

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

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

Plaintiff,)

v.)

Civil Action No.: 24-10677

**MKK HOLDING INC., d/b/a BLUE FISH)
ASIAN CUISINE; SUNG HEE KIM, an)
individual; MIN KYU KIM, an individual;)
and YONG KIM, an individual.)**

Defendants)

CONSENT JUDGMENT AND ORDER

Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), has filed a complaint under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), and MKK Holding Inc., d/b/a Blue Fish Asian Cuisine (“MKK”), Sung Hee Kim, Min Kyu Kim, and Yong Kim, each an individual (collectively, “Defendants”), waive formal service of process of the Summons and Complaint, waive their Answer and any defenses which they may have, and agree to the entry of this Consent Judgment and Order (“Consent Judgment”) without contest.

Defendants admit, and the Court finds, Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit, and the Court finds, Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendants admit, and the Court finds, Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Defendant Sung Hee Kim admits, and the Court finds, she is and remains permanently enjoined from violating the FLSA pursuant to the judgment entered in this district on January 12, 2018, by the Hon. George Caram Steeh, United States District Court Judge, in the case captioned [*Secretary of Labor Alexander*] *Acosta v. Min & Kim Inc.*, No. 2:15-cv-14310 (E.D. Mich.) (“Min & Kim Judgment”).

Defendant Sung Hee Kim admits, and the Court finds, the facts alleged and claims asserted in the Complaint in this matter constitute violations of the Min & Kim Judgment, and if this matter were contested, the Acting Secretary would prove by a preponderance of evidence that Defendant Sung Hee Kim has violated the Min & Kim Judgment.

Defendant Sung Hee Kim therefore admits, and the Court finds, that she is in civil contempt of the Min & Kim Judgment.

Upon motion of the Acting Secretary and Defendants and for cause shown, it is:

ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, in the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees including, but not limited to, any of their employees working at MKK, or at any business location owned, operated, and/or controlled by any Defendant, and at any other business location at which their employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed.

2. Defendants shall make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of their employees working at MKK, or at any business location owned, operated, and/or controlled by any Defendant, and at any other business location at which their employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Defendants shall make such records available at all reasonable times to representatives of the Acting Secretary.

3. Pursuant to 29 U.S.C. § 215(a)(3), Defendants shall not discharge or take any retaliatory action against any of their current or former employees because the current or former employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Defendants or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA, by the Defendants or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

It is FURTHER ORDERED that:

4. No later than 15 days after execution of this Consent Judgment, Defendants shall distribute a physical copy of the U.S. Department of Labor Wage and Hour Division's "Fact Sheet #23: Overtime Pay Requirements of the FLSA" ("Fact Sheet #23"), attached as Exhibit A (English) and Exhibit B (Spanish); "Fact Sheet #2: Restaurants and Fast Food Establishments

Under the Fair Labor Standards Act (FLSA)” (“Fact Sheet #2”), attached as Exhibit C (English) and Exhibit D (Spanish); and “Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act (FLSA)” (“Fact Sheet #15”), attached as Exhibit E (English); to each current employee of any business operated by any Defendant in a language in which the employee is fluent.

5. For a period of no less than 3 years after the execution of this Consent Judgment, Defendants shall distribute a physical copy of Fact Sheet #23, Fact Sheet #2, and Fact Sheet #15 to each newly hired employee of any business operated by any Defendant, in a language in which the employee is fluent.

6. No later than 30 days after execution of this Consent Judgment, Defendants shall submit to the Acting Secretary evidence demonstrating they (a) are paying all MKK employees one-and-a-half times their regular rates for all hours in excess of 40 in a workweek, and (b) have a recordkeeping system in place that includes making, keeping, and preserving accurate employment, pay, and time records that comply with Section 11 of the Act and 29 C.F.R. Part 516. The Acting Secretary agrees that compliance with this paragraph shall be sufficient to purge Defendant Sung Mee Kim of contempt of the Min & Kim Judgment. Failure to timely submit evidence sufficient to demonstrate compliance with this provision shall be a material breach of this Consent Judgment and shall entitle the Acting Secretary to reinstate litigation proceedings against Defendants, including, without limitation, to recover any additional back wages and/or liquidated damages due to employees and to enforce the injunctive provisions of this Consent Judgment or the Min & Kim Judgment, including through an adjudication of contempt.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of the Acting Secretary and against Defendants in the total amount of \$38,602.48, plus post-judgment interest, as set forth in Exhibit F.

7. The Acting Secretary shall recover from Defendants the sum of \$19,301.24 in unpaid overtime compensation covering the period from October 3, 2020, through October 1,

2022, for Defendants' current and former employees whose names are listed in the attached Exhibit G, and the additional sum of \$19,301.24 in liquidated damages.

- a. At the time of Defendants' execution of this Consent Judgment, Defendants shall deliver payment in the amount of \$38,602.48 by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching "WHD Back Wage Payment – Midwest Region".
- b. Defendants shall also furnish to the Acting Secretary the full name (including, where unknown, missing first or last names), last-known address, last-known phone number, and social security number for each employee named in Exhibit G.
- c. Upon receipt of full payment from Defendants, representatives of the Acting Secretary shall distribute such amounts, less appropriate deductions for federal income withholding taxes and the employee's share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 16(c) of the FLSA. Defendants remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages distributed by the Acting Secretary.
- d. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return of any sums paid under this Consent Judgment.
- e. If an individual named on Exhibit G refuses any sums paid under this Consent Judgment by attempting to return them to Defendants or to anyone on Defendants' behalf, Defendants shall refuse to accept them and shall ensure that all such sums be immediately paid to the Acting Secretary for deposit as above. Defendants shall have no further obligations with respect to such monies.
- f. Any monies not disbursed by the Department of Labor after three years from the date of payment by Defendants, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the

Treasury of the United States as miscellaneous receipts, pursuant to section 16(c) of the FLSA.

g. The provisions of this Consent Judgment shall not in any way affect any legal right of any individual not named on Exhibit G, nor shall the provisions in any way affect any legal right of any individual named on Exhibit G to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

8. By entering into this Consent Judgment, the Acting Secretary does not waive her right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

It is FURTHER ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated this 20th day of May, 2024

s/Shalina D. Kumar
Shalina D. Kumar
United States District Judge

Entry of this judgment is hereby consented to:

Dated: 3/13/2024


MKK HOLDING INC.

by: Sung Hee Kim,

its Owner



SUNG HEE KIM, individually




MIN KYU KIM, individually



YONG KIM, individually

Defendants



MARK G CHEERA P48013

Attorney for Defendant MKK Holding, Inc.

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
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