

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

R. ALEXANDER ACOSTA, )  
SECRETARY OF LABOR, )  
UNITED STATES DEPARTMENT OF LABOR, )  
Plaintiff, )

CIVIL ACTION FILE  
NO. 4:18-cv-65

v. )

OCHOA, INC. dba EL RODEO MEXICAN )  
RESTAURANT, ROJAS, LLC dba EL )  
RODEO MEXICAN RESTAURANT, and )  
GLORIA OCHOA, individually, )  
Defendants. )

JUDGMENT

Plaintiff having filed his complaint, and Defendants having agreed to the entry of this judgment without contest;

It is, therefore, upon motion of counsel for the Plaintiff, and for cause shown:

ORDERED, ADJUDGED, and DECREED that Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this judgment be, and each of them hereby is, permanently enjoined and restrained from violating the provisions of sections 15(a)(2), 15(a)(3), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.), hereinafter called the Act, in any of the following manners:

(a) Defendants shall not, contrary to sections 6 and 15(a)(2) of the Act, fail to pay to their employees employed in their enterprise engaged in commerce wages at rates not less than \$7.25 an hour, or any rate subsequently made applicable by amendment to the Act.

(b) Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any of their employees in their enterprise engaged in commerce for workweeks longer than 40 hours without compensating such employee for his or her employment in excess of 40 hours per workweek at a rate not less than one and one-half times the regular rate at which he or she is employed.

(c) Defendants shall not, contrary to sections 11(c) and 15(a)(5) of the Act, fail to make, keep and preserve adequate and accurate records of their 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 C.F.R. § 516). Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

(d) Defendants shall not, contrary to the provisions of section 15(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 this Act, or has testified or is about to testify in any such proceeding.

(e) Defendants shall not request, solicit, suggest, or coerce, directly or indirectly, an employee to return or to offer to return to the Defendants or to someone else for the Defendants, any money, whether in the form of cash, check, or any other form, previously due or to become due in the future to said employee under the provisions of this judgment or the Act; nor shall Defendants accept, or receive from any employee, either directly or indirectly, any money, whether in the form of cash, check, or any other form, heretofore or hereafter paid to said employee under the provisions of this judgment or the Act; nor shall Defendants discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him from the Defendants under the

provisions of this judgment or the Act; nor shall Defendants or any one acting on their behalf retaliate against any employee recovering back wages under this Judgment by paying said employee at an hourly rate that is less than the regular hourly rate presently paid to such employee or that is presently set or established by Defendants for the job titles or duties such employee is performing or will be assigned to perform. Defendants will not raise an employee's immigration status as a defense to the payment of the back wages in any suit alleging such retaliation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants shall immediately begin complying with all provisions of the FLSA. In order to ensure that Defendants remain in compliance with the FLSA, Defendants agree to the following:

1. Defendants acknowledge that all tipped employees must be paid at least \$2.13 per hour for all hours worked up to 40 hours a week.
2. Defendants acknowledge that the maximum tip credit is the applicable federal minimum wage minus \$2.13 (currently \$5.12), and that Respondents acknowledge where an employee does not receive sufficient tips to make up the difference between the direct (or cash) wage payment (which must be at least \$2.13 per hour) and the applicable federal minimum wage, the employer must make up the difference.
3. Defendants acknowledge that all non-tipped hourly employees must be paid at least the applicable federal minimum wage (currently \$7.25) per hour for all hours worked up to 40 hours a week.
4. Defendants acknowledge that all tipped employees must be paid at least time and one-half the applicable federal minimum wage minus the tip credit utilized for non-overtime hours per hour for all hours worked over 40 hours a week.
5. Defendants acknowledge that all non-tipped hourly employees must be paid at one and one half times the employee's regular rate of pay for all hours worked over 40

hours a week.

6. Defendants acknowledge that they are responsible for ensuring that every one of their employees accurately records all of the hours he or she works on a week-to-week basis.

7. Defendants acknowledge that they will make, keep, and preserve adequate and accurate records of their employees and of their employees' wages and hours worked, the amount of tips received by the tipped employees and any other credits the Defendants are using towards wages.

8. Defendants agree to seek compliance assistance from the Des Moines, Iowa Wage and Hour Office to ensure that they are currently in compliance.

9. Defendants agree to immediately post the Fair Labor Standards Act poster provided the Wage and Hour Division (WHD Publication 1088) with the Des Moines Wage and Hour office contact information in break rooms at all locations owned in whole or in part by any of the Defendants.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

**Defendants agree and acknowledge that a result of claims made by Plaintiff in his lawsuit, Defendants will pay \$833,992.22 to the employees identified in Appendix A in the amounts set forth opposite their names in minimum wage and overtime compensation for the period March 9, 2015 to May 21, 2017. Payment will be made to Wage & Hour by February 1, 2018, on behalf of the employees.**

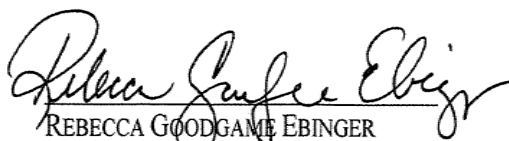
Upon receipt of full payment from Defendants, Plaintiff's counsel shall file with the Court a certificate of payment and representatives of the Plaintiff shall distribute such amounts less appropriate deductions for federal income withholding taxes and the employee's share of the social security (F.I.C.A.) tax to the employees or their legal representative as their interests may appear, in accordance with the provisions of section

16(c) of the Act. Defendants remain responsible for the employers' share of F.I.C.A. arising from or related to the back wages distributed by Plaintiff.

Any sums not distributed within a period of three years from the date of this judgment because of inability to locate the proper person or because of such person's refusal to accept the sum sought to be distributed shall be deposited into the Treasury of the United States.

This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the judgment.

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

  
REBECCA GOODGAME EBINGER  
UNITED STATES DISTRICT JUDGE

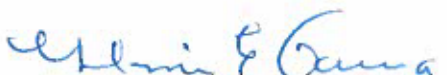
Entry of this judgment  
is hereby consented to:

Signed by United States District Judge  
Rebecca Goodgame Ebinger  
this 13th day of March, 2018.

Ochoa, Inc.

  
Gloria Ochoa, owner

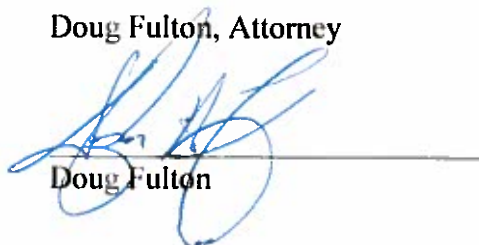
Rojas, LLC

  
Gloria Ochoa, owner

Gloria Ochoa, individually

  
Gloria Ochoa

Doug Fulton, Attorney


  
Doug Fulton

APPROVED:

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**U.S. Department of Labor**

**Attorneys for Plaintiff**