

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

.....  
JULIE A. SU, Acting Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

EL RODEO CONCORD, LLC dba EL  
RODEO MEXICAN RESTAURANT; CASA  
TEQUILA, LLC dba CASA TEQUILA;  
CASA TEQUILA SALEM MA LLC dba  
CASA TEQUILA; and GILBERTO REYES,

Defendants.  
.....

Civil Action No.: 1:23-cv-00204

Injunctive Relief Sought

COMPLAINT

1. Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Secretary”) brings this action because three commonly owned and operated New Hampshire and Massachusetts restaurants, Defendants El Rodeo Concord, LLC dba El Rodeo Mexican Restaurant, Casa Tequila, LLC dba Casa Tequila and Casa Tequila Salem MA LLC dba Casa Tequila (the “Restaurants”), and Defendant Gilberto Reyes, an owner and operator of the Restaurants, failed to pay proper minimum wage and overtime compensation, and failed to keep accurate employment-related records in violation of the Fair Labor Standards Act (the “FLSA”).

2. The Secretary seeks to have the Court enjoin Defendants from violating the provisions of Sections 6, 7, 11, 15(a)(2), and 15(a)(5) of the FLSA, 29 U.S.C. §§ 206, 207, 211, 215(a)(2), 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 FLSA, 29 U.S.C. §§ 215(a)(2) and 216(c).

Jurisdiction and Venue

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

4. Venue is proper in the United States District Court for the District of New Hampshire because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

The Parties

5. Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor, is vested with authority to file suit to restrain violations of the FLSA and recover back wages and liquidated damages and is the proper plaintiff for this action.

6. Defendant El Rodeo Concord, LLC dba El Rodeo Mexican Restaurant is a restaurant located at 22 Loudon Road, Concord, New Hampshire 03301, within the jurisdiction of this Court, and is engaged at that place of business in the operation of a full-service restaurant.

7. Defendant Casa Tequila, LLC dba Casa Tequila is a restaurant located at 620 Lafayette Road, Seabrook, New Hampshire 03874, within the jurisdiction of this Court, and is engaged at that place of business in the operation of a full-service restaurant.

8. Defendant Casa Tequila Salem MA LLC dba Casa Tequila is a restaurant located at 300 Derby Street, Salem, Massachusetts 01970 and is engaged at that place of business in the operation of a full-service restaurant.

9. The Restaurants employ the employees listed on the attached Exhibit A who have not received proper compensation under the FLSA.

10. Defendant Gilberto Reyes is an owner of the Restaurants.

11. Defendant Gilberto Reyes resides at 20 Emily Way, Concord, NH 03303, within

the jurisdiction of this Court.

12. Defendant Gilberto Reyes resides and transacts substantial business on a continuous and systematic basis in this judicial district, within the jurisdiction of this Court.

13. The majority of the claims against Defendant Gilberto Reyes in this case arise out of and are directly related to business activities in New Hampshire.

14. Defendant Gilberto Reyes has certain control over the daily operations of the Restaurants, including the authority to hire and fire employees, determine employees' wage rates, manage the daily operations of the business, and set policies for the business.

15. Defendant Gilberto Reyes is and has been an employer of the Restaurants' employees within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

Statute of Limitations Tolling Agreements

16. On or about October 5, 2022, Defendants El Rodeo Concord, LLC and Gilberto Reyes entered into a statute of limitations tolling agreement with the Secretary.

17. Under the terms of that statute of limitations tolling agreement, Defendants El Rodeo Concord, LLC and Gilberto Reyes agreed that for purposes of the FLSA statute of limitations as to Defendant El Rodeo Concord, LLC, this Complaint is deemed to have been filed on July 23, 2022.

18. On or about October 5, 2022, Defendants Casa Tequila, LLC, Casa Tequila Salem MA LLC and Gilberto Reyes entered into a statute of limitations tolling agreement with the Secretary.

19. Under the terms of that statute of limitations tolling agreement, Defendants Casa Tequila, LLC, Casa Tequila Salem MA LLC and Gilberto Reyes agreed that for purposes of the

FLSA statute of limitations as to Defendants Casa Tequila, LLC and Casa Tequila Salem MA LLC, this complaint is deemed to have been filed on August 27, 2022.

FLSA Coverage

20. From July 24, 2020 through December 24, 2022, Defendants employed employees who engaged in commerce or the production of goods for commerce.

21. From July 24, 2020 through December 24, 2022, Defendants were an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r), as they engaged in related activities performed through unified operation or common control for a common business purpose.

22. From July 24, 2020 through December 24, 2022, 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.

23. From July 24, 2020 through December 24, 2022, said enterprise has had an annual gross volume of sales or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated).

24. From July 24, 2020 through December 24, 2022, Defendants' employees have been employed in this enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the FLSA, 29 U.S.C. § 203(s).

Defendants Are a Single or Joint Employer

25. From July 24, 2020 through December 24, 2022, Defendants were a single employer under the integrated-enterprise test because they had interrelated operations, and common management at the Restaurants.

26. From July 24, 2020 through December 24, 2022, if Defendants were not a single employer, then Defendants jointly employed certain employees at the Restaurants, including certain employees, listed on Exhibit A of this complaint, who worked at more than one restaurant during one work week.

27. From July 24, 2020 through December 24, 2022, the Restaurants had common ownership by one of the owners, Defendant Gilberto Reyes.

28. From July 24, 2020 through December 24, 2022, the Restaurants had common management by Defendant Gilberto Reyes.

29. From July 24, 2020 through December 24, 2022, the Restaurants had common payroll processing through manager, Nancy Sanchez..

30. From July 24, 2020 through December 24, 2022, the Restaurants shared some employees.

31. From July 24, 2020 through December 24, 2022, the Restaurants shared bookkeeping/accounting services.

Defendants' Wage and Hour Practices

32. From July 24, 2020 to at least December 24, 2022, Defendants failed to pay certain employees working at the Restaurants, who are listed in the attached Exhibit A, minimum wage and overtime compensation as required by Sections 6 and 7 of the FLSA, 29 U.S.C. §§ 206 and 207.

33. From July 24, 2020 to at least December 24, 2022, Defendants failed to pay certain employees for all hours worked.

34. From July 24, 2020 to at least December 24, 2022, Defendants failed to pay certain nonexempt employees, who were paid on a salary basis or who were paid on both an hourly and salaried basis at the Federal minimum hourly wage.

35. From July 24, 2020 to at least December 24, 2022, Defendants failed to compensate certain employees at one and one-half times their regular rates of pay for all hours worked over forty hours in a workweek.

36. From July 24, 2020 to at least December 24, 2022, Defendants paid certain nonexempt employees such as individuals working as cooks, dishwashers and bussers, on a salary basis, and failed to pay overtime premiums to those workers for all hours worked over forty hours in a workweek.

37. From July 24, 2020 to at least December 24, 2022, Defendants failed to combine the hours of certain employees when they worked in more than one job category in one work week, such as the job categories of server and maintenance worker, resulting in the Defendants failing to pay overtime premiums for hours worked over forty per week.

38. From July 24, 2020 to at least December 24, 2022, Defendants failed to combine hours of certain employees when they worked in more than one of the restaurants in the same

work week, resulting in the Defendants failing to pay overtime premiums for hours worked over forty per week.

39. From July 24, 2020 to at least December 24, 2022, Defendants improperly calculated certain tipped employees' overtime rates based on their cash wage as opposed to the federal minimum wage.

40. From July 24, 2020 to at least December 24, 2022, Defendants failed to maintain the records required under Section 11 of the FLSA, 29 U.S.C. § 211.

41. Defendants did not maintain records as required by the FLSA, including complete and accurate records of hours worked by employees, and complete and accurate records of payments made to employees.

### COUNT ONE

#### **Defendants Failed to Pay Certain Employees the Federal Minimum Hourly Wage Rate Required by Section 6 of the FLSA**

42. The Secretary incorporates by reference and re-alleges all of the foregoing allegations in this Complaint.

43. Defendants have violated the provisions of Sections 6 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206 and 215(a)(2), by failing to pay certain employees for all of their hours, and for failing to pay certain employees at the federal hourly minimum wage rate for all of their hours.

44. Therefore, Defendants are liable for the difference between the federal minimum wage rate of \$7.25 per hour and the amount paid such employees for all hours worked by certain employees listed in the attached Exhibit A, and an equal amount of liquidated damages under Section 16(c) of the FLSA, 29 U.S.C. § 216(c).

## COUNT TWO

### **Defendants Failed to Pay the Overtime Premium Required by Section 7 of the FLSA**

45. The Secretary incorporates by reference and re-alleges all of the foregoing allegations in this Complaint.

46. Defendants have violated the provisions of Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees 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.

47. Therefore, Defendants are liable for overtime compensation owed to certain of the employees listed in the attached Exhibit A and an equal amount of liquidated damages under Section 16(c) of the FLSA, 29 U.S.C. § 216(c).

## COUNT THREE

### **Defendants Failed to Keep Records Required Under Section 11 of the FLSA**

48. The Secretary incorporates by reference and re-alleges all of the foregoing allegations in this Complaint.

49. Defendants failed to keep true and accurate records in violation of Sections 11 and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211 and 215(a)(5), and the regulations thereunder, specifically 29 C.F.R. Part 516.

## PRAYER FOR RELIEF

Throughout the period covered by this Complaint, Defendants violated the aforesaid provisions of the FLSA, as alleged. WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendants as follows:

1. For an order pursuant to Section 17 of the FLSA, 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 FLSA, including Sections 6, 7, 11, 15(a)(2) and 15(a)(5). 29 U.S.C. §§ 206, 207, 211, 215(a)(2) and 215(a)(5);

2. For an order pursuant to Section 16(c) of the FLSA, 29 U.S.C. § 216(c), holding Defendants liable for unpaid back wages found due to certain of Defendants' current and former employees listed in the attached Exhibit A for the time period set forth above, plus an equal amount 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 Exhibit A for violations continuing after the time period set forth above, and may be owed to certain current and former employees presently unknown to the Secretary for the periods covered by this Complaint, who may be identified during this litigation and added to Exhibit A;

3. 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 withholding the amount of unpaid minimum overtime compensation found due to Defendants' employees;

4. In the event liquidated damages are not awarded, prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621;

5. Awarding the Secretary the costs of this action; and

6. Granting such other and further relief as may be necessary and appropriate.

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Solicitor of Labor

Maia S. Fisher  
Regional Solicitor

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