

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND
SOUTHERN DIVISION**

PURNA BAHADUR PUN
15 Stone Park Place
Nottingham, MD 21236

Plaintiff,

v.

LOK TIWARI
9301 Colesville Road
Silver Spring, MD 20901

SHARMA SHANTI
9301 Colesville Road
Silver Spring, MD 20901

GHAR-E-KABAB, LLC
944 Wayne Avenue
Silver Spring, MD 20910

SHANGRILA, LLC
7345-A Wisconsin Avenue
Bethesda, MD 20814

RIGHTWAY ENGINEERING AND MANAGEMENT LLP
9301 Colesville Road
Silver Spring, MD 20901,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff Purna Bahadur Pun brings this action against Defendants Lok Tiwari, Shanti Sharma, Ghar-E-Kabab, LLC, Shangrila, LLC, and Rightway Engineering and Management LLP (collectively, “Defendants”) to recover unpaid wages, overtime wages, and damages under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), the Maryland Wage and Hour Law,

Md. Code Ann., Lab. & Empl. § 3-401 *et seq.* (“MWHL”), the Maryland Wage Payment and Collection Law, Md. Code. Ann., Lab. & Empl. § 3-501 *et seq.* (“MWPCL”), the Montgomery County Code §§ 27-67 *et seq.* (“MCC”), and Maryland common law.

Mr. Pun, by his undersigned counsel, alleges as follows:

STATEMENT OF THE CASE

1. Defendants own and operate a number of businesses in Maryland, including a farm and two restaurants. In October 2013, under promises of compensation at \$2000 per month and help securing legal permanent resident status, Defendant Lok Tiwari lured Plaintiff Purna Bahadur Pun, who had been an experienced agricultural expert in Nepal, from his job in New York to Mr. Tiwari’s farm in Maryland. Exploiting Mr. Pun’s inability to speak English, lack of resources and local support, Mr. Tiwari left Mr. Pun to work and live on the farm by himself. Mr. Pun worked day and night to clear and sow the land, and care for and harvest the crops. Defendants further employed Mr. Pun at two restaurants, one in Silver Spring and one in Bethesda, Maryland, as well as at Defendant Tiwari’s and Defendant Shanti’s residential home in Silver Spring, Maryland. Mr. Pun’s work for Defendants lasted approximately three years, for which Defendants paid him only \$20,000. Defendants did not pay Mr. Pun the applicable minimum wage or overtime wage for the work performed.

PARTIES

2. Plaintiff Purna Bahadur Pun is an adult male currently residing in Maryland. One or more of the Defendants employed Mr. Pun as a farmer, restaurant worker, handyman, and gardener from October 2013 to September 2016.

3. At all times relevant to this action, Mr. Pun was an “employee” within the meaning of the FLSA, the MWHL, the MWPCL, and the MCC.

4. At all times relevant to this action, Mr. Pun was engaged in commerce as required by 29 U.S.C. §§ 206–07.

5. Defendant Rightway Engineering and Management LLP (“Rightway”) is a limited liability partnership organized pursuant to the laws of Maryland with its principal place of business at 9301 Colesville Road, Silver Spring, MD 20901.

6. At all times relevant to this action, Rightway owned the farm at which Mr. Pun worked.

7. At all times relevant to this action, Rightway was an “employer” for purposes of the FLSA, the MWHL, the MWPCCL and the MCC.

8. At all times relevant to this action, Rightway was engaged in commerce within the meaning of Section 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

9. At all times relevant to this action, upon information and belief, Rightway qualified as an “enterprise” within the meaning of Section 3(r) of the FLSA (29 U.S.C. § 203(r)).

10. Defendant Ghar-E-Kabab, LLC (“Ghar-E-Kabab”) is a limited liability corporation organized pursuant to the laws of Maryland with its principal place of business at 944 Wayne Avenue, Silver Spring, MD 20910.

11. At all times relevant to this action, Ghar-E-Kabab was a restaurant.

12. At all times relevant to this action, Ghar-E-Kabab was an “employer” for purposes of the FLSA, the MWHL, the MWPCCL, and the MCC.

13. At all times relevant to this action, Ghar-E-Kabab was engaged in commerce within the meaning of Section 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

14. At all times relevant to this action, upon information and belief, Ghar-E-Kabab qualified as an “enterprise” within the meaning of Section 3(r) of the FLSA (29 U.S.C. § 203(r)).

15. Defendant Shangri-La, LLC (“Shangri-La”) is a limited liability corporation organized pursuant to the laws of Maryland with its principal place of business at 7345-A Wisconsin Avenue Bethesda, MD 20814.

16. At all times relevant to this action, Shangri-La was a restaurant.

17. At all times relevant to this action, Shangri-La was an “employer” for purposes of the FLSA, the MWHL, the MWPCCL, and the MCC.

18. At all times relevant to this action, Shangri-La was engaged in commerce within the meaning of Section 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

19. At all times relevant to this action, upon information and belief, Shangri-La qualified as an “enterprise” within the meaning of Section 3(r) of the FLSA (29 U.S.C. § 203(r)).

20. Defendant Lok Tiwari is a Maryland resident residing at 9301 Colesville Road, Silver Spring, MD 20901. At all times relevant to this action, Mr. Tiwari was the registered agent of Rightway and Ghar-E-Kabab.

21. At all times relevant to this action, Mr. Tiwari was an “employer” for purposes of the FLSA, the MWHL, the MWPCCL, and the MCC.

22. Defendant Sharma Shanti is a Maryland resident residing at 9301 Colesville Road, Silver Spring, MD 20901. At all times relevant to this action, Ms. Shanti was Mr. Tiwari’s wife.

23. At all times relevant to this action, upon information and belief, Ms. Shanti was an “employer” for purposes of the FLSA, the MWHL, the MWPCCL, and the MCC.

24. At all times relevant to this action, Mr. Tiwari and/or Ms. Shanti and/or one or more of the other Defendants directed Mr. Pun’s work on the farm, and at Ghar-E-Kabab and Shangri-La, as well as at Mr. Tiwari and Ms. Shanti’s home in Silver Spring.

25. At all times relevant to this action, Mr. Tiwari and/or one or more of the other Defendants made all decisions relating to the amount and method of Mr. Pun’s compensation.

26. At all times relevant to this action, Mr. Tiwari and/or one or more of the other Defendants were responsible for maintaining all employment records for Mr. Pun.

27. At all times relevant to this action, Defendants were engaged in commerce within the meaning of Section 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

28. At all times relevant to this action, Defendants qualified as an “enterprise” within the meaning of Section 3(r) of the FLSA (29 U.S.C. § 203(r)).

JURISDICTION AND VENUE

29. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 over Mr. Pun's claim arising under the FLSA because that claim arises under federal law.

30. This Court has supplemental jurisdiction over Mr. Pun's state law claims pursuant to 28 U.S.C. § 1367(a) because those claims arise from a common set of operative facts and are so related to the claim in the action within the original jurisdiction of this Court that they form part of the same case or controversy.

31. Venue is proper under 28 U.S.C. § 1391 because all Defendants are residents of Maryland, one or more of the Defendants resides in the Southern Division of the District of Maryland, and a substantial part of the events giving rise to Mr. Pun's claims occurred in the Southern Division of the District of Maryland.

STATEMENT OF FACTS

32. In or around October 2013, Defendant Lok Tiwari approached Plaintiff Purna Bahadur Pun with an offer to set up Mr. Tiwari's farm in Federalsburg, Maryland. Mr. Tiwari promised Mr. Pun compensation at \$2000 per month, plus food and shelter and help securing legal permanent resident status.

33. Mr. Pun, who had been a beekeeper in Nepal, accepted the offer.

34. Because Mr. Pun lived in New York and did not own a car, Mr. Tiwari drove Mr. Pun to the farm from New York.

35. Mr. Tiwari left Mr. Pun to work and live on the farm by himself with no means to leave. At that time, the farm was little more than a field. Because he was alone most of the time, Mr. Pun had to perform nearly all the work by himself. He was responsible for clearing the land, mulching, and planting and harvesting produce for sale. Mr. Pun consistently worked well in excess of 40 hours per week, and he often had to work in the middle of the night to keep animals such as deer, rabbits, and mice away from the crops.

36. Mr. Pun lived in a dilapidated house on the property, which had no running water or electricity to start. Every few months, Mr. Tiwari dropped off a few bags of rice and some

vegetables. Mr. Pun was consistently underfed to the point that, once, upon hearing a gunshot, he ran into the woods hoping to find a dead animal he could eat.

37. Mr. Pun worked on the farm for approximately eight months each calendar year (i.e., all months except the winter months).

38. For this work, Defendants paid him only \$20,000, and Mr. Pun had to spend some of that money on farm expenses, such as seeds and building materials.

39. The sum of \$20,000 is far short of Mr. Pun's contractual salary of \$2000 per month, as well as the applicable federal and state minimum and overtime wages.

40. Additionally, Mr. Pun was forced to spend another \$5000 of his own money to pay for further farm expenditures. Mr. Pun requested reimbursement, but Defendants never paid him back.

41. During the winter months as well as some of the time he worked on the farm, Mr. Pun also worked at Ghar-E-Kabab and Shangri-La, Defendants' restaurants in Silver Spring and Bethesda, where he performed an assortment of tasks, including washing dishes, making repairs, and prepping food.

42. Ms. Shanti primarily directed Mr. Pun's work at the restaurants.

43. Mr. Pun did not receive any pay for this work.

44. Mr. Pun also worked at Mr. Tiwari's and Ms. Shanti's house in Silver Spring, Maryland, performing landscaping, construction, and other repairs. Ms. Shanti primarily directed Mr. Pun's work at the house.

45. Ms. Shanti regularly refused to drive Mr. Pun back to the farm unless he finished all the housework.

46. Mr. Pun did not receive any pay for his work at Defendants' Silver Spring, MD home.

47. Mr. Pun's work for Defendants spanned from October 2013 to September 2016.

48. The wages Defendants withheld from Mr. Pun were not withheld as a result of a bona fide dispute.

49. The FLSA requires Defendants to keep detailed records including, among other things, the compensation of each employee, the rate of pay for each employee, and the total hours worked each workday and each workweek. *See* 29 C.F.R. § 516, *et seq.*

50. The MWHL similarly requires Defendants to maintain detailed records including, among other things, the compensation of each employee, the rate of pay for each employee, and the total hours worked each workday and each workweek. Md. Code Ann., Labor & Empl. Art. § 3-424.

51. At all times relevant to this action, upon information and belief, one or more of the Defendants were responsible for keeping and maintaining all employment records relating to Mr. Pun or cause such records to be kept or maintained.

52. Upon information and belief, one or more of the Defendants have failed to keep accurate time records for Mr. Pun.

CAUSES OF ACTION

COUNT I

(Violation of the Fair Labor Standards Act)

53. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

54. Defendants were employers within the meaning of the FLSA.

55. At all relevant times, Mr. Pun was an employee, within the meaning of the FLSA, of one or more Defendants.

56. Mr. Pun was a “non-exempt” employee of one or more of the Defendants within the meaning of the FLSA.

57. At all relevant times, the FLSA required Defendants to pay Mr. Pun the applicable minimum wage per hour during his employment.

58. Defendants violated the FLSA by knowingly failing to pay Mr. Pun at least at the applicable minimum wage per hour in violation of 29 U.S.C. § 206(a)(1)(C).

59. Section 207(a)(1) of the FLSA provides that “no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one-and-one-half times the regular rate at which he is employed.”

60. Defendants, as Mr. Pun’s employers, were obligated to compensate Mr. Pun at the overtime rate of one-and-one-half his regular hourly rates for all hours worked in excess of 40 per week.

61. While in Defendants’ employ, Mr. Pun regularly and customarily worked overtime hours in excess of 40 hours per week.

62. Defendants, however, failed to compensate Mr. Pun time and one-half his regular hourly rate as required by the FLSA for overtime hours worked each week in excess of 40 hours.

63. Defendants’ violations of the FLSA’s minimum wage and overtime requirements were repeated, willful, and intentional.

64. Defendants are liable to Mr. Pun for all unpaid minimum wages, unpaid overtime wages, plus liquidated damages, interest, attorneys’ fees and costs, and any other and further relief this Court deems appropriate.

COUNT II

(Violation of the Maryland Wage and Hour Law)

65. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

66. Defendants were employers within the meaning of the MWHL.

67. From the start of Mr. Pun’s employment with one or more Defendants until January 1, 2015, the minimum wage required by the MWHL was \$7.25 per hour. From January 1, 2015, until July 1, 2015, the minimum wage required by the MWHL was \$8.00 per hour. From July 1, 2015, until July 1, 2016, the minimum wage required by the MWHL was \$8.25 per hour. From July 1, 2016, until the end of Mr. Pun’s employment, the minimum wage required by the MWHL was \$8.75 per hour.

68. Mr. Pun was not exempt from being paid the Maryland minimum wage or overtime wages at a rate of one-and-one-half times his regular rate of pay for hours worked over forty (40) in a workweek.

69. In violation of the MWHL, Defendants did not pay Mr. Pun the statutorily mandated minimum and overtime wages at a rate of one-and-one-half times his regular rate of pay for his work for Defendants.

70. Defendants' violations of the MWHL's wage requirements were repeated, willful, and intentional.

71. The wages Defendants withheld from Mr. Pun were not withheld as a result of a bona fide dispute.

72. Defendants are liable to Mr. Pun for the wages required under the MWHL, liquidated damages, and reasonable attorneys' fees and costs.

COUNT III

(Violation of Montgomery County Minimum Wage Law)

73. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

74. The MCC requires employers to pay employees in Montgomery County the Montgomery County minimum wage. Montgomery County Code § 27-68.

75. From the start of Mr. Pun's employment with one or more Defendants until October 1, 2014, the minimum wage required by the MCC was \$7.25 per hour. From October 1, 2014, until September 30, 2015, the minimum wage required by the MCC was \$8.40 per hour. From October 1, 2015, until September 30, 2016, the minimum wage required by the MCC was \$9.55 per hour.

76. Defendants failed to pay Mr. Pun the Montgomery County minimum wage for the time periods that he worked in Montgomery County.

COUNT IV

(Violation of the Maryland Wage Payment and Collection Law)

77. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

78. The MWPCCL requires employers promptly to pay employees “all compensation that is due to an employee for employment.” Md. Code, Lab. & Empl. Art. § 3-501(c)(1).

79. Defendants failed to pay Mr. Pun wages due for work that he performed in violation of the MWPCCL.

80. Defendants’ violation of the MWPCCL was not the result of a bona fide dispute.

81. As a result, Defendants are liable to Mr. Pun for three times his unpaid wages, as well as reasonable attorneys’ fees and costs.

COUNT V

(Unjust Enrichment)

82. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

83. Mr. Tiwari and/or one or more of the other Defendants benefited from Mr. Pun’s purchase of farm materials at his personal expense.

84. Mr. Tiwari and/or one or more of the other Defendants knew that Mr. Pun had spent his own money to purchase materials for Mr. Tiwari’s farm.

85. Mr. Tiwari and/or one or more of the other Defendants never reimbursed Mr. Pun for those expenses, despite Mr. Pun’s repeated requests for reimbursement.

86. As a result of Defendants’ conduct, Mr. Pun suffered damages in an amount to be determined at trial.

COUNT VI

(Intentional Infliction of Emotional Distress)

87. Plaintiff realleges and reasserts each and every allegation set forth in the preceding paragraphs as if each were set forth herein.

88. Mr. Tiwari and/or one or more of the other Defendants intentionally or recklessly committed the conduct described above, including leaving Mr. Pun to live and work on a farm with inadequate food and water and no means to leave, then denying him payment that was due.

89. Such conduct is extreme and outrageous. Mr. Tiwari and/or one or more of the other Defendants intentionally or recklessly took advantage of Mr. Pun, who they knew was vulnerable.

90. As a direct and proximate result of Mr. Tiwari's and/or one or more of the other Defendants' conduct, Mr. Pun suffered severe emotional distress, including anguish caused by thirst, starvation, and isolation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Purna Bahadur Pun respectfully requests that this Court:

- a) Enter judgment in favor of Plaintiff and against Defendants on all counts;
- b) Determine the damages sustained by Plaintiff as a result of Defendants' willful and intentional violations of the FLSA, the MWHL, the MWPCCL, and the MCC, and award such back pay and unpaid overtime and minimum wages against Defendants in favor of Plaintiff, plus an additional amount in liquidated damages pursuant to 29 U.S.C. § 216(b), Md. Code Ann., Labor & Empl. § 3-427(a)(1-2), plus such interest as may be allowed by law;
- c) Enter judgment in the amount of three times the amount of wages due, plus reasonable attorneys' fees and costs, as provided by Md. Code Ann., Labor & Empl. Art. § 3-507.2 (a) and (b);
- d) Award Plaintiff his damages under Maryland law in an amount to be proved at trial, as well as prejudgment interest at the applicable rate;
- e) Award Plaintiff compensatory and punitive damages in an amount to be determined at trial;
- f) Award Plaintiff the expenses of this suit, including, without limitation, reasonable attorneys' fees, accountants' fees, investigators' fees, experts' fees, and other associated costs;

- g) Enter an order enjoining Defendants from violating the Maryland Wage and Hour Law and the Maryland Wage Payment and Collection Law; and
- h) Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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