

Lugo ("Defendants"), alleging violations of the minimum wage, overtime, and record-keeping provisions of the Fair Labor Standards Act ("FLSA"). The Secretary also sought liquidated damages.

After years of litigation, the district court ordered Oasis to pay \$141,270.64 in back wages and an equal amount in liquidated damages to 282 current and former employees. The court also found Lugo personally liable for the back wages and penalties. Lugo and Oasis appealed.

JUDICIAL OPINION

TORRUELLA, Circuit Judge

"[T]he overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages." Although we found it "difficult to accept . . . that Congress intended that *any* corporate officer or other employee with ultimate operational control over payroll matters be personally liable," we narrowly determined that the FLSA did not preclude personal liability for "corporate officers with a significant ownership interest who had operational control of significant aspects of the corporation's day to day functions, including compensation of employees, and who personally made decisions to continue operations despite financial adversity during the period of non-payment." . . .

. . . [Because] not every corporate employee who exercised supervisory control should be held personally liable, we identified several factors that were important to the personal liability analysis, including the individual's ownership interest, degree of control over the corporation's financial affairs and compensation practices, and role in "caus[ing] the corporation to compensate (or not to compensate) employees in accordance with the FLSA."

Based on the above considerations, we affirm the district court's judgment holding Lugo personally liable for Oasis's compensation decisions. Lugo was not just any employee with some supervisory control over other employees. He was the president of the corporation, and he had ultimate control over the business's day-to-day operations. In particular, it is undisputed that Lugo was the corporate officer principally in charge of directing employment practices, such as hiring and firing employees, requiring employees to attend meetings unpaid, and setting employees' wages and schedules. He was thus instrumental in "causing" the corporation to violate the FLSA. The FLSA contemplates, at least in certain circumstances, holding officers with such personal responsibility for statutory compliance jointly and severally liable along with the corporation.

Finally, Defendants argue that the district court erred in awarding liquidated damages based on a finding of willfulness. The FLSA authorizes the Secretary of Labor to recover on behalf of employees unpaid wages and overtime compensation plus an equal amount in liquidated damages. The only way an employer can escape liquidated damages is to "show[] to the satisfaction of the court" that it acted in good faith and had reasonable grounds for believing that its acts did not violate the FLSA.

Here, the district court found that Defendants failed to show good faith or objective reasonableness, referring back to its findings on willfulness with respect to the applicable statute of limitations. Defendants "intentionally and consistently failed to keep accurate records of the time worked by its employees[,] . . . disguised minimum wage, as well as overtime pay violations, . . . did not record the amounts of cash tips . . . [and] most salient. . . [to] a finding of willfulness . . . [paid] employees 'off the books.'"

Oasis's failure to keep adequate payroll records and its intentional manipulation of the records it did keep are sufficient grounds for concluding that Oasis did not act in good faith or with a reasonable belief that it was in compliance with the FLSA. "[T]he fact that an employer knowingly under-reported its employee's work hours could suggest to a [fact finder] that the employer was attempting to conceal its failure to pay overtime from regulators, or was acting to eliminate evidence that might later be used against it in a suit by one of its employees."

Defendants' primary argument on appeal is that the court had indicated at trial that the willfulness issue was "close" and that the Secretary had offered no evidence that Oasis acted in reckless disregard of its statutory obligations. These arguments are unpersuasive. First, the district court noted its "initial inclination against a determination of willfulness," but explained that it ultimately relied on the employees' testimony and Defendants' own documentary evidence to reach its conclusion regarding willfulness. We have already determined that the willfulness finding is not clearly erroneous. Furthermore, it is the *employer's* burden to show good faith and objective reasonableness, and therefore the Secretary's alleged failure to offer evidence of willfulness is not an impediment to the court's decision to refrain from awarding liquidated damages.

Affirmed.

CASE QUESTIONS

1. What shows willfulness of a violation?
2. What are the standards for holding an officer liable for FLSA violations?
3. Explain what liquidated damages are and when they are available for recovery.