

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

JULIE A. SU, Acting Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
)
)
v.) Civil Action No.: 3:24-cv-1359
)
GORDO CORPORATION, an Illinois)
corporation d/b/a **EL GORDITO**,)
PATRICIA GONZALEZ LARA, an)
individual, and **SAMUEL GONZALEZ**)
LARA, individuals.)
)
)
Defendants)
)

COMPLAINT

Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA” or “Act”), Plaintiff, **Julie A. Su**, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), brings this action to enjoin and restrain the Defendants **Gordo Corporation**, an Illinois corporation d/b/a El Gordito (“El Gordito”) and **Patricia** and **Samuel Gonzalez Lara**, individuals (collectively, “Defendants”) from violating Sections 206, 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 May 22, 2021 through May 21, 2023 (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(c), 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 El Gordito is a corporation within this Court's jurisdiction. It previously had an office at 2630 Mascoutah Ave. Belleville, IL. 62221, St. Clair County, where it conducted business.

4. Defendant El Gordito was a single location, full-service restaurant in operation from 2010 to 2023.

5. Defendants Patricia and Samuel Gonzalez Lara actively managed and supervised El Gordito's operations and its employees during the Investigation Period. Patricia Gonzalez Lara owns 50% of El Gordito and is El Gordito's President. Samuel Gonzalez Lara owns 50% of El Gordito and is El Gorditor's Vice President. Among other things, Patricia and Samuel Gonzalez Lara hired and fired employees, set their work schedules, and set their pay rates.

6. Patricia and Samuel Gonzalez Lara acted directly or indirectly in El Gordito's interests with respect to its employees and therefore each were an "employer" under the FLSA. 29 U.S.C. § 203(d).

7. Patricia and Samuel Gonzalez Lara reside in Belleville, Illinois, within this Court's jurisdiction.

8. During the Investigation Period, Defendants engaged in business within St. Clair County, within this Court's jurisdiction.

The FLSA Applies to Defendants

9. El Gordito was 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).

10. El Gordito was 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

11. Defendants repeatedly violated Sections 206 and 215(a)(2) of the FLSA when they failed to pay their full-time servers at least \$7.25 per hour. 29 U.S.C. §§ 206(a)(1), 215(a)(2). Specifically, Defendants:

- a. failed to consistently pay their full-time servers any hourly wages;

b. failed to pay full-time servers for all hours worked by failing to keep a record of hours worked and underreporting actual hours worked on payroll;

c. allowed their full-time servers to keep their tips, but failed to enact a proper tip credit because they did not provide proper notice of the tip credit and they did not track hours worked or tips received. 29 U.S.C. § 203(m); and

d. made up the number of hours worked by the servers and their tips for the payroll records so servers would be due to close to \$0 on their paychecks.

12. 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. 29 U.S.C. §§ 207(a)(1), 215(a)(2). Specifically, Defendants:

a. failed to pay the overtime premium to all employees who regularly worked in excess of 40 hours; and

b. paid certain employees off payroll in cash payments at their regular rates, failed to keep a record of hours worked or payments made, and failed to pay them the overtime premium.

13. 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. Defendants failed to make, keep, and preserve adequate and accurate

records of employees and the wages, hours, and other conditions and practices of employment maintained by them. Specifically, Defendants:

- a. failed to keep a complete and accurate record of hours worked by employees;
- b. failed to keep a complete and accurate record of tips received by full-time servers;
- c. failed to keep a complete and accurate record of cash payments made to employees;
- d. failed to maintain complete identifying information for employees.
- e. and failed to post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy.

14. Moreover, Defendants repeatedly and willfully violated Sections 206 and 207 of the FLSA because Defendants knew or showed reckless disregard for whether the FLSA prohibited their conduct.

15. Specifically, Defendants acted willfully when they repeatedly underreported hours worked on payroll and failed to pay minimum wage for all hours worked and failed to pay the overtime premium for hours worked in excess of 40 in a workweek, allowing servers to be compensated only or primarily through tips received from customers. Defendants knew or showed reckless disregard for

whether the FLSA prohibited their conduct through their systematic manipulation of the payroll records and by paying employees off payroll, including making up the number of hours worked by the servers and their tips for the payroll records so servers would be due to close to \$0 on their paychecks.

Remedies Sought

16. 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),

17. 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.

18. Because Defendants repeatedly and willfully violated the FLSA, the Acting Secretary is entitled to recover back wages and liquidated damages for a three-year period. 29 U.S.C. § 255(a).

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 violating Sections 206, 207, 211, 215(a)(2), and 215(a)(5) of the FLSA. 29 U.S.C. § 217(a).

B. Finding Defendants liable for unpaid minimum and 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,

SEEMA NANDA

Solicitor of Labor

CHRISTINE Z. HERI

Regional Solicitor

/s/Alice B. Catlin

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U.S. Department of Labor

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