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Acting United States Secretary of Labor*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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

Plaintiff,

v.

LBB PROGRESS RIDGE, LLC, an Oregon
Corporation; AMERGENT HOSPITALITY
GROUP INC, a Delaware Corporation; FRED
GLICK, an individual; MIKE PRUITT, an
individual; and ADRIAN OCA, an individual,

Defendants.

Case No. 3:24-cv-00736 MO

CONSENT JUDGMENT AND ORDER

Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”) and Defendants LBB Progress Ridge, LLC, Amergent Hospitality Group Inc., Fred Glick, Mike Pruitt, and Adrian Oca (hereinafter “Defendants”) (collectively the “Parties”), have agreed to resolve the matter in controversy in this civil action and consent to the entry of this Consent Judgment in accordance herewith:

A. The Acting Secretary filed a Complaint naming Defendants and alleging that they violated Section 3(m)(2)(B) of the Fair Labor Standards Act of 1938, as amended (“FLSA”), 29

U.S.C. §§ 203(m)(2)(B).

B. Defendants have retained counsel and acknowledge receipt of a copy of the Acting Secretary's Complaint in this action.

C. Defendants waive issuance and service of process of the Complaint and their respective Summonses and waive their response to the Acting Secretary's Complaint.

D. The Parties agree to waive findings of fact and conclusions of law and agree to the entry of this Consent Judgment and Order without further contest.

E. The Parties stipulate that the Court has jurisdiction over the Parties and the subject matter of this civil action and that venue lies within the District of Oregon.

F. The Acting Secretary conducted an investigation of Defendants pursuant to the FLSA covering the period February 16, 2019 through February 15, 2022.

G. Defendants stipulate that at all relevant times they operated restaurants in Oregon, and were an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A) of the FLSA, 29 U.S.C. § 203(s)(1)(A).

H. Defendants stipulate that at all relevant times they were employers of their employees listed on **Exhibit A** to this Consent Judgment and Order within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

PERMANENT INJUNCTION

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, and the inherent authority of the Court, Defendants, their officers, agents, servants, employees, successor companies, parties in interest, and all persons and entities acting at its direction or in concert or participation with them, are permanently enjoined and restrained from violating the FLSA, including through any of the following manners:

1. Defendants shall not, contrary to Sections 11(c) and 15(a)(5), 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep, and preserve accurate records of tips as required under 29 C.F.R. § 516.28(b).

2. Defendants shall not, contrary to Section 3(m)(2)(B) of the FLSA, 29 U.S.C. §§ 203(m)(2)(B), keep tips received by its employees, including for the purpose of allowing managers

or supervisors to keep a portion of employees' tips. Defendants, jointly and severally, shall not continue to withhold the payment of \$140,000.00 in tips hereby found to be due by Defendants under the FLSA to employees, as a result of their employment by Defendants during the period of February 16, 2019 through February 15, 2022.

3. Defendants, their officers, agents, servants, employees, successor companies, parties in interest, and all persons and entities acting at its direction or in concert or participation with them, are permanently enjoined and restrained from in any way directly or indirectly, demanding, requiring, or accepting any of the tip compensation or liquidated damages from any of the employees listed on the attached **Exhibit A**. Defendants shall not threaten or imply that adverse action will be taken against any employee because of their receipt of funds due under this Consent Judgment. Violation of this Paragraph may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

JUDGMENT

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Section 16(c) of the FLSA, 29 U.S.C. § 216(c), in favor of the Acting Secretary and against Defendants in the total amount of **\$316,497.19**, which includes \$140,000.00 in tips to Defendants' present and former employees who are identified in **Exhibit A**, plus an additional equal amount of \$140,000.00 as liquidated damages to the employees identified in **Exhibit A**, plus \$16,497.19 in post-judgment interest to Defendants' present and former employees who are identified in **Exhibit A**, plus \$20,000.00 designated as civil money penalties under 29 U.S.C. § 216(e).

Pursuant to this Judgment, **IT IS HEREBY ORDERED THAT**

4. Defendants shall jointly and severally pay the tips and liquidated damages hereby due under the FLSA and this Consent Judgment to the employees listed on **Exhibit A**, with such amounts including post-judgment interest. Defendants shall accomplish this by making twelve (12) monthly installment payments pursuant to the payment schedule set forth in **Exhibit B**, with the first of such payments occurring no later than May 31, 2024.

5. Additionally, Defendants shall jointly and severally pay civil money penalties in the amount of \$20,000.00 pursuant to Section 216(e)(2) of the FLSA, 29 U.S.C. § 216(e)(2) no

later than April 30, 2025, per the payment schedule set forth in **Exhibit B**. Such penalties are hereby assessed against Defendants and finally determined, pursuant to FLSA Section 16(e), 29 U.S.C. § 216(e). Defendants waive the right to a hearing with respect to this assessment of civil money penalties.

6. As set forth in Exhibit B, Defendants shall first pay the liquidated damages, followed by back wages, followed by civil money penalties.

7. To accomplish the requirements of Paragraphs 4, 5 and 6, Defendants shall:

a. No later than thirty (30) days following the entry of this Consent Judgment, deliver to the U.S. Wage and Hour Division the last known contact information for all current and former employees listed in Exhibit A, including last known address, email, telephone number, and social security number.

b. Make the payments for tips, liquidated damages and post-judgment interest required by this Consent Judgment online by ACH transfer, credit card, debit card, or digital wallet by going to <https://www.pay.gov/public/form/start/77761888>, or by going to www.pay.gov and searching “WHD Back Wage Payment – WE Region.” Payments shall reference Case Number 1958164.

c. Make the civil money penalty payment required by this Consent Judgment online by ACH transfer, credit card, debit card, or digital wallet by going to <https://www.pay.gov/public/form/start/77743734>, or by going to www.pay.gov and searching “WHD Civil Money Penalty - WE Region.” Payments shall reference Case Number 1958164.

8. In the event of any default in the timely making of any payment due hereunder, the full amount due under this Judgment which then remains unpaid, plus post-judgment interest at the rate of 10% per year, from the date of this Judgment until paid in full, shall become due and payable upon the Acting Secretary’s sending by ordinary mail a written demand to the last business address of Defendants then known to the Acting Secretary with electronic copies also concurrently e-served on Defendants’ counsel of record.

9. The Acting Secretary shall distribute the payments described in Paragraph 4 to employees listed in **Exhibit A**, or if necessary, to the employees’ estates. If any monies are not

distributed to employees within three years from the date of receipt of payment from Defendants because of an inability to locate the proper persons or because of their refusal to accept it, the Acting Secretary shall deposit the payment into the Treasury of the United States of America as miscellaneous receipts under 29 U.S.C. § 216(c).

10. No later than thirty (30) days of the entry of this Judgment, Defendants shall supply all current employees with copies of the attached **Exhibit C**. In addition, Defendants shall provide copies of **Exhibit C** to all new hires and post a copy at a work location where it is visible to employees for the period of two (2) years from the date of entry of this Consent Judgment.

11. This Consent Judgment may be signed in multiple counterparts and transmitted by facsimile or by electronic mail or by any other electronic means intended to preserve the original graphic and pictorial appearance of a Party's signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IT IS FURTHER ORDERED that the filing, pursuit, and/or resolution of this proceeding with the entry of this Judgment shall not act as or be asserted as a bar to any action or claim under FLSA Section 16(b), 29 U.S.C. § 216(b), as to any employee not named on the attached **Exhibit A**, nor as to any employee named on the attached **Exhibit A** for any period not specified therein, nor as to any employer other than Defendants.

IT IS FURTHER ORDERED that each party shall bear their own fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to attorneys' fees, which may be available under the Equal Access to Justice Act, as amended, to the date of entry of the Judgment herein; and

IT IS FURTHER ORDERED that this Court retains jurisdiction of this action for purposes of enforcing compliance with the terms of this Consent Judgment.

IT IS SO ORDERED.

DATED this 8 day of May, 2024

Michael W. Mosman

United States District Judge

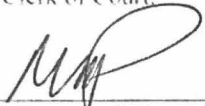
For Plaintiff

SEEMA NANDA
Solicitor of Labor
MARC A. PILOTIN
Regional Solicitor
KATHERINE E. CAMLON
Associate Regional Solicitor

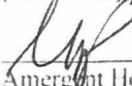
s. Andrew M. Katz
ANDREW M. KATZ
Senior Trial Attorney

For Defendants

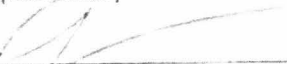
The Defendants hereby appear and consent to the entry of this Judgment and waives notice by the Clerk of Court.



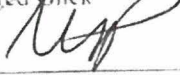
LBB Progress Ridge, LLC
By: Michael Pruitt
[name/title] Managing Member




Amergent Hospitality Group Inc
By: CEO Michael Pruitt
[name/title]



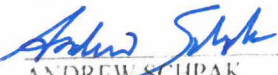
Fred Glick



Mike Pruitt



Adrian Gea

Approved as to form:


ANDREW SCHPAK
Attorney for Defendant *LBB Progress Ridge LLC
and Amergent Hospitality Group Inc.*