UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 20-1033(DSD/LIB)

Julie A. Su,
Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v. **ORDER**

Alpha & Omega USA, Inc, d/b/a
Travelon Transportation, and
Viktor Cernatinskij,

Defendants.

This matter is before the court following a jury trial, which resulted in a unanimous verdict in favor of plaintiff Julie A. Su, Acting Secretary of the United States Department of Labor and against defendants Alpha & Omega USA, Inc. d/b/a Travelon Transportation and Viktor Cernatinskij (collectively, Travelon or defendants).

In the trial, and pursuant to the mandate of the Eighth Circuit Court of Appeals, the jury was asked to consider the following three questions based on the economic realities test, as set forth by the Eighth Circuit in Action Process Service & Private Investigations, LLC, 860 F.3d 1089, 1092-93 (8th Cir. 2017) and adopted by the court in this matter:[1]

[1] The full background of this matter is set forth in the court's summary judgment order and the Eighth Circuit's decision

1. Did Travelon control the manner and means in which the drivers performed special transportation services?

2. Did the drivers have opportunities for profit or loss based on their exercise of initiative, managerial skill, and business judgment?

3. Were the drivers' special transportation services integral to Travelon's business?

As to the first and third questions, the jury answered "yes." ECF No. 132. As to the second question, the jury answered "no." Id.

Now that the jury has reached its verdict, the court must determine whether the facts in the case establish that the drivers were Travelon employees or independent contractors. See Karlson v. Action Process Serv. & Priv. Investigations, LLC, 860 F.3d 1089, 1092-93 (8th Cir. 2017) (quoting Donovan v. Trans World Airlines, Inc., 726 F.2d 415, 417 (8th Cir. 1984)). ("[T]he ultimate question of "[w]hether or not an individual is an 'employee' within the meaning of the FLSA is a legal determination rather than a factual one.").

In its summary judgment order, the court determined that all six factors of the economic realities test[2] weighed in favor

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remanding the case for a jury determination on the three limited questions set forth above. See ECF Nos. 61, 70.

[2] The six factors are as follows: (1) whether the service rendered by the worker is an integral part of the alleged

of a finding that the drivers were employees and had been misclassified as independent contractors by Travelon. See ECF No. 61, at 17-27. On appeal, the Eighth Circuit found that there were genuine issues of material fact as to only the three factors discussed above that warranted resolution by jury trial. See ECF No. 70, at 5 ("[W]e remand the case so these factual disputes can be resolved by the ultimate trier of fact."). As such, the court's initial determination as to the three factors not subject to remand stand as previously stated. And, given the jury's determination in the Secretary's favor on each of the three triable factors, the court must conclude that Travelon's drivers were employees rather than independent contractors.

The sole remaining issue, then, is whether damages - as awarded in the court's summary judgment order - should be revisited. Although the court indicated that it may be open to further briefing as to damages post-trial, it has carefully reviewed the record as a whole and finds that there is no basis on which to revisit its previous damages determination. The Eighth Circuit's mandate does not require such further review

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employer's business; (2) the degree of skill required for the rendering of the services; (3) the worker's investment in equipment or materials for the task; (4) the degree of the alleged employer's right to control the manner in which the work is performed; (5) the worker's opportunity for profit or loss, depending upon his skill; and (6) the permanency of the relationship between the parties. Wang v. Jessy Corp., No. 17-cv-5069, 2020 WL 3618596, at *4 (D. Minn. July 2, 2020).

and nothing that occurred before or during the trial affected the court's previous ruling in this regard.

Accordingly, based on the above, **IT IS HEREBY ORDERED THAT:**

1. Defendants are an "employer" under section 3(d) of the Fair Labor Standards Act, 29 U.S.C. § 203(d)(3) (FLSA);

2. Defendants' drivers, identified in Exhibit A of the Secretary's complaint, are employees under section 3(e)(1), 29 U.S.C § 203(e)(1), of the FLSA;

3. Defendants violated the FLSA's minimum wage provisions, 29 U.S.C. § 206, by failing to pay drivers the federal minimum wage of $7.25 per hour for all hours worked;

4. Defendants violated the FLSA's overtime provisions, 29 U.S.C. § 207, by failing to compensate drivers at least one and one-half times their regular rates for hours in excess of forty hours per week;

5. Defendants violated the FLSA's recordkeeping provisions, 29 U.S.C. § 211(c), by failing to: (1) maintain a complete set of time records; and (2) keep and maintain time and pay records reflecting each driver's total hours worked each week, including regular and overtime hours; each driver's regular rates; and each driver's weekly premium pay;

6. The Secretary properly computed back wages for the 21 drivers listed in Exhibit A of the Secretary's complaint for the time period from March 20, 2017, through March 19, 2019;

7. Defendants are jointly and severally liable for the full amount of back wages and for an equal amount in liquidated damages;

8. Defendants shall pay $127,314.10 in back wages due to the 21 drivers listed in Exhibit A of the Secretary's complaint under section 16 of the FLSA, with an equal amount of liquidated damages, for a total amount of $254,628.20. The amounts due to each driver shall be paid in accordance with the Secretary's WH-56 Form;

9. Defendants are enjoined and restrained, under section 17 of the FLSA, 29 U.S.C. § 217, from withholding the back wages and liquidated damages found due and from prospectively violating the FLSA's minimum wage, overtime, and recordkeeping provisions; and

10. Defendants shall properly classify all current and future drivers as employees and pay them in accordance with the FLSA, 29 U.S.C. § 201 et seq.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 27, 2023

s/David S. Doty
David S. Doty, Judge
United States District Court