

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MARTIN J. WALSH,)	
Secretary of Labor, United States)	
Department of Labor,)	
)	
Plaintiff,)	
)	
v.)	
)	
PIGEON FORGE HOSPITALITY, LLC)	<u>COMPLAINT</u>
and NIMESH PATEL,)	(Injunctive Relief Sought)
)	
Defendants.)	

This cause of action, which arises under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, hereinafter the Act, is brought by the Secretary of Labor pursuant to authority granted by Section 11(a) and Section 16(c) of the Act, 29 U.S.C. § 211(a) and § 216(c).

I

Jurisdiction is conferred upon the Court by Section 17 of the Act, 29 U.S.C. § 217, to enjoin violations of the Act and to restrain the withholding of back wages due under the Act; and by 28 U.S.C. § 1345 to award additional amounts, equal to back wages due, as liquidated damages under Section 16(c) of the Act, 29 U.S.C. § 216(c).

II

A. Defendant, Pigeon Forge Hospitality, LLC, a limited liability company operated by Nimesh Patel, having a place of business and doing business in Sevier County, Tennessee, at all times hereinafter mentioned, has been engaged in the operation of a hotel.

B. Defendant, Nimesh Patel, at all times hereinafter mentioned, has acted directly or indirectly in the interest of Pigeon Forge Hospitality, LLC in relation to its employees, and therefore, is an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

III

A. Defendants, at all times hereinafter mentioned, have suffered or permitted to work employees, and therefore, have been employers within the meaning of Sections 3(d) and 3(g) of the Act, 29 U.S.C. §§ 203(d) and 203(g).

B. At all times hereinafter mentioned, Defendants employed employees that have been and are engaged in commerce or in the production of goods for commerce, within the meaning of Sections 3(b) and (j), respectively, of the Act, 29 U.S.C. §§ 203(b) and (j).

IV

At all times hereinafter mentioned:

A. Defendants, having been engaged in related activities performed either through unified operation or common control for a common business purpose, constitute an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r), and

B. Such enterprise, employing employees engaged in commerce or in the production of goods for commerce, or employing employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce; and having an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), constitutes an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of § 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

C. Therefore, during the period at issue the said employees were employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of Sections 3(r) and/or 3(s)(1) of the Act, and the employees and the enterprise were subject to Sections 6, 7, and 11(c) of the Act.

V

Since at least June of 2019, Defendants willfully and repeatedly violated the provisions of Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), by failing to pay employees employed in an enterprise engaged in commerce or in the production of goods for commerce the applicable minimum hourly rate.

VI

Since at least June of 2019, Defendants willfully and repeatedly violated the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce for workweeks longer than 40 hours without compensating such employees for their employment in excess of such hours at rates not less than one and one-half times the regular rates at which they were employed.

VII

Since at least June of 2019, Defendants, subject to the provisions of the Act, willfully and repeatedly violated the provisions of Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), and Regulations found at 29 C.F.R. Part 516, by failing to make, keep, and preserve adequate and accurate records of the persons employed and of the wages, hours, and other conditions and practices of employment maintained by the enterprise, as prescribed in the aforesaid Regulations.

VIII

Since at least March of 2021, Defendants, subject to the provisions of the Act, willfully and repeatedly violated the provisions of Sections 12(c) and 15(a)(4) of the Act, 29 U.S.C. §§ 212(c) and 215(a)(4), and Regulations found at 29 C.F.R. Part 570, by employing oppressive child labor, within the meaning of § 3(1) of the Act, 29 U.S.C. § 203(1), in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, in that Defendants employed two minors at the hotel who were under the age of 12 years.

IX

Since at least March of 2021, Defendants, subject to the provision of the Act, willfully and repeatedly violated the provisions of Sections 12(c) and 15(a)(4) of the Act, 29 U.S.C. §§ 212(c) and 215(a)(4), and Regulations found at 29 C.F.R. § 570.33, by employing oppressive child labor, within the meaning of § 3(1) of the Act, 29 U.S.C. § 203(1), in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, in that Defendants employed a minor who was fifteen (15) years of age in non-excepted baking and cooking activities, an occupation declared by the Secretary in the aforesaid regulation, to be particularly hazardous for such minors.

X

WHEREFORE, Plaintiff prays for an order:

1. Permanently enjoining Defendants, their agents, servants, employees and all persons in active concert or participation with them, from violating the provisions of Sections 6, 7, 11(c), 12(c) 15(a)(2), 15(a)(4) and 15(a)(5) of the Act [29 U.S.C. §§ 206, 207, 211(c), 212(c), 215(a)(2), 215(a)(4) and 215(a)(5)] in accordance with Section 17 of the Act [29 U.S.C. § 217];
2. Restraining the withholding of payment of wages found by the Court to be due employees under the Act (as named in “Exhibit A” attached hereto and made a part hereof and such other employees as hereafter may be identified and named prior to or at trial) for a period of three years prior to June 6, 2021 in accordance with Section 17 of the Act [29 U.S.C. § 217];
3. Awarding back wages for a period of three years prior to June 6, 2021, and an additional equal amount as liquidated damages to employees (as named in “Exhibit A” attached hereto and made a part hereof and such other employees as hereafter may be identified and named prior to or at trial), in accordance with Section 16(c) of the Act [29 U.S.C. § 216(c)]; and

4. For such other and further relief as may be necessary and appropriate including but not limited to interest on such back wages at the underpayment rate established by the Secretary of the Treasury, pursuant to 26 U.S.C. § 6621, from the date they became due until paid.

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

TREMELLE HOWARD
Regional Solicitor

SCHEAN G. BELTON
Associate Regional Solicitor

MATT S. SHEPHERD
Counsel for Wage and Hour

/s/ Megan A. Carrick
MEGAN A. CARRICK
Trial Attorney
Tennessee Bar No. 029095

U. S. Department of Labor
Attorneys for the Plaintiff

POST OFFICE ADDRESS:

Office of the Solicitor
U. S. Department of Labor
618 Church Street, Suite 230
Nashville, Tennessee 37219
Telephone: 615.781.5330
carrick.megan.a@dol.gov
nash.fedcourt@dol.gov