

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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

Plaintiff,

v. :

: **COMPLAINT**

: Civil Action No. 24-cv-894

NATIONAL MAINTENANCE SOLUTIONS LLC and :  
THOMAS W. PELLETTE, individually, :

Defendants. :

-----

**INTRODUCTION**

1. Defendants National Maintenance Solutions LLC and Thomas W. Pellette (“Defendants”) consistently and willfully failed to pay their employees proper wages for all hours worked renovating hotels, including overtime hours, between at least approximately May 13, 2023 and December 23, 2023.

2. In many of these weeks, Defendants failed to pay employees any wages at all.

3. After Defendants had failed to pay their employees for several weeks of work in the Buffalo, New York area, employees complained to Defendants about Defendants not paying them their lawfully earned wages. Workers demanded their pay from Defendants and stated that they were not going to continue working if Defendants did not pay them.

4. Instead of paying his employees their lawfully earned wages, defendant Pellette sought to intimidate employees and even have them removed from the country, in a flagrant act of retaliation.

5. Specifically, on the morning of August 15, 2023, defendant Pellette called U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE”) in

Buffalo, New York and referred the deportation officer to his foreman to provide a list of the employees defendant Pellette sought to remove from the hotel, including identification documents for two employees.

6. ICE used this information to arrest Juan David de Paz-Reyes that same day.

7. Defendants' illegal retaliation was just one of Defendants' schemes to deny their employees proper minimum and overtime wages.

8. Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the "Acting Secretary"), by and through undersigned counsel, brings this action pursuant to the authority granted by sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (the "Act" or the "FLSA"). The Acting Secretary brings this action alleging that Defendants violated sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, to restrain Defendants' egregious and wanton violations of the Act, enjoin acts and practices that violate the provisions of the FLSA, redress Defendants' retaliation against employees, recover back wages and liquidated damages, as well as punitive damages for Defendants' flagrant retaliatory violations, and to obtain other appropriate relief.

### **JURISDICTION AND VENUE**

9. 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.

10. Venue is proper in the United States District Court for the Western District of New York 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).

11. Specifically, the majority of the events giving rise to the claims herein occurred in the Buffalo, New York area.

**FACTUAL ALLEGATIONS**

**The Parties**

12. Plaintiff JULIE A. SU, Acting Secretary of Labor, United States Department of Labor, is vested with authority to sue to restrain violations of the FLSA; recover back wages, liquidated damages, and punitive damages; and is the proper plaintiff for this action.

13. Defendant NATIONAL MAINTENANCE SOLUTIONS LLC (“National Maintenance”) is a Pennsylvania domestic limited liability company, having its principle place of business and/or headquarters at 99 Pearce Avenue, Tonawanda, New York 14150.

14. Between at least May 13, 2023 until at least December 23, 2023, and possibly through the present (the “relevant time period”), defendant National Maintenance provided various demolition, repair, masonry, and/or painting services to multiple hotels in and around Buffalo, New York and one hotel in Erie, Pennsylvania. Services included but were not limited to demolishing exterior walkways, repairing stairs, painting hallways and doors, among other construction work.

15. Defendant National Maintenance regulated the employment of all persons employed by it during the relevant time period, acted directly and indirectly in the company’s interest in relation to the employees, and thus was an employer of the employees within the meaning of section 3(d) of the Act.

16. Defendant THOMAS W. PELLETTE (“Pellette”) is the founder and President of defendant National Maintenance and owned and operated it during the relevant time period.

17. As owner and operator of defendant National Maintenance, defendant Pellette had authority to hire, fire, and supervise employees and did hire, fire, and supervise employees.

18. Defendant Pellette had the authority to set employee hours of work.

19. Upon information and belief, defendant Pellette did set employee hours of work.

20. Defendant Pellette had the authority to set the compensation of employees.

21. Defendant Pellette did set the compensation of employees.

22. Defendant Pellette had the authority to distribute compensation to employees.

23. Defendant Pellette did distribute compensation to employees.

24. Defendant Pellette had the authority to sign contracts to provide services on behalf of defendant National Maintenance.

25. Defendant Pellette did sign contracts to provide services on behalf of defendant National Maintenance.

26. Defendant Pellette managed the day-to-day operations of defendant National Maintenance.

27. Defendant Pellette is a “person” within the meaning of Section 3(a) of the FLSA.

28. Defendant Pellette otherwise acted directly and indirectly in the interest of defendant National Maintenance in relation to the employees during the relevant time period and is thus an employer of the employees within the meaning of Section 3(d) of the Act.

29. Defendant Pellette has a family residence in Springville, New York, within the jurisdiction of this Court.

30. HOTEL SOLUTIONS GROUP (“Hotel Solutions”) was formed in June 2023 by defendant Pellette.

31. Hotel Solutions is a New York domestic limited liability company, having its process address at 78 Elm Street in Springville, New York 14141 and its principle place of business and/or headquarters at 99, Tonawanda, New York 14150, within the jurisdiction of this Court.

32. During the U.S. Department of Labor, Wage and Hour Division (“WHD”) investigation that preceded the filing of this action, defendant Pellette told WHD that eventually he would be closing defendant National Maintenance and start working under Hotel Solutions.

33. Upon information and belief, defendant Pellette ceased ordinary business operation of defendant National Maintenance and commenced operation of Hotel Solutions by early 2024.

**Defendants were an Enterprise Engaged in Commerce**

34. During the relevant time period, defendant National Maintenance was a contractor specializing in commercial property renovations, including but not limited to roofing, drywall, painting, demolition, carpentry.

35. Defendant National Maintenance had an annual gross volume of sales made or business done in an amount not less than \$500,000 during the relevant time period.

36. During the relevant time period, defendant National Maintenance had employees handling and using goods or materials that have been moved in or produced for commerce, such as drywall and other construction and painting materials.

37. Therefore, the employees 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’ Ongoing and Continuous Failure to Pay  
Minimum Wage and Overtime**

38. Defendants’ failed to pay minimum wage and overtime to employees throughout the relevant time period in three significant ways.

39. First, in some weeks during the relevant time period, Defendants paid straight time hourly rates for overtime hours worked.

40. Second, in some weeks during the relevant time period, Defendants failed to pay any wages for any hours worked.

41. Third, in some weeks during the relevant time period, Defendants paid partial wages sporadically and without regard to hours worked.

*Defendants' Buffalo, New York Area Employees*

42. Certain employees began working for Defendants in approximately May 2023 in the Buffalo, New York area.

43. Defendants employed these workers to perform construction work at M Hotel located at 2040 Walden Avenue, Buffalo, New York 14225 and two Red Roof Inns located at 5370 Camp Road, Hamburg, New York 14075 and 42 Flint Road, Amherst, New York 14226.

44. Duties these employees performed included but were not limited to hanging drywall, painting doorways, and sanding and painting stairs.

45. These employees worked approximately six days per week, Monday through Saturday.

46. During the relevant time period through approximately mid-August 2023, they regularly worked on average 50 to 67 hours per week.

47. At or around their time of hire, Defendants or their representatives told at least some of these employees their pay rates were \$15 per hour.

48. At first, from May 2023 until approximately mid-July 2023, Defendants made partial payments to the employees, in cash and/or through Cash App, paying employees straight time hourly rates for all hours worked, including overtime hours worked.

49. During this time, Defendants failed to pay any overtime premium for hours worked in excess of 40 per week.

50. Starting around mid-July 2023 through approximately mid-August 2023, however, Defendants stopped paying these employees any wages for work employees continued to perform, including when employees worked more than 40 hours per week.

51. As a result of not paying their employees any wages for work performed between around mid-July 2023 through approximately mid-August 2023, Defendants failed to pay workers one and one-half times their regular rates of pay for hours worked in excess of 40 per workweek.

*Defendants' Foreman*

52. Defendants' foreman worked alongside these employees in the Buffalo, New York area but typically for fewer hours – approximately 30 to 35 hours per week.

53. Defendants' foreman had a pay rate of \$20 per hour.

54. Defendants likewise only made partial payments to their foreman, in cash and/or through Cash App, but pay was sporadic and not based on hours worked.

55. In addition to working at hotels in the Buffalo, New York area, Defendants' foreman continued to work for Defendants as they began performing renovations at Home 2 Suites at 8035 Oliver Road, Erie, Pennsylvania 16509 in September 2023.

56. Defendants' foreman continued to have a pay rate of \$20 per hour in Erie, Pennsylvania, but Defendants continued to make only partial payments to their foreman not based on hours worked, resulting in Defendants' failure to pay proper minimum wage to their foreman for work performed in Erie, Pennsylvania.

57. In at least one workweek in Erie, Pennsylvania in September 2023, Defendants' paid their foreman only partial wages for work performed in an overtime workweek. Specifically, Defendants paid their foreman \$164.29 for 40.5 hours of work in the workweek, resulting in Defendants' failure to pay proper overtime wages to their foreman in at least one workweek.

58. Defendants' foreman continued working for Defendants at Home 2 Suites in Erie, Pennsylvania until approximately October 13, 2023.

*Defendants' Erie, Pennsylvania Employees*

59. In September 2023, Defendants also hired several new employees to assist with the renovations in Erie, Pennsylvania at Home 2 Suites.

60. Defendants employed these employees from approximately September 9, 2023 through approximately December 23, 2023 at Home 2 Suites in Erie, Pennsylvania.

61. Duties these employees performed included but were not limited to hanging drywall, painting, sanding and laying carpet.

62. These employees had pay rates ranging from \$20 to \$35 per hour.

63. These employees who worked at Home 2 Suites in Erie, Pennsylvania generally worked 40 to 65 hours per week, but Defendants continued their illegal pay practices: they either failed to pay an employee any wages at all for hours worked or sporadically paid only partial wages not based on hours worked

\*\*\*

64. Accordingly, throughout the relevant time period, due to Defendants' failure to pay employees any wages for some weeks of work, payment at times of straight time hourly rates for overtime hours worked, and otherwise sporadic payments to employees without regard to hours worked, Defendants failed to pay their employees proper overtime of one and one-half times employees' regular rates of pay for hours worked in excess of 40 in a workweek, as prescribed by section 7 of the FLSA.

65. Likewise, during the relevant time period, due to Defendants' failure to pay workers any wages for some weeks of work and otherwise sporadic payments to employees without regard



to hours worked, Defendants failed to pay their employees proper minimum wages, as prescribed by section 6 of the FLSA.

**Defendants' Retaliation Against Employees for Complaining  
About Defendants' Failure to Pay Wages**

66. After working for Defendants for several weeks in the Buffalo, New York area without receiving any wages, at least one employee – Juan David de Paz-Reyes – complained to defendant Pellette about not getting paid his rightfully earned wages; in early- to mid-August 2023, Juan David de Paz-Reyes demanded defendant Pellette pay employees.

67. At that time, Juan David de Paz-Reyes told defendant Pellette that if defendant Pellette was not going to pay employees their wages, they were not going to keep working.

68. Rather than paying his workers, defendant Pellette called ICE on the morning of August 15, 2023; spoke with a deportation officer; stated that he hired individuals to help renovate hotels; and stated that the individuals he hired refused to leave the hotel housing provided to the employees.

69. Defendant Pellette referred the deportation officer to his foreman to provide a list of the employees defendant Pellette sought to remove from the hotel.

70. The information defendant Pellette's foreman provided to ICE at defendant Pellette's direction included identification documents for two employees and the room numbers in which at least 11 employees had been staying, specifically identifying which employees were staying in which rooms.

71. ICE used this information to arrest Juan David de Paz-Reyes that same day, August 15, 2023, at the Red Roof Inn at 42 Flint Road, Amherst, New York 14226.

72. Juan David de Paz-Reyes was detained until the beginning of October 2023.

73. Defendant Pellette at first attempted to conceal from WHD that he called ICE to have employees removed from the Red Roof Inn in Amherst, New York.

74. Later, defendant Pellette admitted to WHD that he called ICE.

75. When defendant Pellette admitted to WHD that he called ICE, he stated he called ICE because the employees would not leave the hotel.

76. That is, defendant Pellette called ICE in retaliation for Juan David de Paz-Reyes complaining about Defendants' failure to pay proper wages, in violation of section 15(a)(3) of the FLSA.

#### **Defendants' Ongoing and Continuous Failure to Maintain Accurate Records**

77. During the relevant time period, Defendants did not maintain accurate and complete records of hours worked by employees, including daily and weekly hours worked.

78. Defendants did not record any employee's daily start or stop times or total daily hours worked.

79. Defendants also did not record any weekly overtime hours worked.

80. During the relevant time period, Defendants also did not maintain accurate and complete records of wages paid to employees.

#### **Defendants' Practices Have Been Willful**

81. As described herein, Defendants' failure to pay workers their overtime and minimum wages has been willful.

82. At the start of the investigation by WHD, Defendants attempted to conceal from the U.S. Department of Labor that they had any employees working for them in New York State in 2023.

83. When defendant Pellette did admit to WHD that he had some employees in New York State in 2023, he then lied to WHD by stating that employees had been paid proper wages.

84. Defendants have also known or should have been aware of the pay and recordkeeping requirements of the Act.

85. Indeed, in not paying employees for whole weeks of work during the relevant time period, Defendants knew or showed reckless disregard for the requirements of the FLSA to pay minimum wages and overtime.

**FIRST CAUSE OF ACTION**  
**(Failure to Pay Overtime Wages in Violation of the FLSA)**

86. The Acting Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 85 of the complaint.

87. Defendants willfully have violated the provisions of Sections 7 and 15(a)(2) of the Act by employing employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than forty hours, as prescribed in Section 7 of the Act, without compensating the employees 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.

88. 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 under Section 17 of the Act.

**SECOND CAUSE OF ACTION**  
**(Failure to Pay Minimum Wage in Violation of the FLSA)**

89. The Acting Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 85 of the complaint.

90. Defendants willfully have violated the provisions of Sections 6 and 15(a)(2) of the Act by employing employees in an enterprise engaged in commerce or in the production of goods for commerce at a rate less than the applicable statutory minimum wage prescribed in Section 6 of the Act.

91. Therefore, Defendants are liable for any unpaid minimum wages and an equal amount in liquidated damages under Section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid minimum wages and prejudgment interest under Section 17 of the Act.

**THIRD CAUSE OF ACTION**  
**(Retaliation Against Employees in Violation of the FLSA, 29 U.S.C. § 215(a)(3))**

92. The Acting Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 85 of the complaint.

93. Section 15(a)(3) prohibits retaliation against employees and former employees because they assert their rights under the FLSA. The provision prohibits, among other things, “any person” from “discharg[ing] or in any other manner discriminat[ing] against any employee because such employee has filed any complaint . . . under or related to this chapter [8 of the FLSA].” 29 U.S.C. § 215(a)(3).

94. Defendants violated section 15(a)(3), including by calling ICE.

95. Defendants further instructed their foreman to provide employee identification information to ICE after employees complained about not being paid their wages, with the intent to evade paying wages and have their employees deported.

96. By engaging in the conduct set forth above, Defendants violated section 15(a)(3) of the Act, by retaliating against employees for engaging, or preparing to engage, in activity that is protected by the FLSA, specifically, for complaining to Defendants about Defendants’ failure to pay them proper wages for their work.

97. As a result of Defendants' actions, a reasonable employee would be dissuaded from engaging in activities protected under the Act, such as complaining to the U.S. Department of Labor about pay and/or cooperating with an investigation by the Acting Secretary into violations of the FLSA.

**FOURTH CAUSE OF ACTION**  
**(Failure to Keep and Preserve Accurate Records in Violation of the FLSA)**

98. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 through 85 of the complaint.

99. Defendants willfully have violated the provisions of Sections 11(c) and 15(a)(5) of the Act, in that Defendants failed to make, keep, and preserve adequate 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.

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

(1) An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from violating the provisions of Sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the Act;

(2) An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants, from harming or making any threats of harm to any employee or former employee; from terminating or threatening to terminate any employee, from reporting or threatening to report any employee or former employee to immigration authorities or other law enforcement because of their protected activity; from retaliating or discriminating against any

employee or former employee in any other way, based on their belief that such employees or former employees intend to testify in any proceeding under the Act, have complained about FLSA violations, have spoken or will speak with any personnel from the U.S. Department of Labor, or have engaged in any other protected activity;

(3) An order awarding punitive damages for Defendants' retaliation against Juan David de Paz Reyes in violation of Section 15(a)(3) of the Act;

(4) An order pursuant to Section 16(c) of the Act finding Defendants liable for unpaid minimum wage and overtime compensation found due Defendants' employees listed on the attached Exhibit A, plus 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

(5) 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 the Treasury pursuant to 26 U.S.C. § 6621;

(6) An order awarding plaintiff the costs of this action;

(7) An order granting such other relief as the Court may deem necessary or appropriate.

DATED: September 23, 2024  
New York, New York

SEEMA NANDA  
Solicitor of Labor

JEFFREY S. ROGOFF  
Regional Solicitor

s/ Frances Y. Ma \_\_\_\_\_  
FRANCES Y. MA  
Attorney

U.S. Department of Labor  
Office of the Regional Solicitor  
201 Varick Street, Room 983  
New York, NY 10014  
(646) 264-3694  
(646) 264-3660 (fax)  
ma.frances.y@dol.gov  
NY-SOL-ECF@dol.gov

*Attorneys for plaintiff Acting Secretary  
of Labor*