

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

.....
EUGENE SCALIA, SECRETARY OF LABOR,
United States Department of Labor,

Plaintiff,

v.

LOS ANDES, LLC, d/b/a Los Andes Restaurant,
OMAR CURI, and CESIN CURI,

Defendants.
.....

CIVIL ACTION: 1:20-cv-00073

CONSENT JUDGMENT AND ORDER

Plaintiff Eugene Scalia, Secretary of Labor, United States Department of Labor (the "Secretary"), has filed a Complaint and Defendants have received a copy of Plaintiff's Complaint and waived service of process. Defendants also acknowledge assessment by Plaintiff of civil money penalties, and waive exception to those civil money penalties, all under Section 16(e) of the Fair Labor Standards Act of 1938 (the "Act"), 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4 and 580.1–580.18. Defendants neither admit nor deny the allegations in the Complaint. The Court finds that it has jurisdiction to enter this Consent Judgment and Order (the "Judgment"), and Plaintiff and Defendants agree to its terms.

It is, therefore, ORDERED, ADJUDGED, and DECREED that Defendants, their agents, servants, employees, and all persons acting or claiming to act on their behalf and interest be, and hereby are, permanently enjoined and restrained from violating the provisions of the Act, as amended, 29 U.S.C. § 201, *et seq.*, in any of the following manners:

1. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in the

production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless such employees receive compensation for their employment in excess of forty (40) hours at a rate not less than one and one-half times the employees' regular rates of pay.

2. Defendants shall not fail to make, keep, and preserve records of employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations issued, and from time to time amended, pursuant to Section 11(c) of the Act, 29 U.S.C. § 211(c), and found in Title 29, Part 516 of the Code of Federal Regulations.

3. Defendants shall not, contrary to Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3), 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 the Act, has testified or is about to testify in any such proceeding, or has otherwise engaged in protected activity under the Act.

Further, the Court, finding that the employees are due compensation in the amount of \$729,895.80 (inclusive of gross back wages and liquidated damages), as shown on the attached Exhibit A that is incorporated in and made a part hereof, it is ORDERED, ADJUDGED, and DECREED that Defendants are restrained from withholding payment of said back wages, and are ordered, jointly and severally, to pay said liquidated damages.

Defendants shall pay said compensation plus interest in accordance with the terms set forth herein. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the Act since October 9, 2016. In

agreeing to resolve the amount of back wages and liquidated damages in this case, the Acting Secretary has relied on this representation and, accordingly, the back wage and liquidated damages provisions of this Judgment shall have no effect upon any back wages and liquidated damages which may have accrued since that date.

The back wage and liquidated damages provisions of this Judgment shall be deemed satisfied when Defendants deliver to Plaintiff, in accordance with the installment payments and dates set forth in the schedule contained in Exhibit B attached hereto, payment of \$364,947.90 in back wages plus interest from which deductions for Defendants' employees' share of social security and federal withholding taxes will be made by Plaintiffs, with no deduction for the employees' state withholding tax, and separate payments of \$364,947.90 in liquidated damages plus interest, none of which is subject to deductions. Defendants, jointly and severally, shall further pay the employers' share of FICA to the appropriate authorities for the back wages paid pursuant to this Judgment after presentation of the United States Department of Labor's quarterly summary of employee payments made.

It is also ORDERED, ADJUDGED and DECREED that Defendants, in accordance with the installment payments and dates set forth in the schedule contained in Exhibit B, shall pay to Plaintiff, jointly and severally, the civil money penalties issued pursuant to Section 16(e) of the Act, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, in the amended amount of \$45,104.20 plus interest.

To comply with the payment provisions set forth above related to back wages and liquidated damages, Defendants shall pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77689032> or by going to <http://www.pay.gov> and searching for WHDBWNE. Defendants also have the option to provide

to the Secretary certified checks, bank checks, or money orders made payable to “Wage and Hour Division—Labor,” and those checks or money orders shall be mailed to:

U.S. Department of Labor
Wage and Hour Division
Northeast Region
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317
Attention: William Schweizer

Checks or money orders shall have Case No. 1803767 written on the face of the checks or money orders. The first payment will be due on before December 1, 2019. Payments will first be allocated to the liquidated damages plus interest and second to the back wages plus interest, in accordance with the Attached Exhibit B. Plaintiff shall distribute all back wages and liquidated damages to the employees listed in Exhibit A.

To comply with the civil money penalty payment provisions set forth above, Defendants shall pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734516> or by going to www.pay.gov and searching “WHD CMP Payment - NE Region.” Defendants also have the option to provide to the Acting Secretary certified checks, bank checks, or money orders, and those checks or money orders shall be mailed to:

U.S. Department of Labor
Wage and Hour Division
Northeast Region
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317
Attention: William Schweizer

Checks or money orders shall be made payable to “Wage and Hour Division—Labor” with Case No. 1803767 written on the face of the checks or money orders.

If Defendants make any payment by check or money order, a copy of said check or money order shall also be mailed to the following address: U.S. Department of Labor, Wage and Hour Division, Providence Area Office, 380 Westminster Mall, Room 546, Providence, Rhode Island 02903, Attention Assistant District Director ("Providence Area Office").

On or before ten (10) days from the entry of this Judgment, Defendants shall deliver to the United States Department of Labor at the address of the Providence Area Office of the Wage and Hour Division set forth above, a statement showing the following: employers' Federal ID number(s), the name of each employee listed in Exhibit A, and each employee's current address and social security number (to the extent currently known by Defendants).

When recovered wages and/or liquidated damages have not been claimed by an employee within three (3) years, because of inability to locate the employee or because of the employee's refusal to accept such sums, Plaintiff shall deposit the wages and/or liquidated damages into the United States Treasury as miscellaneous receipts pursuant to 29 U.S.C. § 216(c).

Defendants shall not, under any circumstances, solicit repayment of any amount paid to any employee in connection with this Judgment. In the event any such amount is received from any employee, Defendants shall immediately remit such amount to the United States Department of Labor at the Philadelphia, Pennsylvania address set forth above.

It is further ORDERED, ADJUDGED and DECREED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

Nothing in this Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint in this case in any future investigation, enforcement action, or legal action.


United States District Judge

Dated: _____ April 23, 20²⁰

Respectfully submitted,

FOR THE SECRETARY:

Kate S. O'Scannlain
Solicitor of Labor


Maia S. Fisher
Regional Solicitor


James Glickman BBO#550777
Senior Trial Attorney

2/10/2020
Date

U.S. Department of Labor
Office of the Solicitor
John F. Kennedy Federal Building, Room E-375
Boston, MA 02203
Telephone: (617) 565-2500
Facsimile: (617) 565-2142
E-mail: glickman.james@dol.gov

FOR DEFENDANTS:


Omar Curi
*Individually and as an owner and officer of
Defendant Los Andes, LLC*

1/24/2020
Date



Cesar Curi

*Individually and as an owner and officer of
Defendant Los Andes, LLC*

1/24/2020

Date



Geoffrey M. Aptt, Esquire

Darrow Everett LLP

One Turks Head Place, 12th Floor

Providence, RI 02903

Telephone: (401) 453-1200

Facsimile: (401) 453-1201

E-mail: gaptt@darroverett.com

Attorney for Defendants Omar Curi

Cesar Curi and Los Andes, LLC

3/5/2020

Date