

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

THOMAS E. PEREZ, Secretary of Labor,
United States Department of Labor,

:
: **COMPLAINT**

:

Plaintiff,

: Civil Action No.

v.

: 15-cv-

LPH GAS MART, INC. a/k/a LPH FOOD MART, INC.
dba VALERO, ANGOLA FOOD MART, INC. dba
MOBIL, LAKE SHORE MINI MART, INC. dba
MOBIL, and LAKHWINDER GILL AND
PARABHPRIT GILL, Individually and as Owners,

:

:

:

Defendants.

Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor (the “Secretary”), by and through undersigned counsel, brings this action under Section 16(c) and Section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.) (“the Act” or “the FLSA”), alleging that defendants violated Sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Act to recover back wages, liquidated damages, and to enjoin acts and practices which violate the provisions of the FLSA, and to obtain other appropriate relief.

JURISDICTION AND VENUE

1. Jurisdiction over this action is properly conferred upon this Court by Section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in the United States District Court for the Western District of New York because a substantial part of the events or omissions giving rise to the claims herein occurred in this District.

FACTUAL ALLEGATIONS

The Parties

3. Plaintiff, THOMAS E. PEREZ, Secretary of Labor, United States Department of Labor, is vested with authority to file suit to restrain violations of the FLSA and recover back wages and liquidated damages and is the proper plaintiff for this action.

4. Defendant LPH GAS MART, INC. a/k/a LPH FOOD MART, INC. dba VALERO (“LPH”) is a corporation duly organized under the laws of the State of New York that has its office and principal place of business at 3932 South Park Ave. Buffalo, NY 14219, where it is engaged in the operation of a gas station and convenience store. It has been in business since 2007.

5. Defendant ANGOLA FOOD MART, INC. dba MOBIL (“ANGOLA”) is a corporation duly organized under the laws of the State of New York that has its office and principal place of business at 8445 Southwestern Blvd. Angola, NY 14006, where it is engaged in the operation of a gas station and convenience store. It has been in business since 2011.

6. Defendant LAKE SHORE MINI MART, INC. dba MOBIL (“LAKE SHORE”) is a corporation duly organized under the laws of the State of New York that has its office and principal place of business at 4878 Lake Shore Rd. Hamburg, NY 14075, where it is engaged in the operation of a gas station and convenience store. It has been in business since December 2013.

7. Defendant LPH has regulated the employment of all persons employed by it, acted directly and indirectly in the company’s interest in relation to the employees, and thus is an employer of the employees within the meaning of section 3(d) of the Act, 29 U.S.C. § 203(d) and is a person within the meaning of section 3(a) of the Act, 29 U.S.C. § 203(a).

8. Defendant ANGOLA has regulated the employment of all persons employed by it, acted directly and indirectly in the company's interest in relation to the employees, and thus is an employer of the employees within the meaning of section 3(d) of the Act, 29 U.S.C. § 203(d) and is a person within the meaning of section 3(a) of the Act, 29 U.S.C. § 203(a).

9. Defendant LAKE SHORE has regulated the employment of all persons employed by it, acted directly and indirectly in the company's interest in relation to the employees, and thus is an employer of the employees within the meaning of section 3(d) of the Act, 29 U.S.C. § 203(d) and is a person within the meaning of section 3(a) of the Act, 29 U.S.C. § 203(a).

10. Defendant LAKHWINDER GILL is the chief executive officer and owner of Defendants ANGOLA and LAKE SHORE and is in active control and management of those companies. He also operates and manages Defendant LPH along with Defendant PARABHPRIT GILL. Defendant LAKHWINDER GILL has the power to and does supervise, hire and fire employees of the corporate defendants and set the terms and conditions of their employment. Further, he has regulated the employment of all persons he has employed and has acted directly and indirectly in the corporations' interests in relation to the employees. He is thus an employer of employees within the meaning of section 3(d) of the Act, 29 U.S.C. § 203(d).

11. Defendant PARABHPRIT GILL is the chief executive officer and owner of Defendant LPH and is in active control and management of the company. She also operates and manages Defendants ANGOLA and LAKE SHORE along with Defendant LAKHWINDER GILL. Defendant PARABHPRIT GILL has the power to and does hire and fire employees of the corporate defendants and set the terms and conditions of their employment. Further, she has regulated the employment of all persons she has employed and has acted directly and indirectly in the corporations' interests in relation to the employees. She is thus an employer of employees

within the meaning of section 3(d) of the Act, 29 U.S.C. § 203(d).

12. Upon information and belief, Defendants LAKHWINDER GILL and PARABHPRIT GILL are husband and wife.

Defendants Are an Enterprise Engaged in Commerce

13. The business activities of the defendants, as described herein, are related and performed through common control for a common business purpose and constitute an enterprise within the meaning of section 3(r) of the Act, 29 U.S.C. § 203(r).

14. During the relevant period since at least September 15, 2012, the corporate defendants have been operated under unified control by the individual defendants for a common business purpose of operating gas stations and convenience stores open to the public. Some employees were transferred from one location to another within the enterprise during the term of their employment. At least one employee worked at two locations during the same weekly pay period. As described herein, Defendants have employed the same employment practices at all three locations through common control.

15. Defendants have employed and are employing employees listed in Exhibit A in workweeks at their places of business engaged in commerce.

16. Defendants have employed and are employing employees at their places of business in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. These goods include but are not limited to gas, lottery tickets, food, and beverages. During the relevant period, the enterprise has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00. Therefore, the employees are employed in an enterprise engaged in commerce or in the

production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

17. During the relevant period, each of the corporate defendants – Defendants LPH, ANGOLA and LAKE SHORE – independently had an annual gross volume of sales made or business done in an amount not less than \$500,000. Therefore, each of the corporate defendants is also an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

Defendants' Timekeeping and Recordkeeping Practices

18. On or about February 2015, the Wage and Hour Division of the U.S. Department of Labor (“WHD”) commenced an investigation into the employment practices of Defendants under the FLSA (“the Investigation”).

19. Prior to the Investigation, Defendants did not create or maintain adequate and accurate records of their employees’ daily or weekly hours. Defendants did not create or maintain adequate and accurate records of the times that their employees started and stopped work each day, or the total regular and overtime hours that their employees worked each week. Defendants used inaccurate “timesheets” showing employees’ scheduled hours rather than precise timesheets that recorded the actual hours worked each day by each employee. Defendants instructed employees to write their scheduled arrival and departure times, rather than the actual times when they started and stopped performing work duties.

20. Prior to the Investigation, Defendants also falsified the records of employees’ hours worked through a variety of methods. Defendants instructed employees to write their hours worked in pencil so that their entries could be modified to maintain the appearance of no overtime hours worked by employees. Defendants sometimes erased, crossed out or modified the

entries on these sheets to reduce the overall hours worked by certain employees.

21. Defendants falsely listed Defendants LAKHWINDER GILL and/or PARABHPRIT GILL on the records of hours worked on particular dates and weeks when the owners were not, in fact, working at those locations. On more than one occasion, Defendant LAKHWINDER GILL was falsely listed as working at two different locations during the same hours on the same day.

22. Defendants used these falsification schemes to conceal the overtime hours worked by certain employees. Prior to the investigation, Defendants' payroll records rarely showed any overtime hours worked by employees even though some employees regularly worked overtime hours.

23. Prior to the Investigation, Defendants ANGOLA, LAKHWINDER GILL and PARABHPRIT GILL did not create or maintain any records of the hours worked by one employee at ANGOLA.

24. Prior to the Investigation, Defendants LPH, LAKHWINDER GILL and PARABHPRIT GILL did not create or maintain any records of the overtime hours worked by a salaried non-exempt employee at LPH.

25. Prior to the investigation, Defendants ANGOLA, LAKHWINDER GILL and PARABHPRIT GILL did not create or maintain any records of straight time payments made to some employees employed at ANGOLA at their regular hourly rate for all hours worked in excess of 40 in a workweek.

26. At all relevant times beginning in 2013, Defendants did not maintain records containing the date of birth of one minor employee who worked at ANGOLA.

Defendants' Pay Practices

27. At all relevant times, Defendants failed to pay some employees for their initial 16 training hours worked and delayed for many workweeks payment to other employees for their initial 16 hours of work. Although these hours were described as "training hours," the work performed was typical of the employees' regular responsibilities. As a result, some employees did not receive at least the minimum wage for their initial workweek, and some employees did not receive one and one half times their regular rate of pay when they worked in excess of 40 hours per week during their initial workweek.

28. At all relevant times, Defendants failed to pay some employees for all hours worked performing pre- and post-shift duties. As a result, some employees did not receive at least the minimum wage for certain workweeks, and some employees did not receive one and one half times their regular rate of pay when they worked in excess of 40 hours per week during certain workweeks.

29. At all relevant times, Defendants made impermissible deductions from some employees' wages for register shortages and breakages, such as stolen gas, errors in printing lottery tickets, and discrepancies in the pre/post shift count of cigarettes and other merchandise. As a result of these unlawful practices, Defendants did not pay some employees at least the applicable statutory minimum rate prescribed in Section 6 of the Act, 29 U.S.C. § 206(a), and did not pay non-exempt employees one and one half times their regular rate of pay when they worked in excess of 40 hours per week.

30. At all relevant times, Defendants ANGOLA, LAKHWINDER GILL and PARABHPRIT GILL did not pay any wages to one employee at ANGOLA who worked for approximately two years. This employee appeared on the payroll records for only eight weeks in

2012, yet continued to work, on virtually a daily basis, until 2014 without receiving any compensation from the convenience store. This employee was directed by Defendant LAKHWINDER GILL and other managers to perform a variety of work tasks at ANGOLA for the benefit of Defendants, including but not limited to stocking merchandise, cleaning the store, washing dishes, and making deli sandwiches for customers. Therefore, Defendants suffered or permitted this employee to work at LPH and did not pay this employee at least the applicable statutory minimum rate prescribed in Section 6 of the Act, 29 U.S.C. § 206(a).

31. At all relevant times, Defendants ANGOLA, LAKHWINDER GILL and PARABHPRIT GILL paid employees employed at ANGOLA straight time off the books at their regular hourly rate for all overtime hours worked. Some employees at ANGOLA worked between 46.5 and 48.5 hours during some workweeks and they were paid at their regular hourly rates for all hours worked in excess of 40 during these workweeks.

32. At all relevant times, Defendants LPH, LAKHWINDER GILL and PARABHPRIT GILL did not pay one non-exempt employee employed at LPH one and one-half times his regular rate of pay when he worked in excess of 40 hours per week but rather paid him a set weekly salary. This employee consistently worked more than 70 hours each week. This employee did not direct the work of any other employees; indeed he often worked alone. He was not responsible for hiring or firing employees; he did not handle staffing or make any scheduling decisions for the company. He did not exercise discretion or independent judgement on behalf of the store, he did not determine the pricing of merchandise or negotiate with vendors, and he did not make budget, pricing or financial decisions for the store.

33. During at least one pay period during the relevant time, Defendants did not combine the hours worked by one employee who worked at two locations, LPH and ANGOLA,

in a single workweek to calculate the overtime compensation owed. Although employees typically worked at a single location, Defendants instructed this employee to work at another location within the enterprise to cover for another employee. There was an arrangement between LPH and ANGOLA to share this employee's services. Accordingly, Defendants did not pay this non-exempt employee one and one-half times his regular rate of pay when he worked in excess of 40 hours per week.

FIRST CAUSE OF ACTION

Violation of Sections 6(a) and 15(a)(2) of the FLSA, Failure to Pay Minimum Wage

34. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 to 33 of the Complaint.

35. As a result of Defendants' unlawful practices of failing to pay any compensation to one employee, failing to pay and/or delaying payment to employees for initial training hours worked, failing to pay employees for pre- and post-shift hours worked, impermissibly deducting money from employees' pay for shortages and breakages, and charging fees to a few employees to cash their paychecks, Defendants have willfully and repeatedly violated the provisions of Sections 6 and 15(a)(2) of the Act, by paying many of their employees employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at rates less than the applicable statutory minimum rate prescribed in Section 6 of the Act.

36. Thus, Defendants are liable for unpaid minimum wage compensation owing to their employees under section 6 of the Act and an additional equal amount as liquidated damages pursuant to section 16(c) of the Act, or in the event liquidated damages are not awarded, minimum wage compensation and prejudgment interest on said minimum wage compensation under section 17 of the Act.

37. As described herein, Defendants' actions have been willful. For example, Defendants engaged in a variety of schemes to reduce the number of hours worked recorded for each employee, including instructing employees to underreport their hours worked and falsifying the records of employees' hours worked. Defendants willfully and repeatedly have violated the Act since at least February 20, 2012.

SECOND CAUSE OF ACTION

Violation of Sections 7(a) and 15(a)(2) of the FLSA, Failure to Pay Overtime

38. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 to 37 of the Complaint.

39. Defendants in many workweeks willfully have violated the provisions of sections 7 and 15(a)(2) of the Act by employing their employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than those prescribed in section 7 of the Act without compensating the employees for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed.

40. Defendants willfully have violated the provisions of sections 7 and 15(a)(2) of the Act by failing to pay at least six employees one and one-half their regular rate of pay for hours worked in excess of 40 in a single pay period at ANGOLA. Defendants compensated these employees at their regular hourly rates for all hours worked in a workweek by paying straight time off the books for the "off-the-clock" hours worked beyond 40 hours in one workweek.

41. Defendants willfully have violated the provisions of sections 7 and 15(a)(2) of the Act by compensating one employee who worked over 40 hours in each workweek at LPH with a set salary regardless of the number of hours worked. Defendants did not pay any additional

premiums of one and one-half this employee's regular rate for hours worked in excess of 40 in a workweek.

42. Defendants willfully have violated the provisions of sections 7 and 15(a)(2) of the Act by failing to aggregate hours worked by at least one employee across locations as prescribed by the Regulations issued and found at 29 C.F.R. Part 791. Defendants compensated one employee who worked more than 40 hours at two locations regular hourly rates for all hours worked in a workweek. Defendants did not pay any additional premiums of one and one-half the employees' regular rates for hours worked by employees in excess of 40 in a workweek at multiple locations.

43. Therefore, Defendants are liable for unpaid overtime compensation and an equal amount in liquidated damages under section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest on said unpaid overtime compensation under section 17 of the Act.

44. As described herein, Defendants' actions have been willful. For example, Defendants used various falsification schemes to conceal the overtime hours worked by certain employees, such as by physically altering the employees' records of hours worked such that no employees worked more than 40 hours in a workweek.

THIRD CAUSE OF ACTION
Violation of Sections 11(c) and 15(a)(5) of the FLSA

45. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 to 44 of the Complaint.

46. Defendants willfully have violated the provisions of sections 11(c) and 15(a)(5) of the Act, in that Defendants failed to make, keep, and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions of employment which they

maintained as prescribed by the Regulations issued and found at 29 C.F.R. Part 516. More specifically, Defendants failed to keep adequate and accurate records of many of their employees' actual daily and weekly hours of work, regular hourly rate of pay, and total weekly overtime payments.

WHEREFORE, cause having been shown, Plaintiff respectfully prays for judgment against Defendants providing the following relief:

1. An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, and those persons in active concern or participation with Defendants, from violating the provisions of Sections 6, 7, 11(c), 15(a)(2), and 15(a)(5) of the Act;

2. An order pursuant to Section 16(c) of the Act finding Defendants liable for unpaid minimum wage and overtime compensation found due Defendants' employees listed on the attached Exhibit A and an equal amount of liquidated damages (additional minimum wage and overtime compensation and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint); or

3. In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid minimum wage and overtime compensation found due Defendants' employees and prejudgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621;

4. An order compelling Defendants to reimburse the Secretary for the costs of this action; and
5. An order granting such other relief as the Court may deem necessary or appropriate.

DATED: September 15, 2015
New York, New York

s/ M. Patricia Smith
M. PATRICIA SMITH
Solicitor of Labor

s/ Jeffrey S. Rogoff
JEFFREY S. ROGOFF
Regional Solicitor

s/ Kathryn L. Stewart
KATHRYN L. STEWART
Senior Trial Attorney

U.S. Department of Labor,
Attorneys for Plaintiff Secretary of Labor

U.S. Department of Labor
Office of the Regional Solicitor
201 Varick Street, Room 983
New York, NY 10014
(646) 264-3675
(646) 264-3660 (fax)
Stewart.kathryn@dol.gov
NY-SOL-ECF@dol.gov
Secretary of Labor, Plaintiff