

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

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

Plaintiff,)

v.)

VISHAV, INC. d/b/a MEGA LIQUOR)
& **SMOKE #13**, and **BHOLA SINGH**,)

Defendants.)

Case No. 3:24-cv-00186-DRL-
MGG

**THE ACTING SECRETARY OF LABOR’S MEMORANDUM OF LAW IN
SUPPORT OF A TEMPORARY RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES **ii**

PRELIMINARY STATEMENTError! Bookmark not defined.

BACKGROUND..... **2**

JURISDICTIONError! Bookmark not defined.

LEGAL STANDARD **6**

ARGUMENT **7**

I. This Court Should Enjoin Defendants from Retaliating Against Employees..... **7**

A. The Acting Secretary is Likely to Succeed on the Merits of Her Claims. **8**

B. Defendants’ Employees, the Department of Labor, and the Public Will Suffer Irreparable Harm Absent a Temporary Restraining Order **14**

C. The Balance of Harms: Public Interest Favors Issuing a Temporary Restraining Order and Preliminary Injunction..... **17**

CONCLUSION..... **18**

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Acosta v. Austin Elec. Servs. LLC</i> , 322 F. Supp. 3d 951 (D. Ariz. 2018).....	11
<i>Am. C.L. Union of Illinois v. Alvarez</i> , 679 F.3d 583 (7th Cir. 2012)	6
<i>AM General Corp. v. DaimlerChrysler Corp.</i> , 311 F.3d 796 (7th Cir. 2002)	6
<i>Arcamuzi v. Cont’l Air Lines, Inc.</i> , 819 F.2d 935 (9th Cir. 1987)	15
<i>Brock v. Casey Truck Sales, Inc.</i> , 839 F.2d 872 (2d Cir. 1988).....	9, 11
<i>Brock v. Kentucky Ridge Mining, Inc.</i> , 635 F. Supp. 444 (W.D. Ky. 1985).....	18
<i>Brooklyn Sav. Bank v. O’Neil</i> , 324 U.S. 697.....	2
<i>Burlington N. & Santa Fe Ry. Co. v. White</i> , 548 U.S. 53 (2006)	12, 13
<i>Chicago United Indus., Ltd. v. City of Chicago</i> , 445 F.3d 940 (7th Cir. 2006)	6
<i>Crowley v. Pace Suburban Bus Div. of Regional Transp. Authority</i> , 938 F.2d 797	11
<i>DeNovellis v. Shalala</i> , 135 F.3d 58 (1st Cir. 1998).....	15
<i>Donovan v. Rockwell Tire & Fuel, Inc.</i> , No. C-79-498, 1982 WL 2120 (M.D.N.C. March 30, 1982).....	11
<i>Donovan v. Rockwell Tire & Fuel, Inc.</i> , 711 F.2d 1050 (4th Cir. 1983).....	12
<i>Ezell v. City of Chicago</i> , 651 F.3d 684 (7th Cir. 2011)	7
<i>Greathouse v. JHS Sec. Inc.</i> , 784 F.3d 105 (2d Cir. 2015).....	10
<i>Holt v. Cont’l Grp., Inc.</i> , 708 F.2d 87 (2d Cir. 1983).....	15
<i>In re Aimster Copyright Litig.</i> , 334 F. 3d 643 (7th Cir. 2003)	7
<i>Kasten v. Saint-Gobain Performance Plastics Corp.</i> , 563 U.S. 1 (2011)	8, 9, 10
<i>Kasten v. Saint-Gobain Performance Plastics Corp.</i> , 703 F.3d 966 (7th Cir. 2012)	14
<i>Lin v. Great Rose Fashion, Inc.</i> , No. 08-CV-4778(NGG)(RLM), 2009 WL 1544749 (E.D.N.Y. June 3, 2009).....	16

Long v. Bd. of Educ., Dist. 128,
 167 F. Supp. 2d 988 (N.D. Ill. 2001) 6, 7
Martin v. Funtime, Inc.,
 963 F.2d 110 (6th Cir. 1992) 17
McDonnell Douglas Corp. v. Green,
 411 U.S. 792 (1973) 9
Mitchell v. Robert DeMario Jewelry, Inc.,
 361 U.S. 288 (1960) 8, 10, 16, 17
Mullins v. City of New York,
 626 F.3d 47 (2d Cir. 2010)..... 8, 9, 14, 16
N.L.R.B. v. Electro-Voice, Inc.,
 83 F.3d 1559 (7th Cir. 1996) 18
NLRB v. Scrivener,
 405 U.S. 117 (1972) 10
Odicho v. Swedish Covenant Hosp.,
 No. 17 C 6995, 2018 WL 1064590 (N.D. Ill. Feb. 27, 2018)..... 12
Perez v. Five M’s,
 No. 2:15CV176, 2017 WL 784204 (N.D. Ind. Mar. 1, 2017)..... 17
Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State Dep’t Health,
 699 F.3d 962 (7th Cir. 2012) 7
Roney v. Ill. Dep’t of Transp.,
 474 F.3d 455 (7th Cir. 2007) 12
Sauers v. Salt Lake Cty.,
 1 F.3d 1122 (10th Cir. 1993) 10
Scott v. Sunrise Healthcare Corp.,
 195 F.3d 938 (7th Cir. 1999) 8
Speech First, Inc. v. Killeen,
 968 F.3d 628 (7th Cir. 2020) 6
Tolene v. T-Mobile, USA, Inc.,
 178 F. Supp. 3d 674 (N.D. Ill. 2016) 8
Treadwell v. Office of Ill. Sec. of State,
 455 F.3d 778 (7th Cir. 2006) 14
United States v. Darby,
 312 U.S. 100 (1941) 18
United States v. Siemens Corp.,
 621 F.2d 499 (2d Cir. 1980)..... 17
United States v. Town of Cicero, Ill.,
 786 F.2d 331 (7th Cir. 1986) 15
Washington v. Ill. Dep’t of Revenue,
 420 F.3d 658 (7th Cir. 2005) 12

Statutes

28 U.S.C. §§ 1331 and 1345..... 6
 29 U.S.C. § 158(a)(4)..... 10

29 U.S.C. § 201 1
29 U.S.C. § 215(a)(3)..... 1, 8, 10, 18
29 U.S.C. § 216(c) 15
29 U.S.C. § 217 6
29 U.S.C. §§ 202(a), 206-207 2

Rules

Rule 65 of the Federal Rules of Civil Procedure 2

PRELIMINARY STATEMENT

Pursuant to a settlement agreement executed on September 23, 2023, resolving an investigation by the U.S. Department of Labor’s (“the Department”) Wage and Hour Division (“WHD”), Defendants Vishav, Inc., d/b/a Mega Liquor & Smoke #13 (“Mega Smoke & Liquor”), and Bhola Singh (“Singh”) (collectively, “Defendants”), agreed to pay \$354,633.24 to 156 employees for violations of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“the Act” or “FLSA”). Instead of complying with the FLSA and the executed settlement agreement by paying the back wages and liquidated damages owed, Defendants engaged in an ongoing kickback scheme designed to deprive current and former employees of the money they are owed through the use of threats, intimidation, and coercion. Defendant Singh is vitiating the Agreement’s terms by repeatedly demanding employees sign receipts falsely attesting they had been paid back wages and liquidated damages due under the terms of the settlement agreement with the WHD, when no such payments were made. Defendants’ actions plainly constitute wanton, unlawful, and ongoing retaliation against employees in clear violation of the anti-retaliation provisions of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3), and frustrate the government’s efforts to enforce the law.

The government’s future enforcement efforts and Defendants’ current and former employees are threatened with irreparable harm absent immediate action to enjoin Defendants’ continued unlawful and outrageous conduct. Defendants’ illegal conduct imperils the Acting Secretary’s ability to enforce the FLSA, deters employees from asserting their rights under the Act, and undermines the public’s

interest in effective enforcement of the Act. Congress enacted the FLSA to protect workers by establishing federal minimum wage and overtime guarantees, and to protect law-abiding employers from unfair competition from employers who fail to comply with the Act's requirements. *See Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 706–707 & n. 18 (1945); 29 U.S.C. §§ 202(a), 206-207. The Acting Secretary's investigations and enforcement actions serve these important public interests and must not be hindered or obstructed through unlawful retaliation.

Accordingly, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiff Julie A. Su, Acting Secretary of Labor, U.S. Department of Labor (“Acting Secretary”), seeks: (1) a temporary restraining order, to be in effect until a hearing is held concerning a preliminary injunction, and (2) a preliminary injunction. This requested relief seeks to enjoin Defendants and their agents from continuing to violate Section 15(a)(3) of the FLSA by threatening, intimidating, coercing, or retaliating against their current and former employees in an attempt to hinder their employees' ability to recover back wages and liquidated damages owed to them.

BACKGROUND

Defendant Vishav, Inc. d/b/a Mega Liquor & Smoke #13 (“Mega Liquor & Smoke”), is an Indiana corporation with a principal address at 7106 Grape Road, Granger, Indiana 46530. Declaration of Wage and Hour Investigator Theresa Fell, ¶ 5 (“Fell Decl.”), attached hereto as Exhibit 1. This location is one of over 15 locations operating under the company named Vishav, Inc., and one of 61 stores located in the states of Indiana and Michigan named Mega Liquor & Smoke. *Id.* Defendant Bhola Singh (“Singh”) co-owns and operates Mega Liquor & Smoke #13, and upon

information and belief owns or co-owns all other Mega Liquor & Smoke locations in Indiana and Michigan. *Id.* Singh hires and directs the work of employees, sets pay rates, and manages human resource functions, administrative functions, time and payroll processing, and all merchandise decisions, including ordering and receiving. *Id.* at ¶ 7.

In 2022, on behalf of the Acting Secretary, the WHD began an investigation into the wage and hour practices of Mega Liquor & Smoke and its owners, including Singh. *Id.* at ¶ 8. That investigation covered the period November 9, 2020, through November 6, 2022 (the “Investigation Period”). *Id.* at ¶ 10. In the course of that investigation, WHD determined Defendants had violated multiple FLSA provisions, including Section 6’s minimum wage provisions and Section 7’s overtime provisions. *Id.* at ¶ 9. WHD determined Defendants owed employees back wages and liquidated damages for the Investigation Period. *Id.* at ¶ 10.

On September 23, 2023, after being presented with the findings of WHD’s investigation, Defendants entered into a Settlement Agreement in Lieu of Litigation (“Agreement”), attached hereto as Exhibit 2. with the Acting Secretary to pay \$354,633.24 in back wages and liquidated damages owed to 156 current and former employees. *Id.* In the Agreement, Defendants also represented to the Acting Secretary they were currently in compliance with the FLSA’s applicable provisions. Defendants further agreed they “and any of their agents or anyone acting on their behalf will not, directly or indirectly, solicit or accept the return or refusal of any sums paid or due under this Agreement.” *See* Exhibit 2. Defendants waived all defenses based on the passage of time since the signing of the Agreement in the

event they did not pay their employees as required by the Agreement and the Acting Secretary then initiated legal action. *Id.* Pursuant to the Agreement, Defendants were required to make all payments, and provide proof of payment to the Acting Secretary, by October 27, 2023. *Id.*

Shortly after signing the Agreement, Defendants initiated a kickback scheme designed to deny current and former employees the back wages and liquidated damages they are legally owed under the FLSA and the Agreement. Beginning in approximately January 2024, Defendants sent copies of WHD Form WH58 (“WH58” or “the form”), which certify to WHD receipt of payments due, to current and former employees owed back wages and liquidated damages. *See* Fell Decl., ¶¶ 15-17. Defendants failed to remit full payments—or, in most cases, any payments—to all current and former employees owed back wages and liquidated damages under the terms of the Agreement. *Id.* at ¶¶ 15-17, 21-30. Instead of paying those employees the back wages and liquidated damages they are due, Defendants have intimidated, threatened, and coerced current and former employees to sign the WH58s. *See id.* Those signatures signify employees’ representations that they have been paid in full despite, in most cases, never receiving any payments in accordance with the Agreement. *See id.* In many instances, Singh presented workers with the forms and asked them to sign without affording them an opportunity to read or review the document. *Id.* at ¶¶ 16, 24, 26. Other times, Singh insisted workers sign the WH58s by placing the forms in front of the workers and repeatedly tapping the signature line while telling them to sign the form. *Id.* at ¶ 16.

As part of the kickback scheme, Singh also coerced other employees to solicit

signatures from current and former employees on Defendants' behalf, asking them to inform those employees their signature would certify they were not due any additional money. *Id.* at ¶¶ 16, 29. One employee who Singh instructed to collect signatures acknowledged the employees are owed money but told employees they would personally not accept payment and the other employees should follow suit. *Id.* at ¶ 28. That employee also denied those employees an opportunity to review the forms before signing. *Id.* The same employee, acting on Defendants' behalf, instructed current employees not to speak to representatives from the Wage and Hour Division. *Id.* Employees informed Wage and Hour Investigator Theresa Fell ("WHI Fell") they felt intimidated and pressured to sign the forms. *Id.* at ¶¶ 24, 26-27, 30.

Employees also reported to WHI Fell that, based on their experience working for and with Singh, they believed he would fire them if they did not sign the WH58s. *Id.* at ¶¶ 24, 26, 30. Indeed, Singh stated that although he could not fire an employee for speaking to representatives from the Department of Labor, he could find another reason to fire them. *Id.* at ¶ 16. In some cases, Singh instructed employees to write checks to current employees who were owed back wages and/or liquidated damages, but stated if the employee had signed a WH58 stating they had been paid— regardless of whether that attestation was true—they could not cash the check and either had to destroy the check or to return it to Defendants. *Id.* at ¶ 29. One employee informed WHI Fell they intended to cash their check and keep their money, but assumed Singh would fire them for doing so. *Id.* at ¶ 30. Another employee requested back pay from Singh, but in response Singh yelled at and

intimidated the employee, leaving the employee afraid to ask again for the money they are due. *Id.* at ¶ 27. According to current and former employees who have contacted WHI Fell, Defendants’ retaliatory actions are ongoing. *See generally id.* at ¶¶ 15-17, 21-30.

JURISDICTION

This Court has jurisdiction of this action pursuant to section 17 of the Act, 29 U.S.C. § 217 and 28 U.S.C. §§ 1331 and 1345.

LEGAL STANDARD

To obtain a preliminary injunction, a plaintiff must show (1) she has some likelihood of success on the merits of her claim; (2) traditional legal remedies are inadequate; and (3) she would suffer irreparable harm without preliminary injunctive relief. *Speech First, Inc. v. Killeen*, 968 F.3d 628, 637 (7th Cir. 2020). Regarding the first element, the Court must determine whether “plaintiff has any likelihood of success – in other words, a greater than negligible chance of winning.” *AM General Corp. v. DaimlerChrysler Corp.*, 311 F.3d 796, 804 (7th Cir. 2002). The standards for issuing TROs and preliminary injunctions are the same. *Long v. Bd. of Educ., Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001); *see also Chicago United Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 943 (7th Cir. 2006) (temporary restraining order kept in force by district court more than 20 days is deemed a preliminary injunction).

Once a showing on the first three factors is made, “the court weighs the factors against one another, assessing whether the balance of harms favors the moving party or whether the harm to the nonmoving party or the public is sufficiently weighty that the injunction should be denied.” *Am. C.L. Union of Illinois v. Alvarez*, 679 F.3d 583,

589 (7th Cir. 2012) (citing *Ezell v. City of Chicago*, 651 F.3d 684, 694 (7th Cir. 2011) (internal citations omitted)). These factors are weighed on a “sliding scale,” or in other words, “the more likely the party’s chance of success on the merits, the less the balance of harms need weigh in favor and vice-versa.” *Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State Dep’t Health*, 699 F.3d 962, 972 (7th Cir. 2012); *Long v. Bd. Of Educ. Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001). In addition, a court need only hold an evidentiary hearing if “genuine issues of material fact are created by the response to a motion for a preliminary injunction.” *In re Aimster Copyright Litig.*, 334 F. 3d 643, 654 (7th Cir. 2003).

ARGUMENT

I. This Court Should Enjoin Defendants from Retaliating Against Employees

The Court must enjoin Defendants from continuing their retaliatory and intimidating conduct. As set forth below, the Acting Secretary meets all of the requirements for issuance of a TRO and preliminary injunction because: (1) the Acting Secretary is likely to succeed on the merits of her claims that Defendants’ retaliated against and intimidated their employees from asserting their rights under the Act; (2) there is no adequate remedy to be found at law absent the entry of a temporary restraining order; and (3) Defendants’ employees and the Department will suffer irreparable harm absent a temporary restraining order. Crucially, the balance of hardships tips decidedly in favor of the Department and the public interest.

A. The Acting Secretary is Likely to Succeed on the Merits of Her Claims.

The FLSA’s anti-retaliation provision, Section 15(a)(3), is the guardian of the statute’s enforcement scheme because it protects the ability of employees to communicate freely with the Acting Secretary concerning their hours and wages. *See Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960). Enforcement of the FLSA’s protections relies “not upon ‘continuing detailed federal supervision or inspection of payrolls,’ but upon ‘information and complaints received from employees.’” *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 11-12 (2011) (quoting *Robert DeMario*, 361 U.S. at 292). “Unchecked retaliation, no matter what form, subverts the purpose of the FLSA.” *Mullins v. City of New York*, 626 F.3d 47, 55 (2d Cir. 2010).

Section 15(a)(3) of the FLSA prohibits “any person” from, among other things, “discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter [8 of the Act], or has testified or is about to testify in any such proceeding.” 29 U.S.C. § 215(a)(3). To prevail on an FLSA retaliation claim, the Acting Secretary must show that: (i) an employee engaged in statutorily protected activity; (ii) the employer or its agent subjected that employee to an adverse action; and (iii) that adverse action was because of the protected activity. *See Scott v. Sunrise Healthcare Corp.*, 195 F.3d 938, 940 (7th Cir. 1999); *Tolene v. T-Mobile, USA, Inc.*, 178 F. Supp. 3d 674, 681 (N.D. Ill. 2016).

FLSA retaliation claims are analyzed under the familiar burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Brock v. Casey Truck Sales, Inc.*, 839 F.2d 872, 876 (2d Cir. 1988). To establish a *prima facie* case, the Acting Secretary must show that (1) Defendants’ employees engaged in protected activity; (2) Defendants took adverse action against them; and (3) a causal connection between the two. *Mullins*, 626 F.3d at 53. If Defendants articulate a legitimate, non-discriminatory reason for their conduct, the Acting Secretary must produce evidence that retaliation is more likely than not the real reason for the employment action. *Id.* at 53–54. The Acting Secretary meets all the required elements to establish a *prima facie* retaliation case. Absent this Court’s intervention, Defendants’ retaliation and intimidation will likely continue unabated.

1. When Employees Spoke Truthfully and Cooperated with the Acting Secretary’s Investigation, They Were Engaged in Protected Activity

The Supreme Court has repeatedly instructed that worker protection statutes like the FLSA should be construed to “provide broad rather than narrow protection to the employee.” *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011) (holding that the “enforcement needs” of the FLSA suggests an expansive “interpretation of the word ‘complaint’”). In *Kasten*, for example, the Supreme Court found that the Act’s anti-retaliation provision covers oral complaints to the Department of Labor. *Id.* at 4. Likewise, in the context of the anti-retaliation provision of the National Labor Relations Act—which similarly prohibits retaliation against employees who “filed charges or give testimony”—the Supreme

Court has held that it covers workers who did not formally testify or file charges, but simply participated in an investigation. *Id.* at 13 (citing 29 U.S.C. § 158(a)(4) and *NLRB v. Scrivener*, 405 U.S. 117, 123 (1972)).

Oral complaints to the Department are protected activity under the Act's anti-retaliation provision. *See* 29 U.S.C. § 215(a)(3); *Kasten*, 563 U.S. at 14. That Defendants preemptively threatened adverse action or otherwise intimidated or coerced employees to discourage them from cooperating with the Department's investigation does not make the act of discussing their compensation with an investigator any less protected. *See Sauers v. Salt Lake Cty.*, 1 F.3d 1122, 1228 (10th Cir. 1993) ("Action taken against an individual in anticipation of that person engaging in protected opposition to discrimination is no less retaliatory than action taken after the fact"). Indeed, it would render the FLSA's anti-retaliation provision null if employers could retaliate against employees in advance of their cooperation with the Department. *See Robert DeMario Jewelry, Inc.*, 361 U.S. at 292; *Greathouse v. JHS Sec. Inc.*, 784 F.3d 105, 113 (2d Cir. 2015) (quoting *Kasten*, 563 U.S. at 2) ("Congress enacted [the FLSA's anti-retaliation provision] to 'prevent[] fear of economic retaliation from inducing workers quietly to accept substandard conditions' . . . and to foster an atmosphere protective of employees who lodge such complaints."). Accordingly, providing truthful information and cooperating with the Acting Secretary's investigation is protected activity covered by the Act's anti-retaliation provision.

Defendants' employees engaged in protected activity under Section 15(a)(3) when they communicated with or were about to speak with the Acting Secretary's

representative as part of the Acting Secretary's investigation of Defendants. *See* Fell Decl. at ¶¶ 15-17, 21-30. Because Defendants' employees are potential witnesses for the Acting Secretary's litigation related to Defendants' pay schemes, their future potential testimony is also protected activity. *See, e.g., [Sec'y of Labor Alexander] Acosta v. Austin Elec. Servs. LLC*, 322 F. Supp. 3d 951, 957 (D. Ariz. 2018). As such, they have engaged in protected activity covered by the Act.

2. When Employees Were Coerced Into Falsely Certifying They Had Been Paid Back Wages and Liquidated Damages, They Were Engaged in Protected Activity

Defendants' employees engaged in protected activity when they were coerced and intimidated into falsely certifying they had been paid back wages and liquidated damages WHD found they were due. The Seventh Circuit has held "an employee's assertion of rights protected under the FLSA" is sufficient to meet the broad definition of protected activity under Section 15(a)(3). *See Crowley v. Pace Suburban Bus Div. of Regional Transp. Authority*, 938 F.2d 797, 798 n.3 (citing *[Sec'y of Labor William E.] Brock v. Casey Truck Sales, Inc.*, 839 F.2d 872, 879 (2d Cir.1988)) (holding that protected activities include "activities less directly connected to formal proceedings where retaliatory conduct has a similar chilling effect on employees' assertion of rights."). Indeed, "[p]rotection against discrimination for instituting FLSA proceedings would be worthless if an employee could be fired for declining to give up the benefits he is due under the Act." *Id. See also [Sec'y of Labor Raymond J.] Donovan v. Rockwell Tire & Fuel, Inc.*, No. C-79-498, 1982 WL 2120, at *9 (M.D.N.C. March 30, 1982) ("Section 15(a)(3) was specifically designed to protect employees from retaliatory discharge; to protect employees who refused to return

back wages to their employer; and to protect those employees who succumbed to the employers' unlawful tactics and returned their back wages.”), *aff'd* 711 F.2d 1050 (4th Cir. 1983).

Here, Defendants' employees engaged in protected activity when—as a result of Defendants' coercion and intimidation—they signed forms falsely certifying they had received back wages and liquidated damages they had not received, prospectively denying them their rights under the Act.

3. Defendants' Coercion and Intimidation Are Adverse Employment Actions

An adverse employment action is one that “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (decided in the context of Title VII, which uses the same three-part test regarding retaliation), discussing *Washington v. Ill. Dep't of Revenue*, 420 F.3d 658, 661 (7th Cir. 2005); *see also Roney v. Ill. Dep't of Transp.*, 474 F.3d 455, 461 (7th Cir. 2007) (retaliatory actions are “not limited to those that affect the terms and conditions of one's employment”); *Odicho v. Swedish Covenant Hosp.*, No. 17 C 6995, 2018 WL 1064590, at *4 (N.D. Ill. Feb. 27, 2018) (“All that is required to state a retaliation claim is an action that would have dissuaded a reasonable worker from making or supporting a charge of illegal conduct.”).

Defendants' kickback scheme was designed to, and has in fact, dissuaded reasonable workers from accepting back wages and liquidated damages they are due pursuant to the WHD investigation and the Agreement the Defendants executed to resolve that investigation, and from making or supporting a charge of illegal conduct

in speaking with the Department. *See* Fell Decl. at ¶¶ 15-17, 21-30. Pursuant to the Agreement, Defendants agreed to “pay directly to employees the back wage amounts due (less legal payroll deductions) and a separate payment/check for liquidated damages (no legal payroll deductions should be made). *See* Exhibit 2. Defendants’ conduct towards employees—coercing employees to sign WH58 forms falsely attesting they had been paid “in full” when they had not, soliciting employees to coerce current and former employees to do the same, and threatening termination for speaking to representatives from the Department of Labor—would “dissuade[] a reasonable worker from making or supporting a charge of discrimination.” *See* Fell Decl. at ¶¶ 15-17, 21-30; *Burlington N. & Santa Fe Ry. Co.*, 548 U.S. at 68 (“An employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm outside the workplace.”). By coercing employees to falsely certify they had been paid when they had not, by soliciting other employees to do the same, and by threatening termination, Defendants effectively communicated to employees they were not free to discuss or disclose details of their working conditions to the Department of Labor and thereby participate in the investigation. *See Austin Elec. Servs.*, 322 F. Supp. 3d at 962 (granting preliminary injunction where Secretary was “likely to succeed on the merits of a claim that Defendants’ actions in obtaining its employees[] retroactive declarations, under coercive circumstances and during a pending Department investigation into Defendants’ payment practices, violated the FLSA’s anti-retaliation provision”).

4. There Is a Clear Causal Connection Between the Protected Activity and the Adverse Action

A causal connection between an employee's protected activity and an adverse action can be established through "direct evidence of a causal link, or 'circumstantial evidence that is relevant and probative on any of the elements of a direct case of retaliation.'" *Kasten v. Saint-Gobain Performance Plastics Corp.*, 703 F.3d 966, 972 (7th Cir. 2012) (citing *Treadwell v. Office of Ill. Sec. of State*, 455 F.3d 778, 781 (7th Cir. 2006)). The causal connection is straightforward: Defendants' threats and coercion are directly related to the Department's FLSA investigation and money due to employees. Defendants' aim was to dissuade workers from benefiting from and participating in an FLSA investigation by coercing, intimidating, and threatening employees for asserting their rights under the Act.

The Acting Secretary is very likely to succeed on the merits of the retaliation claim. This Court should not tolerate Defendants' retaliatory conduct, which thwarts the FLSA's purpose and enforcement.

B. Defendants' Employees, the Department of Labor, and the Public Will Suffer Irreparable Harm Absent a Temporary Restraining Order

Although the Seventh Circuit has not directly addressed the matter, it is established in other jurisdictions that retaliation and impaired enforcement of federal law constitutes irreparable harm for purposes of a preliminary injunction or temporary restraining order.¹ See *Mullins v. City of New York*, 626 F.3d 47, 55 (2d

¹ Arguably, the Acting Secretary need not establish irreparable harm in an action initiated by an agency of the United States to enforce the provisions of remedial statutes such as the FLSA. Instead, irreparable harm is presumed from the fact the

Cir. 2010); *Holt v. Cont'l Grp., Inc.*, 708 F.2d 87, 91 (2d Cir. 1983) (where “[a] retaliatory discharge carries with it the distinct risk that other employees may be deterred from protecting their rights under the Act or from providing testimony for the plaintiff in her effort to protect her own rights,” irreparable injury may be threatened); *Arcamuzi v. Cont'l Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) (“more than economic harm is involved when an employer retaliates against protected activity”); *see also DeNovellis v. Shalala*, 135 F.3d 58, 64–65 (1st Cir. 1998) (affirming denial of preliminary injunction based on specific facts of the case, but recognizing that “chilling effect” can cause irreparable injury).

Absent an injunction, the Department’s enforcement efforts will also be irreparably harmed. Section 16(c) of the Act authorizes the Acting Secretary to “supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207.” 29 U.S.C. § 216(c). The Department routinely utilizes administrative settlement agreements like the Agreement between Defendants and the WHD to resolve investigations and ensure the payment of unpaid wages. Defendants’ commitment to pay back wages and liquidated damages, and to comply with the Act in the future—only to reverse course shortly thereafter and demand employees falsely certify payment of those wages and damages—substantially impedes the Acting Secretary’s ability to enforce the Act.

statute has been violated. *See, e.g., United States v. Town of Cicero, Ill.*, 786 F.2d 331, 337 (7th Cir. 1986) (“Probably no more [than establishing likelihood of prevailing on the merits] is required to entitle the government to a preliminary injunction under a statute that expressly authorizes it to seek such relief”).

To permit Defendants to hide their blatant non-compliance with the Agreement renders the Agreement meaningless and makes a mockery of the Acting Secretary's authority under the Act. If employees are required to certify receipt of money they have not received and/or solicit and encourage other employees to do the same for fear of retaliation, the Acting Secretary's ability to supervise the payment of back wages and liquidated damages is seriously curtailed. Further, in conducting investigations and litigating cases against employers who have committed wage and hour violations, the Acting Secretary relies on the testimony of workers. Employees are unlikely to feel free to testify truthfully or cooperate with the Acting Secretary if they know they can be required to kick back their wages or be terminated.

“[E]ffective enforcement [of the FLSA]...could only be expected if employees felt free to approach officials with their grievances.” *Robert DeMario Jewelry*, 361 U.S. at 365.

Coercing, intimidating, and/or terminating employees who refuse to kick back their wages or falsely certify they have been paid (when they haven't) pose a clear and direct threat to the Acting Secretary's ability to enforce national labor policy. *See Mullins*, 626 F.3d at 55 (“the resulting weakened enforcement of federal law can *itself* be irreparable harm”) (quoting *Lin v. Great Rose Fashion, Inc.*, No. 08-CV-4778(NGG)(RLM), 2009 WL 1544749, at *21 (E.D.N.Y. June 3, 2009)) (emphasis in original). Defendants' actions undermine the likelihood that other employees will cooperate with the Department and accept the back wages and liquidated damages they are legally owed. Accordingly, this Court must restrain Defendants' conduct from further compromising the ability of the Acting Secretary to enforce the rights

of all employees under the FLSA.

C. The Balance of Harms: Public Interest Favors Issuing a Temporary Restraining Order and Preliminary Injunction

The harm that would result to the Department's enforcement efforts and to the public, absent an injunction, outweighs any harm Defendants would suffer from an injunction. The Acting Secretary enforces an important public interest under the FLSA, and through this proceeding is seeking to raise the labor standards for marginalized employees. *See, e.g., Perez v. Five M's*, No. 2:15CV176, 2017 WL 784204, at *10 (N.D. Ind. Mar. 1, 2017) (“In exercising its discretion, the district court must give substantial weight to the fact the Secretary seeks to vindicate a public, and not a private, right.”) (quoting [*Sec’y of Labor Lynn Morely*] *Martin v. Funtime, Inc.*, 963 F.2d 110, 113 (6th Cir. 1992)). *See also United States v. Siemens Corp.*, 621 F.2d 499, 506 (2d Cir. 1980) (“[O]nce the Government has shown a reasonable likelihood of success on the merits, the equities will usually tip in its favor, since private interests must be subordinated to public ones.”). As noted above, the Acting Secretary's enforcement of the FLSA's anti-retaliation provision via injunctive relief is crucial to ensuring FLSA compliance. *See Robert DeMario*, 361 U.S. at 292 (“By the proscription of retaliatory acts set forth in [Section] 15(a)(3), and its enforcement in equity by the Secretary pursuant to [Section] 17, Congress sought to foster a climate in which compliance with the substantive provisions of the Act would be enhanced.”). The public interest, therefore, strongly favors a TRO and preliminary injunction.

Defendants are being requested to do one thing: comply with the law. The “primary consideration is to be given, not to the individual defendant but to the

'hardship' imposed on the community by permissive existence of substandard labor conditions." *Brock v. Kentucky Ridge Mining, Inc.*, 635 F. Supp. 444, 452 (W.D. Ky. 1985) (citing *United States v. Darby*, 312 U.S. 100, 122 (1941)). See also *N.L.R.B. v. Electro-Voice, Inc.*, 83 F.3d 1559, 1573 (7th Cir. 1996) (where employer had engaged in retaliation and complained that it would not be able to discipline employees, the Seventh Circuit held "the company always has the legal right to discipline an employee *in a nondiscriminatory fashion* for improper conduct" (emphasis added)). Defendants have no legitimate interest in retaliating against, coercing, or intimidating their employees for cooperating with the Department. Therefore, the balance weighs entirely in the Acting Secretary's favor.

CONCLUSION

For the foregoing reasons, the Acting Secretary respectfully requests the Court enter a temporary restraining order, and thereafter a preliminary injunction, prohibiting Defendants from any further retaliation against or intimidation of their employees in violation of the FLSA. Specifically, the Acting Secretary requests the Court immediately issue an order restraining all Defendants and their agents, and all those in active concert and participation with them, as follows:

1. Defendants and their agents are enjoined from retaliating or discriminating in any way against any current or former employee of any location of Mega Liquor & Smoke in violation of 29 U.S.C. § 215(a)(3);
2. Defendants and their agents are enjoined from interrogating, inquiring about or discussing with any employees or former employees in this case the employees' potential or actual communications with the Acting Secretary or other agents of the Department of Labor;
3. Defendants and their agents are enjoined from withholding wages,

terminating or threatening to terminate any employee, or retaliating or discriminating against their employees in any other way, based upon Defendants' belief that such employee has cooperated with the Department of Labor or has engaged in any other protected activity under the Fair Labor Standards Act;

4. Defendants and their agents are enjoined from communicating with any employee between the date of this Order and the trial in this action for the purposes of investigating plaintiff's claims, preparing a defense, gathering evidence or executing declarations, without first informing the employee, in writing with written translation in that employee's primary language, about the nature and existence of this lawsuit, that such communications are voluntary, and that employees cannot be discriminated or retaliated against in any way;
5. Defendants shall allow representatives of the Acting Secretary to read aloud in English, Spanish, and any other language understood by the majority of Defendants' employees, during employees' paid working hours and in the presence of Defendant Bhola Singh, the following statement to all employees employed at Mega Liquor & Smoke:

You are protected by the Fair Labor Standards Act and have the right to participate freely in the U.S. Department of Labor's investigation and litigation. You have the right to speak freely with investigators, attorneys, or other officials from the Department of Labor. It is illegal for your employer to fire you, withhold wages, reduce your wages or your hours, threaten to call immigration authorities, or otherwise retaliate against you for speaking to the Department of Labor or testifying as a witness in this matter. All employees have the right to be lawfully paid for the work they perform, regardless of race, ethnicity, or immigration status.

The U.S. District Court for the Northern District of Indiana has ordered Mega Liquor & Smoke, and anyone acting on their behalf, to cease coercing, retaliating against, threatening to retaliate against, intimidating, or attempting to influence or in any way threatening employees for providing information to the Department of Labor.

6. Defendants shall post the above statement in English, Spanish, and any other language understood by the majority of Defendants' employees, with contact information for representatives of the Secretary, in a conspicuous location at each location they operate and permit the Secretary to provide each employee with the same;

7. For two years, Defendants shall, prior to terminating any employee for any reason, provide a written notice to the Wage and Hour Division of the U.S. Department of Labor at least seven days prior to any termination; and
8. Order all such other relief as may be appropriate, just, and proper.

DATED: February 29, 2024

U.S. Department of Labor
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Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Travis W. Gosselin
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Senior Trial Attorney

HALEY R. JENKINS
Trial Attorney

*Counsel for Julie A. Su, Acting
Secretary of Labor, United States
Department of Labor, Plaintiff*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JULIE A. SU, Acting Secretary of Labor, United States Department of Labor, Plaintiff, v. VISHAV, INC. d/b/a MEGA LIQUOR & SMOKE #13, and BHOLA SINGH, Defendants.

Case No. 3:24-cv-00186-DRL-MGG

DECLARATION OF WAGE AND HOUR INVESTIGATOR THERESA FELL

I, Theresa Fell, declare under penalty of perjury as prescribed in 28 U.S.C. § 1746, that the following is true and correct to the best of my knowledge:

- 1. I submit this declaration in support of the Acting Secretary of Labor’s Memorandum of Law in Support of a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue.
2. I make this declaration based upon personal knowledge of the facts and circumstances relevant to this matter and, if called, would testify to the facts provided herein.
3. I am employed as an Investigator in the Indianapolis, Indiana District Office of the Wage and Hour Division (“WHD”), United States Department of Labor. I have been employed by WHD for 18 years. My duty station is 2515 N. Bendix Dr., Suite 100, South Bend, Indiana 46628.

4. As an Investigator, I investigate the wages, hours, and other conditions and practices of employment of employers and others subject to the various statutes that the Department of Labor enforces, including the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “Act” or “FLSA”), which requires the payment of the statutory minimum wage and the payment of one and one-half the employee’s regular rate of pay for hours worked over 40 in a week. The FLSA and corresponding regulations also require the maintenance of accurate records worked and compensation received by employees. Further, the FLSA prohibits employers from retaliating or discriminating against employees because they file a complaint with WHD or participate in a WHD investigation.

Defendants

5. Defendant Vishav, Inc. d/b/a Mega Liquor & Smoke #13 (“Mega Liquor & Smoke”), is an Indiana corporation with a principal address at 7106 Grape Road, Granger, Indiana 46530. This location is one of over 15 locations operating under the company named Vishav, Inc. and one of 61 stores located in the states of Indiana and Michigan named Mega Liquor & Smoke owned and operated by Defendant Bhola Singh.

6. Defendant Bhola Singh (“Singh”) is, and at all relevant times was, co-owner of Mega Liquor & Smoke.

7. Singh hires and directs the work of employees, sets pay rates, and manages human resource functions, administrative functions, time and payroll processing, and all merchandise decisions, including ordering and receiving.

WHD's Investigation

8. In October 2022, WHD initiated an investigation of Mega Liquor & Smoke, 20 of its sister locations, Singh, and other co-owners to determine whether their employment practices complied with the FLSA. As part of my investigation, I reviewed Defendants' payroll and time records, spoke with Singh, and interviewed employees.

9. Based on documents and information gathered during the investigation, I concluded the enterprise had violated the overtime provisions of the FLSA. Specifically, I determined that Defendants paid their non-exempt employees at their regular hourly rates for all hours worked, including over 40 each week.

10. Based on documents and information gathered during the investigation, I computed that Defendants owed back wages in the amount of \$177,316.62 to 156 current and former employees, plus an equal amount in liquidated damages for the period of November 9, 2020, through November 6, 2022 (the "Investigation Period").

Defendants' Agreement to Pay Back Wages

11. On or about September 29, 2023, Defendants entered into a Settlement Agreement in Lieu of Litigation ("Agreement") with WHD to come into compliance with the FLSA and to pay \$177,316.62 in back wages and \$177,316.62 in liquidated damages to 156 affected employees. A true and correct copy of the settlement agreement is attached as Exhibit A.

12. In the Agreement, Defendants agreed to “pay directly to employees the back wages amounts due (less legal payroll deductions) and a separate payment/check for liquidated damages (no legal payroll deductions should be made) on or before . . . October 27, 2023.” (Exhibit A at 2.)

13. Defendants also agreed not to “discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the FLSA, including such employee’s right to proper payment under the Act.” (Exhibit A at 3.)

14. Defendants further agreed not to “directly or indirectly[] solicit or accept the return or refusal of any sums paid or due under this Agreement.” (Exhibit A at 3.)

Defendants’ Retaliation and Attempted Kickbacks

15. On January 9, 2024, I spoke with a current Mega Liquor & Smoke employee (“Employee 1”) to verify whether payments had been made pursuant to the Agreement. Employee 1 was agitated and stated that they “signed the form and was paid for [their] work.” I asked the employee the dollar amount they received from Defendants. Employee 1 stated, “I don’t know, \$200 something.” I advised Employee 1 they were due more than \$200 in back wages and liquidated damages and asked if the employee was sure they received those payments. Employee 1 got angry and stated, “I don’t know, I signed the form, I was paid for all my work” and then hung up on me.

16. On January 10, 2024, I received a call from a current Mega Liquor & Smoke employee (“Employee 2”) informing me Singh did not intend to pay workers the back wages and liquidated damages required under the Agreement. Specifically, Employee 2 stated Singh brought copies of Form WH58 (“WH58” or “the form”), which indicate receipt of payment, to the store and instructed at least three employees to sign the forms. Singh did not give employees time to read the forms and kept tapping on the paper telling them to sign. Once employees signed, Singh took the forms away. Singh stated that although he could not fire an employee for speaking to representatives from the Department of Labor, he could find another reason to do so.

17. On January 10, 2024, I spoke with one of Defendants’ former employees (“Employee 3”) to verify whether they had received back wages and liquidated damages payments. The employee stated Singh had called them a few days prior and stated, “You know that I paid you when you worked for me but I am going around to people that worked for me and I have to get them to sign for the Department of Labor.” Employee 3 stated Singh then told them that someone had complained to the Department of Labor that they were not paid, and that is why Singh had to get everyone to sign papers saying that he had paid them. Employee 3 stated they replied to Singh that if the Department of Labor says they are owed money, they will not sign anything until they get paid what the Department of Labor says is owed. Employee 3 told me Singh got angry and said, “Other employees

signed the paper, and either way, I already paid you, and you will not get paid anything else from me.”

18. On January 18, 2024, and February 12, 2024, WHD sent notices to all 156 current and former Mega Liquor & Smoke employees advising them of their rights under the FLSA’s anti-retaliation provision, 29 U.S.C. § 215(a)(3). (Exhibits B, C).

19. On January 18, 2024, WHD sent Singh an Employer Certification stating:

I understand that the FLSA prohibits retaliation against current and former employees for accepting back wages as part of an U.S. Department of Labor investigation. I hereby certify that I will not discharge, retaliate or in any other manner discriminate against any current or former employee for accepting the payments shown on the attached Form WH-56 or for their perceived cooperation with the U.S. Department of Labor, and I will not ask any current or former employee to return all or part of these payments to me or any other agent of Mega Liquor & Smoke.

(Exhibit D).

20. On January 18 and 22, 2024, Assistant Area Director (“ADD”) Ricky Collins emailed Singh requesting his signature on the Employer Certification. Singh never returned the Employer Certification to WHD.

21. On January 23, 2024, a former Mega Liquor & Smoke employee (“Employee 4”) called WHD’s public help line to ask questions about the receipt they received from Defendants. Employee 4’s contact information was provided to me and I called Employee 4. Employee 4 stated they received a call from an unidentified person at the store where they used to work telling Employee 4 they

had received mail. Employee 4 stated they went to the location to pick up the mail, which was a form that they were supposed to sign. Employee 4 said the form stated they were owed back wages and liquidated damages. Employee 4 stated there were no payments included with the form in the envelope.

22. On January 30, 2024, I received a call from one of Defendants' current employees ("Employee 5"). Employee 5 stated that Singh sent them a form to sign a few weeks ago, but there were no checks or money with the form. Employee 5 stated Singh told them that they had to sign the form and give it back to him.

23. On January 30, 2024, I received a call from a current Mega Liquor & Smoke employee ("Employee 6"). Employee 6 stated Singh had told them to sign a form a few weeks ago, but they never received any money when they signed it, and he did not allow them to read the form.

24. On January 30, 2024, I received a call from one of Defendants' current employees ("Employee 7"). Employee 7 stated that a few weeks ago, Singh came into their store with some papers. Employee 7 stated that Singh said they had to sign the form to say they were paid. Employee 7 stated they know Singh is vindictive and they knew Singh would fire them if they did not sign the form. Employee 7 said that they did not understand the form when they tried to read it, and Singh just said he had to get employees to sign and say they were paid.

25. On January 30, 2024, I received a call from a current Mega Liquor & Smoke employee ("Employee 8"). Employee 8 stated that a few weeks ago, Singh told them they had to sign a form but Employee 8 did not understand what the form

was for. Employee 8 stated they have not received any payments. Employee 8 then asked me if they were due money and how much. I advised Employee 8 was on the list of employees due back wages and disclosed the amounts in back wages and liquidated damages owed.

26. On February 14, 2024, I received a call from a current Mega Liquor & Smoke employee (“Employee 9”). Employee 9 stated Singh put a paper in front of them in the beginning of January and told them to sign it, but Singh would not let them read what they were signing. Employee 9 stated Singh told workers that they had to sign the form so the Department of Labor knows they were paid for their work. Employee 9 stated that they did not argue with Singh or ask to read the paper because they and all the other employees know him, and they know he would fire them if they did not do what he told them to do. Employee 9 stated they signed the form but were not paid anything. Employee 9 said that they did not realize they were owed any money until they got the letter in the mail from the Department of Labor. Employee 9 stated they did work a lot of overtime and they were not paid. Employee 9 asked me what they and others should do if Singh fires them. Employee 9 then asked me what they and the other workers should do if Singh pays them what he owes and then makes them pay him back the money. Employee 9 stated Singh would do that and not think twice about it. Employee 9 stated Singh did not say directly that he would fire them if they did not sign the form, but Employee 9 and the other workers “all know him and are scared of him and know he would fire [them] if [they] didn’t do what he said.”

27. On February 15, 2024, I received a call from one of Defendants' current employees ("Employee 10"). Employee 10 stated they received a letter with my contact information on it and would like to know how to get their back wages and liquidated damages. I advised Employee 12 to contact Singh for payments. Employee 12 then called me again and stated they called Singh and asked for back pay, and Singh yelled at them and said that he would not be handling this and hung up on them. Employee 12 stated they are frightened of Singh because he is so mean and is afraid of asking him again. Employee 12 stated they have not been paid for any back wages or liquidated damages owed.

28. On February 15, 2024, I received a call from one of Defendants' former employees ("Employee 11"). Employee 11 told me that one employee who Singh instructed to collect signatures acknowledges employees are owed money but told employees they would personally not accept payment and the other employees should do follow suit. That employee also denied those employees an opportunity to review the forms before signing, and, acting on Defendants' behalf, instructed current employees not to speak to representatives from the WHD.

29. On February 21, 2024, I received another call from Employee 2. Employee 2 told me they spoke with Employee 14, who said Employee 2 had to tell all the other employees that signed their forms that they are not allowed to cash the checks: they had to return the checks to the office or destroy them.

30. On February 21, 2024, I received another call from Employee 7. Employee 7 stated they did sign the form saying they were paid but did not receive

the back wages and liquidated damages they are owed. Employee 7 stated that they are going to cash the check, but they are sure Singh will fire them “because [they] all know how he is.”

31. Defendants’ actions severely decrease the likelihood that other employees will cooperate with WHD and/or accept the back wages owed to them.

Dated: 2/28/2024

THERESA FELL Digitally signed by THERESA FELL
Date: 2024.02.28 15:08:01 -05'00'

THERESA FELL
Investigator
U.S. Department of Labor
Wage and Hour Division

U.S. Department of Labor
Wage and Hour Division

Settlement Agreement in Lieu of Litigation

(with Summary of Unpaid Wages and Liquidated Damages)

The Wage and Hour Division of the U.S. Department of Labor has conducted an investigation of **Vishav, Inc.,; Inder, Inc., ; Vikrant, Inc.; 7 Day Express, Inc.; Singh, Inc.; 7 Days, Inc.; First Capitol Liquor, Inc.; Friendly Liquor, Inc.; Kamboj, Inc.; Linn Corp; Mega Smoke, Inc.; Mishawaka Smoke Incorporated; Ovid MKT, Inc.; Roop, Inc.; Turna, Inc.; Vishal, Inc.; VST, Inc.; Calah Management, Inc.; Mega Smoke and Pop, LLC; Mega Indiana, LLC; Mr. Charan Singh; Mr. Bhola Singh; Ramandip Kaur; Amandip Singh; Maninderpal Kaur; and Ranvir Singh (together the “Employer”)** under the Fair Labor Standards Act of 1938 (FLSA), hereafter referred to as “the Act”, covering the period set forth in Attachment A, Form WH-56, has found violations of the Act, and has computed back wages and liquidated damages owed to employees listed on Attachment A.

The Employer agrees that it is a covered enterprise under **section 203(s)(1)(A) of the FLSA** that the provisions of the Act apply to the Employer, including all of its branches. The Employer further states that it is currently in compliance with the applicable provisions of the Act as interpreted by the Secretary, and agrees that it will continue to comply in the future.

Mr. Charan Singh; Mr. Bhola Singh; Ramandip Kaur; Amandip Singh; Maninderpal Kaur; and Ranvir Singh agrees that they are an employer within the meaning of section 3(d) of the Fair Labor Standards Act.

WHD conducted investigations under Section 206, 207, 211, and 212 provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §201et seq., covering the period of 11/09/2020 through 11/06/2022, with respect to **1. Vishav, Inc.** with locations at 3508 Lincolnway East in Mishawaka, Indiana, 3622 Edison Rd in South Bend, Indiana, 7106 Grape Rd in Granger, Indiana, 1917 Elkhart Rd in Goshen, Indiana, 1108 E. Market St in Nappanee, Indiana, 2301 Mishawaka in South Bend, Indiana, 1703 E. State Road 14 in Rochester, Indiana, 50 E. 18th St in Rochester, Indiana, 1116 S. Main St in South Bend, Indiana, 1116 S. Main St. in South Bend, Indiana, 502 E. Colfax Ave. in South Bend, Indiana, 902 Mayflower Rd in South Bend, Indiana, 4505 Ameritech Dr. in South Bend, Indiana, 65889 State Road 19 in Wakarusa, Indiana, 1740 Lincolnway East in South Bend, Indiana, and 17963 Cleveland Rd. in South Bend, Indiana; **2. Vishal, Inc.** with locations at 9714 Red Arrow Highway in Bridgman, Michigan, 1009 Huntly Rd in Niles, Michigan, 901 Spruce St in Dowagiac, Michigan, 1911 S. 11th St in Niles, Michigan, 1129 Stateline Rd in Niles, Michigan, 52990 M-40 in Marcellus, Michigan, 4031 M-139 in St. Joseph, Michigan, 83269 M-40 in Lawton, Michigan, 16976 Marcellus Highway in Marcellus, Michigan; **3. Inder, Inc.** with locations at 405 S. Wabash St in Wabash Indiana, 1236 W. Market St in Logansport Indiana, 3800 E. Market St in Logansport Indiana, 509 North St. in Logansport Indiana, 1700 E. Broadway St in Logansport Indiana, 598 N. Cass St. in Wabash, Indiana, 307 W. Main St in Peru Indiana, 1604 Allison Lane in Jeffersonville Indiana, and 313 E. Lewis & Clark Parkway in Clarksville, Indiana; **4. Roop, Inc.** located at 602 N. Front St in

Dowagiac Michigan; **5. Singh, Inc.** located at 1702 Broadway St in Niles, Michigan; **6. Vikrant, Inc.** located at 3626 Jefferson Rd in South Bend, Indiana; **7. 7 Day Express, Inc.** located at 1206 N. Front St. in Niles, Michigan; **8. 7 Days Inc.** with locations at 33974 US 12 E. in Niles, Michigan and 107 W. Railroad Street in Dowagiac, Michigan; **9. Turna, Inc.** located at 303 N. 5th St. in Niles, Michigan; **10. Ovid MKT, Inc.** located at 9800 E. M-21 in Ovid, Michigan; **11. Calah Management LLC** located at 1703 Charlestown New Albany Pike in Jeffersonville, Indiana; **12. Mega Indiana LLC** with locations at 7906 Madison Avenue in Indianapolis, Indiana, 3601 Shelby St. in Indianapolis, Indiana, 5975 Cambridge Way in Plainfield, Indiana, and 6089 US-40 in Stilesville, Indiana; **13. First Capitol Liquor, Inc.** with locations at 1361 Old Highway 135 NE in Corydon, Indiana, 112 Beaver St. in Corydon, Indiana, and 7426 Main St. in Lanesville, Indiana; **14. Linn Corporation** located at 322 W. Marion St. in South Bend, Indiana; **15. Mega Smoke and Pop, LLC** located at 50510 IN State Road 933 in South Bend, Indiana; **16. VST, Inc.** with locations at 16376 Branchwood LN in Granger, Indiana and 107 N. Washington St. in Crawfordsville, Indiana; **17. Mishawaka Smoke, Inc.** located at 2407 Mishawaka Avenue in South Bend, Indiana; **18. Friendly Liquor, Inc.** with locations at 11945 Adams Rd in Granger, Indiana, and 109 E. Washington St. in Millersburg, Indiana; **19. Kamboj, Inc.** located at 702 Broadway in Niles, Michigan; and **20. Mega Smoke, Inc.** located at 30 E. 18th in Rochester, Indiana. As a result of its investigation, WHD found violations of the Section 207 and 211 provisions of the Act and computed unpaid back wages and liquidated damages.

The Secretary of Labor (“the Secretary”) by their authorized representative, and the Employer, by its authorized representative, agree that in lieu of litigation brought by the Secretary under the Act, the Employer shall pay back wages and liquidated damages owed to the employees before the payment date set forth in the Summary of Unpaid Wages and Liquidated Damages, Attachment A:

1. The Employer shall pay directly to employees the back wage amounts due (less legal payroll deductions) and a separate payment/check for liquidated damages (no legal payroll deductions should be made) on or before the payment date and deliver to the Secretary’s representative proof of payment by **10/27/2023**.

Should the employer(s) fail to pay the amounts on or before the dates set forth hereinabove, the entire amount of the balance of unpaid compensation and liquidated damages with accrued interest shall become immediately due and payable, without further notice, by the employer to the WHD.

The employer agrees to provide the Secretary's representative with a listing of all unlocated employees with their full name, their last known address, last known email-address, social security number (if possible), and their gross and net amounts due as soon as the employer determines that they are unable to locate an employee due back wages.

In the event that any employees cannot be located, or refuse to accept the back wages, the employer agrees to cover the total net due to all employees by either delivering to the Secretary’s representative a cashier's or certified check, payable to "Wage and Hour Division - Labor" or by

digital wallet by going to <https://www.pay.gov/public/form/start/77692637>. After three years, any monies which have not been distributed because of inability to locate the proper persons or because of their refusal to accept payment shall be covered into the Treasury of the United States as miscellaneous receipts.

The employers agree that the amounts set out in this settlement agreement constitute a debt owed to the United States Government. The Debt Collection Improvement Act of 1996 (Public Law 104-134) provides that any non-tax debt or claim owed to the U.S. Government that is 180 days delinquent, with certain exceptions, will be referred to the U.S. Department of Treasury for collection. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Department may file a lawsuit under Section 216(c) or 217 of the FLSA for the unpaid compensation and any liquidated damages due or pursue additional collection action, including but not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the U.S. Department of Justice. Any rights to challenge or contest the validity of this settlement agreement are hereby waived."

In the event the Secretary initiates legal action pursuant to sections 216(c), 216(e) and/or 217 of the Fair Labor Standards Act (FLSA), the employer agrees to waive any and all defenses based upon the passage of time since the date of signing this Agreement (or, if earlier, the earliest operative date for any pending waiver), including, but not limited, to the statute of limitations set forth at section 6 of the Portal-to-Portal Act of 1947, 29 U.S.C. § 255, in connection with the alleged violations discovered during the investigation identified hereinabove. The employer further agrees that this Agreement (or any copy or facsimile thereof) may be introduced as evidence of such tolling in any action brought by the Secretary pursuant to sections 216(b), 216(c), 216(e), and/ or 217 of the FLSA.

By entering into this agreement, the Secretary does not waive their right to assess civil money penalties for this investigation, to conduct future investigations under the Act, and to take any and all appropriate enforcement action, including any action to seek back wages and liquidated damages and civil money penalties, with respect to any violations disclosed by such investigations.

The Employer will not, contrary to Section 15(a)(3) of the Fair Labor Standards Act discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the FLSA, including such employee's right to proper payment under the Act. The Employer and any of its agents or anyone acting on its behalf will not, directly or indirectly, solicit or accept the return or refusal of any sums paid or due under this Agreement.

Any rights to challenge or contest the validity of this Agreement are hereby waived. This agreement does not affect any legal right of any individual not named in Attachment A, or any individual named for any period outside the period covered by Attachment A.

EXHIBIT A

Agreed to this 29th day of September, 2023

For the Secretary

Vishav, Inc.,; Inder, Inc., ; Vikrant, Inc.;
7 Day Express, Inc.; Singh, Inc.; 7 Days,
Inc.; First Capitol Liquor, Inc.; Friendly
Liquor, Inc.; Kamboj, Inc.; Linn Corp;
Mega Smoke, Inc.; Mishawaka Smoke
Incorporated; Ovid MKT, Inc.; Roop,
Inc.; Turna, Inc.; Vishal, Inc.; VST, Inc.;
Calah Management, Inc.; Mega Smoke
and Pop, LLC; and Mega Indiana, LLC
By its officer(s)

Bhola Singh

AARON
LOOMIS

Digitally signed by AARON
LOOMIS
Date: 2023.09.29 16:02:54
-04'00'

Aaron Loomis

Bhola Singh

Title: District Director

Title(s): OWNERS

Dated: 9/29/2023

Dated: 9/29/23

Charan Singh

Title(s): _____

Dated: _____

Enclosures:

Attachment A — Summary of Unpaid Wages and Liquidated Damages (WH-56)

Indianapolis IN District Office
135 North Pennsylvania Street
Room 700
Indianapolis, IN 46204
317-808-7909



Date:

To:

Firm: MEGA Liquor & Smoke

Back Wages: \$0.00

Liquidated Damages: \$0.00

Total: \$0.00

As a result of our investigation of the above named firm under the Fair Labor Standards Act, we determined that the firm owed you back wages, liquidated damages, or other compensation in the amount shown above.

The investigation covered the time period beginning with the workweek ending **1/31/2021** through the workweek ending **6/12/2022**. The firm agreed to pay you the amount due, less any legal deductions from back wages such as social security and taxes.

In order to complete our records regarding this matter, we would like to know whether you have been paid. **Please contact WHI Fell to report if you have/have not received your wages due, any discrepancies, or if you have any additional questions or concerns. You may call or text 574-210-0836 at ANYTIME to report this information. If there is no answer, PLEASE leave a voicemail, if not, we will not know you have called. You can also send an email response to Fell.Theresa@dol.gov.**

RETALIATION AND KICKBACKS PROHIBITED: Your employer is prohibited from retaliating against you for accepting payment of wages you are owed or from requiring you to return or decline payment of the wages owed to you. Your employer is also prohibited from retaliating against any person who files a complaint with the Wage and Hour Division (WHD) or cooperates with a WHD investigation. Your employer is also prohibited from interfering with, restraining, or denying the exercise of Family Medical Leave Act (FMLA) rights. You should contact the WHD immediately if your employer takes any of these actions or fails to comply with the law in the future. Your identity will be kept confidential to the maximum extent possible under existing law.

Enclosed for your information is a brief guide to the applicable law.

Sincerely,

Aaron Loomis
District Director

Enclosure to link part 578 <http://www.dol.gov/whd/regs/compliance/wh1282.pdf>

¹Or where applicable, the Family Medical Leave Act (FMLA), Walsh-Healey Public Contracts Act (PCA), McNamara-O'Hara Service Contract Act (SCA), the Davis-Bacon and related acts (DBRA), the Contract Work Hours and Safety Standards Act (CWHSSA) or Title III of the Consumer Credit Protection Act (CCPA).

U.S. Department of Labor

**Wage & Hour Division
 135 North Pennsylvania Room 700
 Indianapolis, Indiana 46204
 PH: (317) 226-6801
 Fax: (317) 226-5177**



NOTICE TO CURRENT AND FORMER EMPLOYEES

The Department of Labor reached a settlement with various businesses (and their owners) operating throughout Indiana and Michigan as **Mega Liquor & Smoke** for violations of the Fair Labor Standards Act (FLSA). The settlement agreement applies to **each** of the following persons and businesses:

<u>Persons:</u>	<u>Businesses operating as Mega Liquor & Smoke:</u>	<u>Businesses operating as Mega Liquor & Smoke:</u>
Bhola Singh	7 Day Express, Inc.	Mishawaka Smoke Incorporated
Charan Singh	Calah Management, Inc.	
Ranvir Singh	7 Days, Inc.	Ovid MKT, Inc.
Amandip Singh		Roop, Inc.
Maninderpal Kaur	First Capitol Liquor, Inc.	Singh, Inc.
Ramandip Kaur	Friendly Liquor, Inc.	Turna, Inc.
	Kamboj, Inc. Linn Corp	Vikrant, Inc.
	Inder, Inc.	Vishav, Inc.
	Mega Smoke, Inc.	Vishal, Inc.
	Mega Smoke and Pop, LLC	VST, Inc.
	Mega Indiana, LLC	

Some workers are owed overtime wages for work performed between November 9, 2020, through November 6, 2022 (this is the time period the USDOL’s investigation

covered). **You may call Wage and Hour Investigator Theresa Fell at (574) 210-0836** to find out more information about the back wage payment process, whether you are owed back wages and liquidated damages, how much you are owed, or to provide an updated mailing address and/or telephone number.

You have the right to receive the full amount of any back wages owed (after taxes). You also have the right to receive the full amount of any liquidated damages owed (there are no withholdings from liquidated damages). Liquidated damages are an additional amount equal to the back wages owed.

The persons and business listed above—including owner Bhol Singh—may NOT require you to return any money paid to you as part of the settlement with the Department of Labor, ask you to give up your current or future wages to get money from the settlement, or threaten to retaliate against you if you keep any money you get as part of the settlement with the Department of Labor.

You are protected by the FLSA and have the right to participate freely in the U.S. Department of Labor's investigation into your employer's pay practices. You have the right to speak freely with investigators or other officials from the Department of Labor. Your employer is prohibited from retaliating against you in any way, including by terminating you, reporting you to immigration, or threatening to do any of these things because you spoke with the Department of Labor or because you refused to return any money paid to you as part of the settlement with the Department of Labor.

If you have any questions or concerns about minimum wage, overtime, the payment of back wages, the payment of current wages, or about your rights under the FLSA, **please call the Wage and Hour Investigator Theresa Fell at (574) 210-0836**. Your name will be kept confidential.

Employer Certification

I understand that the FLSA prohibits retaliation against current and former employees for accepting back wages as part of an U.S. Department of Labor investigation. I hereby certify that I will not discharge, retaliate or in any other manner discriminate against any current or former employee for accepting the payments shown on the attached Form WH-56 or for their perceived cooperation with the U.S. Department of Labor, and I will not ask any current or former employee to return all or part of these payments to me or any other agent of Mega Liquor & Smoke.

Bhola Singh:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Charan Singh:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Ranvir Singh:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Amandip Singh:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Maninderpal Kaur:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Ramandip Kaur:

Date: _____

Signature: _____

Printed Name: _____

Title: _____

U.S. Department of Labor
Wage and Hour Division

Settlement Agreement in Lieu of Litigation

(with Summary of Unpaid Wages and Liquidated Damages)

The Wage and Hour Division of the U.S. Department of Labor has conducted an investigation of **Vishav, Inc.,; Inder, Inc., ; Vikrant, Inc.; 7 Day Express, Inc.; Singh, Inc.; 7 Days, Inc.; First Capitol Liquor, Inc.; Friendly Liquor, Inc.; Kamboj, Inc.; Linn Corp; Mega Smoke, Inc.; Mishawaka Smoke Incorporated; Ovid MKT, Inc.; Roop, Inc.; Turna, Inc.; Vishal, Inc.; VST, Inc.; Calah Management, Inc.; Mega Smoke and Pop, LLC; Mega Indiana, LLC; Mr. Charan Singh; Mr. Bhola Singh; Ramandip Kaur; Amandip Singh; Maninderpal Kaur; and Ranvir Singh (together the “Employer”)** under the Fair Labor Standards Act of 1938 (FLSA), hereafter referred to as “the Act”, covering the period set forth in Attachment A, Form WH-56, has found violations of the Act, and has computed back wages and liquidated damages owed to employees listed on Attachment A.

The Employer agrees that it is a covered enterprise under **section 203(s)(1)(A) of the FLSA** that the provisions of the Act apply to the Employer, including all of its branches. The Employer further states that it is currently in compliance with the applicable provisions of the Act as interpreted by the Secretary, and agrees that it will continue to comply in the future.

Mr. Charan Singh; Mr. Bhola Singh; Ramandip Kaur; Amandip Singh; Maninderpal Kaur; and Ranvir Singh agrees that they are an employer within the meaning of section 3(d) of the Fair Labor Standards Act.

WHD conducted investigations under Section 206, 207, 211, and 212 provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §201et seq., covering the period of 11/09/2020 through 11/06/2022, with respect to **1. Vishav, Inc.** with locations at 3508 Lincolnway East in Mishawaka, Indiana, 3622 Edison Rd in South Bend, Indiana, 7106 Grape Rd in Granger, Indiana, 1917 Elkhart Rd in Goshen, Indiana, 1108 E. Market St in Nappanee, Indiana, 2301 Mishawaka in South Bend, Indiana, 1703 E. State Road 14 in Rochester, Indiana, 50 E. 18th St in Rochester, Indiana, 1116 S. Main St in South Bend, Indiana, 1116 S. Main St. in South Bend, Indiana, 502 E. Colfax Ave. in South Bend, Indiana, 902 Mayflower Rd in South Bend, Indiana, 4505 Ameritech Dr. in South Bend, Indiana, 65889 State Road 19 in Wakarusa, Indiana, 1740 Lincolnway East in South Bend, Indiana, and 17963 Cleveland Rd. in South Bend, Indiana; **2. Vishal, Inc.** with locations at 9714 Red Arrow Highway in Bridgman, Michigan, 1009 Huntly Rd in Niles, Michigan, 901 Spruce St in Dowagiac, Michigan, 1911 S. 11th St in Niles, Michigan, 1129 Stateline Rd in Niles, Michigan, 52990 M-40 in Marcellus, Michigan, 4031 M-139 in St. Joseph, Michigan, 83269 M-40 in Lawton, Michigan, 16976 Marcellus Highway in Marcellus, Michigan; **3. Inder, Inc.** with locations at 405 S. Wabash St in Wabash Indiana, 1236 W. Market St in Logansport Indiana, 3800 E. Market St in Logansport Indiana, 509 North St. in Logansport Indiana, 1700 E. Broadway St in Logansport Indiana, 598 N. Cass St. in Wabash, Indiana, 307 W. Main St in Peru Indiana, 1604 Allison Lane in Jeffersonville Indiana, and 313 E. Lewis & Clark Parkway in Clarksville, Indiana; **4. Roop, Inc.** located at 602 N. Front St in

Dowagiac Michigan; **5. Singh, Inc.** located at 1702 Broadway St in Niles, Michigan; **6. Vikrant, Inc.** located at 3626 Jefferson Rd in South Bend, Indiana; **7. 7 Day Express, Inc.** located at 1206 N. Front St. in Niles, Michigan; **8. 7 Days Inc.** with locations at 33974 US 12 E. in Niles, Michigan and 107 W. Railroad Street in Dowagiac, Michigan; **9. Turna, Inc.** located at 303 N. 5th St. in Niles, Michigan; **10. Ovid MKT, Inc.** located at 9800 E. M-21 in Ovid, Michigan; **11. Calah Management LLC** located at 1703 Charlestown New Albany Pike in Jeffersonville, Indiana; **12. Mega Indiana LLC** with locations at 7906 Madison Avenue in Indianapolis, Indiana, 3601 Shelby St. in Indianapolis, Indiana, 5975 Cambridge Way in Plainfield, Indiana, and 6089 US-40 in Stilesville, Indiana; **13. First Capitol Liquor, Inc.** with locations at 1361 Old Highway 135 NE in Corydon, Indiana, 112 Beaver St. in Corydon, Indiana, and 7426 Main St. in Lanesville, Indiana; **14. Linn Corporation** located at 322 W. Marion St. in South Bend, Indiana; **15. Mega Smoke and Pop, LLC** located at 50510 IN State Road 933 in South Bend, Indiana; **16. VST, Inc.** with locations at 16376 Branchwood LN in Granger, Indiana and 107 N. Washington St. in Crawfordsville, Indiana; **17. Mishawaka Smoke, Inc.** located at 2407 Mishawaka Avenue in South Bend, Indiana; **18. Friendly Liquor, Inc.** with locations at 11945 Adams Rd in Granger, Indiana, and 109 E. Washington St. in Millersburg, Indiana; **19. Kamboj, Inc.** located at 702 Broadway in Niles, Michigan; and **20. Mega Smoke, Inc.** located at 30 E. 18th in Rochester, Indiana. As a result of its investigation, WHD found violations of the Section 207 and 211 provisions of the Act and computed unpaid back wages and liquidated damages.

The Secretary of Labor (“the Secretary”) by their authorized representative, and the Employer, by its authorized representative, agree that in lieu of litigation brought by the Secretary under the Act, the Employer shall pay back wages and liquidated damages owed to the employees before the payment date set forth in the Summary of Unpaid Wages and Liquidated Damages, Attachment A:

1. The Employer shall pay directly to employees the back wage amounts due (less legal payroll deductions) and a separate payment/check for liquidated damages (no legal payroll deductions should be made) on or before the payment date and deliver to the Secretary’s representative proof of payment by **10/27/2023**.

Should the employer(s) fail to pay the amounts on or before the dates set forth hereinabove, the entire amount of the balance of unpaid compensation and liquidated damages with accrued interest shall become immediately due and payable, without further notice, by the employer to the WHD.

The employer agrees to provide the Secretary's representative with a listing of all unlocated employees with their full name, their last known address, last known email-address, social security number (if possible), and their gross and net amounts due as soon as the employer determines that they are unable to locate an employee due back wages.

In the event that any employees cannot be located, or refuse to accept the back wages, the employer agrees to cover the total net due to all employees by either delivering to the Secretary’s representative a cashier's or certified check, payable to "Wage and Hour Division - Labor" or by

digital wallet by going to <https://www.pay.gov/public/form/start/77692637>. After three years, any monies which have not been distributed because of inability to locate the proper persons or because of their refusal to accept payment shall be covered into the Treasury of the United States as miscellaneous receipts.

The employers agree that the amounts set out in this settlement agreement constitute a debt owed to the United States Government. The Debt Collection Improvement Act of 1996 (Public Law 104-134) provides that any non-tax debt or claim owed to the U.S. Government that is 180 days delinquent, with certain exceptions, will be referred to the U.S. Department of Treasury for collection. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Department may file a lawsuit under Section 216(c) or 217 of the FLSA for the unpaid compensation and any liquidated damages due or pursue additional collection action, including but not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the U.S. Department of Justice. Any rights to challenge or contest the validity of this settlement agreement are hereby waived."

In the event the Secretary initiates legal action pursuant to sections 216(c), 216(e) and/or 217 of the Fair Labor Standards Act (FLSA), the employer agrees to waive any and all defenses based upon the passage of time since the date of signing this Agreement (or, if earlier, the earliest operative date for any pending waiver), including, but not limited, to the statute of limitations set forth at section 6 of the Portal-to-Portal Act of 1947, 29 U.S.C. § 255, in connection with the alleged violations discovered during the investigation identified hereinabove. The employer further agrees that this Agreement (or any copy or facsimile thereof) may be introduced as evidence of such tolling in any action brought by the Secretary pursuant to sections 216(b), 216(c), 216(e), and/ or 217 of the FLSA.

By entering into this agreement, the Secretary does not waive their right to assess civil money penalties for this investigation, to conduct future investigations under the Act, and to take any and all appropriate enforcement action, including any action to seek back wages and liquidated damages and civil money penalties, with respect to any violations disclosed by such investigations.

The Employer will not, contrary to Section 15(a)(3) of the Fair Labor Standards Act discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the FLSA, including such employee's right to proper payment under the Act. The Employer and any of its agents or anyone acting on its behalf will not, directly or indirectly, solicit or accept the return or refusal of any sums paid or due under this Agreement.

Any rights to challenge or contest the validity of this Agreement are hereby waived. This agreement does not affect any legal right of any individual not named in Attachment A, or any individual named for any period outside the period covered by Attachment A.

Agreed to this 29th day of September, 2023

For the Secretary

Vishav, Inc.,; Inder, Inc., ; Vikrant, Inc.;
7 Day Express, Inc.; Singh, Inc.; 7 Days,
Inc.; First Capitol Liquor, Inc.; Friendly
Liquor, Inc.; Kamboj, Inc.; Linn Corp;
Mega Smoke, Inc.; Mishawaka Smoke
Incorporated; Ovid MKT, Inc.; Roop,
Inc.; Turna, Inc.; Vishal, Inc.; VST, Inc.;
Calah Management, Inc.; Mega Smoke
and Pop, LLC; and Mega Indiana, LLC
By its officer(s)

AARON
LOOMIS

Digitally signed by AARON
LOOMIS
Date: 2023.09.29 16:02:54
-04'00'

Bhola Singh

Aaron Loomis

Bhola Singh

Title: District Director

Title(s): OWNERS

Dated: 9/29/2023

Dated: 9/29/23

Charan Singh

Title(s): _____

Dated: _____

Enclosures:

Attachment A — Summary of Unpaid Wages and Liquidated Damages (WH-56)