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8 *Acting United States Secretary of Labor*

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

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

15 Plaintiff,

16 v.

17 2 POTO, INC., d/b/a ENTRE NOUS FRENCH
18 BISTRO, a California Corporation; JEAN-
CHRISTOPHE FEBBRARI, individually and
19 as managing agent of the entity defendant;
20 MATHIAS WAKRAT, individually and as
managing agent of the entity defendant.
21

Case No. 2:23-cv-10871

**COMPLAINT TO RECOVER
AMOUNTS DUE UNDER THE
FAIR LABOR STANDARDS
ACT**

INTRODUCTION

1
2 Plaintiff Julie A. Su, Acting Secretary of Labor, U.S. Department of Labor
3 (“Acting Secretary”) brings this case against 2 Poto, Inc., dba Entre Nous French
4 Bistro; Jean-Christophe Febbrari, individually and as a managing agent; and
5 Mathias Wakrat, individually and as a managing agent (“Defendants”) under the
6 Fair Labor Standards Act (“FLSA”). Defendants violated the FLSA by
7 misappropriating a portion of employee earned tips, misclassifying workers as
8 independent contractors, and not keeping accurate records of tips earned by
9 employees.

10 Defendants operate a French restaurant in Pasadena, California. Defendants
11 employ workers as servers, bussers, food runners, chefs, sous chefs, prep cooks,
12 and dishwashers. Defendants knowingly and willfully withheld a portion of
13 employee earned tips and misappropriated them to fund Defendant Entre Nous’s
14 business expenses. Further, Defendants misclassified several workers as 1099
15 independent contractors despite retaining control of their schedules and pay, and
16 the workers performing the same duties as W-2 employees in the same position.
17 Lastly, Defendants failed to maintain accurate records of employee earned tips and
18 work hours. Through these actions, Defendants have harmed not only their own
19 employees, but also law-abiding employers who face unfair competition in the
20 marketplace due to Defendants’ illegal practices. The Acting Secretary brings this
21 case to recover the wages owed to Defendants’ employees, to enjoin future
22 violations, and to protect the significant public interest at stake.

NATURE OF THE ACTION

23
24 1. The Acting Secretary brings this action under the Fair Labor
25 Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*, to enjoin
26 Defendants from violating the provisions of Sections 3(m)(2)(B) and 11(c), of the
27 FLSA, 29 U.S.C. §§ 203(m)(2)(B), 211(c).

1 and tends to customers. Defendant Wakrat is also responsible for employee
2 supervision.

3 15. Defendant Wakrat is individually liable as an employer under Section
4 3(d), 29 U.S.C. § 203(d), for back wages and liquidated damages owed to
5 employees of Defendant Entre Nous.

6 16. The claims against Defendant Wakrat in this case arise out of and are
7 directly related to his business activities in the jurisdiction of this Court.

8 **Defendants are an Enterprise Covered by the FLSA**

9 17. At all times relevant Defendants Febrari and Wakrat owned,
10 operated, and controlled Defendant Entre Nous for the common business purpose
11 of providing a full-service restaurant in Pasadena, California. As a result,
12 Defendants are and have been an “enterprise,” as defined in FLSA § 3(r), 29
13 U.S.C. § 203(r), with business activities that are related and performed through
14 unified operation or common control for a common business purpose.

15 18. At all relevant times, two or more employees of Defendants have
16 regularly and routinely handled or otherwise worked on goods or materials that
17 have been moved in or produced for commerce, including food products and
18 beverages.

19 19. At all relevant times, Defendants’ enterprise had an annual gross
20 volume of sales made or business done of not less than \$500,000.00 (exclusive of
21 excise taxes at the retail level that are separately stated).

22 20. As a result, Defendants’ employees are and at all times relevant have
23 been employees in an enterprise engaged in commerce or in the production of
24 goods for commerce, within the meaning of Section 3(s) of the FLSA, 29 U.S.C. §
25 203(s).

FACTS COMMON TO ALL CAUSES AND ACTION

I. Defendants Deprived Employees of their Tips and Misappropriated Tips.

21. At all relevant times, Defendants withheld employee earned tips and misappropriated them to fund Defendant Entre Nous's business expenses.

22. Defendants collected employee earned credit card and cash tips from customers. Credit card tips were automatically deposited in Defendants' business account. Defendants also collected cash tips and stored them under the cash register and later deposited the cash tips in their business account.

23. Defendants used employee earned tips for purposes other than to distribute to employees their share of tips. Defendants distributed only a portion of the employee earned tips to front of the house employees, servers, food runners, waiters, hosts, and bartenders through Zelle on a weekly basis. The remaining portion of the employee earned credit card and cash tips were retained by Defendants and used to cover business expenses of Entre Nous unrelated to credit card processing fees attributable to tips paid by credit card. For example, for the workweek of December 21, 2021, customers left \$12,512.07 in credit card tips to employees. Defendants only distributed \$7,596 of these tips to employees diverting the rest for other purposes.

24. On May 25, 2023, during the pendency of the Acting Secretary's investigation, Defendants implemented a no-tip policy and instead collected a 20%percent service charge from customers. However, some customers still leave cash tips for employees. Defendants continue to wrongfully keep employee earned cash tips instead of distributing them to employees.

II. Defendants Misclassified Employees as Independent Contractors.

25. From July 1, 2020 to early 2022, Defendants misclassified several employees as 1099 independent contractors instead of W-2 employees.

26. There was no difference in the duties and responsibilities of workers

1 classified as 1099 independent contractors versus W-2 employees holding the same
2 job title at Entre Nous. Workers classified as 1099 independent contractors who
3 served the front of the house had the same duties and responsibilities as W-2
4 employees in the same position.

5 27. On or before January 2022, Defendants reclassified the 1099 workers
6 to W-2 employees with their job duties remaining the same, they continued to take
7 orders and wait tables when Defendants reclassified them.

8 28. Individual Defendants supervised front-of-the-house workers,
9 including the misclassified 1099 workers, in the performance of their duties
10 including how the employees served customers and made sure the employees
11 continuously served tables. Individual Defendants communicated instructions to
12 these employees if they were not properly servicing their tables or otherwise
13 performing their duties. Individual Defendants also set the pay rate for workers and
14 prepared schedules on a weekly basis for misclassified 1099 workers after
15 discussion with the workers. There was no difference in training between a
16 worker classified as an employee versus an independent contractor.

17 **III. Defendants Failed to Maintain Accurate Records.**

18 29. At all relevant times, Defendants failed to record and maintain
19 accurate records of employee earned tips and hours worked by employees.

20 30. Defendants failed to record all tips received by employees from
21 customers including cash tips.

22 31. Defendants did not record the hours worked by all employees.

23 **CLAIMS FOR RELIEF**

24 **First Claim For Relief**

25 **Tip Violations**

26 32. The Acting Secretary realleges and hereby incorporates by reference
27 the foregoing paragraphs as though fully set forth herein.

1 33. Defendants violated Section 3(m)(2)(B) and 16(e)(2) of the FLSA, 29
2 U.S.C. §§ 203(m)(2)(B) and 216(e)(2), by keeping employee earned tips, and
3 diverting a portion of the employee earned tips to cover Defendant Entre Nous's
4 business expenses.

5 34. At all relevant times, Defendants have willfully violated and continue
6 to violate Sections 3(m)(2)(B) and 16(e)(2) of the FLSA, 29 U.S.C. §§
7 203(m)(2)(B) and 216(e)(2). Defendants knew or should have known of the
8 FLSA's tip requirements but diverted a portion of employee earned tips to cover
9 Defendant Entre Nous's business expenses unrelated to credit card processing fees
10 attributable to tips paid by credit card.

11 **Second Claim For Relief**

12 **Recordkeeping Violations**

13 35. The Acting Secretary realleges and hereby incorporates by reference
14 the foregoing paragraphs as though fully set forth herein.

15 36. Defendants have violated Sections 11(c) and 15(a)(5) of the FLSA, 29
16 U.S.C. §§ 211(c) and 215(a)(5), by failing to maintain, keep, make available (to the
17 Acting Secretary's agents for inspection, transcription, and/or copying), and
18 preserve accurate records of all employees and of the tips, hours, and other
19 conditions and practices of employment maintained, as prescribed by regulations
20 duly issued pursuant to authority granted in the FLSA and found at 29 C.F.R. part
21 516.

22 37. At all relevant times, Defendants have willfully violated Section 11(c)
23 of the FLSA, 29 U.S.C. §§ 211(c). Defendants knew of or should have known of
24 the FLSA's recordkeeping requirements and continued to maintain incomplete
25 records of employees' hours worked and wages paid.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, good cause having been shown, the Acting Secretary prays
28 for judgment against Defendants as follows:

1 A. For an Order permanently enjoining and restraining Defendants, their
2 officers, agents, servants, employees, and those persons in active concert or
3 participation with them from prospectively violating the FLSA including: Section
4 15(a)(2) of the FLSA, 29 U.S.C. §§ 215(a)(2); Sections 3(m)(2)(B) and 16(e)(2) of
5 the FLSA, 29 U.S.C. §§ 203(m)(2)(B) and 216(e)(2); Sections 11(c), 15(a)(5) of
6 the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5).

7 B. For an Order under Section 16(c) of the FLSA, 29 U.S.C. § 216(c)
8 finding Defendants liable for all wages due, including tip compensation, from at
9 least July 1, 2020 through the date of trial to all Defendants' employees including
10 the employees listed in attached Exhibit A and other employees not presently
11 known to the Acting Secretary, and an additional equal amount as liquidated
12 damages;

13 C. For an Order directing Defendants to issue a curative notice to their
14 employees that rectifies their FLSA violations, including notifying employees of
15 their rights under the FLSA, under any injunction, judgment, or order in this
16 action, and this lawsuit;

17 D. For an Order awarding the Acting Secretary the costs of this action.

18 E. For an Order awarding the Acting Secretary any other equitable and legal
19 relief that the Court deems necessary and appropriate.

20 December 28 2023,

Respectfully Submitted

21 SEEMA NANDA
22 Solicitor of Labor

23 MARC A. PILOTIN
24 Regional Solicitor

25 BORIS ORLOV
26 Counsel for Wage and Hour
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By /s/ Karla Malagón Castillo
KARLA MALAGÓN CASTILLO
Trial Attorney

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