

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
DIVISION OF LABOR**

**LABOR STANDARDS SECTION**

**AGENCY**

**VS.**

**CASE NO.: JW01142020A**

**JAYSON BASS, NANCY BASS, AND NED BASS a.k.a.  
BENTON NED BASS, ALL JOINTLY AND SEVERALLY  
LIABLE, AND BUBBA BREW'S SPORTS PUB & GRILL,  
LLC d/b/a BUBBA BREW'S ON LAKE HAMILTON**

**RESPONDENTS**

**ORDER**

This matter came before the Arkansas Division of Labor on March 23, 2021. The above referenced Respondents appealed the findings of the Labor Standards Section of the Division of Labor of the Department of Labor and Licensing (hereafter referred to as the "Agency") that violations under A.C.A. §11-4-211 occurred regarding the payment of overtime to certain employees for work in excess of 40 hours worked in a work week at the statutorily required pay rate.

The Agency was represented by Marcus Devine, Associate Counsel. The Respondents were represented by Colin C. Heaton, lead attorney, and C. Burt Newell, attorney. The Agency presented five witnesses. Cody Wright, the previous manager of Bubba Brew's Sports Pub & Grill LLC d/b/a Bubba Brew's on Lake Hamilton (hereinafter referred to Bubba Brew's), Dakota Sharp, the previous assistant manager and bartender of Bubba Brew's, Mr. Lindsay Moore, Labor Standards Administrator, and Mr. Nathan Butler, Labor Standards Investigator Manager provided in person testimony, while Mr. John Whittle, Labor Standards Investigator, provided testimony via phone. Bubba Brew's witnesses were Respondents Jayson

Bass a.k.a “Bubba” Bass and Ned Bass. Respondent Mrs. Nancy Bass was not present for the hearing, but she was represented by counsel. Ms. Bass decided to stay home with her child.

### **FINDINGS OF FACT**

Bubba Brew’s is a three level sports bar and grill located on Lake Hamilton in Hot Springs, Arkansas. Ned Bass, Bubba Bass and Nancy Bass are the owners and/or operators and/or agents of this establishment. Previously, the Bass’s owned and operated another business in Tennessee where Cody Wright and Dakota Sharp were employed. That business was sold, and both Cody Wright and Dakota Sharp were offered positions at Bubba Brew’s during the time the business was being built. That was 8 or 9 months prior to the business opening in October, 2017.

Both Mr. Wright and Mr. Sharp moved to Arkansas where they lived in a condominium owned by Ned Bass. Prior to Bubba Brew’s opening, both Mr. Wright and Mr. Sharp worked helping with the construction and getting ready for the business to open. When the business opened, Cody Wright became the Manager and Dakota Sharp became the bartender and Assistant Manager. Neither Mr. Wright nor Mr. Sharp were responsible for the hiring or firing of employees. However, Mr. Wright or Mr. Sharp, in Mr. Wright’s absence, were responsible for the day to day operations of the business including closing out the cash registers, locking up at night, and reporting employee work time to Mrs. Nancy Bass. Mrs. Bass did the payroll. In addition to credit card sales, daily cash amounts of \$4,000 per night were not uncommon. Mr. Wright would close out the Aloha Point of Sales (POS) system after closing each evening. He would obtain the credit card amounts, and he would place the cash in a cash bag which was then locked up. Further, both Cody Wright and Dakota Sharp had the capability to make “clock in” and “clock out” entries, adjustments or edits for all employees, including themselves.

Cody Wright testified that he did make changes, and was advised later at some point that he should not make edits to clock in and clock out times. Bubba Bass also testified that he did tell Mr. Wright not to do any edits, however, he also testified that he did not advise Mr. Wright that making further edits would result in termination. Mr. Wright testified that he would do edits to reflect either when an employee failed to clock in or out, or when he had to clock out at the end of the day to run reports and then would have to clock back in. He further stated that his work time reflected his actual work time and it did not include times where he may have stayed later to drink a free beer that employees could have if they wanted one after work hours or to play pool. He also testified that it would not be unusual for him to work in excess of 40 hours per week in performing his job. Bubba Bass testified that Mr. Wright had stayed late, did not sign off the job and stayed after the establishment closed. His statements were based on his review of camera footage and time worked information. Mr. Wright, however, did not provide camera footage, specific dates or times to support this testimony.

On approximately, July 26, 2019 Cody Wright found out from his roommate and coworker, Sean Threadgill, that Sean had been offered the position of manager at Bubba Brew's. Cody Wright then decided to no longer work at Bubba Brew's, and did not return to his job from that date forward. Since his lease was going to expire at the end of July, he decided to move back to Tennessee, where he obtained unemployment benefits. Mr. Wright also filed a complaint with the Arkansas Division of Labor for overtime hours for which he had never been paid. Cody Wright testified that he normally worked in in the range of 50-55 hours per week.

Further, around the same time as these events were happening, Bubba Brew's had a break in and around \$300.00 in cash was stolen from the cash register(s). Testimony by Ned Bass indicated that he had evidence to indicate that Cody Wright was in on this break in even though Mr. Wright was not filmed inside the building, and that another person (with what appeared to be Mr. Wright's Tennessee Vols key chain) was filmed. When asked about any participation in a

break in at Bubba Brew's, Mr. Wight denied any wrongdoing, and he indicated that he had tried to get in touch with the Hot Springs Detective, but had been unable to get in touch with him. Labor Investigator John Whittle, in Agency Exhibit D, indicated that "There was an on-going criminal investigation with Hot Springs Police Department." No evidence or testimony was provided that any charges had been filed or that any finding of guilt had been made in this matter. Testimony was offered by Investigator Whittle that under Arkansas law, his responsibility was to determine what, if any, overtime money was due to Bubba Brew's employees or ex-employees. The matter relating to the break in was outside the purview of his job duties and responsibilities. He did however, feel that it was something that needed to be noted in his case file because he had talked with Detective Hammond with the Hot Springs Police Department.

As mentioned, Dakota Sharp worked for the Basses at their similar business that was sold in Tennessee. He testified that he started working summers when he was young and that he is a distant cousin. He said that he had been good friends with the Basses and known them since he was 15 years old. Later he was offered a job along with Cody Wright to move to Arkansas to work again with the Basses at a new business they were building. After moving to Arkansas, he initially lived with Cody Wright, in a condominium owned by Ned Bass, but later moved out with his girlfriend to another place. His job entailed being a bartender and acting as an assistant manager. He worked mainly on the second floor. He did what needed to be done. This included liquor purchases, having keys to rooms, handling money, responsibility for the cash drawer, and putting the money in the locked cabinet. He had access to edit or change employee work times. There were only three cash drawers; however, there were 9-11 computer terminals where employees could clock in or out. He testified that occasionally he would change times a few minutes like when a server forgot to clock in or out. When asked whether he participated in

any kickback scheme, he responded that “I don’t steal” and I’d never do that.” Dakota Sharp also testified that if he stayed late to play pool or drink a free beer, he did not claim that as work time. There is further testimony that he felt that the Basses went behind Cody Wright’s back with the hiring of Sean Threadgill who subsequently declined the manager’s job. When he asked Ned Bass to be paid for overtime, he stated that the response received was “we cannot meet your demands.” Dakota Sharp left Bubba Brew’s about 4 to 6 weeks after Cody Wright. When he left, he had another job in Tennessee.

Bubba Bass testified that late in Dakota Sharp’s employment, he noticed “missing” liquor. Additionally, Bubba Bass stated that Mr. Sharp took a bottle of Rock Town Vodka. Dakota Sharp said he brought the bottle back the next day and that he had intended to so. Bubba Bass testified that he did not return the bottle, and that he did not terminate or take disciplinary action against Mr. Sharp for this incident.

Outside of Respondents’ Exhibit A and Agency Exhibits A through F that dealt with the amounts claimed by, or on behalf of employees or former employees, there was very little testimony relating to the other individuals other than whether Mr. Wright or Mr. Sharp knew these persons. Other than Cody Wright and Dakota Sharp, none of the other employees or former employees listed in these exhibits were called as witnesses or appeared or were noted as witnesses.

When Investigator Whittle with the Arkansas Division of Labor was assigned to investigate a complaint received against Bubba Brew’s for failure to pay overtime due, he performed an audit of weekly hours worked and amounts paid to covered employees during the time period of January 1, 2018 through August 29, 2019. Mrs. Nancy Bass, the person responsible for paying and maintaining payroll records, provided Mr. Whittle copies of Bubba Brew’s payroll records for this time period. Using the company’s own records, Investigator Whittle placed the

information into a spreadsheet for each employee (*See* Agency exhibit F). Each individual's spreadsheet contains relevant payroll information that includes each workweek's beginning date, the number of hours worked for that week, the gross amount paid during that week, the hourly salary rate of pay, the amount of straight time earnings, the amount of overtime earnings, and the difference between gross paid and back wages due. Mr. Whittle testified that this information was provided directly from the employer's own records. As a result of this audit, 14 employees or former employees were found to be due overtime back wages.

Agency Exhibit E lists the following back overtime wages owed by Bubba Brew's for these 14 employees or former employees:

Stacy Briggs	\$103.66
Virginia Olson	\$132.32
Cody Wright	\$10,767.51
Dakota Sharp	\$4,760.46
Cody O'Neal	\$544.99
David Young	\$598.53
Zane Wisdom	\$351.10
David Galloway	\$86.13
Hunter Qullci	\$211.17
Sean Threadgill	\$248.05
Robin Butera-Heinz	\$366.19
Ben Root	\$1,034.13
Joseph Star	\$55.83
Joshua Portugal	\$266.06
Total:	\$19,486.13

A letter dated February 11, 2020 from Lindsay M. Moore, Labor Standards Administrator, was then sent to Ned Bass. In this letter, notice was provided that 311 violations of A.C.A. §11-4-211 (Overtime) were found in the Agency's audit of Bubba Brew's and that payment was due on March 1, 2020, unless appealed (*See* Agency Exhibit C). On February 27, 2020, the Agency received an appeal from Ned Bass requesting an administrative law hearing (*See* Agency Exhibit B). Initially, this hearing was scheduled for October 20, 2020. However, due to several requests for rescheduling that were granted by the Administrative Law Judge, this

hearing was finally scheduled and heard on March 23, 2021.

According to testimony by Bubba Bass, the company was previously unaware that any time edits made on the Aloha Point of Service (POS) system could be compiled on a printout. Accordingly, they obtained a copy of an "Edited Punches Report" for the period 09/18/2017 to 11/04/2020. This report, which appears to have been printed on November 5, 2020, lists the employee number, name of the employee, date, time in and time out, type of change and who made the change (*See* Respondent Exhibit A). Bubba Bass testified that this information shows that Cody Wright and Dakota Sharp made numerous edits to their time. He conceded that many of these were only for a few minutes one way or the other. He also contended that a minute or two adds up over time and costs the company money. During the over 3 year period that the Edited Punches Report covered, Bubba Bass performed edits on his own clock in time and clock out times along with edits he made on employees. Nancy Bass is also noted to have made edit changes during that time period on some employees. Some of her edits also changed the employees work time for that day by a few minutes or more. Bubba Bass testified that he was not really familiar with how time worked was reported to Nancy Bass, his wife. She was the one who processed the payroll, and that was her area not his or Ned Bass's area of responsibility. He stated it was Cody Wright's responsibility to report payroll information from the Aloha POS system to Mrs. Nancy Bass.

A cursory review of Respondents Exhibit A readily indicates that for whatever reason(s), many employees on many occasions were failing to clock out. These employees included the aforementioned and also Cody O'Neal and Ben Root who are still employed at Bubba Brew's.

Although Exhibit A does not reflect the date each edit was performed, it would be logical to infer that edits would have to have occurred before the payroll, or reconciliation report for hours worked, would run properly. It is common knowledge that most payroll systems will place an

alert or exception notice on an employee's pay when the system is faced with an inability to compute hours worked because there is not either a starting or ending time entered. Some systems will even stop the entire payroll process until such errors are corrected. Accordingly, this information would need to be placed in the system before reported hours were used for calculating pay.

Bubba Bass testified that making these changes alone was sufficient evidence of wrong doing on the part of Cody Wright and Dakota Sharp and that this should disqualify them from, or negate their hours claimed for overtime. Further, he proffered that both had been told not to do edits, however, Bubba Bass did not terminate, discipline or state that termination would occur if either or both did another edit. It is also noted that Nancy Bass continued to accept payroll information from Cody Wright and Dakota Sharp. Investigator Whittle did testify that it was common for him to find changes or modifications of time clock records in his audits and that there were many reasons(s) that adjustments could be made.

Respondents did not dispute that the 14 employees listed in Agency Exhibit F were paid straight time for hours worked in excess of 40 hours during a work week. For example, Cody Wright claimed to have worked 71.01 hours during the week beginning 7/1/18 and his rate of pay was \$15 hour per hour. Bubba Brew's paid him \$1065.15 for that week. Accordingly, this indicates that Bubba Brew's had constructive or actual knowledge that he was claiming over 40 hours per week because if he was only claiming 40 hours per week, his gross amount paid would have been \$600.00 (40 x \$15.00 = \$600.00).

It should be noted that Respondents did not dispute any of the hourly rates of pay listed in Agency Exhibit F or argue that any of the individuals listed were eligible for an exemption from overtime pay.

Lastly, the Respondents through their Attorney, stated that they were not contesting the Agency's findings in regard to Cody O'Neal (\$544.99 in overtime wages due) and Ben Root



(\$1,034.13 in overtime wages due) who are still employees at Bubba Brew's. They, however, continued to contest the Agency's findings relating to the remaining 12 former employees.

### CONCLUSIONS OF LAW

The Department of Labor and Licensing, Division of Labor, is the agency of Arkansas state government charged with the enforcement of the Arkansas Minimum Wage and Overtime laws, A.C.A. §11-4-201 *et. seq.* Since Bubba Brew's operates in the State of Arkansas and had more than four employees, it falls under the jurisdiction of the Arkansas wage and hour laws and rules. Respondents did not contest the Agency's jurisdiction, nor did they contest that the 14 employees or former employees in question would be eligible for overtime wages under A.C.A. §11-4-211.

When the Agency received a complaint relating to wages at Bubba Brew's, it had an obligation to investigate and determine whether Respondents failed to pay required minimum wage and overtime wages for hours worked by former or current employees of Bubba Brew's.

An investigator with the Agency's Labor Standards Section requested and received payroll records for the appropriate time period of January 1, 2018 through August 29, 2019. These payroll records were provided by the Mrs. Nancy Bass. Based upon the Respondents' own records, the Agency found that although Respondents' paid for hours worked in excess of 40 hours per week, **it only paid these hours at regular, straight time and not at an overtime rate of time and one-half.** The Agency found approximately 311 incidents or violations of A.C.A §11-4-211 relating to non-payment at the appropriate overtime rate during the audited time period on 14 employees or former employees.

Respondents spent most of their case presentation involving Respondents' Exhibit A that

involved edited changes made during the audited period, many of which resulted in very small time adjustments of just a few minutes. It was more apparent from this exhibit that there had been an issue with people not clocking out and adjustments had to be made or the system to properly pay an employee. It is not uncommon for time records to be edited, adjusted, and corrected for numerous reasons. Respondents pointed fault to Cody Wright, the manager, and Dakota Sharp, for making edits when they were told they should not. Respondents, however, did not issue a disciplinary warning or perform a termination when these edits continued after these employees continued to do edits. Respondents mentioned that they had video of both Mr. Wright and Mr. Sharp playing pool when they should have been clocked out. However, no evidence was provided of specific times and dates and other collaborating evidence to support these allegations. Mr. Wright and Mr. Sharp reported that they did play pool and stay to drink their one free beer, however, these times were after their clock out times. This issue falls upon the employer to correct through means like disciplinary actions including termination, closer monitoring, tighter security access, or implementing a check and balance sign off system. Further, Respondents also offered testimony of an allegation against Mr. Sharp of "missing liquor." Once again, these are the types of issues that fall upon an employer responsibility to investigate and take appropriate action(s). Other allegations and testimony by Respondents were offered to cast doubt upon Mr. Wright's credibility as it related to a break in that occurred at Bubba Brew's. Respondents did not present evidence that Mr. Wright had been charged or convicted relating to this incident.

Respondents also testified that they did not know that employees were working overtime. However, the Respondents continued to pay the 14 affected employees during the audited period for hours in excess of 40 hours per week at regular time instead of at an overtime rate of pay. It is readily apparent from the employee's gross pay that employees were

being paid more than 40 hours per week by simply noticing the employees hourly pay and the gross pay. It is the responsibility of the Respondents to ensure that employees are being properly paid under the law.

The Agency presented a prima facie case and met its burden of proof that Respondents failed to pay 14 employees for hours worked in excess of 40 hours per week at the required overtime rate based upon the Respondents' own records. Although Respondents did pay those 14 employees at the hourly rate of pay for all hours worked, it failed to pay these employees an additional half -time rate to meet the overtime pay rate requirement.

It is noted that Respondents acknowledged that there may have been some personnel issues; however, they also acknowledged that they did not to take further action to resolve, monitor, or modify the situation including seeking other checks and balances to their current system or procedures.

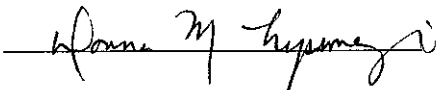
All witnesses that testified appeared to be credible. Like most testimony there were some discrepancies noted between the Respondents' testimony and the former employees' testimony, however, these discrepancies did not negate or cause the written exhibit information ,including the findings of the Agency, to be modified or disregarded.

Based upon the testimony and written exhibits submitted, the Administrative Law Judge concludes that the Respondents' have failed to pay appropriate overtime wages during the period of 1/1/18 to 8/29/19 to the following fourteen employees in the amounts as follows: Stacy Briggs (\$103.66); Virginia Olson (\$132.32); Cody Wright (\$10,767.51); Dakota Sharp (\$4,760.46); Cody O'Neal (\$544.99); David Young (\$598.530; Zane Wisdom (\$351.10); David Galloway (\$86.13); Hunter Qullci (\$211.17); Sean Threadgill (\$248.05); Robin Butera-Heinz (\$366.19); Ben Root (\$1,034.13); Joseph Star \$55.83); and Joshua Portugal (\$266.06). It should be specifically noted that edits were also performed on Cody O'Neal or Ben Root during this time by Cody Wright. The Respondents, however, accepted these edits and agreed that Cody

O'Neal and Ben Root were due additional overtime wages.

**THEREFORE, IT IS CONSIDERED AND ORDERED** that Respondents Jayson Bass, Nancy Bass, Ned Bass, a.k.a. Benton Ned Bass, are all held jointly and severally liable, and Bubba Brew's Sports Pub Grill LLC d/b/a Bubba Brew's on Lake Hamilton shall be **liable for a total sum of \$19,486.13**. This amount should be submitted to the Division of Labor of the Department of Labor and Licensing.

Ralph T. Hudson  
Director, Arkansas Division of Labor  
Arkansas Department of Labor and Licensing

BY:   
Donna M. Lipsmeyer, Administrative Law Judge  
Arkansas Division of Labor  
Arkansas Department of Labor and Licensing

DATE: March 25, 2021

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
DIVISION OF LABOR**

**LABOR STANDARDS SECTION**

**AGENCY**

**VS.**

**CASE NO. SM05212020A**

**EDWARD WHITFIELD INDIVIDUALLY AND D/B/A  
PROMISE LAND CHURCH, INC.**

**RESPONDENT**

**ORDER**

This matter came before the Arkansas Division of Labor on March 30, 2021. The above referenced Respondent appealed the findings of the Labor Standards Section of the Division of Labor of the Department of Labor and Licensing (hereafter referred to as the “Agency”) that violations under A.C.A. §11-4-210, A.C.A. §11-4-217 and A.C.A. §11-4-401 occurred regarding the payment of wages to certain employees.

The Agency was represented by Marcus Devine, Associate Counsel. The Respondent was represented by Shelia Campbell, attorney. The Agency presented the following four witnesses: Mr. Lindsay Moore, Labor Standards Administrator, Mr. Nathan Butler, Labor Standards Investigator Supervisor, Ms. Samantha Martinez, Labor Standards Investigator, and Ms. Regilia Elianzo, a former employee of Promise Land Church, Inc. Mr. Whitfield testified on his own behalf and Ms. Stephanie Thomas was called on behalf of the Respondent. Further, via zoom, Mr. David Utter served as translator for Ms. Elianzo.

## **FINDINGS OF FACT**

Promise Land Church, Inc. is not a “traditional” church. It is a “non-profit” corporation in good standing with the Arkansas Secretary of State. Mr. Edward Lee Whitfield is the owner and operator of this company. The Agency mentioned that although Promise Land Church, Inc. was a non-profit corporation with a connection to a “church,” jurisdiction would still fall under the Arkansas wage and overtime laws and rules. Respondent did not raise any jurisdictional objection nor raise any objection that any of its former or current employees were exempt from the Arkansas wage and overtime laws.

Promise Land Church, Inc. receives grant monies administered through the Arkansas Department of Human Services from the USDA Food Program. It employs individuals who assemble ready to go meals, then they travel to locations in a company van to distribute the meals to low income or needy children in various locations in the Springdale, Arkansas area. The delivery locations mainly include schools during the week and for special events that may be held on weekends. Many of its employees are Marshallese and do not speak English, or may only speak broken English. Notwithstanding, a translator is often necessary for clear comprehension or communication.

On August 15, 2019, the Agency received several complaints that their employer, Promise Land Church, Inc., failed to pay its employees, and when the employees were paid, it was on a monthly basis. Ms. Samantha Martinez was assigned to investigate these complaints. By August 26, 2019, the Agency had received 17 wage and hour claims filed against the Respondent. Normal Agency procedure entails that a single wage claim is processed without a wage and hour audit; however, in this case, with the large number of claims from the same employer, the Agency determined an audit would be appropriate. In Ms. Martinez’s preliminary

investigation, she spoke with Mr. Whitfield. On September 18, 2019, Mr. Whitfield stated to Ms. Martinez that he had paid these individuals, and if any employee or former employee ever came to him regarding non-receipt of their paycheck, they would have been advised that he would re-issue a check to them at a charge of \$50 to \$150. This would be what it would cost to cancel the old check and re-issue a new check. At the hearing, Respondent stated that a stop payment to cancel an issued checks would cost around \$35.00.

Mr. Whitfield stated that he believed that once he mailed a person's check, he had no further responsibility in ensuring that the person either received or did not receive the check. He did not send checks by certified mail nor had he received any returned mail in this regard. He stated that his outstanding check register would verify that the check was cut and that it was mailed. Promise Land Church, Inc. utilizes a company named "isolved" in Missouri, as its "check ledger processing system" where checks are requested and processed, including Respondent's payroll checks. These checks are then mailed to Mr. Whitfield for mailing or distribution.

On October 8, 2019, Respondent was notified that a wage and hour audit would be conducted for the period of March 1, 2018 to September 30, 2019. Accordingly, Respondent was notified that all employee records for that period of time were to be made available to the Agency. A request was also made by the Agency for cancelled or cashed payroll checks for that time period.

On November 8, 2019, the Agency received copies of the bank statements from the Respondent for the period of March 2018 to September 2019. While reviewing this information, Ms. Martinez noted that employees were paid once a month (or on a bi-weekly rotation). Respondent confirmed that employees had been paid on a monthly basis. Mr. Whitfield testified during the hearing that he was reimbursed on a monthly basis from the USDA, and that Mr. Curtis Curry, his Consultant and a former employee of the Department of Human Services in

this program, had not mentioned to him a state requirement that employees be paid on a semi-monthly basis. Upon notification by the Agency of this statutory requirement, Mr. Whitfield changed his payroll procedure to be in compliance with state law. [See Agency Exhibit F] The Agency did not challenge Mr. Whitfield's testimony in this regard. Additionally, the Agency did not set out any allegations or testimony that Respondent's failure to pay at least semi-monthly was willful.

On February 11, 2020, Investigator Martinez notified Respondent, that she had not received complete employee records and she requested 4 lists of additional payroll/employee record information that was not provided, that was incomplete, or that needed further clarification. To complete her audit she needed this information. It is further specifically noted in Ms. Martinez's audit narrative that some employees received checks; however no hours were provided to compare the information to the amounts paid. Further, she noted that sometimes she received copies of checks cashed and records of hours worked, however no social security numbers were provided.

Under the comment section of Agency Exhibit E, Investigator Martinez noted on February 11, 2020, that Mr. Curry contacted her and stated that he could not understand why she was asking for additional information since he had provided all the information he had. Mr. Whitfield testified that Mr. Curry was responsible for doing some of the personnel duties like completing I-9's, entering new employee information into the system, making sure a hire had a driver's license, and time-clock data.

During Ms. Martinez's investigation, she noted that during her interviews with claimants Ms. Etin Andrew, Mr. Lucky Andrew and Mr. Ajobi Clanry, allegations were made that Respondent hired a minor, Abraham Lain (who was around the age of 15 or 16 at that time),



that employees were shorted hours worked, that employees were not able to log in hours worked, and “that a timekeeper would log the hours worked in at the end of the month.” Ms. Martinez testified that many of the log in and log out times were consistent with postings done at a later date. For example, the hourly time records would contain specific log in and log out times with no time variance (9:00:00 clock in and 12:00:00 clock out times were consistently perfect and exact on the hour).

Ms. Martinez further found time records that Mr. Lain had worked, however no minor work permit, date of birth or verification that Mr. Laine had been paid for that work time was found in Respondent’s payroll records. Respondent testified that there is a time clock that employees use to punch in and punch out. During the hearing, a Ms. Sueta Gideon,” the Office Secretary at that time, was referenced several times during the hearing. Mr. Whitfield could not recall the exact spelling of her name. She was used as a translator between the Marshallese employees and Mr. Whitfield, and Ms. Gideon would have been privy to personnel issues including time clocking in out. It should be noted that Ms. Sueta Gideon no longer works at Promise Land Church, Inc. She was not called as a witness by either party. Her testimony may have shed more light on the time clock issue. Ms. Regilia Elianzo’s testimony also included her conversation with Ms. Gideon. Ms. Elianzo recalled that she went to the office and asked Ms. Gideon about her paycheck. She testified that Ms. Gideon said that the check would be mailed. When Ms. Elianzo asked about picking up her check like her son did, she was told it would be mailed.

Testimony was also offered by Ms. Stephanie Thomas, a retired 39 year finance employee with the City of North Little Rock, Arkansas. Ms. Thomas has a major in accounting from the University of Arkansas at Little Rock and worked in payroll processing for over 1,000 employees. Ms. Thomas produced Respondent’s Exhibit 1. Ms. Thomas testified

that at the City of North Little Rock, there were times that payroll checks sent to employees would not be cashed. Some employees just kept them for whatever reason. City of North Little Rock payroll checks did not contain expiration or voided by dates. However, Respondent testified that Promise Land Church, Inc. payroll checks did contain a cash by date that probably was around 60 to 90 days. It was noted that banks or other establishments should decline cashing these checks after that date. Accordingly, it is clear that any payroll checks issued by Respondent for employees during the Agency's audit would now be voided and expired, and in effect, "un-cashable."

The Agency found that Promise Land Church, Inc. violated the Arkansas minimum wage laws and regulations. Initially, the Agency found 51 employees or former employees were due wages of \$13,667.14 in minimum wage back wages. It further found 106 violations under A.C.A. §11-4-210 (Minimum Wage); 73 violations of A.C.A. §11-4-217 (Recordkeeping) and 83 violations under A.C.A. §11-4-401 (Semi-Monthly Payment). Subsequently, Respondent provided proof that 4 of the outstanding payroll checks (encompassing 6 violations of the fail to pay minimum wage ) cited by the Agency in its audit report were subsequently cashed since the Agency's final audit report. (Specifically, check #11679 dated 5/10/19 for Tyonte Redden in the amount of \$298.22; check #11803 dated 9/13/19 for Ms. Whiterose Nathan in the amount of \$92.50 gross; and checks #11810 dated 9/20/19 and #11811 dated 9/27/19 for Dannyia Bajo in the amount of \$100.82 gross and \$575.35 gross.).

This reduces the Agency's findings from 106 minimum wage violations to 100 violations under A.C.A. §11-4-210. Accordingly, the Agency reduced the number of individuals owed back wages from 51 to 48 individuals and the total amount of wages reduced from \$13,667.14 to now \$12,600.25. Attached to this Order by reference, and by incorporation, is the Agency

Response to Respondent's Cumulative Exhibit 54. This Agency response contains a spreadsheet detailing each of the remaining 48 individuals who are still due back wages and the amount each individual is owed. (This amount acknowledges that checks covering these wages had been written and cancelled or voided).

The Agency provided exhibits and testimony that since the Respondent could not prove that the 48 employees or former employees during the audited period had cashed payroll checks for work performed, or in the alternative, that the Respondent had other evidence like a receipt to show these individuals actually received the money due them, Respondent failed to pay minimum wages to those 48 employees, and therefore, multiple violations occurred under A.C.A. §11-4-210 (each check issued constituted a violation). There is no allegation that the pay for each of these employees that Respondent reported to have mailed was incorrect, that there was any intent of Respondent not paying these employees in the correct amount, or that the Respondent **willfully** did not pay these individuals in accordance with state law and regulations. The Agency only contends that it cannot verify that checks were mailed and that these individuals are actually owed wages for work performed. Respondent's Exhibits 1-53 provides unauthenticated check history information for each of the original 51 (and now 48) individuals found by the Agency to still be owed back wages. As mentioned, Mr. Whitfield previously testified that once he received checks from "isolated," he would place the checks in envelopes and in the mail. Accordingly, no second party could verify that the checks had actually been mailed. As mentioned previously, Respondent stated that he had not received any of the mailed checks returned by the Postal Service. He stated that there are issues with the US Postal Service in that area of the Arkansas. He also stated that he had difficulty obtaining accurate addresses from employees. The Agency proffered that even if the checks had been mailed by Mr.

Whitfield, a “the check is in the mail ” defense was not adequate to overcome the fact that these individuals actually did not receive or were not paid wages/money due.

Mr. Whitfield testified that he did not contact the Agency to find out what an employer should do when payroll checks were not cashed. During the hearing, the Agency did mention to Respondent, that employers have a process now under state law whereby the employer contacts the Arkansas Secretary of State when they have unclaimed property like uncashed payroll checks.

In regard to recordkeeping violations, Agency exhibits and testimony support that Respondent failed to keep and maintain payroll records under the Administrative Rules Regarding the Arkansas Minimum Wage Act effective July 2, 2020 as contained in Agency Exhibit I. Specifically, Rule 010.14.102 Records To Be Kept By Employer, required, among other items, that the following accurate payroll information be maintained and preserved **for each employee**:

- A.1.a. Names in full, as used for Social Security recordkeeping purposes, and on the same record, any identifying symbol or number used in place of name on any time, work or payroll records;
- A.1.b. Home address, including zip code;
- A.1.c. Date of birth, if under 19;
- A.1.d. Sex and occupation;
- A.1.e. Time of day and day of week on which the employee’s workweek begins. A single notation will suffice if the entire workforce in an establishment have the same and workday beginning;
- A.1.f. Hours worked each workday and total hours worked each workweek.
  - A.1.1. Wages paid each pay period; and
  - A.1.1. Date of payment and the pay period covered by payment.

A cursory review of the Agency’s Spreadsheet in response to Respondent’s Exhibit 54 and Agency Exhibit E indicates that at least four violations are reflected on no home addresses provided from Respondent’s records on four employees who are owed back wages. Testimony from the Investigator Martinez, indicated that she encountered some challenges in securing the required information/records from Respondent. [See also Agency Exhibit E] The

Agency did not make any allegations or provide evidence that Respondent intentionally or willfully failed to maintain accurate and complete records. However, the Agency did find violations under A.C.A. §11-4-217 and Agency Rule 010.14.102 Records To Be Kept By Employer.

In addition to \$12,600.25 in minimum wage back wages owed to 48 former or current employees of Promise Land Church, Inc. the Agency is also asking that Respondent be assessed civil penalties of \$12,775.00 [\$4,475.00 based on Respondent's failure to pay minimum wage and recordkeeping under violations under A.C.A. §11-4-210 and §11-4-217 and \$8,300.00 for failure to pay semi-monthly under A.C.A. §11-4-401]. In total, the Agency is asking that the Respondent pay a total of \$25,375.25 in back wages owed and civil penalties.

### **CONCLUSIONS OF LAW**

The Department of Labor and Licensing, Division of Labor, is the agency of Arkansas state government charged with the enforcement of the Arkansas Minimum Wage and Overtime laws, A.C.A. §11-4-201 *et. seq.* Since Promise Land Church, Inc. operates in the State of Arkansas and had more than four employees, it falls under the jurisdiction of the Arkansas wage and hour laws and rules.

Respondent did not challenge the Agency's jurisdiction, nor did Respondent contest that it could not prove that the 48 employees or former employees contained in the Agency's Response to Respondent's Exhibit 54 were not due minimum wage back wages in the amounts as listed for each individual, and for a cumulative total amount of \$12,600.25 in minimum pay back wages for all 48 employees. The Respondent could only testify that checks were sent and that either the

Post Office did not return this mail to sender, or these individuals received their checks and for whatever reason chose not to cash the checks. Beyond this explanation, Mr. Whitfield could not produce actual receipt of cashed payroll checks or receipts of other documentation that these individuals had actually received some form of currency for their work performed. The question relating to these checks is moot as any such payroll checks are now outdated, and since they have not been cashed by these individuals, are un-cashable. Based upon the testimony and written exhibits, it is clear that 48 individuals are still owed minimum wage back wages that were earned during the period of March 1, 2018 to September 30, 2019. **Accordingly, Respondent is in violation for failing to pay minimum wages of \$12,600.25 in the form of back wages in accordance with A.C.A. §11-4-210.**

The Agency also requested that Respondent be assessed a civil penalty of \$4,475.00 for failing to pay minimum wage on 100 separate occasions/violations under the A.C.A. §11-4-210 in combination with 73 recordkeeping violations under A.C.A. §11-4-217. Lastly, the Agency requested that the Respondent be assessed a civil penalty of \$8,300.00 for 83 violations under A.C.A. §11-4-401 that requires employers to pay employees at least semi-monthly. The total amount of civil penalties requested against Respondent is \$12,775.00 (or \$4,475.00 + \$8,300.00)

A.C.A §11-4-217 and Rule 010.14-102 of the Administrative Rules Regarding the Arkansas Minimum Wage Act of the Labor Standards Section, Division of Labor Arkansas Department of Labor and Licensing set out what specific records shall be maintained by the employer and record retention timeframes. It further provides that records should be true and accurate. The Agency found 73 recordkeeping violations. It did not provide a detailed listing of each of the 73 recordkeeping violations. Further, neither A.C.A. §11-4-217 nor Rule 010.14-102 authorize

civil penalties for recordkeeping. Therefore, the general provisions for civil penalties under A.C.A. §11-4-206 were reviewed for applicability. Under A.C.A. §11-4-206, an employer who

**willfully**

... fails to make, keep and preserve any records as required under the provision of this subchapter this chapter ... or otherwise willfully violates any provision of this subchapter or of any regulation issued under this subchapter shall be deemed in violation of this subchapter and shall be subject to a civil penalty of not fewer than \$50.0 and not more than \$1,000 dollars for each violation.

No allegation or evidence was presented by the Agency that Respondent willfully violated the recordkeeping provisions under A.C.A. §11-4-217 and Rule 010.14-102. Accordingly, the Agency's request for **civil penalties for any Respondent's recordkeeping violations is denied.**

Rolled into the Agency's request of \$4,475.00 civil penalties for recording violations was some unknown amount to be included for the Respondent's failure to pay minimum wage under A.C.A. §11-4-210. There is a provision under A.C.A. §11-4-218 (a)(1)(A) whereby an "employer who pays less than minimum wages to which the employee is entitled under or by virtue of this subchapter shall pay any applicable civil penalties." The employer just needs to violate the failure to pay minimum wage and no willfulness on the part of the employer is required. In determining the amount of penalty, consideration of the appropriateness of the penalty to the size of the business and the gravity of the violation(s) should be taken into account.

Mr. Whitfield testified that he thought he met what was required by law. He sent paychecks out to these employees. The fact that at least 3 employees or former employees cashed their payroll checks since the Agency's audit does lend creditability that Mr. Whitfield may have mailed out the payroll checks in question as listed in the check register. The Agency contented

that the issue was not solely that Mr. Whitfield might have mailed out the checks, but also that the employer failed to pay minimum wages by having **no evidence** that the 48 employees or former **employees actually received in hand the paycheck** as evidence by a cashed check, signed receipt or direct deposit notice. The Respondent testimony appears credible relating to the mailout of payroll checks.

It should be noted that the Agency's request for the \$4,475.00 in civil penalties covers both where the law allows civil penalties to be granted (in the case of failure to pay minimum wages) and where the law would not allow civil penalties (recordkeeping violations which required willfulness on the part of the Employer). Which part of the Agency's request is allowable and which is not is unknown. Accordingly, based upon the circumstances of this case, the Agency's request for **\$4,475.00 in civil penalties is denied**.

Lastly, not knowing that there was a law requiring employers to pay employees at least semi-monthly, the Respondent stated that he had paid monthly; however, after notification by the Agency, he changed his payroll to be in compliance with the state law. There was no evidence presented by the Agency that Mr. Whitfield failed to comply after the Agency advised him of this violation or that Mr. Whitfield willfully violated this particular provision of the law during the time he was paying employees monthly. A.C.A. §11-4-401 provides that any corporation violating subsections (a) and (c) on a monthly basis, shall be deemed guilty of a misdemeanor and **on conviction** shall be fined in any sum not less than fifty dollars (\$50.00) nor more than \$500.00 for each offense. No evidence was provided by the Agency that Respondent has such a **conviction**. Accordingly, the elements to grant civil penalties under A.C.A. §11-4-401 for violations of not paying on a semi-monthly basis are not met by the Agency. Next, the general penalties provision under A.C.A. §11-4-206 (a)(1) through (i) were reviewed for



applicability. A.C.A. §11-4-206(a)(1) through (i) provide civil penalties that may be imposed, however, it must be found that the employer **willfully** violated any provision of this subchapter or any regulation issued under this subchapter. Then, the employer may be subject to a civil penalty of not less than \$50.00 and not more than \$1,000 for each violation. Again, no allegation or proof was made that Respondent's failure to pay semi-monthly was willful. In fact, the Respondent immediately complied as soon as the Agency pointed out the semi-monthly requirement as mandated by law. The Agency once again failed simply to meet its burden under A.C.A. §11-4-206(a)(1) through (i) to show that civil penalties were warranted. The Agency's request that **\$8,300.00 in civil penalties be assessed against the Respondent is denied.**

Mr. Whitfield is now on notice that there are Arkansas statutory and regulatory wage and overtime requirements that he must follow and further violations may be considered willful. Respondent has elected to outsource his payroll check system and many of the company's personnel and payroll functions. This does not negate an employer's responsibilities for statutory and regulatory requirements. It is readily apparent that Respondent's record keeping was not easily accessible, complete or logically linked and organized. It would be advisable that Respondent review his record keeping system and payroll payment system to ensure that **complete** records are logically and easily accessible. Even simple changes like updating and verifying employee information like mailing addresses more often or even paying employees more frequently could help resolve some of the issues the Respondent has encountered.

Mr. Whitmore may even consider having the employees pick up checks and only mail those that are not picked up after an employee leaves employment or is out on extended leave.

Respondent should also realize that there are expenses associated with having employees. It is a normal part of doing business when employees do not receive their checks. Procedures could

be written in languages of your employees that address how to notify the Respondent regarding the process of having a check re-issued. The cost of cancelling and re-issuing a payroll check is part of doing business. Charging an employee for the cancelling and re-issuance of a lost or stolen check is not reasonable, especially given that through no fault of the employee, he/ or she did not receive his/her paycheck. This penalty to the employee, especially very low wage earners, could even negate the employee's wages earned. There are many free or nominal training courses for new companies that cover personnel and payroll processes and issues. Respondent may wish to take advantage of such training by contacting places like the Small Business Administration, the local Chamber of Commerce, or the Labor Standards Section of the Division of Labor of the Arkansas Department of Labor and Licensing for information relating to recommended training that may be available. An employer who is a small business, does not mean that it should not be a "good" employer or that the rules and regulations that large business must meet are somehow not required for small business.

**THEREFORE, IT IS CONSIDERED AND ORDERED** that Respondent Edward Whitfield individually and d/b/a Promise Land Church, Inc. is **found liable for a total sum of \$12,600.25 for minimum wage back wages**. The Respondent is ordered to provide this amount in one check made payable to the Arkansas Department of Labor and Licensing. Once this check is received and clears the state's bank, the Arkansas Department of Labor and Licensing will begin distributing the back wages owed to the 48 individuals as contained in the attachment to this Order. **All civil penalties requested by the Agency are denied.**

Ralph T. Hudson  
Director, Arkansas Division of Labor  
Arkansas Department of Labor and Licensing

BY: Donna M. Lipsmeyer  
Donna M. Lipsmeyer, Administrative Law Judge  
Arkansas Division of Labor  
Arkansas Department of Labor and Licensing

DATE: 4/7/2021

Attachment Incorporated By Reference:

Agency Response to Respondent's Exhibit 54

E-mail from Marcus Devine dated April 5, 2021 with attached spreadsheet containing back wages amounts owed for each of 48 employees/former employees; and,  
Promise Land Wage and Hour Audit Memo update from Hearing dated 4/2/21 signed by Investigator Samantha L. Martinez

**Susan Miller (ADLL)**

---

**From:** Marcus Devine (ADLL)  
**Sent:** Thursday, April 8, 2021 11:51 AM  
**To:** Susan Miller (ADLL)  
**Subject:** FW: Promised Land  
**Attachments:** Wages due Promise land.pdf

**From:** Samantha Martinez (ADLL) <Samantha.Martinez@arkansas.gov>  
**Sent:** Monday, April 05, 2021 10:02 AM  
**To:** Marcus Devine (ADLL) <Marcus.Devine@arkansas.gov>  
**Subject:** Re: Promised Land

Marcus,

Here is a list of the 48 remaining employees and what wages are owed to them.

*Respectfully,*

*Samantha L. Martinez  
Arkansas Department of Labor & Licensing  
Labor Standards Investigator*

**Direct : (501) 690-9561**

**Office : (501) 682-4500**

Email : [Samantha.Martinez@Arkansas.gov](mailto:Samantha.Martinez@Arkansas.gov)

**Hours : Mon-Fri 8:00 AM – 4:30 PM**



ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
900 West Capitol Avenue, Suite 400  
Little Rock, AR 72201  
[www.labor.arkansas.gov](http://www.labor.arkansas.gov)

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This e-mail is provided for informational purposes only and is not to be relied on as legal advice

or as the legal opinion of the agency in future or pending matters.

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**From:** Samantha Martinez (ADLL) <[Samantha.Martinez@arkansas.gov](mailto:Samantha.Martinez@arkansas.gov)>  
**Sent:** Monday, April 5, 2021 9:32 AM  
**To:** Marcus Devine (ADLL) <[Marcus.Devine@arkansas.gov](mailto:Marcus.Devine@arkansas.gov)>  
**Subject:** Re: Promised Land

No problem, give me a few and I will have it all typed up.

*Respectfully,*

Samantha L. Martinez  
Arkansas Department of Labor & Licensing  
Labor Standards Investigator  
**Direct : (501) 690-9561**  
**Office : (501) 682-4500**  
Email : [Samantha.Martinez@Arkansas.gov](mailto:Samantha.Martinez@Arkansas.gov)  
Hours : Mon-Fri 8:00 AM – 4:30 PM



ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
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Our Vision: Leading-Arkansans-Beyond-Ordinary-Results

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or as the legal opinion of the agency in future or pending matters.

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**From:** Marcus Devine (ADLL) <[Marcus.Devine@arkansas.gov](mailto:Marcus.Devine@arkansas.gov)>  
**Sent:** Monday, April 5, 2021 9:15 AM  
**To:** Samantha Martinez (ADLL) <[Samantha.Martinez@arkansas.gov](mailto:Samantha.Martinez@arkansas.gov)>  
**Subject:** FW: Promised Land

Good morning Sam, can you send me a document responsive to the Judge's question? Thanks

**From:** Donna Lipsmeyer (ADLL) <[Donna.Lipsmeyer@arkansas.gov](mailto:Donna.Lipsmeyer@arkansas.gov)>  
**Sent:** Monday, April 05, 2021 9:13 AM  
**To:** Marcus Devine (ADLL) <[Marcus.Devine@arkansas.gov](mailto:Marcus.Devine@arkansas.gov)>; Sheila Campbell <[sheila.sfclaw@gmail.com](mailto:sheila.sfclaw@gmail.com)>  
**Cc:** Susan Miller (ADLL) <[susan.miller@arkansas.gov](mailto:susan.miller@arkansas.gov)>  
**Subject:** Re: Promised Land

Mr Devine: Thank you for providing the update. I also need a list of how much each employee has not yet been paid ( as evidenced by checks yet uncashed).  
Donna M Lipsmeyer, JD , Administrative Law Judge

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---

**From:** Marcus Devine (ADLL) <[Marcus.Devine@arkansas.gov](mailto:Marcus.Devine@arkansas.gov)>  
**Sent:** Monday, April 5, 2021 8:58:52 AM  
**To:** Donna Lipsmeyer (ADLL) <[Donna.Lipsmeyer@arkansas.gov](mailto:Donna.Lipsmeyer@arkansas.gov)>; Sheila Campbell <[sheila.sfclaw@gmail.com](mailto:sheila.sfclaw@gmail.com)>  
**Cc:** Susan Miller (ADLL) <[susan.miller@arkansas.gov](mailto:susan.miller@arkansas.gov)>  
**Subject:** Promised Land

Good morning ALL,

I attach to this email the memo from the Department staff regarding the updated check clearing information provided by the Respondent via Counsel.

The Department is convinced that we pled and proved the case that the record keeping was deficient and therefore violative of the statute and that the penalty levied was justified. We also contend that we pled and proved the fact that numerous employees did not receive pay for their labor in violation of the statute. We further contend that the Respondent did not pay employees in semi-monthly manner consistent with the Statute and as such the penalty levied was reasonable and justified. Along with the department staff we do agree that the cleared checks should be taken in to account and deducted from the total amount owed.

We are prepared to immediately receive the checks owed to each individual claimant and process them and distribute the monies to each individual claimant.

As to the penalties, your Honor can agree with the Department's levy or direct that some other amount be paid by the Respondent or that no amount is owed by the Respondent.

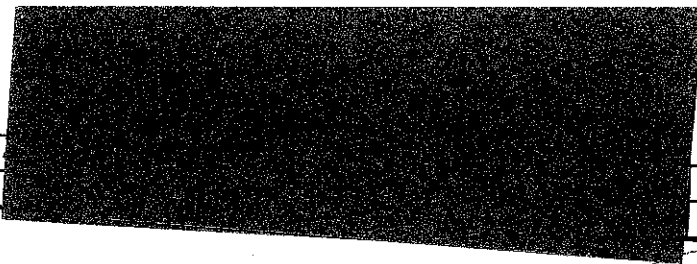
We stand ready to answer any questions or respond to any comment as directed.

Best Regards,

Marcus C. Devine (ADL)

First Name	Last Name	Address	Wages due
Ajobi	Clanry		\$ 13.43
Nelson	Andrew		\$ 249.76
Antonia	Bautista		\$ 31.73
Edesa	Boaz		\$ 1,077.21
Takmi	Bonju-Alee		\$ 369.34
Aldo Omar	Castro-Lemus		\$ 305.44
Dejay	Elanzo		\$ 41.63
Dolores	Samuel		\$ 412.08
Etin	Andrew		\$ 408.00
Ariana	Elcar		\$ 95.74
Rejila	Elianzo		\$ 542.69
Moana	Ellamar		\$ 368.61
Marquis	Flowers		\$ 571.19
Alice	Gachuzo-Colin		\$ 78.63
Roy	Glass		\$ 55.50
Kairin	Harris		\$ 47.92
Estella	Herrera		\$ 216.75
Clam	Hiram		\$ 17.00
Jill	Jilly		\$ 17.00
Marrel	Jeik		\$ 111.00
Stevenson	Jeriong		\$ 23.13
Jarki	Jermeto		\$ 29.84
Eplinth	Jilly		\$ 48.96
Airi	Joel		\$ 185.01
Dannia	Johnson		\$ 339.25
Magdline	Kaious		\$ 91.30
Aljina	Kaisha		\$ 312.19
Thomasko	Kintaro		\$ 639.46
Lucky	Andrew		\$ 933.31
Loreta	Bautista		\$ 300.44
Coline	Lao		\$ 51.00
Abraham	Lain		\$ 416.25
Neiko	Lamny		\$ 114.24
Berline	Laninjid		\$ 97.87
Neki	Lavin		\$ 151.15
Hermiko	Leon		\$ 327.08
Juliana	Lewis		\$ 294.87
Noalani	Luther		\$ 1,088.36
Shailer	Menke		\$ 234.67
Melines	Morris		\$ 49.12
Eiko	Nagel		\$ 564.25
Alinda	Nimaia		\$ 300.63
Courtney	Pennie		\$ 83.35
Latling	Riklon		\$ 17.00
Lena	Rithen		\$ 118.91
Keenan	Stewart		\$ 233.75

Andrea	Taesali
Torie	Tartaglia



\$	239.62
\$	284.58

\$ 12,600.24

*Sam King*  
4/5/21



**Susan Miller (ADLL)**

---

**From:** Marcus Devine (ADLL)  
**Sent:** Monday, April 5, 2021 8:59 AM  
**To:** Donna Lipsmeyer (ADLL); Sheila Campbell  
**Cc:** Susan Miller (ADLL)  
**Subject:** Promised Land  
**Attachments:** Memo Promise Land update (002).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning ALL,

I attach to this email the memo from the Department staff regarding the updated check clearing information provided by the Respondent via Counsel.

The Department is convinced that we pled and proved the case that the record keeping was deficient and therefore violative of the statute and that the penalty levied was justified. We also contend that we pled and proved the fact that numerous employees did not receive pay for their labor in violation of the statute. We further contend that the Respondent did not pay employees in semi-monthly manner consistent with the Statute and as such the penalty levied was reasonable and justified. Along with the department staff we do agree that the cleared checks should be taken in to account and deducted from the total amount owed.

We are prepared to immediately receive the checks owed to each individual claimant and process them and distribute the monies to each individual claimant.

As to the penalties, your Honor can agree with the Department's levy or direct that some other amount be paid by the Respondent or that no amount is owed by the Respondent.

We stand ready to answer any questions or respond to any comment as directed.

Best Regards,

Marcus C. Devine (ADL)

Asa Hutchinson  
Governor



STATE OF ARKANSAS  
ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
LABOR STANDARDS SECTION

Ralph T. Hudson  
Director  
Division of Labor

900 W Capitol Ave Suite 400 • LITTLE ROCK, AR 72201  
Phone: 501-682-4600 Fax: 501-682-4506 TRS: 800-285-1131

Promise Land Wage and Hour Audit  
Memo update from Hearing

4/2/21

Marcus,

After reviewing the 6 checks that you received and forwarded to me. I can confirm the following:

The check # 11823 dated for 10/11/19 for Mr. Thomasko Kinarito was beyond my audit period and does not clear the violations already assessed.

The check # 11533 dated for 12/14/18 for Ms. Estella Herrera was already documented as received. This does not clear the violation already assessed for wages owed to her in 2019.

The check # 11758 dated for 8/9/19 for Mr. Wilson was already documented as received and he was not one of the 51 individuals owed wages.

The check # 11679 dated 5/10/19 for Mr. Tyonte Redden in the amount of \$298.22 gross, will clear the 3 minimum wage violations but the violation of paying monthly still stands.

The check # 11803 dated 9/13/19 for Ms. Whiterose Nathan in the amount of \$92.50 gross, will clear the 1 minimum wage violation.

The checks # 11810 dated 9/20/19 & # 11811 dated 9/27/19 for Ms. Dannyia Bajo in the amount of \$100.82 gross and \$575.35 gross, will clear the 2 minimum wage violations.

As of 4/2/21 -100 Minimum wage violations 11-4-210  
73 Record keeping violations 11-4-217  
83 Semi-monthly violations 11-4-401



STATE OF ARKANSAS  
ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
LABOR STANDARDS SECTION

900 W Capitol Ave Suite 400 • LITTLE ROCK, AR 72201  
Phone: 501-682-4500 Fax: 501-682-4506 TRS: 800-285-1131

Total wages owed at the end of audit \$13,667.14 on 5/21/20.  
Received check credit for 3 employees \$1066.89 on 4/1/21.

Total wages owed \$12600.25 as of 4/2/21.

Respectfully,

A handwritten signature in cursive script, appearing to read 'Samantha L. Martinez'.

Samantha L. Martinez  
Arkansas Department of Labor and Licensing  
Labor Standards Investigator  
Monday – Friday 8:00am -4:00pm  
Ph: (501) 690-9561  
[Samantha.Martinez@Arkansas.gov](mailto:Samantha.Martinez@Arkansas.gov)