

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

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

Plaintiff, :

v. :

OPTIMUS SERVICE GROUP, LLC and JORGE :  
RIVERA BERRIOS, individually and as an officer, :

Defendants. :

Case No. 3:24-cv-1452

**COMPLAINT**

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**INTRODUCTION**

Defendants OPTIMUS SERVICE GROUP, LLC and JORGE RIVERA BERRIOS individually (collectively “Defendants”) operate a security business that willfully misclassifies security guards as independent contractors instead of employees in a bid to flaunt their obligations under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.*) (the “Act” or the “FLSA”). From at least April 8, 2020 to April 7, 2023, and possibly to the present (the “relevant time period”), Defendants repeatedly and willfully violated the FLSA by failing to pay overtime premium pay to hundreds of their employees who worked more than 40 hours per workweek as security guards. Although many security guards regularly worked between 45 to 55 hours per week, and some working 60 or more hours per week, Defendants typically paid the security guards the same hourly rate (typically \$7.25 to \$11.00 per hour) for all the hours they worked.

Plaintiff, JULIE A SU, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary”), brings this action pursuant to the authority granted by sections 16(c) and 17 of the FLSA, alleging that Defendants violated sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act and 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 District of Puerto Rico because a substantial part of the events or omissions giving rise to the claims herein occurred within this District. 28 U.S.C. § 1391(b).

## **FACTUAL ALLEGATIONS**

### **The Parties**

3. Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor, is vested with authority to sue to stop violations of the FLSA, recover back wages and liquidated damages and is the proper plaintiff for this action.

4. Defendant Optimus Service Group, LLC (hereinafter “Optimus”) is a corporation organized under the laws of the Commonwealth of Puerto Rico, having its corporate office at 450 Avenida Constitución, Suite 200, San Juan, Puerto Rico, 00901B, within the jurisdiction of this Court.

5. Defendant Optimus is a private security guard company that provides security guard services to an array of businesses across the Commonwealth, including in residential communities, cannabis dispensaries, and other commercial entities, such as a supermarket, a hostel, and a restaurant.

6. Optimus Service Group, LLC has regulated the employment of all persons employed by it and acted directly and indirectly in the company’s interest in relation to the employees during the relevant time period. Thus, Optimus Service Group, LLC is an “employer” of the employees within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. Defendant Jorge Rivera Berrios (hereinafter “Rivera Berrios”) is the sole owner of Defendant Optimus Service Group, LLC.

8. Defendant Rivera Berrios is the President of Defendant Optimus.

9. Defendant Rivera Berrios manages Defendant Optimus’s budget and makes purchases for Optimus.

10. Defendant Rivera Berrios has authority to hire, fire, and supervise Optimus security guards and did on some occasions hire and supervise Optimus guards.

11. Defendant Rivera Berrios selects the people who supervise Optimus security guards.

12. Important employment decisions, including but not limited to the decision to terminate a guard’s employment, need to be approved by Defendant Jorge Rivera Berrios absent exigent circumstances.

13. Defendant Rivera Berrios sets the rate of pay for Optimus’s security guards.

14. Defendant Rivera Berrios reviews employees’ time records and uploads this information into the payroll software system Optimus uses.

15. In some instances, Defendant Rivera Berrios reviews requests to include hours worked by guards that were not captured by Optimus’s payroll system. If Defendant Rivera Berrios approves the requests, he directs another person to manually enter the time into the payroll system. For example, if a guard forgets to punch in and/or out when they arrive or leave work, the guard can ask Optimus to include these hours worked; ultimately, Defendant Rivera Berrios will decide whether to include the hours worked in Optimus’s payroll and, if approved, take steps to ensure the guard is paid for the actual hours worked.

16. In other instances, Defendant Rivera Berrios directs someone to manually correct errors in the payroll system data.

17. Defendant Rivera Berrios resides in Puerto Rico, within the jurisdiction of this Court.

18. Defendant Rivera Berrios has regulated the employment of all persons he employed and acted directly and indirectly in the interest of Defendant Optimus Service Group, LLC in relation to the employees during the relevant time period.

19. Defendant Rivera Berrios is an “employer” of employees within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d).

**Defendant Optimus Is an Enterprise Engaged in Commerce**

20. During the relevant time period, Optimus has been engaged in providing security guard services to an array of businesses, including residential communities, cannabis dispensaries, and other commercial entities across the Commonwealth.

21. Defendant Optimus has had an annual gross volume of sales made or business done in an amount not less than \$500,000 for the relevant time period covered by this Complaint.

22. During the relevant time period, Defendant Optimus has had hundreds of employees handling and using goods or materials that have been moved in or produced for commerce. These goods include but are not limited to mobile phones, uniforms, security vehicles, and guns.

23. Therefore, the employees are and were 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.

### **Defendants' Business Practices**

24. Defendants secure clients in need of security guard services.

25. Defendants suffer or permit their security guards to work for their clients.

26. Defendants advertise security guard job positions.

27. During the relevant time period, hundreds of security guards have worked for Defendants.

28. Defendants typically post their guards at the entrance of a client establishment. However, the precise set of duties Defendants assign their guards to perform varies by the type of establishment where Defendants posted them.

29. Defendants assign their guards to work at a range of establishments across Puerto Rico, including residential and commercial entities, including numerous cannabis dispensaries.

30. From April 8, 2020 to at least April 7, 2023, Defendants classified a small number of their security guards as employees.

31. From April 8, 2020 to at least April 7, 2023, Defendants classified the majority of their security guards, including but not limited to, those listed on Exhibit A, as "professional services," which is the equivalent of independent contractors (hereinafter "independent contractors").

32. Defendants classified security guards as independent contractors, even though these guards typically performed the same type of work as those guards classified as employees, posted to similar commercial locations, and worked under the same or similar terms and conditions of employment.

33. For example, regardless of whether they are classified as independent contractors or employees, the guards Defendants post to cannabis dispensaries typically are responsible for

registering patients and/or writing down information about the patients at arrival and/or departure in a logbook.

34. In fact, sometimes Defendants initially classify a guard as an independent contractor and later classify the same guard as an employee on payroll.

35. Defendants continue to classify some of their security guards as independent contractors.

*Defendants Misclassify their Guards as Independent Contractors Instead of Employees in a Bid to Avoid Paying them the Required Premium for Overtime Hours Worked*

36. Defendants exercise substantial control over key aspects of the work their security guards perform for Optimus clients.

37. Defendant Optimus require their employees employed as security guards to wear uniforms.

38. Defendant Optimus provides the required uniform as well as IDs to their guards.

39. Defendant Optimus also provides the guards with required equipment and materials to perform the job.

40. Defendant Optimus determines for which Optimus client(s) each guard works.

41. Because the security guards do not select which Optimus client(s) they would work for, they also do not determine the location of their work.

42. Defendant Optimus sets its employees' work schedules and requires them to report their hours worked to Optimus.

43. The security guards cannot negotiate their primary work schedule; their schedule depends on the assignment Defendant Optimus gives them.

44. Defendant Optimus provides rules of conduct that the security guards must follow.

45. For example, the rules of conduct put limitations on guards' use of screens.

46. If a security guard needs to take a day off, they must request approval from an Optimus supervisor.

47. When Optimus assigns a single security guard to a location, that guard is not permitted to leave their post for the duration of the shift, which can be up to 12 or more hours, including to eat lunch. The guards eat lunch at their post.

48. In some instances, security guards are not allowed to leave their posts until the location manager closes the store's front door, which sometimes is after the end of the guards' assigned shifts.

49. Defendants determines how records of its security guards' hours worked would be maintained.

50. Defendants also determines how records regarding the wages they pay to their guards are maintained.

51. Defendants determine how its security guards' wages are paid.

52. Defendants set the rate of pay for security guards.

53. Defendants' security guards cannot negotiate their rate of pay.

54. Defendant Optimus pays the security guards a flat hourly rate for all hours worked, which was typically between \$7.25 and \$11.00.

55. The only way the security guards can increase their earnings with Optimus is to work more hours for Optimus.

56. The security guards do not have an opportunity to earn any profits based on their work for Optimus.

57. The security guards do not make any capital investments that could be lost if Defendants' business failed.

58. Defendants' relationship with the security guards lasts for indefinite periods of time and often lasted years.

59. The security services the security guards provided to Optimus clients are integral to Optimus' business.

60. The security guards are as a matter of economic reality "employees" of Defendants within the meaning of Section 3(e)(1) of the Act, 29 U.S.C. § 203(e)(1).

*Defendants Failed to Pay the Security Guards an Overtime Premium  
For Hours Worked over 40 per Week*

61. Defendants pay their security guards biweekly.

62. Defendants typically pay the security guards listed on Exhibit A, as well as others currently unknown, a flat hourly rate for every hour worked, including for hours worked more than 40 hours per week.

63. The number of hours Defendants' guards worked varied across time and location.

64. Defendants' records show that many of Defendants' security guards work more than 80 hours biweekly.

65. In fact, Defendants' records show that Defendants' security guards often work 90 to 110 hours biweekly and some guards work between 120 to 170 or more hours biweekly, resulting in 5 to 45 or more overtime hours per week.

66. During the relevant time period, Defendants typically paid most guards between \$7.25 and \$11.00 per hour for all hours worked, regardless of the number of hours worked in a single workweek, including for hours worked more than 40 hours per week.

67. As an example, Defendants' pay records for the two-week pay period November 1, 2021 to November 14, 2021 show that one security guard worked 12 days, typically punching in to work around 8:30 a.m. and punching out sometime between approximately 7:00 p.m. and



7:30 p.m. for a total of 129.50 hours worked that pay period. Defendants' records show they paid this guard \$1,165.50 total that pay period, or \$9.00 per hour for all hours worked, including for 49.5 overtime hours.

68. As a second example, Defendants' pay records for the two-week pay period May 2, 2022 to May 15, 2022 show that in that pay period, one guard worked nine twelve-hours shifts, from about 6:00 a.m. to 6:00 p.m., and one twelve and a half hour shift, for a total of 120.5 hours. Defendants' pay records show that they paid this guard \$1,235.13 total that pay period, or \$10.25 per hour for all hours worked, including for 40.5 overtime hours.

69. As a third example, Defendants' pay records for the two-week pay period July 10, 2023 to July 23, 2023 show that one guard typically worked 9.5-hour shifts five days a week, typically punching in to work at around 8:30 a.m. and punching out around 6:00 p.m., for a total of 95.50 hours that pay period. Defendants' pay records show that they paid him \$1,050.50 total that pay period, or \$11.00 per hour for all hours worked, including for 15.5 overtime hours worked that pay period.

70. In a few instances, Defendants' pay records include the notations "Overtime 1.5" or "AddOT0.5".

71. Nevertheless, per those same records, the amount paid does not always reflect payment of an overtime premium for hours worked over 40 each week.

72. For instance, Defendants' pay records for the two-week pay period July 12, 2021 to July 25, 2021 show that one guard worked 88 hours, punching in at around 10:00 p.m. and punching out around 6:00 a.m. on 11 days. Despite the notation "Overtime 1.5" on that guard's pay record, the records do not reflect payment at one and one-half times the employee's regular

rate. Instead, they show that Defendants paid this guard \$704.00 in this pay period, or \$8.00 for all hours worked.

73. As another example, Defendants' records for the two-week pay period May 2, 2022 to May 15, 2022, show that a guard worked 96 hours that pay period. Even though the record includes a line called "Overtime 1.5", the records do not reflect payment at one and one-half times the employee's regular rate. Instead, they show payment of \$984.00 that pay period or \$10.25 for each of the 96 hours worked.

74. Defendants underpaid the security guards listed on Exhibit A each and every week during the relevant time period that they worked in excess of forty hours per week, by paying a flat hourly rate, without any overtime premium, regardless of the number of hours worked in excess of forty hours in a workweek.

75. In all, Defendants failed to compensate at least 254 current and former employees during the relevant time period for work performed in workweeks longer than forty hours at a rate not less than one and one-half times the regular rate at which they were employed, as required by the Act.

76. Defendants continue to underpay at least some of their security guards by paying a flat hourly rate, without any overtime premium, regardless of the number of hours worked in excess of forty hours in a workweek.

### **Defendants' Recordkeeping Practices**

77. Defendants have failed to make, keep, and preserve complete and accurate records of their employees and of the wages, hours, and other conditions of employment as prescribed by

the regulations at 29 C.F.R. Part 516.

78. For example, during the relevant time period Defendants did not keep or maintain complete records of the daily start and stop times for all guards.

79. As another example, where Defendants' records state "Overtime 1.5" or "AddOT0.5" they do not always reflect the payment of an overtime premium, and the records do not always show the number of hours worked.

#### **Defendants Violations of the Act Were Willful**

80. As described herein, Defendants' actions have been willful.

81. Defendants knew that their pay and recordkeeping practices violated the FLSA, including the Act's requirement that employers pay overtime premiums for hours over 40 in a workweek.

82. More specifically, on October 28, 2015, pursuant to the authority vested by section 17 of the Act, then-Secretary of Labor Thomas A. Perez, instituted an action in this Court to restrain Defendant Rivera Berrios and another security-guard company he controlled, Optimus Investigations Corp., from violating sections 7 and 15(a)(2) of the FLSA and seeking payment of unpaid overtime compensation and liquidated damages for approximately 240 security guards. *See* Dkt. No. 3:15-cv-02669 (PAD) (ECF No. 1 (Complaint)).

83. The parties resolved the aforementioned case pursuant to a Consent Judgment executed on October 23, 2015 by Defendant Rivera Berrios, on behalf of himself and Optimus Investigations Corp., and their counsel. *Id.* ECF Nos. 4, 7.

84. More specifically, in the aforementioned Consent Judgment, Defendant Rivera Berrios and then-defendant Optimus Investigations Corp., *inter alia*, admitted that "they misclassified employees employed as security guards as independent contractors, known as

‘professional services’” and that they “employed employees as security guards in excess of 40 hours in a work week without paying overtime premiums as required by the Act,” and agreed to pay \$83,382.74 in unpaid overtime back wages as well as \$83,382.74 in liquidated damages to approximately 240 security guards. *See id.* ECF No. 7 pp. 1, 3.

85. The Consent Judgment Defendant Rivera Berrios signed also included an injunction that “permanently enjoined and restrained” Defendant Rivera Berrios and then-defendant Optimus Investigations Corp. from violating the provisions of sections 7 and 15(a)(2) of the Act...” ECF No. 7 p. 2 and required that Defendant Rivera Berrios and then-defendant Optimus Investigations Corp. “shall pay their security guards and all other employees at time and one-half their regular hourly rates for all hours worked over 40 per week, and shall not, contrary to Section 7 of the Act employ any of their employees in any workweek for workweeks longer than the hours now, or which in the future may become, applicable under Section 7 and 15(a)(2) of the Act, unless the employee receives compensation in compliance with the Act.”

86. Furthermore, during the relevant time period, Defendants correctly classified some of their guards as employees, yet still classified most guards as independent contractors, even those who performed the same duties.

87. Finally, during the relevant time period, in a few instances, Defendants’ pay records include the notations “Overtime 1.5” or “AddOT0.5” but nevertheless do not reflect payment at time and one half.

### **Tolling Agreement**

88. On or about August 16, 2024, Rivera Berrios knowingly and voluntarily signed a Statute of Limitations Tolling Agreement with the Acting Secretary.

89. The Tolling Agreement tolls the applicable statute of limitations beginning on March 31, 2023 until and including September 16, 2024 for a total of 535 days.

90. Accordingly, this Complaint filed on September 24, 2024 shall be deemed to have been filed 535 days prior to the actual filing date or April 8, 2023.

**FIRST CAUSE OF ACTION**  
**(Failure to Pay Overtime in Violation of Sections 7(a) and 15(a)(2) of the FLSA)**

91. The Acting Secretary incorporates by reference and re-alleges all foregoing allegations of this Complaint.

92. As a result of Defendants' practice of willfully misclassifying security guards that performed work for Optimus as independent contractors instead of employees, Defendants do not compensate all security guards 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. Defendants have repeatedly and willfully violated the provisions of Sections 7 and 15(a)(2) of the Act by not paying additional premium of one-half the security guards' regular rate for hours worked in excess of 40 in a workweek.

93. 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.

**SECOND CAUSE OF ACTION**  
**(Failure to Keep Complete and Accurate Records in Violation of Sections 11(c) and 15(a)(5) of the FLSA)**

94. The Acting Secretary incorporates by reference and re-alleges all foregoing allegations of this Complaint.

95. Defendants willfully and repeatedly have violated the provisions of sections 11(c) and 15(a)(5) of the Act in that Defendants failed to make, keep, and preserve complete 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 CFR Part 516; more specifically, Defendants did not maintain complete records of the hours worked, including, for instance, the daily start and stop times for all guards during the relevant time period or the number of hours worked in every overtime week.

**WHEREFORE**, cause having been shown, the Acting Secretary respectfully requests this Court enter judgment against Defendants providing the following relief:

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

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

c. 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 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; and

d. An order awarding Plaintiff the costs of this action; and

e. An order granting such other relief as the Court may deem necessary or appropriate.

DATED: September 24, 2024  
New York, New York

SEEMA NANDA  
Solicitor of Labor

JEFFREY S. ROGOFF  
Regional Solicitor

*s/Allison L. Bowles*  
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