

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

JULIE A. SU, Acting Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	Civil Action No. 4:23-cv-209
)	
v.)	
)	
TOWN & COUNTRY, INC.;)	
and GABRIEL MYERS, Individually,)	
)	
Defendants)	
)	

COMPLAINT

Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Secretary”), brings this action to enjoin and restrain the defendants Town and Country, Inc. (“T&C”) and Gabriel Myers (collectively, “Defendants”) from violating Sections 207, 211, 215(a)(2), and/or 215(a)(5) of the FLSA and to recover unpaid compensation, plus an equal amount in liquidated damages pursuant to Section 216(c) of the Act, for Defendants’ employees.

The Secretary, through the Wage and Hour Division, conducted an investigation of Defendants for compliance with the FLSA. The Secretary’s investigation reviewed Defendants’ employment and pay practices from December 1, 2019, through November 30, 2021 (the “Investigation Period”). Unless stated otherwise, all allegations and conditions described herein pertain to the Investigation Period.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this case. 29 U.S.C. §§ 216(c), 217 and 28 U.S.C. § 1345.
2. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these allegations occurred in this judicial district.

DEFENDANTS

3. Defendant T&C is a corporation within this Court's jurisdiction with an office at 23109 S. State Line Road, Cleveland, Missouri 64734 where it conducts business.
4. T&C is a painting contractor, which provides services in the Kansas City metropolitan area.
5. Defendant Gabriel Myers has actively managed and supervised T&C's operations and its employees during the Investigation Period. Among other things, Gabriel Myers has hired and fired employees, set their work schedules, and set their pay rates.
6. Gabriel Myers has acted directly or indirectly in T&C's interests with respect to its employees and is therefore an "employer" under the FLSA. 29 U.S.C. § 203(d).
7. During the Investigation Period, Defendants engaged in business within Cass County, within this Court's jurisdiction.

THE FLSA APPLIES TO DEFENDANTS

8. T&C is an "enterprise" under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

9. T&C is an “enterprise engaged in commerce” under the FLSA, because it had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Investigation Period. 29 U.S.C. § 203(s)(1)(A).

FLSA VIOLATIONS

10. Defendants repeatedly violated Sections 207 and 215(a)(2) of the FLSA when they failed to pay their employees one-and-one-half times their regular rates for hours worked in excess of 40 in a workweek. T&C did not pay its employees for all hours worked and sporadically paid them straight time for hours worked over 40 in a given workweek. 29 U.S.C. §§ 207(a)(1), 215(a)(2).

11. Defendants also violated Sections 211 and 215(a)(5) of the FLSA when they failed to keep complete and accurate records. 29 U.S.C. §§ 211, 215(a)(5), 29 C.F.R. Part 516. T&C failed to accurately record total premium pay for overtime hours.

REMEDIES SOUGHT

12. As a result of their FLSA violations, Defendants owe the employees listed in **Exhibit A** back wages and liquidated damages, under 29 U.S.C. §§ 216(c) and 217. If Defendants continued to violate the FLSA after the Investigation Period, then Defendants may owe additional back wages and liquidated damages to employees.

13. Defendants may also owe additional back wages and liquidated damages, during the Investigation Period, to their employees whose identities the Secretary does not currently know.

14. As a result of their FLSA violations, Defendants have unlawfully withheld unpaid compensation from their employees.

15. Moreover, Defendants repeatedly and willfully violated Section 207 and 215(a)(2) of the FLSA, because Defendants knew or showed reckless disregard for whether the FLSA prohibited their conduct.

16. Specifically, Defendants acted willfully when they sporadically paid employees straight time for hours worked over 40 in a given workweek.

17. Because Defendants repeatedly and willfully violated the FLSA, the Secretary is entitled to recover back wages and liquidated damages for a three-year period. 29 U.S.C. § 255(a).

Prayer for Relief

As a result of Defendants' repeated and willful violations of the FLSA, the Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, from violating Sections 207, 211, 215(a)(2) and/or 215(a)(5) of the FLSA. 29 U.S.C. § 217(a).

B. Finding Defendants liable for unpaid overtime wages, plus an equal amount in liquidated damages, owing to the employees listed in Exhibit A, as well as to other of Defendants' employees not yet known to the Secretary. 29 U.S.C. § 216(c).

C. If the Court declines to award liquidated damages, then enjoining and restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding unpaid compensation found owing to Defendants' employees, plus prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury under 26 U.S.C. § 6621.

D. Providing such other relief as may be necessary and appropriate.

E. Awarding costs and granting such other and further relief as may be necessary and appropriate.

Dated: March 28, 2023

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