroll and placement services with respect to temporary employees placed at Intershell. Ultimate also paid worker’s compensation and unemployment taxes to the Commonwealth of Massachusetts concerning

these temporary employees, and did so as the employer of the temporary employees. Ultimate cooperated with Intershell by presenting false payroll information to Plaintiff's Wage and Hour Division, by creating, at Intershell's request, a set of payroll documents which falsely showed the payment of an overtime premium to temporary employees placed at Intershell. Ultimate, knowing that overtime compensation should have been but was not paid to the temporary employees placed at Intershell, cooperated with and followed the directions of Intershell in the unlawful underpayment of temporary employees placed there. Ultimate acted as, and was, therefore, an employer of the workers placed at Intershell within the meaning of the Act at all times from April 10, 2015 to June 2016.

In the alternative, Ultimate was an employer of the temporary workers placed at Intershell under the Act at all times from April 10, 2015 to June 2016, because it acted at all times material herein directly and indirectly in the interest of Intershell in relation to its employees by, among other things, cooperating with and following the directions of Intershell to pay the temporary employees improperly, and to present false payroll information to Plaintiff's Wage and Hour Division.

VI.

Defendant Phalla Chhit ("Chhit") resides at 86 Canton Street, Lowell, MA 01851, within the jurisdiction of this court, and is and at all times hereinafter mentioned was, the owner of Ultimate. At all times from April 10, 2015 to June 2016, she paid wages to temporary employees placed at Intershell, performed payroll and placement services concerning these employees, and paid worker's compensation and unemployment taxes to the Commonwealth of Massachusetts concerning these temporary employees. She cooperated with Intershell by presenting false payroll information to Plaintiff's Wage and Hour Division by creating or having created, at Intershell's request, a set of payroll documents which falsely showed the payment of an overtime premium to temporary employees placed at Intershell.

As such, at all times from April 10, 2015 to June 2016, Chhit actively managed, supervised, and directed the day to day business affairs and operations of Ultimate. She acted at

all times material herein directly and indirectly in the interest of Ultimate, in relation to temporary employees placed at Intershell and was, therefore, an employer of said temporary employees within the meaning of the Act. In the alternative, she acted at all times material herein directly and indirectly in the interest of Intershell, in relation to temporary employees placed at Intershell and was, therefore, an employer of said temporary employees within the meaning of the Act.

VII.

Intershell, Gao-Rome and Rome are, and at all times since February 22, 2013 were, engaged in related activities performed through unified operation or common control for a common business purpose, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the Act.

VIII.

At all times since February 22, 2013, Intershell, Gao-Rome and Rome employed employees in the activities of said enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Accordingly, the said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act.

IX.

Ultimate and Chhit were at all times from April 10, 2015 to June 2016 engaged in related activities performed through unified operation or common control for a common business purpose, and at all times hereinafter mentioned, they were an enterprise within the meaning of Section 3(r) of the Act.

X.

At all times from April 10, 2015 to June 2016, Ultimate and Chhit employed employees in the activities of said enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Accordingly, the said employees were employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act.

XI.

Beginning no later than February 22, 2013, Defendants Intershell, Gao-Rome and Rome have willfully and repeatedly violated the provisions of Sections 7 and 15(a)(2) of the Act by employing employees for workweeks longer than forty (40) hours without compensating them at rates not less than one and one-half times the regular rate at which they were employed, for employment in excess of forty (40) hours in said workweeks, and therefore these Defendants are liable for overtime compensation owed to these employees and an equal amount of liquidated damages under Section 16(c) of the Act as set forth below.

In particular, during the pertinent period, the affected employees cut, cleaned, and packed various types of seafood at Intershell facility. Defendants paid the 55 employees listed in the attached Exhibit A their regular rate of pay only, with no overtime premium for hours worked over 40 per workweek, including both employees paid an hourly rate of pay and employees paid on a piece rate basis. The 55 employees listed in Exhibit A regularly worked over 40 hours per workweek, depending on the volume of work available, with seasonal and other variations in hours worked. Defendants paid the employees wage rates that in most instances ranged between \$10.00 and \$13.75 per hour. In addition, since December 2014 Defendants improperly deducted from certain employees performing cutting, cleaning, and packing of seafood the cost of cleaning their uniforms, ranging from \$3.00 to \$20.00 per week. The cleaning of these uniforms was for

the benefit of defendants, and deductions from the employees' pay in such circumstances is impermissible under the Act. Finally, Defendants failed to pay four employees performing seafood packing duties, who were paid on a salary basis and who worked hours over 40 per week, an overtime premium. Consequently, throughout the three year period on which the investigation focused, February 22, 2013 through February 18, 2016, the 55 employees listed in Exhibit A were underpaid, on an aggregated basis, in the amount of approximately \$137,000 on account of the violations of the overtime provisions of the Act. Additional overtime back wages are due from February 18, 2016 until the date that defendants Intershell, Gao-Rome and Rome came or will come into compliance with the Act's overtime pay requirements.

XII.

Beginning no later than April 10, 2015 to June 2016, Defendants Ultimate and Chhit have repeatedly violated the provisions of Sections 7 and 15(a)(2) of the Act by employing employees for workweeks longer than forty (40) hours without compensating them at rates not less than one and one-half times the regular rate at which they were employed, for employment in excess of forty (40) hours in said workweeks over an extended period of time, and therefore defendants are liable for overtime compensation owed to these employees and an equal amount of liquidated damages under Section 16(c) of the Act as set forth below.

In particular, during the pertinent period, the affected employees cut, cleaned and packed various types of seafood at defendants' facility. Ultimate and Chhit paid the temporary employees, who are included in the employees listed in the attached Exhibit A their regular rate of pay only, with no overtime premium for hours worked over 40 per workweek, including both employees paid an hourly rate of pay and employees paid on a piece rate basis. In addition, Defendants Ultimate and Chhit improperly deducted from certain employees performing cutting, cleaning, and packing of seafood fees for the cost of cleaning their uniforms, which cleaning of uniforms was for the benefit of defendants. Finally, four employees who were paid on a salary basis and who worked hours over 40 per week were not paid an overtime premium. Consequently, during the period since April 10, 2015 through February 18, 2016, the end of the

period on which the investigation focused, these employees were underpaid in the amount of approximately \$58,000 on account of violations of the overtime provisions of the Act, which underpayments are part of the back wages owed by Defendants Intershell, Gao-Rome and Rome. Additional overtime back wages are due from February 18, 2016 until the date that Defendants Ultimate and Chhit came into compliance with the Act's overtime pay requirements.

XIII.

Beginning no later than February 22, 2013, Defendants Intershell, Gao-Rome and Rome have willfully and repeatedly violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that they failed to make, keep, and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 CFR 516. Defendant Intershell's records failed throughout the period of the investigation to show adequately and accurately all employees' hours worked each workday and their total hours worked each workweek, specifically temporary employees paid by piece rate, and four permanent employees during the period of investigation who worked hours over 40 per week and were entitled to, but were not paid, an overtime premium .

XIV.

Beginning no later than April 10, 2015 to June 2016, defendants Ultimate and Chhit repeatedly violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that they failed to make, keep, and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 CFR 516. Defendant Ultimate's records failed throughout the period of the investigation to show adequately and accurately all employees' hours worked each workday and their total hours worked each workweek, specifically temporary employees paid by piece rate, and four permanent employees who, during the period of investigation, worked hours over 40 per week and were entitled to, but were not paid, an overtime premium.

XV.

Defendant Intershell, Gao-Rome and Rome's violations of the Act, as set forth above, were knowing, deliberate, and intentional. Defendants Intershell, Gao-Rome and Rome knowingly caused Plaintiff's Wage and Hour Division to receive inaccurate payroll records during Plaintiff's investigation of this matter through a temporary employment agency. Plaintiff later obtained payroll records concerning temporary employees. In addition, certain of Defendant Intershell, Gao-Rome and Rome's employees were paid an overtime premium for hours worked over 40 in a workweek, demonstrating awareness of the Act's overtime requirements, while the employees listed in Exhibit A were not paid an overtime premium. Finally, Plaintiff's Wage and Hour Division investigated Intershell in 2012, and found and communicated to it overtime and recordkeeping violations of the Act. Intershell promised at that time to comply with the Act in the future. Defendants were aware of the overtime and recordkeeping requirements of the Act during the period covered by this Complaint, and yet they knowingly violated those requirements.

XVI.

During the relevant period beginning no later than February 22, 2013, Defendants Intershell, Gao-Rome and Rome have willfully and repeatedly violated the aforesaid provisions of the Act, as alleged, and during the relevant period beginning no later than April 10, 2015 to June 2016 Defendants and Chhit have willfully and repeatedly violated the aforesaid provisions of the Act, as alleged.

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

(1) 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; and

(2) For an Order pursuant to Section 16(c) of the Act finding defendants liable for unpaid back wages found due to Defendants' employees, both permanent and temporary, plus liquidated damages equal in amount to the unpaid compensation found due to Defendants' 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) giving credit for any back wage amounts already paid;

Alternatively, in the event liquidated damages are not awarded, Plaintiff prays for an Order pursuant to Section 17 of the Act enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them, from withholding payment of unpaid back wages found due to Defendants' employees, both permanent and temporary, and pre-judgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621; and

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

(4) For an Order granting such other and further relief as may be necessary and appropriate.

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