IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PLANO CHAMBER OF COMMERCE; AMERICAN HOTEL AND LODGING ASSOCIATION; ASSOCIATED BUILDERS AND CONTRACTORS; INTERNATIONAL FRANCHISE ASSOCIATION; NATIONAL ASSOCIATION OF CONVENIENCE STORES; NATIONAL ASSOCIATION OF HOME BUILDERS; NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.; NATIONAL RETAIL FEDERATION; RESTAURANT LAW CENTER; TEXAS RESTAURANT ASSaX5Td()2 (I)-8-1.23(AURANT)TJ-7.431.22 T4w2A8-1.24PSTMREA4OSECRETARY,	§ § § § § § § § § § § § § § §	**Civil Action No. 4:24-cv-468**
ED STATES DEPARTMENT OF R, in her official capacity; JESSICA IAN, ADMINISTRATOR, WAGE IOUR DIVISION, U.S. RTMENT OF LABOR, in her capacity; and UNITED STATES RTMENT OF LABOR,	§ § § § § § § § § § § §	
Defendants.		

COMPLAINT

On behalf of themselves and the millions of businesses and employers they represent in Texas and throughout the United States, Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. In 2017, this Court

the minimum salary for the EAP exemption far beyond a level which DOL is permitted to adopt, and again included an unlawful

interests of the regulated community, and failed to meaningfully consider reasonable alternatives, all in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 500 *et seq*.

4. The first phase of the 2024 Rule is scheduled to go into effect on July 1, 2024, followed by a second, even more substantial increase in the minimum salary for exemption on January 1, 2025. When fully effective as of January 1, 2025, the new Overtime Rule will increase the minimum annual EAP salary threshold from the current $35,568 to $58,656,

Millions of employees across the country will have to be reclassified from salaried to hourly workers, resulting in restricted work hours that will deny them opportunities for advancement and hinder their job performance—to the detriment of their employers, their customers, and their own careers. Finally, the inclusion of the unlawful escalator provision will exacerbate the harmful impact on businesses, both large and small, and will add to the rampant inflation that is already harming the economy as a whole.

6. Because the first phase of the increased salary threshold is scheduled to take effect on July 1, 2024, and the full impact will be felt a mere six months later on January 1, 2025, expedited consideration of this Complaint is requested in order to avoid irreparable harm to both

8. Plaintiff American Hotel and Lodging Association ("AHLA") is the leading voice representing every segment of the hotel industry including major chains, independent hotels, management companies, REITs, bed and breakfasts, industry partners, and more. AHLA represents the interests of its members in regulatory matters relating to employment. In addition, AHLA itself is harmed by the new Overtime Rule, as it is also subject to the minimum wage, overtime, and recordkeeping requirements imposed by the FLSA for non-exempt employees.

9. Plaintiff Associated Builders and Contractors ("ABC") is a national construction industry trade association representing more than 23,000 chapter members. The vast majority of ABC members are small businesses, and they employ many workers who are currently exempt under the established salary threshold, whose exempt status will be jeopardized under the Department's 2024 Rule, as is also true of ABC itself. ABC is bringing this action on its own behalf as well as on behalf of its member companies in the construction industry, including plaintiff CGC (referenced below).

10. Plaintiff International Franchise Association ("IFA") is a membership organization of franchisors, franchisees, and suppliers. The IFA's membership includes more than 1,350 franchisor companies and more than 12,000 franchisees nationwide, including in Texas. IFA brings this action on behalf of itself and its members who employ EAP workers whose exempt status is jeopardized by the 2024 Rule.

11. Plaintiff National Association of Convenience Stores ("NACS") advances the role of convenience stores as positive economic, social, and philanthropic contributors to the communities they serve. The U.S. convenience store industry, with 148,000 stores selling fuel, food and merchandise, serves 160 million customers daily. NACS serves the convenience and fuel retailing industry by, among other things, working to protect the best interests of the convenience

and fuel retailing industry before Congress and federal agencies NACS is bringing this action on its own behalf and on behalf of its members whose employees' exempt status is jeopardized by the challenged Rule.

12. Plaintiff National Association of Home Builders ("NAHB") is a national trade association whose chief mission is that all Americans have access to safe, decent, and affordable housing. NAHB is a federation of more than 700 state and local associations, representing over 140,000 individual members in Texas and across the country, who are home builders, remodelers, and others in housing-related industries, such as housing finance, manufacturing, and building supplies. NAHB is bringing this action on behalf of its members and local associations whose exempt employees are at risk of losing their exempt status because of the 2024 Rule.

13. Plaintiff National Association of Wholesaler-Distributors ("NAW") is an employer and a non-profit, non-stock, incorporated trade association that represents the wholesale distribution industry—the essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. NAW is made up of direct member companies and a federation of 59 national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than $8 trillion in annual sales volume providing stable and well-paying jobs to more than 6 million workers. NAW is bringing this action on its own behalf as well as on behalf of its members' companies who employ exempt employees whose status is placed at risk by the 2024 Rule.

14. Plaintiff the National Federation of Independent Business ("NFIB") is the nation's leading small business advocacy association, representing members in all 50 states and Washington, D.C. NFIB represents about 325,000 independent business owners who are adversely impacted by the 2024 Rule, as is NFIB itself. NFIB brings this action on behalf of itself and its members.

15. Plaintiff National Retail Federation ("NRF") is the world's largest retail trade association, representing retailers of all types and sizes across the United States. NRF brings this action on behalf of itself and its members, whose exempt employees' status is placed at risk by the 2024 Rule.

16. Plaintiff Restaurant Law Center ("RLC") is the only independent public policy organization created specifically to represent the interests of the food service industry in the courts. This labor-intensive industry is comprised of over one million restaurants and other foodservice outlets employing nearly 16 million people—approximately 10 percent of the U.S. workforce, including many

jeopardized by the Rule. The TRA is bringing this action on behalf of itself and its members whose employees' exempt status is placed at risk by the 2024 Rule.

18. Plaintiff Cooper General Contractors ("CGC") is a minority-owned, family-oriented commercial construction contractor based in Plano, Texas. CGC is a member of plaintiff ABC. CGC employs a number of executive, administrative, and/or professional employees who are lawfully exempt from overtime under the Fair Labor Standards Act as it is currently enforced by the U.S. Department of Labor. Under the Department's new Rule, CGC will face increased labor costs and harm to its employee relations unless the company dramatically increases its exempt salary structure to the levels mandated by the new Rule.

19. Plaintiff DASE Blinds ("DASE") is a family-owned and operated Bloomin' Blinds franchise based in Carrollton, Texas providing custom window treatments and repairs. DASE employs a number of executive, administrative, and/or professional employees who are lawfully exempt from overtime under the FLSA as it is currently enforced by the U.S. Department of Labor. Some of DASE's exempt employees, who are paid on a salary basis and perform exempt job duties, earn salaries above the threshold specified in the Department's current overtime rule, but less than the amounts specified in the 2024 Rule. DASE will face increased labor costs and harm to its employee relations because currently exempt employees will lose their exempt status unless the

its effective date. They will also suffer irreparable harm to their ability to manage their businesses due to the loss of flexibility in the hours worked by previously exempt executive, administrative, professional, and computer employees and the forced conversion of millions of previously exempt salaried employees to an hourly basis.

21. Defendant Julie Su is functioning as the Acting Secretary of the Department of Labor, although she has not been confirmed by the Senate to that position.

22. Defendant Jessica Looman is the Administrator of the Wage and Hour Division of the U.S. Department of Labor, which promulgated the challenged rule.

23. Acting Secretary Su and Administrator Looman are sued in their official capacities and the relief sought extends to all of their successors, employees, officers, and agents.

24. Defendant U.S. Department of Labor is an agency of the United States and published the 2024 Overtime Rule in the *Federal Register*.

JURISDICTION, VENUE, AND STANDING

28. In *Nevada II*, this Court held that the trade association plaintiffs had standing to challenge the Department's rulemaking due to harm caused by drastically increasing the minimum salary required to exempt EAP employees from overtime requirements. The Court specifically found that these and other similarly situated business associations and their members "would incur significant payroll, accounting, and legal costs to comply with the Final Rule, both before and after its effective date"

34. As this Court further observed in *Nevada II,* 275 F. Supp. 3d at 805-06:

> Congress unambiguously intended the exemption to apply to employees who perform 'bona fide executive, administrative, or professional capacity' duties. *** Specifically the Department's authority is limited to determining the essential qualities of, precise signification of, or marking the limits of those "bona fide executive, administrative, or professional capacity" employees who perform exempt duties and should be exempt from overtime pay. With this said, the Department does not have the authority to use a salary-level test that will effectively eliminate the duties test as prescribed by Section 213(a)(1). *** Nor does the Department have the authority to categorically exclude those who perform "bona fide executive administrative, or professional capacity" duties based on salary level alone. In fact, the Department admits, "the Secretary does not have the authority under the FLSA to adopt a 'salary only' test for exemption."

35. While the Court acknowledged the Department's use of a "permissible minimum salary level" under the Fifth Circuit's holding in *Wirtz v. Mississippi Publishers Corp.*, 364 F.2d 603, 608 (5th Cir. 1966) (now being r(now)d[(.,t[(.,t[(.,t)-2 (r)3 (a')3 (s)-1(he)4 (bTJ0 Tw h)-2 (pt)-2 TJ0 T)-2 (h

36. Based upon the foregoing legal analysis in *Nevada II*, this Court found that it was unlawful for the Department to increase the minimum salary level from $455 per week ($23,660 annually) to $913 per week ($47,476 annually). The Court held that "this significant increase

that will exclude from the white-collar exemptions millions of currently exempt EAP workers.

the statutory exemption. In particular, the inclusion of bonuses, incentives, and commissions is so restricted that it fails to mitigate and actually exacerbates the impact of the new Overtime Rule's exclusion of millions of employees who perform exempt duties, because it arbitrarily excludes discretionary bonuses, incentives, and commissions that may constitute more than ten percent of an exempt employee's salary, as well as a host of

43. Likewise, there is no precedent for indexing the minimum salary threshold in the regulatory history of Part 541. In its 2004 rulemaking, the DOL rejected indexing as contrary to congressional intent and as disproportionately affecting lower-wage geographic regions and industries, stating:

> [T]he Department finds nothing in the legislative or regulatory history that would support indexing or automatic increases. Although an automatic indexing mechanism has been adopted under some other statutes, Congress has not adopted indexing for the Fair Labor Standards Act. In 1990, Congress modified the FLSA to exempt certain computer employees paid an hourly wage of at least 6.5 times the minimum wage, but this standard lasted only until the next minimum wage increase six years later. In 1996, Congress froze the minimum hourly wage for the computer exemption at $27.63 (6.5 times the 1990 minimum wage of $4.25 an hour). In addition, as noted above, the Department has repeatedly rejected requests to mechanically rely on inflationary measures when setting the salary levels in the past because of concerns regarding the impact on lower wage geographic regions and industries. This reasoning applies equally when considering automatic increases to the salary levels. The Department believes that adopting such approaches in this rulemaking is both contrary to congressional intent and inappropriate.

2004 Final Rule, 69 Fed. Reg. at 22171-72 (emphasis added).

44. Finally, the Rule significantly increases the total annual compensation required to be exempt as a "highly compensated employee" to $151,164 as of January 1, 2025, up from the current $107,432, an increase of 41%) *See* 89 Fed. Reg. at 32792 (29 C.F.R. § 541.601).

45. As noted above, DOL projects that in the first year the rule is effective, more than four million employees across the country will lose their exempt status. *See* 89 Fed. Reg. at 32900 & Table 4. By Year 10, because of the automatic increases to the minimum salary level, DOL predicts that almost 6 million employees will have lost their exempt status. *Id*. Similarly, by Year 10, the Rule will have imposed a cost of almost $3.4 billion on emponxeost.

46. The economic analysis set forth by DOL in support of the new Rule is inadequate due to its reliance on the Current Population Survey as the sole source of salary data; an inadequate assessment of compliance costs, transfers, benefits, regulatory flexibility analysis, and unfunded mandate impacts; an inadequate analysis of the full costs and benefits of available alternatives; and inattention to the regulatory risks inherent in a sudden change in regulatory requirements and salary test adjustment procedures. For example, DOL wholly fails to account for the salary compression issues employers will face under the 2024 Rule, and the pressure they will face to raise the salariuris s

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compensation (*e.g.*, profit-sharing, stock options, employer-funded retirement benefit, deferred compensation) is also arbitrary and capricious.

PRAYER FOR RELIEF

69. For the foregoing reasons, Plaintiffs pray for an order and judgement:

a.

Dated: May 22, 2024

Respectfully submitted,

/s/ Robert F. Friedman

Robert F. Friedman

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JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

DEFENDANTS