

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

MARTIN J. WALSH,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)
))
Plaintiff,)
))
v.)
))
RESTO CONTRACTING, LLC,)
BETHANY BERRY RESTO, individually, owner,)
And as manager of the aforementioned company)
))
Defendants.)

Civil Action No. 2:22-cv-00015

COMPLAINT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Plaintiff”), brings this action to enjoin Resto Contracting, LLC, a Virginia limited liability company, Bethany B. Resto, individually and as owner, officer, and manager of the aforementioned company (collectively, “Defendants”), from violating the provisions of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“the Act”), and for a judgment against Defendants in the total amount of back wage compensation found by the Court to be due to any of the employees of Defendants pursuant to the Act and an equal amount due to the employees of Defendants in liquidated damages.

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

2. During all relevant times, Defendant Resto Contracting, LLC. (“Resto”) was a company duly organized under the laws of the Commonwealth of Virginia. Resto’s registered

address and principal place of business was 3800 Pughsville Rd., Lot 53, Suffolk, VA 23435, within the jurisdiction of this Court. Resto was engaged as an employment agency for local construction companies within the jurisdiction of this Court.

3. Defendant Bethany B. Resto was the company's president and owner of the limited liability company identified in Paragraph II and resides at 3800 Pughsville, Rd., TRLR 53, Suffolk, VA 23435. Bethany Resto directed employment practices and has directly or indirectly acted in the interest of Defendant Resto in relation to their employees at all relevant times herein, including interviewing, hiring, and setting pay rates for employees, and setting the conditions of employment for employees, and meets the definition of an employer under Section 3(d) of the Act. At all times relevant herein, Bethany B. Resto has been responsible for making, keeping, and preserving records of Resto's workers, including accurately recording regular work hours and pay separately from overtime work hours and pay.

4. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the Act, in that Defendants have been, through a unified operation or common control, engaged in the performance of related activities for a common business purpose. These activities constituted (and/or were related to) providing construction services, in furtherance of the business purposes of Defendants' unified business entity.

5. At all times relevant herein, Defendants have employed, and are employing, employees in the activities of an enterprise engaged in commerce or in the production of good for commerce, including employees providing constructions services, handling, moving, or otherwise working on goods or materials that have been moved in or produced for commerce. Further, at all times relevant herein, Defendants have had an annual gross volume sales made or

business done of not less than \$500,000.00, thereby affording coverage over all their employees pursuant to Section (3)(s)(1)(A) of the Act.

6. During the time period of at least August 19, 2017, through at least August 19, 2019 (“relevant period”), Defendants employed the individuals listed in the attached Schedule A (collectively “employees”) as construction workers, including, but not limited to, finishers, loaders, operators, and carpenters.

7. Defendants willfully violated the provisions of Sections 7 and 15(a)(2) of the Act by employing individuals, including construction workers such as finishers, loaders, operators, and carpenters in an enterprise engaged in commerce or handling goods or materials that have been moved in or produced for commerce for workweeks longer than those prescribed in Section 7 of the Act without compensating said employees for employment in excess of the prescribed hours at rates not less than one and one-half times their regular rates. Therefore, Defendants are liable for the payment of unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act.

- a. For example, during the time period of at least August 19, 2017, through at least August 19, 2019 (“relevant period”), Defendants improperly classified individuals, including, construction workers such as finishers, loaders, operators, and carpenters as independent contractors and thereby failed to compensate those individuals who worked over 40 hours in a workweek one and one-half times their regular rate. Although many of these individuals worked for more than 40 hours in a given week, these individuals did not receive time and one-half their regular rate for their overtime hours.

8. Defendants 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, which they maintained as prescribed by the regulations issued and found at 29 C.F.R. Part 516. For example, Defendants failed to keep and preserve payroll records for employees including records of hours worked by the employees and failed to maintain full addresses for the employees. *See* 29 C.F.R. §§ 516.2(a), 516.5(a)(2), (7) & (8).

9. As a result of the violations alleged above, amounts are owed for hours worked that were paid at rates less than the rate set forth in Section 7 of the Act for the employees named in Schedule A attached to this Complaint. Additional amounts may be due to other employees employed by Defendants during the time period covered by this Complaint (and continuing up to the time Defendants demonstrate that they came into compliance with the Act) whose identities are not now known to the Plaintiff.

10. During the investigative period, Defendants continually and willfully violated the provisions of the Act as alleged above. A judgment permanently enjoining and restraining the violations herein alleged (including restraining of withholding of overtime compensation) is specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

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

(1) For an injunction issued 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 Defendants who receive actual notice of any such judgment, from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and

(2) For judgment pursuant to Section 16(c) of the Act finding Defendants liable for unpaid overtime compensation due to certain of Defendants' current and former employees listed in the attached Schedule A for the period from at least August 17, 2017, through at least August 19, 2019, and for an equal amount due to certain of Defendants' current and former employees in liquidated damages. Additional amounts of back wages and liquidated damages may also be owed to certain current and former employees of Defendants listed in the attached Schedule A for violations continuing after August 19, 2019, and may be owed to certain current and former employees presently unknown to the Secretary for the period covered by this Complaint, who may be identified during this litigation and added to Schedule A; 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 wages and overtime compensation found due Defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

FURTHER, Plaintiff prays that this Honorable Court award costs in his favor, and an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

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January 13, 2022

/s/Mohamed Seifeldein
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