

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE SCALIA, Secretary of Labor,
United States Department of Labor,

: **COMPLAINT**

Plaintiff,

: Civil Action No. 20-3914

v.

:

NANARD ENTERPRISES, INC. d/b/a
WESTWOOD CAR WASH; OILUBE R WE,
INC. d/b/a 10-MINUTE OIL LUBE; BERNARD
TORRACO, Individually and as Officer; NANCY
TORRACO, Individually and as Officer; and
ANTON MUSTO, Individually,

:

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:

:

Defendants.

PRELIMINARY STATEMENT

Plaintiff, EUGENE SCALIA, Secretary of Labor, United States Department of Labor (“the Secretary”), by and through undersigned counsel, brings this action under Section 16(c) and Section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, (“the Act” or “the FLSA”), alleging that Defendants violated Sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Act to recover back wages and liquidated damages, to enjoin violations of the FLSA, and to obtain other appropriate relief.

Defendants, who own and operate two car washes and an automotive oil change shop in Westwood, New Jersey, employ car washers and oil change technicians who routinely work as many as 50 to 70 hours per week. Defendants, however, do not pay them any overtime and, in some cases, do not even pay them the federal minimum wage. Defendants’ failures have for years deprived their employees of their hard-earned wages. While deficient records at one location show Defendants’ egregious violations on their face, Defendants routinely destroyed the evidence of

their unlawful and pervasive pay practices at the other location. Defendants have violated the FLSA by failing to pay their employees the applicable minimum wage and overtime premiums and failing to keep accurate records of hours worked and wages paid to employees. Through this action, the Secretary seeks to bring Defendants into compliance with the FLSA and to recover years of stolen wages owed to Defendants' employees.

JURISDICTION AND VENUE

1. Jurisdiction over this action is properly conferred upon this Court by Section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

FACTUAL ALLEGATIONS

The Parties

Plaintiff

3. Plaintiff Eugene Scalia, Secretary of Labor, United States Department of Labor, is vested with authority to file suit to restrain violations of the FLSA and to recover back wages and liquidated damages, and is the proper plaintiff for this action.

Corporate Defendants

4. Defendant NANARD ENTERPRISES, INC. d/b/a WESTWOOD CAR WASH ("Westwood") is a domestic business corporation duly organized under the laws of the State of New Jersey.

5. Defendant Westwood is engaged in the operation of a car wash doing business as Westwood Car Wash, located at 20 Lake Street, Westwood, New Jersey 07675, within the jurisdiction of this Court.

6. Defendant Westwood, at all relevant times, has regulated the employment of all persons employed by it, acted directly and indirectly in the company's interest in relation to the employees, and thus is an employer of employees within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. Defendant OILUBE-R-WE, INC. d/b/a 10-MINUTE OIL LUBE ("10-Minute") is a domestic business corporation duly organized under the laws of the State of New Jersey.

8. Defendant 10-Minute is engaged in the operation of an automotive oil change shop called 10-Minute Oil Lube, located at 351 Old Hook Road, Westwood, New Jersey 07675, and an adjacent car wash known as Old Hook Car Wash, located at 148 Bergenline Avenue, Westwood, New Jersey 07675.

9. Defendant 10-Minute is within the jurisdiction of this Court.

10. Defendant 10-Minute, at all relevant times, has regulated the employment of all persons employed by it, acted directly and indirectly in the company's interest in relation to the employees, and thus is an employer of employees within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

Individual Defendants

11. Defendants BERNARD TORRACO, NANCY TORRACO, and ANTON MUSTO (together, "the Individual Defendants") operate Westwood and 10-Minute (together, "the Corporate Defendants").

12. Defendant Bernard Torracco resides in the state of New Jersey, within the jurisdiction of this Court.

13. Defendant Bernard Torracco is 50% owner of the Corporate Defendants.

14. Defendant Bernard Torracco is in active control and management of the Corporate Defendants.

15. Defendant Bernard Torracco oversees the operations of the Corporate Defendants.

16. Defendant Bernard Torracco has authority to hire employees of the Corporate Defendants.

17. Defendant Bernard Torracco has hired employees of the Corporate Defendants.

18. For example, Bernard Torracco, together with Nancy Torracco, hired Anton Musto, General Manager of both of the Corporate Defendants.

19. Defendant Bernard Torracco has authority to supervise employees of the Corporate Defendants.

20. Defendant Bernard Torracco has authority to determine the compensation of employees of the Corporate Defendants.

21. Defendant Bernard Torracco has determined the compensation of employees of the Corporate Defendants.

22. For example, Bernard Torracco has managed the Corporate Defendants' payroll and determined how much compensation to pay employees based on their hours worked.

23. Defendant Bernard Torracco has regulated the employment of all persons he has employed and has acted directly and indirectly in the Corporate Defendants' interests in relation to the employees. Defendant Bernard Torracco is thus an employer of the Corporate Defendants'

employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), and is a “person” within the meaning of Section 3(a) of the Act, 29 U.S.C. § 203(a).

24. Defendant Nancy Torraco is 50% owner of the Corporate Defendants.

25. Defendant Nancy Torraco is in active control and management of the Corporate Defendants.

26. Defendant Nancy Torraco oversees the operations of the Corporate Defendants.

27. For example, Nancy Torraco signed a letter on Westwood letterhead confirming that a car washer “has been working for me,” and confirming that employee’s rate of pay.

28. Defendant Nancy Torraco has authority to hire and fire employees of the Corporate Defendants.

29. For example, Nancy Torraco, together with Bernard Torraco, hired Anton Musto, General Manager of both of the Corporate Defendants.

30. As another example, Nancy Torraco has also hired at least one other employee for the Corporate Defendants.

31. Defendant Nancy Torraco has authority to supervise employees of the Corporate Defendants.

32. Defendant Nancy Torraco has authority to determine the compensation of employees of the Corporate Defendants.

33. Defendant Nancy Torraco has determined compensation of employees of the Corporate Defendants.

34. Defendant Nancy Torraco has regulated the employment of all persons she has employed and has acted directly and indirectly in the Corporate Defendants’ interests in relation to the employees. Defendant Nancy Torraco is thus an employer of the Corporate Defendants’

employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), and is a “person” within the meaning of Section 3(a) of the Act, 29 U.S.C. § 203(a).

35. Defendant Anton Musto resides in the state of New Jersey, within the jurisdiction of this Court.

36. Defendant Anton Musto is General Manager of the Corporate Defendants.

37. Defendant Anton Musto is in active control and management of the Corporate Defendants.

38. Defendant Anton Musto oversees the day-to-day operations of the Corporate Defendants.

39. For example, Anton Musto supervises employees, manages customer complaints, handles equipment problems, and administers purchase orders for the Corporate Defendants.

40. Anton Musto is present at 10-Minute six days a week during all hours of operation.

41. When problems or issues arise at Westwood, employees call Anton Musto to manage and resolve them.

42. Anton Musto also manages the Corporate Defendants’ payroll and distributes pay to employees of the Corporate Defendants.

43. Defendant Anton Musto has regulated the employment of all persons he has employed and has acted directly and indirectly in the Corporate Defendants’ interests in relation to the employees. Defendant Anton Musto is thus an employer of the Corporate Defendants’ employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), and is a “person” within the meaning of Section 3(a) of the Act, 29 U.S.C. § 203(a).

Defendants Are an Enterprise Engaged in Commerce

44. The business activities of the Corporate Defendants, as described herein, are related and performed through unified operation or common control for a common business purpose. Thus, the Corporate Defendants constitute an “enterprise” within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r).

45. From at least approximately 2017 through the present, the Corporate Defendants have operated under unified control by the three Individual Defendants.

46. From at least approximately 2007 through the present, the Corporate Defendants have operated two car washes and an automotive oil change shop for a common business purpose.

47. The Corporate Defendants share a single website, westwoodcarwashnj.com, advertising the services of both Corporate Defendants and all their hours of operation.

48. The Corporate Defendants share the same accountant.

49. The Corporate Defendants employ employees that have worked for more than one Corporate Defendant.

50. The Corporate Defendants share at least two employees that work at more than one location in the same workweek.

51. Together, the Corporate Defendants have had an annual gross volume of sales made or business done in an amount not less than \$500,000 from approximately 2017 through the present.

52. The Corporate Defendants have employees handling, selling, and working on goods or materials that have been moved in or produced for commerce, such as Simoniz wax treatments and synthetic motor oil. The Corporate Defendants have employees who regularly process interstate electronic credit card payments.

53. Therefore, Defendants' employees are employed in 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, 29 U.S.C. § 203(s)(1)(A).

Defendants' Unlawful Pay Practices

54. From at least approximately 2017 through the present, Defendants have employed employees as car washers, oil change technicians, and cashiers.

55. Defendants' pay practices violated the Act in several ways.

Car Washers

56. From at least approximately 2017 through approximately March 2020, Defendants have employed at least 17 car washers.

57. Among other tasks, car washers wash, dry, and vacuum cars, and perform other auto detailing tasks.

58. Most car washers regularly work over 40 hours per week, between approximately 58 and 70 hours a week.

59. For example, most car washers at Westwood regularly work from approximately 8:00 a.m. to 6:00 p.m., five to six days each week, plus from approximately 8:00 a.m. to 4:00 p.m. on Sundays.

60. As another example, most car washers at 10-Minute regularly work from approximately 8:00 a.m. to 6:00 p.m., six to seven days each week.

61. Despite car washers regularly working over 40 hours per week, as reflected in some of Defendants' records, Defendants only pay them a fixed hourly rate, between approximately \$7.00 to \$12.00, for all hours worked without an overtime premium.

62. For example, Defendants' records show that, for the week ending on April 2, 2019, Defendants only paid a car washer \$9.00 per hour for a 70-hour workweek, for a total of \$630, without any additional pay for hours worked over 40.

63. Accordingly, Defendants have failed to pay car washers at one and one-half times their regular rate of pay when car washers work in excess of 40 hours per week, as prescribed by Section 7 of the FLSA.

64. Similarly, as reflected in some of Defendants' records, Defendants also do not pay the minimum wage to some car washers as prescribed by Section 6 of the FLSA.

65. For example, Defendants' records show that Defendants only paid a rate of \$7.00 per hours, below the statutory rate of \$7.25, to at least two car washers.

Cashiers

66. From at least approximately 2017 through approximately March 2020, Defendants have employed at least two cashiers.

67. Among other tasks, cashiers charge and accept payments for products sold and services rendered to customers.

68. Cashiers regularly work over 40 hours per week, between approximately 45 and 55 hours per week.

69. For example, Westwood's payroll records show that, for the week ending on July 7, 2019, one cashier worked 47 hours.

70. As another example, 10-Minute's payroll records show that cashiers regularly work approximately 45 to 55 hours per week, and sometimes more.

71. Despite cashiers regularly working over 40 hours per week, as reflected in some of Defendants' records, Defendants only pay them a fixed hourly rate, between approximately \$8.00 to \$10.00, for all hours worked without an overtime premium.

72. For example, Defendants' records show that, for the week ending on May 21, 2019, Defendants only paid a cashier \$10.00 per hour for a 52.75-hour workweek, for a total of \$527.50, without any additional pay for hours worked over 40.

73. Accordingly, Defendants have failed to pay cashiers at one and one-half times their regular rate of pay when cashiers work in excess of 40 hours per week, as prescribed by Section 7 of the FLSA.

Oil Change Technicians

74. From at least approximately 2017 through approximately March 2020, Defendants employed at least 11 oil change technicians.

75. Among other tasks, oil change technicians change motor oil, replace windshield wipers, and replace oil and air filters on automobiles.

76. Most oil change technicians regularly work over 40 hours per week, between approximately 45 and 66 hours each week.

77. For example, some oil change technicians regularly work from approximately 8:00 a.m. to 6:00 p.m. five to six days each week, plus from approximately 8:00 a.m. to 2:00 p.m. on Sundays.

78. Despite oil change technicians regularly working over 40 hours per week, as reflected in Defendants' records, Defendants only pay them a fixed hourly rate, between approximately \$8.50 and \$11.50, for all hours worked without an overtime premium.

79. For example, Defendants' records show that, for the week ending on May 21, 2019, Defendants only paid an oil technician \$8.00 per hour for a 50-hour workweek, for a total of \$400, without any additional pay for hours worked over 40.

80. Defendants also pay oil change technicians a commission for the sale of certain items.

81. For example, Defendants pay oil change technicians \$1.00 for the sale of each set of windshield wipers and \$1.00 for the sale of each air filter.

82. However, Defendants fail to include their employees' commission in calculating the regular rate of pay when they work over 40 hours each week.

83. As a result, Defendants have failed to pay oil technicians at one and one-half times their regular rate of pay when oil technicians work in excess of 40 hours per week, as prescribed by Section 7 of the FLSA.

84. From at least approximately 2017 through approximately March 2020, Defendants also did not pay the minimum wage to at least one oil change technician as prescribed by Section 6 of the FLSA.

85. For example, 10-Minute's records show that at least one oil change technician's regular rate of pay for one week was \$6.14, below the statutory rate of \$7.25.

86. Defendants engaged in the practices described in the preceding paragraphs 54 through 85 at all times from at least approximately 2017 and, upon information and belief, these practices continued through approximately March 2020.

Defendants' Unlawful Recordkeeping Practices

87. Defendants do not maintain and preserve adequate and accurate records of its employees and of the wages, hours, and other conditions of employment as prescribed by 29 C.F.R. Part 516.

88. For example, at Westwood, Defendants use handwritten time records reflecting the approximate hours worked by each employee each week, which Defendants have routinely destroyed at the end of each week.

89. Similarly, at Westwood, Defendants use handwritten calculations to determine the hourly rates and total wages paid to their employees each week, which Defendants have routinely destroyed at the end of each week.

90. Defendants further fail to maintain a record of the hours worked each workday, as required by law.

91. Defendants also do not maintain a record of the regular rate or the premium pay due each employee, as required by law.

92. Defendants also fail to record the dates, amounts, and nature of the items that make up the total deductions in their employees' wages.

93. Defendants have also failed to maintain a record of the full names of all employees, as required by law.

94. Defendants have engaged in the practices described in the preceding paragraphs 87 through 93 at all times from at least approximately 2017 and, upon information and belief, these practices continued through approximately March 2020.

FIRST CAUSE OF ACTION

Violations of Sections 6(a) and 15(a)(2) of the FLSA: Failure to Pay Minimum Wage

95. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 86 of the Complaint.

96. As a result of paying at least eight employees employed in an enterprise engaged in commerce or in the production of goods for commerce at rates less than the applicable statutory minimum wage, Defendants have violated the provisions of Sections 6 and 15(a)(2) of the Act.

97. Accordingly, Defendants are liable for any unpaid minimum wages and an equal amount of liquidated damages under Section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid minimum wages and prejudgment interest on said unpaid minimum wages under Section 17 of the Act.

SECOND CAUSE OF ACTION

Violations of Sections 7(a) and 15(a)(2) of the FLSA: Failure to Pay Overtime Wages

98. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 86 of the Complaint.

99. Defendants in many workweeks have violated the provisions of Sections 7 and 15(a)(2) of the FLSA by employing their employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than 40 hours, without compensating the employees for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed.

100. Therefore, Defendants are liable for unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest on said unpaid overtime compensation under Section 17 of the Act.

THIRD CAUSE OF ACTION

Violations of Sections 11(c) and 15(a)(5) of the FLSA: Failure to Make, Keep, and Preserve Adequate and Accurate Records

101. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 94 of the Complaint.

102. Defendants have violated the provisions of Sections 11(c) and 15(a)(5) of the Act in that Defendants failed to make, keep, and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions of their employment as prescribed by the Regulations issued and found at 29 C.F.R. Part 516.

WHEREFORE, cause having been shown, Plaintiff respectfully prays for judgment against Defendants providing the following relief:

1. An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, and those persons in active concern or participation with Defendants, from violating the provisions of Sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Act;

2. An order pursuant to Section 16(c) of the Act finding Defendants liable for unpaid minimum wage and overtime compensation found due Defendants' employees listed on the attached Exhibit A and an equal amount of liquidated damages (additional minimum wage, overtime compensation, and liquidated damages may be owed to certain employees presently unknown to Plaintiff from at least approximately 2017); or

3. In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid minimum wage and overtime compensation found due Defendants' employees and prejudgment

interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621;

4. An order compelling Defendants to reimburse the Secretary for the costs of this action; and

5. An order granting such other relief as the Court may deem necessary or appropriate.

DATED: April 10, 2020
New York, New York

KATE S. O'SCANNLAIN
Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

/s/ Rosemary Almonte
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