

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PATRICK PIZZELLA, Acting Secretary of
Labor, United States Department of Labor,

Plaintiff,

v.

MAVILIS, LLC d/b/a COACHMEN’S
LODGE; J & D PIZZA, INC. d/b/a BRIGGS
CORNER PIZZERIA; NNMW, INC. d/b/a
MEDITERRANEAN GRILL & PIZZERIA;
VASSILIOS NICOLOS; and NIKOLAOS
NICOLOS,

Defendants.

Civil Action No. 1:19-cv-11833

Injunctive Relief Sought

COMPLAINT

Plaintiff Patrick Pizzella, Acting Secretary of Labor, United States Department of Labor (the “Secretary”) brings this action because three restaurants—Defendants Mavilis, LLC d/b/a Coachmen’s Lodge; J & D Pizza, Inc. d/b/a Briggs Corner Pizzeria; and NNMW, Inc. d/b/a Mediterranean Grill & Pizzeria (collectively, the “Restaurants”)—and Defendants Vassilios Nicolos and Nikolaos Nicolos, owners and officers of the Restaurants, have willfully and repeatedly failed to pay their employees proper overtime compensation and failed to keep accurate employment-related records. The Secretary seeks to have the Court enjoin Defendants from violating the provisions of Sections 7, 11, 15(a)(2), 15(a)(3), and 15(a)(5) of the Fair Labor Standards Act of 1938 (the “Act”), 29 U.S.C. §§ 207, 211, 215(a)(2), 215(a)(3), and 215(a)(5),

and to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the Act, 29 U.S.C. §§ 215(a)(2) and 216(c).

I.

Jurisdiction of this action is conferred upon this Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. § 1331.

II.

Defendant Coachmen's Lodge is, and at all times hereinafter mentioned was, a company having a place of business located at 273 Wrentham Road, Bellingham, Massachusetts 02019, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business in the operation of a restaurant. Coachmen's Lodge employs certain of the employees who have not received proper compensation under the Act in this case.

III.

Defendant Briggs Corner Pizzeria is, and at all times hereinafter mentioned was, a company having a place of business located at 1123 Oakhill Avenue, Attleboro, Massachusetts 02703, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business in the operation of a restaurant. Briggs Corner Pizzeria employs certain of the employees who have not received proper compensation under the Act in this case.

IV.

Defendant Mediterranean Grill & Pizzeria is, and at all times hereinafter mentioned was, a company having a place of business located at 593 Washington Street, Attleboro, Massachusetts 02703, within the jurisdiction of this Court, and is now, and at all times

hereinafter mentioned was, engaged at that place of business in the operation of a restaurant.

Mediterranean Grill & Pizzeria employs certain of the employees who have not received proper compensation under the Act in this case.

V.

Defendant Vassilios Nicolos is an owner and corporate officer of the Restaurants. He transacts substantial business on a continuous and systematic basis in this judicial district, within the jurisdiction of this Court. The claims against Defendant Vassilios Nicolos in this case arise out of and are directly related to his business activities in Massachusetts. Defendant Vassilios Nicolos has certain control over the daily operations of the Restaurants, including by hiring and firing employees, and setting their hours of work and rates of pay. Vassilios Nicolos is and has been an employer of the Restaurants' employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

VI.

Defendant Nikolaos Nicolos is an owner and corporate officer of Defendant Mediterranean Grill & Pizzeria and also performs supervisory functions at Defendant Briggs Corner Pizzeria. He transacts substantial business on a continuous and systematic basis in this judicial district, within the jurisdiction of this Court. The claims against Defendant Nikolaos Nicolos in this case arise out of and are directly related to his business activities in Massachusetts. Defendant Nikolaos Nicolos has certain control over the daily operations of Briggs Corner Pizzeria, including by hiring employees and setting their rates of pay. Nikolaos

Nicolos is and has been an employer of Defendant Briggs Corner Pizzeria's employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

VII.

At all times hereinafter mentioned, Defendants were an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r), as they engaged in related activities performed through unified operation or common control for a common business purpose.

VIII.

At all times hereinafter mentioned, Defendants employed employees in the activities of said enterprise, which is engaged in commerce or in the production of goods for commerce, including having employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, for the years 2015, 2016, and 2017, 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), and, based on existing facts and evidence, that enterprise's annual gross volume of sales made or business done likely greatly exceeded \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated) for 2018 and will do so for 2019. Therefore, 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, 29 U.S.C. § 203(s).

IX.

Defendants have violated the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in the Restaurants for workweeks longer than forty hours without compensating them at rates not less than one and one-half times the regular

rates at which they were employed for hours worked in excess of forty hours in such workweeks. Therefore, Defendants are liable for overtime compensation owed to employees listed in the attached Exhibit A and an equal amount of liquidated damages under Section 16(c) of the Act, 29 U.S.C. § 216(c).

- A. Defendants failed to properly compensate tipped employees for overtime hours worked by paying them an overtime premium of one and one-half times the state tipped cash wage instead of one and one-half times the regular rates at which the employees were employed.
- B. Defendants failed to correctly compensate kitchen and grounds employees by paying them a flat salary without any overtime premium for hours worked in excess of 40 hours in a workweek.

X.

Since October 20, 2015 or earlier, Defendants failed to keep true and accurate records of the hours that each of their non-exempt employees worked, in violation of Section 11 of the Act, 29 U.S.C. § 211, and the regulations thereunder, specifically 29 C.F.R. Part 516.

XI.

Defendants' violations of the Act, as set forth above, were willful. In 2015, at the end of a prior investigation by the Secretary of all three Restaurants, the Secretary explained to the Restaurants and Defendant Vassilios Nicolos that they needed to pay the proper overtime premium and keep accurate records under the Act. Also at the end of that prior investigation, the Restaurants and Defendant Vassilios Nicolos agreed to pay the proper overtime premium and to keep accurate records. However, as alleged above, Defendants subsequently failed to properly

pay the overtime premium under the Act and failed to maintain accurate time records, which renders their violations of the Act willful in this case.

XII.

Defendants violated the aforesaid provisions of the Act, including doing so willfully, as alleged herein. WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendants as follows:

- (1) For an order pursuant to Section 17 of the Act, 29 U.S.C. § 217, 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, 29 U.S.C. § 216(c), holding Defendants liable for unpaid back wages found due to Defendants' employees listed in the attached Exhibit A plus liquidated damages equal in amount to the unpaid compensation found due; alternatively, in the event liquidated damages are not awarded, Plaintiff prays for an order pursuant to Section 17 of the Act, 29 U.S.C. § 217, 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, 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 attorneys' fees; and

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

Kate S. O'Scannlain
Solicitor of Labor

Maia S. Fisher
Regional Solicitor

/s/ Mark A. Pedulla
Mark A. Pedulla
Counsel for Wage & Hour
pedulla.mark.a@dol.gov
MA BBO No. 685925

U.S. Department of Labor
Attorneys for Plaintiff

Post Office Address:
JFK Federal Building—Room E-375
Boston, Massachusetts 02203
TEL: (617) 565-2500
FAX: (617) 565-2142

DATE: August 27, 2019