

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MILTON AL STEWART, Acting Secretary of
Labor, United States Department of Labor,

Plaintiff,

v.

PUERTO VALLARTA MEXICAN GRILL LLC,
NUEVO VALARTA MEXICAN GRILL LLC,
JORGE GOMEZ, and LILIANA GOMEZ,

Defendants.

Civil Action No. 21-140

CONSENT JUDGMENT AND ORDER

Plaintiff Milton Al Stewart, Acting Secretary of Labor, United States Department of Labor (the “Secretary”), has filed a Complaint in this case under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq. (the “Act”). Defendants Puerto Vallarta Mexican Grill LLC, Nuevo Vallarta Mexican Grill LLC, Jorge Gomez, and Liliana Gomez (together, “Defendants”), have received a copy of the Complaint and waived service of process. Defendants admit that they violated Sections 6, 7, 11, and 15(a)(3) of the Act, 29 U.S.C. §§ 206, 207, 211, and 215(a)(3).

Defendants also acknowledge assessment by the Secretary of civil money penalties in the amount of \$38,352.00, waive notice and service requirements for the issuance of those penalties, and waive exception to those civil money penalties all under Section 16(e) of the Act, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, 580.1–580.18.

The Court finds that it has jurisdiction to enter this Consent Judgment and Order (the “Consent Judgment”), and the Secretary and Defendants agree to its terms.

It is therefore ORDERED, ADJUGED, and DECREED that:

1. Defendants and their successors, assigns, agents, servants, employees, and all persons in active concert or participation with them, or acting or claiming to act in their interest and behalf, hereby are permanently enjoined and restrained from violating the Act, in any of the following manners.

a. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who, in any workweek, is employed 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, as defined by the FLSA, wages at less than the applicable minimum wage.

b. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than 40 hours, unless such employees receive compensation for their employment in excess of 40 hours at rates not less than one-and-one-half times the employees' regular rates of pay.

c. Defendants shall not fail to make, keep, and preserve records of employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations issued, and from time to time amended, pursuant to Section 11(c) of the Act, 29 U.S.C. § 211(c), and found in 29 C.F.R. Part 516.

d. Defendants shall not fail to cooperate with the United States Department of Labor in any investigation conducted pursuant to Section 11(a) of the Act, 29 U.S.C. § 211(a), and commenced after the entry of this Consent Judgment. Defendants shall provide truthful responses and other information and documents to the United States Department of Labor. Defendants shall provide the United States Department of Labor access to all records that are required to be maintained pursuant to Section 11(c) of the Act, 29 U. S.C. § 211(c), and 29 C.F.R. Part 516, and shall provide access to other information necessary for the proper execution of any United States Department of Labor investigation. Nothing contained in this Consent Judgment, including the requirement to cooperate as set forth in this Paragraph, abrogates Defendants' rights under the United States Constitution.

e. Defendants shall not, contrary to Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3), discharge or in any other manner discriminate against or take any adverse action or threaten or imply that adverse action will be taken against any individual who provides, or may seek to provide, information to the United States Department of Labor, or who exercises or asserts her or his rights under the Act or this Consent Judgment. Defendants shall not threaten or in any way interfere with any individual's employment prospects or ability to obtain or maintain employment for purposes of inhibiting any individual's rights under the Act. Defendants shall not instruct any individual to provide false information to the United States Department of Labor, instruct any individual not to speak to the United States Department of Labor, or otherwise influence any individual with

respect to her or his participation in any investigation or legal proceeding brought by the United States Department of Labor.

f. Further, the Court, finding that Defendants' employees are due back wages in the amount of \$263,743.22, as shown on the attached Exhibit A, which is incorporated in and made a part of this Consent Judgment, it is ordered that Defendants are restrained from withholding said back wages and shall pay, jointly and severally, said back wages plus applicable interest in accordance with the terms set forth herein.

g. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the Act since October 17, 2020. In resolving the amount of back wages in this Consent Judgment, the Secretary has relied on this representation and, accordingly, the back wage provisions of this Consent Judgment shall have no effect upon any back wages and liquidated damages which may have accrued since October 17, 2020.

h. The back wage provisions of this Consent Judgment shall be deemed satisfied when Defendants deliver to the Secretary: \$263,743.22 in gross back wages plus 2% per annum interest compounded annually on any unpaid balance, from which deductions for Defendants' employees' share of social security and federal withholding taxes will be made by the United States Department of Labor.

i. Defendants, jointly and severally, shall further pay the employers' share of FICA to the appropriate authorities for the back wages paid pursuant to this Consent Judgment.

j. Defendants may make the payments required by this Consent Judgment (back wages, plus interest as applicable) online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77689032> or by going to <http://www.pay.gov> and searching for WHDBWNE. Alternatively, payments may be made in the form of certified checks made payable to “Wage and Hour Division—Labor” and delivered to the United States Department of Labor, Wage and Hour Division, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attention: District Director. Any such checks shall have Case Number 1911428 or 1914066 written on the face of the checks.

k. The back wage payments shall be made on or before April 21, 2021.

2. Defendants shall pay, jointly and severally, the civil money penalties issued pursuant to Section 16(e) of the Act, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, in the amount of \$38,352.00 to the Secretary.

a. The civil money penalty portion of this Consent Judgment will be deemed satisfied when Defendants deliver said penalty amount to Plaintiff, no later than February 20, 2021.

b. To comply with the civil money penalty payment provisions set forth above, Defendants may pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734516> or by going to www.pay.gov and searching “WHD CMP Payment - NE Region.” Defendants also have the option to provide to the Secretary a certified check, bank check, or money order, and that check or money order shall be made payable to “Wage and

Hour Division—Labor” and mailed to: the U.S. Department of Labor, Wage and Hour Division, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attention: District Director. Any such check or money order shall have Case No. 1911428 or 1914066 written on the face of the check or money order.

3. In the event Defendants fail to make a payment within ten days of the payment being due under this Consent Judgment, then Defendants consent to the entry of a Writ of Execution, pursuant to Federal Rule of Civil Procedure 69, to enforce the monetary terms of this Consent Judgment. The Secretary may seek such a writ at any time after the entry of this Consent Judgment and may represent in filing for such a writ that Defendants consent to its issuance. Upon request from the Secretary, Defendants agree to furnish a complete and accurate list of their real, personal, and business property with an estimated value of \$2,000.00 or more and the locations of such property for purposes of the Secretary seeking a Writ of Execution in accordance with this Paragraph of the Consent Judgment.

4. On or before 10 days from the entry of this Consent Judgment, Defendants shall deliver to the U.S. Department of Labor, Wage and Hour Division, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attention: District Director, a statement showing the following: employers’ Federal ID number(s), the name of each employee listed in Exhibit A, and each employee’s current address and social security number (only to the extent currently known by Defendants).

5. When recovered wages have not been claimed by an employee within three years, because of inability to locate the employee or because of the employee’s refusal to accept such sums, the Secretary shall deposit the wages into the United States Treasury as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

6. For a period of three years from the entry of this Consent Judgment, Defendants shall provide each of their employees with a copy of the United States Department of Labor, Wage and Hour Division, Handy Reference Guide to the Fair Labor Standards Act (Publication WH1282), Overtime Pay Requirements of the FLSA (Fact Sheet 23), and Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA) (Fact Sheet 77A), which are available on the United States Department of Labor's website, and a copy of this Consent Judgment. Defendants shall require each employee to sign a receipt acknowledging that she or he has received such materials within 30 days of the beginning of her or his employment (for current employees within 30 days of entry of this Consent Judgment) and shall maintain the receipts in the employees' personnel files.

7. For a period of three years from the entry of this Consent Judgment, Defendants shall provide training on compliance with the Act within the first quarter of each calendar year for managers, supervisors, and other employees involved in payroll processing or who are responsible for processing payroll. This training shall cover the requirements of the minimum wage, overtime, recordkeeping, and anti-retaliation provisions of the Act. Defendants shall maintain a list of all employees trained pursuant to this Paragraph of the Consent Judgment, the dates the trainings took place, the content of the trainings, and the name and contact information for the person or persons who provided the training. This list shall be made available for review and copying by the Secretary upon request.

8. Defendants shall not, in any way, solicit, demand, accept, or keep any amount paid or payable to any employee or former employee under this Consent Judgment or in any manner attempt to recover any amounts paid to such employee or former employee in connection with this Consent Judgment. In the event any such amount is received from any employee,


Defendants shall immediately remit such amount to the United States Department of Labor at the following address: United States Department of Labor, Wage and Hour Division, 1155 Elm Street, Suite 501, Manchester, NH 03101, Attention: District Director.

9. Defendants have certified that their employment practices are currently in compliance with all applicable provisions of the Act as interpreted by the Secretary. If this representation is determined to be false, and Defendants are found to be in violation of the Act, additional civil money penalties may be owed, in addition to back wages, liquidated damages, and other damages as appropriate.

10. Nothing in this Consent Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint in this matter in any future investigation, enforcement action, or legal action.

11. Each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED, this 22nd day of February, 2021.


Steven J. McAuliffe,
United States District Judge
District of New Hampshire

For the Secretary:

Stanley E. Keen
Deputy Solicitor for National Operations

Maia S. Fisher
Regional Solicitor

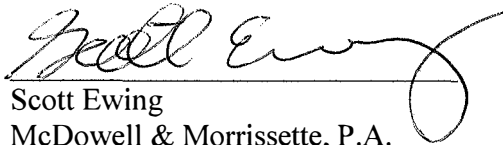
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Dated: February 12 __, 2021

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Dated: 2/4, 2021