

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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

Misc. Case No.: 23-mc-00096

Judge:

v.

Judge:

19 & 75 FILLING STATION LLC, a
Minnesota limited liability company, and
MARTIN STERZINGER, an Individual
Respondents,

**ACTING SECRETARY OF LABOR’S PETITION FOR
ENFORCEMENT OF ADMINISTRATIVE SUBPOENA *DUCES TECUM***

Petitioner **JULIE A. SU**, Acting Secretary of Labor, United States Department of Labor, (“Acting Secretary”) by and through counsel, pursuant to Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et. seq.*, (“FLSA” or “Act”), applies to this Court for an Order requiring **19 & 75 FILLING STATION LLC** (“19 & 75”), and **MARTIN STERZINGER** (“Sterzinger”), individual (collectively “Respondents”) to comply with the Subpoena *Duces Tecum* issued by the Regional Administrator, Wage and Hour Division, United States Department of Labor, (“DOL”) duly served upon Respondents, and an order tolling the statute of limitations.

I

Jurisdiction to issue the Order is conferred upon this Court by Section 9 of the Act, 29 U.S.C. § 209, and by Sections 9 and 10 of the Federal Trade Commission Act of 1914, as amended (15 U.S.C. §§ 49, 50) (“FTC Act”).

II

Section 11 of the FLSA authorizes the Secretary of Labor to investigate and gather data regarding “conditions and practices of employment in any industry subject to this Act . . . as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act.” 29 U.S.C. § 211. Section 9 of the FLSA further provides that sections 9 and 10 of the FTC Act (15 U.S.C. §§ 49, 50), relating to the production of documents, *inter alia*, are applicable to the Secretary for purposes of investigations under the FLSA. 29 U.S.C. § 209. Section 9 of the FTC Act provides authorized agents shall have access to documentary evidence of “any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.” 15 U.S.C. § 49.

III

Michael Lazzeri is the Regional Administrator of the Wage and Hour Division, United States Department of Labor, who, among others, has been delegated the authority by the Acting Secretary to issue administrative subpoenas under the Act (“Regional Administrator Lazzeri”). Kristin Tout is the District Director of the Minneapolis District Office of the Wage and Hour Division, United States Department of Labor (“Director Tout”). Ann Buysman is the Assistant District Director of the Minneapolis District Office of the Wage and Hour Division, United States Department of Labor (“ADD Buysman”).

IV

Respondent 19 & 75 at all times referred to herein, is and was a Minnesota limited liability company with a principal place of business located at 2792 South Highway 75, Ivanhoe, MN 56142, within the jurisdiction of this Court. Respondent Sterzinger, at all times

referred to herein, is and was an individual identified as the current owner and registered agent of 19 & 75 and resides at 2790 South Norman, Ivanhoe, MN 56142, within the jurisdiction of this Court.

V

In order to conduct a thorough investigation into the wages, hours and other conditions and practices of employment, pursuant to section 11 of the FLSA, Wage and Hour investigators regularly review, copy and/or transcribe information from employers' records including, but not limited to, payroll records and records of hours worked, question and interview employees, and collect and review other relevant data relating to compliance by employers under the Act.

VI

On August 2, 2023, pursuant to the power vested in him as Regional Administrator of the Wage and Hour Division, United States Department of Labor, Michael Lazzeri signed and issued an administrative Subpoena *Duces Tecum* ("Subpoena") requiring Respondents to appear before Ann Buysman, Assistant District Director of the Wage and Hour Division, United States Department of Labor, at the Minneapolis District Office located at 331 Second Ave S. Suite 920, Minneapolis, MN 55401, before 4:00 p.m. on August 16, 2023, to produce designated books, records, and documents, listed on Attachment A to the Subpoena, concerning matters within the scope of an investigation being conducted pursuant to the FLSA, 29 U.S.C. § 211. The Subpoena was addressed to both 19 & 75 and Sterzinger, and both are responsible for providing all responsive documents. Therefore, the Acting Secretary is entitled to enforcement of the Subpoena against both Respondents. A copy of the Subpoena *Duces Tecum* is attached hereto and incorporated herein by reference as Exhibit 1 .

VII

On August 7, 2023, the Subpoena was served upon Respondents by hand delivering a duplicate original of the Subpoena to Sterzinger at Respondents' principal place of business located at 2792 Hwy 75, Ivanhoe, MN 56142. A copy of the signed Return of Service is attached hereto and incorporated herein by reference as Exhibit 2.

VIII

Prior to the issuance of the Subpoena, the DOL engaged in a number of attempts to obtain the records from Respondents. The DOL's attempts to secure the documents by other means is reflected in the various requests, conversations, and correspondence exchanged between the DOL and Sterzinger. (See *Declaration of Wage and Hour Investigator Matthew Jones in Support of the Acting Secretary of Labor's Petition to Enforce Administrative Subpoena Duces Tecum*, attached hereto and incorporated herein by reference as Exhibit 3.) As a result of the failure of Respondents to produce the documents requested, the Subpoena was issued and served on Respondents as provided herein. (See Exhibit 3).

IX

Respondents failed to comply with the Subpoena and their failure to produce each of the specified books, records, and documents, as required by the Subpoena, has impeded and continues to impede the Secretary's lawful investigation under the provisions of section 11 of the FLSA. Finally, on September 6, 2023, the undersigned attorney sent a final good faith letter to Respondents seeking Respondents' voluntary compliance and provided a deadline date of September 20, 2023. A copy of the September 6, 2023 letter is attached hereto and incorporated herein by reference as Exhibit 4. To date, the DOL has not received a response to the September 6, 2023 letter.

PRAYER FOR RELIEF

WHEREFORE, the Acting Secretary respectfully requests this Court:

- A. Issue an Order requiring Respondents to fully comply with the DOL's Subpoena *Duces Tecum* within 14 days of the date of the Order or show cause, if any, for their failure to comply with and obey the Acting Secretary's Subpoena *Duces Tecum*;
- B. Issue an Order requiring the U.S. Marshals Service to effect service upon Respondents;¹
- C. Issue an Order tolling the statute of limitations from August 7, 2023, the date Respondents first failed to comply with the Acting Secretary's Subpoena *Duces Tecum*, until such date as the Acting Secretary informs the Court that Respondents have complied in full;
- D. Issue an Order directing Respondents to pay all costs and expenses incurred by the Acting Secretary in this matter; and

¹ In the alternative, the Acting Secretary requests she be ordered to serve Respondents with a copy of the Acting Secretary's initial filings and the Court's Show Cause Order by the following means: (a) By personal service, or if Respondents will not accept service, by affixing the Show Cause Order and Secretary's initial filings to the door of Respondent 19 and 75's place of business and Respondent Sterzinger's residence; (b) By first class mail, uncertified and without return-receipt requested, and; (c) By certified mail, with return-receipt requested.

E. For such other just and further relief as may be necessary and appropriate.

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

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