

JULIE A. SU, ACTING SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,¹

Plaintiff,

v.

PLAZA AZTECA GREAT NECK, INC., et al.

Defendants.

) Case No. 2:21-cv-00531
) RAJ-RJK

Plaintiff Acting Secretaiy of Labor, United States Department of Labor (the "Acting Secretary"), filed on September 21, 2021, a Complaint (ECF No. 1) in this case under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA" or "Act"). Defendants have received a copy of the Complaint and waived service of process.² Defendants admit that they violated Sections 6, 7, and 11 of the FLSA, 29 U.S.C. §§ 206,207, and 211.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Acting Secretary of Labor Julie A. Su is automatically substituted as the proper Plaintiff in this case. For ease of reference, the Acting Secretary and her pertinent predecessors will be referred to herein as the "Acting Secretary" or "Plaintiff."

²"Defendants" refers to Defendants Plaza Azteca Robinson Township, Inc., Plaza Azteca Wyomissing, Inc., Plaza State College, Inc, Monterey of California, Inc., P.A. Greenville Inc., PA OBX, Inc., Plaza Azteca Elizabeth City, Inc., Plaza Azteca Sicklerville, Inc., Plaza Azteca King of Prussia, Inc., Plaza Azteca Exton, Inc., Plaza Azteca Kennett Square, Inc., Plaza Azteca Plymouth Meeting, Inc., Plaza Azteca Great Neck, Inc., Plaza Azteca Jefferson, Inc. d/b/a Plaza Azteca Restaurante Mexicano (4), Plaza Azteca Suffolk, Inc., Plaza Azteca Granby St., Inc., PA Laskin, Inc., Plaza Azteca Short Pump, Inc., Don Valerio of Sterling, Inc. d/b/a Plaza Azteca Sterling, Plaza Azteca Broad, Inc., Plaza Azteca Dock Landing, Inc., Plaza Azteca Gaviotas, Inc., P.A. Glen Allen, Inc., Plaza Azteca Hampton, Inc., Martinez-Haygood, Inc. d/b/a Plaza Azteca Mexican Restaurante, PA Providence, Inc., PA Seminole Inc., Plaza Azteca Warwick, Inc. d/b/a Plaza Azteca (Newport News CI), P.A. Westchester, Inc., PA Williamsburg, Inc., Plaza Azteca

Defendants also acknowledge assessment by the Acting Secretary of civil money penalties, waive notice and service requirements for the issuance of those penalties, and waive exception to those civil money penalties all under Section 16(e) of the FLSA, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1-578.4, 580.1-580.18.

The Court concludes that it has jurisdiction to enter this Consent Judgment and Order (the "Consent Judgment"), and the Acting Secretary and Defendants agree to its terms.

It is therefore ORDERED, ADJUDGED, and DECREED that:

1. Defendants and their successors, assigns, agents, servants, employees, and all persons in active concert or participation with them, or acting or claiming to act in their interest and behalf, hereby are permanently enjoined and restrained from violating the FLSA, in any of the following manners.

- a. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206 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 FLSA, unless such employees receive wages of at least \$7.25 per hour for all hours worked up to 40 hours in a workweek.
- b. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 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,

Yorktown, Inc., Plaza Azteca Inc. d/b/a Plaza Azteca Restaurante Mexicano (1), P.A. Leesburg, Inc., Plaza Azteca Denbigh, Inc., Plaza Azteca Norfolk Outlet, Inc., P.A. Midlothian, Inc., Salsa's Thimble Shoals Inc., and Ruben Leon.

within the meaning of the FLSA, for workweeks longer than 40 hours, unless such employees receive compensation for their employment in excess of 40 hours at rates not less than one-and-one-halftimes the employees' regular rates of pay.

- c. Defendants shall not, contrary to Sections 12(c) and 15(a)(4) of the FLSA, 29 U.S.C. §§ 212(c) and 215(a)(4), employ any oppressive child labor, as defined in Section 3(1) of the FLSA, 29 U.S.C. § 203(1), and 29 C.F.R. Part 570, in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.
- d. 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 Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), and found in 29 C.F.R. Part 516.
- e. Defendants shall not fail to cooperate with the United States Department of Labor in any investigation conducted pursuant to Section 11(a) of the FLSA, 29 U.S.C. § 211(a). Defendants shall provide truthful responses and other information and documents to the United States Department of Labor. Defendants shall provide the United States Department of Labor access to all records that are required to be maintained pursuant to Section 11(c) of the FLSA, 29 U.S.C. § 211(c), and 29 C.F.R. Part 516, and shall provide access to other information necessary for the proper execution of any United States Department of Labor investigation. Nothing contained in this Consent Judgment, including the requirement to cooperate as set

forth in this Paragraph, abrogates Defendants' rights under the United States Constitution.

2. The Secretary agrees that, absent exigent circumstances, he will confer with Defendants' attorneys prior to filing any motion for contempt with respect to this Order and will seek to resolve any issues in good faith 14 days before filing such contempt papers.

3. Further, the Court orders Defendants to pay their employees back wages and liquidated damages in the total amount of \$11,400,000.00, as shown on the attached Exhibit A1 and Exhibit B1, which are incorporated in and made a part of this Consent Judgment, and that Defendants are restrained from withholding said back wages. In addition, Defendants shall pay, jointly and severally, 3.0% interest, in accordance with Exhibit B1, on any amounts 30 days past due under this Consent Judgment.

4. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the FLSA since January 15, 2022. In resolving the amount of back wages and liquidated damages in this Consent Judgment, the Acting Secretary has relied on this representation.

5. The back wage and liquidated damages provisions of this Consent Judgment only cover the period from March 10, 2016 to September 21, 2021 for the individuals named in Exhibit A1, and this Consent Judgment shall have no effect upon any back wages and liquidated damages that may have accrued outside that time period or for any individual not named on Exhibit A1.

6. The back wage and liquidated damages provisions of this Consent Judgment shall be deemed satisfied when Defendants deliver to the Acting Secretary in accordance with Exhibit B1: \$5,700,000.00 in gross back wages, from which deductions for Defendants' employees' share of social security and federal withholding taxes will be made by the United States Department of

Labor with no deduction for the employees' state withholding tax; and separate payment totaling \$5,700,000.00 in liquidated damages, 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 Consent Judgment after presentation of the United States Department of Labor's quarterly summary of employee payments made.

7. Defendants may make the back wage and liquidated damages payments required by this Consent Judgment 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. Alternatively, payments made be made in the form of certified checks made payable to "Wage and Hour Division-Labor," and delivered to the United States Department of Labor, Wage and Hour Division, 1835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio. Any certified check shall have Case No. 1892107 written on the face of the certified check.

8. Defendants shall make the back wage and liquidated damages payments described above within 90 days of the parties' full execution of this Consent Judgment, in accordance with the schedule set out in Exhibit B1. The Acting Secretary will distribute the back wages and liquidated damages to the employees in accordance with Exhibit A1.

9. In addition, Defendants shall pay, jointly and severally, the civil money penalties issued pursuant to Section 16(e) of the FLSA, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1-578.4, to the Acting Secretary.

10. The civil money penalty portion of this Consent Judgment will be deemed satisfied when Defendants deliver \$625,000.00 to the Acting Secretary.

11. To comply with the civil money penalty payment provisions set forth above, Defendants may pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/fmm/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 a certified check, bank check, or money order, and that check or money order shall be made payable to "Wage and Hour Division-Labor" and mailed to: United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio. Any such check or money order shall have Case No. 1892107 written on the face of the check or money order.

12. Defendants shall make the civil money penalty payment described above within 90 days of the parties' full execution of this Consent Judgment, in accordance with the schedule set out in Exhibit B1.

13. In the event Defendants fail to make payment within 10 days of any payment being due under this Consent Judgment, Defendants consent to the entry of a Writ of Execution, pursuant to Rule 69 of the Federal Rules of Civil Procedure, to enforce the monetary terms of this Consent Judgment. The Acting Secretary may represent in filing for such a writ that Defendants consent to its issuance. Upon request from the Acting Secretary, Defendants agree to furnish a complete and accurate list of their real, personal, and business property and other assets, including bank accounts and account numbers, with an estimated value of \$2,000.00 or more and the locations of such property and assets for purposes of the Acting Secretary seeking a Writ of Execution in accordance with this Paragraph of the Consent Judgment.

14. In the event Defendants fail to make payment within 10 days of any payment being due under this Consent Judgment, upon notice to the Defendants, the Court shall appoint a

Receiver to effectuate all of the terms of this Consent Judgment. In the event a Receiver is appointed:

- a. Defendants shall cooperate with the Receiver in all respects, and shall provide to the Receiver any and all information which the Receiver may require to carry out its appointment and in accordance with the authority given to the Receiver pursuant to applicable law at the time of appointment.
- b. All the expenses of the accountant or Receiver shall be borne solely by the Defendants.
- c. If the Court appoints a Receiver, the Receiver shall serve until the payment of the monetary terms of this Judgment are satisfied.
- d. The Receiver shall have full authority to: collect the Defendants' assets and report his/her findings to the Court and the parties; to redeem and/or liquidate the Defendants' assets and turn over the proceeds to the Secretary; if the asset is a debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring; to analyze all transfers of the Defendants' assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under this Judgment.

15. On or before 14 days from the parties' execution of this Consent Judgment, Defendants shall deliver to the United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio, a statement showing the following: employers' Federal ID number(s), the name of each employee

listed in Exhibit A1, and each employee's current address and social security number (only to the extent currently known by Defendants).

16. Defendants acknowledge that they have engaged a qualified independent consultant, Daryl DeMarco, with specific knowledge regarding the requirements of the FLSA. The consultant shall continue to provide consultation to create a system or systems that will ensure that each of Defendants' pay and recordkeeping practices are in compliance with the FLSA. On a quarterly basis, hereinafter the consultant shall continue to review Defendants' pay and recordkeeping practices. Those results shall be made available to the Acting Secretary upon request. *t-or fJC,ooo 111 v,PII rhs or < l. "t)c... J:CJ 0.11qr;dS.*

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

18. Defendants shall not, in any way, solicit, demand, accept, or keep any amount paid or payable to any employee or former employee under this Consent Judgment, or in any manner attempt to recover or otherwise influence any employee or former employee to forfeit any amounts paid to such employee or former employee in connection with this Consent Judgment. In the event any such amount is received from any employee or former employee, Defendants shall immediately remit such amount to the United States Department of Labor at the at the following address: United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio.

19. Defendants have certified that their employment practices are currently in compliance with all applicable provisions of the FLSA as interpreted by the Acting Secretary. If

this representation is determined to be false, and Defendants are found to be in violation of the FLSA, additional civil money penalties may be owed, in addition to back wages, liquidated damages, and other damages as appropriate.

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

21. Nothing in this Consent Judgment precludes the Acting Secretary from bringing any enforcement action against Defendants for any violation of the FLSA not specifically set forth in the Acting Secretary's Complaint in this case.

22. Each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

SO ORDERED, this 26th day of September, 2023.


United States District Judge

For the Acting Secretary:

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Date: August 28, 2023

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Date: August 28, 2023