

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

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| JULIE A. SU , Acting Secretary of Labor, |) | |
| United States Department of Labor, |) | |
| |) | |
| Plaintiff, |) | JURY DEMAND |
| |) | |
| v. |) | Civil Action No.: 24CV50116 |
| |) | |
| RED OAK TREE SERVICE, INC. , an |) | |
| Illinois corporation; and HUMBERTO |) | |
| GONZALEZ , an individual. |) | |
| |) | |
| Defendants |) | |
| |) | |

COMPLAINT

Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), brings this action to enjoin and restrain Red Oak Tree Service, Inc., an Illinois corporation (“Red Oak”) and Humberto Gonzalez, an individual (collectively, “Defendants”) from violating Sections 207, 211, 215(a)(2), and 215(a)(5) of the FLSA, and to recover unpaid compensation, plus an equal amount in liquidated damages pursuant to Section 216(c) of the Act (29 U.S.C. § 216(c)) for Defendants’ employees.

The Acting Secretary, through the Wage and Hour Division, conducted an investigation of Defendants for compliance with the FLSA. The Acting Secretary’s investigation reviewed Defendants’ employment and pay practices from November 1, 2020 through October 30, 2022 (the “Investigation Period”). Unless stated

otherwise, all allegations and conditions described herein pertain to the Investigation Period.

Jurisdiction and Venue

1. This Court has jurisdiction of this case. 29 U.S.C. § 216, 217 and 28 U.S.C. § 1345.

2. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these claims occurred in this judicial district.

Defendants

3. Defendant Red Oak is a corporation within this Court's jurisdiction with an office at 4706 E. Crystal Lake Avenue, Crystal Lake, Illinois 60014, McHenry County, where it conducts business.

4. Defendant Red Oak is a landscaping and tree removal business.

5. Defendant Humberto Gonzalez has actively managed and supervised Red Oak's operations and its employees during the Investigation Period. Among other things, Humberto Gonzalez, owns 100% of Red Oak, is Red Oak's president, exercises operational control over the business, supervises employees, determines pay practices, and hires and fires employees.

6. Humberto Gonzalez has acted directly or indirectly in Red Oak's interests with respect to its employees and is therefore an "employer" under the FLSA. 29 U.S.C. § 203(d).

7. During the Investigation Period, Defendants engaged in business within McHenry County, within this Court's jurisdiction.

The FLSA Applies to Defendants

8. Red Oak is an “enterprise” under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

9. Red Oak is an “enterprise engaged in commerce” under the FLSA, because it had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Investigation Period. 29 U.S.C. § 203(s)(1)(A).

FLSA Violations

10. Defendants repeatedly violated Sections 207 and 215(a)(2) of the FLSA when they failed to pay their employees 1.5 times their regular rates for hours worked in excess of 40 in a workweek. Defendants paid employees at their regular rate for all hours worked without compensating the employees at a rate not less than 1.5 times their regular rates for their hours worked in excess of 40 in a workweek.

a. For both peak and non-peak seasons, Defendants failed to pay their employees 1.5 times their regular rates for hours worked in excess of 40 in a workweek. Specifically, during the peak season—May through September—Defendants paid employees for their first 40 hours with a check. However, during peak season, Defendants paid employees at their regular rates for all hours worked in excess of 40 in cash.

11. In the off-peak season—March, April, October, and November—employees were paid cash at their regular rates for all hours worked, including their first 40 hours worked and hours worked in excess of 40 hours. While the method of payment differed during peak and off-peak seasons, Defendants consistently failed to pay their employees 1.5 times their regular rates for hours worked in excess of 40 in a workweek. 29 U.S.C. §§ 207(a)(1), 215(a)(2). Defendants repeatedly violated Sections 211 and 215(a)(5) of the FLSA when they failed to keep complete and accurate records. 29 U.S.C. § 211, 29 C.F.R. Part 516.

a. Defendants retained only one month of time records during the Investigation Period.

b. Defendants' payroll records contained only a salary paid to each employee for 40 hours in a workweek; they did not contain Defendant's cash payments to employees at their regular rates for hours in excess of 40 in a workweek.

c. During the peak season—May through September—Defendants paid their employees by paycheck for their first 40 hours and in cash for their hours worked in excess of 40 in a workweek. These overtime hours were paid at employees' regular rates without an overtime premium. Defendants maintained no records of cash payments for hours worked in excess of 40 in a workweek in their payroll records.

d. During the off-peak season—March, April, October, and November—Defendants paid their employees exclusively in cash only for all

of their hours worked. Defendants did not keep any records of the wages paid during the off-peak season. There were no records of any wages paid during the off-peak season in Defendants' payroll records.

e. Moreover, Defendants repeatedly and willfully violated Sections 207 and 215(a)(2) of the FLSA, because Defendants knew or showed reckless disregard for whether the FLSA prohibited their conduct.

f. Specifically, Defendants acted willfully when they paid their employees by check for their first 40 hours worked during the peak season, but then paid cash at the regular rate off the books—without maintaining any records—for hours in excess of 40 during a workweek. Defendants' payroll records demonstrated compliance with the FLSA despite the fact that Defendants failed to pay the required overtime premium.

Remedies Sought

g. As a result of their FLSA violations, Defendants owe the employees listed in Exhibit A back wages and liquidated damages, under 29 U.S.C. §§ 216(c), 217. If Defendants continued to violate the FLSA after the Investigation Period, then Defendants may owe additional back wages and liquidated damages to employees.

h. Defendants may also owe additional back wages and liquidated damages during the Investigation Period to employees whose identities are presently unknown to the Acting Secretary.

Prayer for Relief

As a result of Defendants' FLSA repeated and willful violations, the Acting Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, from withholding unpaid compensation found owing to Defendants' employees. 29 U.S.C. § 217(a).

B. Finding Defendants liable for unpaid overtime wages, plus an equal amount in liquidated damages, owing to the employees listed in Exhibit A, as well as to other of Defendants' employees not yet known to the Acting Secretary. 29 U.S.C. § 216(c).

C. If the Court declines to award liquidated damages, then enjoining and restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding unpaid compensation found owing to Defendants' employees, plus prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury under 26 U.S.C. § 6621.

D. Providing such other relief as may be necessary and appropriate.

E. Awarding costs and granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

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Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/Lydia J. Fakis

LYDIA J. FAKLIS

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