

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARTIN J. WALSH, Secretary of Labor,
United States Department of Labor,¹

Plaintiff,

v.

KALE STEMS, LLC d/b/a STONEACRE
BRASSERIE; CHIVE BLOSSOM, LLC d/b/a
STONEACRE GARDEN; RADISH PATCH,
LLC d/b/a STONEACRE TAPAS;
CHRISTOPHER BENDER; and DAVID
CROWELL,

Defendants.

Civil Action No. 1:22-cv-00289-
MSM-LDA

CONSENT JUDGMENT AND ORDER

Plaintiff 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, 29 U.S.C. § 201, et seq. (the “FLSA”). Defendants Kale Stems, LLC, d/b/a Stoneacre Brasserie (“Kale Stems”), Chive Blossom, LLC d/b/a Stoneacre Garden (“Chive Blossom”), Radish Patch, LLC, d/b/a Stoneacre Tapas (“Radish Patch”), Christopher Bender, and David Crowell have received a copy of that Complaint, waived service of process, and answered the Complaint in which they admitted certain of the Secretary’s allegations and denied others.

As part of this resolution, Defendants acknowledge the assessment by the Secretary of civil money penalties, have received notice and service of the issuance of the civil money

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Acting Secretary of Labor Julie A. Su is automatically substituted as the proper Plaintiff in this case. For ease of reference, the Secretary and her pertinent predecessors will be referred to herein as the “Secretary.”

penalties, waive exception to those civil money penalties, and have agreed to pay civil money penalties in the amount of \$11,419.80, all under Section 16(e) of the FLSA, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, 579.1, and 580.1–580.18.

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

1. It is, therefore, ORDERED, ADJUDGED, and DECREED that Defendants, their agents, servants, employees, and all persons acting or claiming to act on their behalf and interest be, and hereby are, permanently enjoined and restrained from violating the provisions of the FLSA 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 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 FLSA, wages at rates less than the applicable minimum wage.
 - b. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 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 FLSA, for workweeks longer than forty hours, unless such employees receive compensation for their employment in excess of forty hours at a rate 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 FLSA, 29 U.S.C. § 211(c), and found in Title 29, Part 516 of the Code of Federal Regulations.
- 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 FLSA, 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 or other applicable law or regulation.
- e. Defendants shall not, contrary to Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the FLSA, has

testified or is about to testify in any such proceeding, or has otherwise engaged in protected activity under the FLSA.

2. Further, the Court, finding that the employees are due compensation in the amount of \$283,061.01 in back wages and tips and \$270,519.19 in liquidated damages, as shown on attached Exhibit A1, which is incorporated in and made a part hereof, and that the Secretary is owed \$11,419.80 in civil money penalties, it is ORDERED, ADJUDGED, and DECREED that Defendants are restrained from withholding said back wages, and shall pay, jointly and severally, said back wages, liquidated damages, and civil money penalties, plus applicable interest, in accordance with the terms set forth herein.
 - a. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the FLSA since January 4, 2021. In agreeing to resolve the amount of back wages, withheld tips, and liquidated damages in this case, Plaintiff has relied on this representation and, accordingly, the back wage, withheld tips, and liquidated damages provisions of this Consent Judgment shall have no effect upon any back wages, tips, and liquidated damages which may have accrued since that date.
 - b. The civil money penalties, withheld tips, back wages, and liquidated damages provisions of this Consent Judgment shall be deemed satisfied when Defendants deliver to the Secretary: (1) \$11,419.80 in civil money penalties plus 1% per annum interest compounded annually on any unpaid balance; (2) \$283,061.01 in back wages and tips plus 1% 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, with no deduction for the employees' state withholding tax; and (3) \$270,519.19 in liquidated damages plus 1% per annum interest compounded annually on any unpaid balance, which is not subject to deductions. The Secretary shall file a Satisfaction of the monetary terms of this Consent Judgment with the Court within thirty (30) days after Defendants' compliance with this paragraph.

- c. Defendants, jointly and severally, shall further pay the employers' share of FICA to the appropriate authorities after presentation of the United States Department of Labor's quarterly summary of employee payments made.
- d. Defendants may make the required payments of withheld tips, back wages, liquidated damages, 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. Defendants may also make the required payment of civil money penalties online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734139> or by going to www.pay.gov and searching "WHD CMP Payment - NE Region." Defendants also have the option to provide to the Secretary certified checks, bank checks, or money orders made payable to "Wage and Hour Division—Labor," which shall be mailed to:

U.S. Department of Labor
Wage and Hour Division

Northeast Region
1835 Market Street
19th Floor
Philadelphia, PA 19103-2968
Attention: Linda Estacio

Checks or money orders shall have Case No. 1888073 written on the face of the check or money order. The Secretary shall distribute the withheld tips, back wages, and liquidated damages to the employees listed in the attached Exhibit A in accordance with this Consent Judgment.

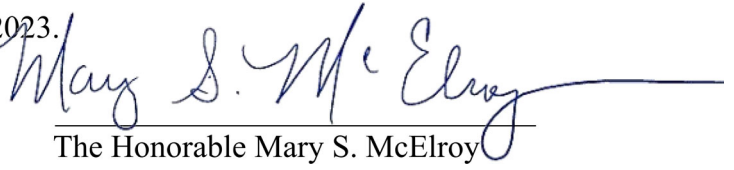
- e. Defendants' payments shall be made on or before the dates set forth on the attached Exhibit B, which is incorporated in and made a part of this Consent Judgment, with the first payment being made on or before December 1, 2023.
 - f. Defendants' payments will first be allocated to the liquidated damages owed plus applicable interest, second to the withheld tips and back wages owed plus applicable interest, and third to the civil money penalties plus applicable interest.
3. In agreeing to the monetary terms of this Consent Judgment, the Secretary has relied on the financial documents and information Defendants have provided to the Secretary, including financial declarations, tax returns, and bank statements. All of the documents and information that Defendants have provided to the Secretary concerning Defendants' finances (including, without limitation, those provided through Defendants' counsel) are collectively referred to herein as "Defendants' Financial Representations." Defendants acknowledge that the Secretary has relied on the accuracy and authenticity of Defendants' Financial Representations in agreeing to the monetary provisions of this Consent Judgment. The Secretary and Defendants

agree that if at any future time there is a judicial determination that Defendants' Financial Representations are materially inaccurate or false, and that Defendants knew or should have known before executing this Consent Judgment that the Defendants' Financial Representations were inaccurate or false, the full amount of any unpaid balance of civil money penalties, withheld tips, back wages, and liquidated damages set forth in paragraph 2(b), plus interest accrued, shall become immediately due to the Secretary. Defendants agree that upon the Secretary's reasonable belief that Defendants' Financial Representations were materially false or inaccurate, the Secretary has the right to seek a determination from this Court as to the inaccuracy or falsity of Defendants' Financial Representations, Defendants' knowledge, and constructive knowledge thereof, and the materiality or the inaccuracy or falsity of those representations. Defendants further agree that the United States District Court for the District of Rhode Island has jurisdiction and that venue is proper in that judicial district for any litigation concerning the provisions of this Paragraph of the Consent Judgment. Defendants further waive any statute of limitations defense that may otherwise bar the Secretary's ability to obtain relief under this Paragraph of the Consent Judgment. For the purposes of this Paragraph of the Consent Judgment, The Secretary and Defendants agree that the inquiry before the Court under this Paragraph of the Consent Judgment shall be limited to whether Defendants' Financial Representations were inaccurate or false, their knowledge and constructive knowledge thereof, and the materiality of the inaccuracy or falsity of the representations. Defendants agree that the provisions of this Paragraph of the Consent Judgment do not limit the ability of the United States, including any of its agencies or

- departments, to seek any other relief, or to seek relief in another court or venue, concerning any inaccuracy or falsity in Defendants' Financial Representations.
4. In the event Defendants fail to make a payment within ten days of a due date set forth on the payment plan in Exhibit B, and are not otherwise up-to-date on the total owed under this Consent Judgment, or in the event of a judicial determination that Defendants' Financial Representations are materially inaccurate or false under Paragraph 3 of 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. No earlier than ten (10) days after providing prior notice to Defendants, the Secretary may seek such a writ in accordance with this Paragraph of the Consent Judgment 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, including any bank account numbers, for purposes of the Secretary seeking a Writ of Execution in accordance with this Paragraph of the Consent Judgment.
5. On or before ten days from the parties' execution of this Consent Judgment, Defendants shall deliver to the U.S. Department of Labor, Wage and Hour Division, 135 High Street, Room 210, Hartford, CT, 06103-1111 Attention: District Director, a statement showing the following: employers' Federal ID number(s), the name of each employee listed in Exhibit A1, and each employee's current address and social security number (only to the extent currently known by Defendants).

6. When recovered tips, wages, and/or liquidated damages 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, Plaintiff shall deposit the tips, wages, and/or liquidated damages into the United States Treasury as miscellaneous receipts pursuant to 29 U.S.C. § 216(c).
7. Defendants shall not, under any circumstances, solicit repayment of any amount paid to any 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 Philadelphia, Pennsylvania address set forth above.
8. It is further ORDERED, ADJUDGED and DECREED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
9. Nothing in this Consent Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint in this case in any future investigation, enforcement action, or legal action.

SO ORDERED, this 28 day of September, 2023.



The Honorable Mary S. McElroy
United States District Judge
District of Rhode Island

FOR ALL DEFENDANTS:

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Dated: Sept. 23, 2023

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Dated: Sept. 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2023, the foregoing Consent Judgment and Order was filed electronically in the CM/ECF system and served on all registered participants as identified on the Notice of Electronic Filing.



Joseph J. Michalakes