

Hearing Date: 12/9/2024 10:00 AM - 10:05 AM
Location: <<CourtRoomNumber>>
Judge: Calendar, 12

FILED
11/26/2024 9:56 AM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2024CH10374
Calendar, 12
30365890

FILED DATE: 11/26/2024 9:56 AM 2024CH10374

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL, Attorney General of
the State of Illinois,

Plaintiff,

v.

DIRECT FOOD SERVICE, INC.,

Defendants.

Case No.

CONSENT DECREE

I. THE LITIGATION

1. The Office of the Illinois Attorney General (“OAG”) filed this action (“Complaint”) on behalf of Plaintiff, the People of the State of Illinois, alleging that Direct Food Service, Inc. (“DFS”) failed to pay their Employees at time and a half their regular rate for all time worked in excess of forty hours per week in violation of the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.* (“IMWL”).

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Defendant and the OAG have agreed that this action should be finally resolved by entry of this Consent Decree (“Decree”). This Decree fully and finally resolves the OAG’s claims in the Complaint. It is also agreed that the Defendant has not admitted liability for any of the conduct alleged in the Complaint and that the Defendant has agreed to the entry of this Consent Decree for the sole purpose of bringing this matter to an efficient resolution.

II. FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulation of the parties, the Court finds the following:

- a. This Court has jurisdiction over the subject matter of this action and over the parties;
- b. No party shall contest the jurisdiction of this Court to enforce this Decree and its terms or the right of the OAG to bring an enforcement suit upon an alleged breach of any term(s) of this Decree;

- c. The terms of this Decree are adequate, fair, reasonable, and just;
- d. The rights of the public are adequately protected by this Decree;
- e. This Decree conforms with the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, and the IMWL, and is not in derogation of the rights or privileges of any person; and
- f. The entry of this Decree will further the objectives of the IMWL and will be in the best interests of the parties and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

III. DEFINITIONS

4. "Employee" shall refer to any individual permitted to work by the Defendants who meets the definition of "employee" under the IMWL, 820 ILCS 105/3, and its implementing regulations, 56 Ill. Admin. Code § 210.110.

5. "Document" shall include, without limitation, anything in which there is portrayed or contained, or from which can be retrieved, any facts, information, or data, including all of the things delineated in Ill. Sup. Ct. R. 214 and, without limitation on the foregoing, all electronic data processing materials.

6. "Administrator" refers to Atticus Administration, LLC, or any subsequently appointed entity performing the same duties under this Consent Decree.

7. "Scope of this Decree" refers to the claim that DFS failed to pay overtime wages at time and a half their regular rate of pay to its employees for the period of December 1, 2019, to December 26, 2023.

8. "Settlement Amount" refers to the amount of \$250,000.00 to be paid by DFS under the Consent Decree.

9. "Settlement Account" refers to the fund established by the Administrator to hold the Settlement Amount and satisfy the Employees' claims.

10. "Settlement Account Balance" refers to the current amount of funds in the Settlement Account at any given time.

11. "Administration Costs" means all costs associated with administration of the Settlement Account, including but not limited to the Administrator's fulfilling all duties itemized in this Decree, foreign exchange conversion fees, wire fees, and any other expenses incidental to the distribution of Settlement Payments to Employees. Administration Costs, while not final, are estimated to be \$7,900.00.

12. "Claimant" refers to an Employee who has filed a claim on the Settlement Account by filling out a claim form and sending it to the Administrator.

13. "Claimant's Minimum Share" refers to the share of the Settlement Amount that each Employee is due before Administration Costs, taxes and withholdings are subtracted from the Settlement Amount. Each Employee's Minimum Claimant Share is listed in Exhibit A.

14. "Settlement Payment" refers to a payment made to an individual Claimant. Settlement Payments shall be made pursuant to the formula set forth in Paragraph 44.

IV. NON-ADMISSION

15. This Decree, being entered with the Consent of the OAG and the Defendant, shall not be deemed an admission by DFS of any violation of the IMWL or any wrongdoing. The Defendant denies any liability for all claims contained in the Complaint and denies that it has violated the IMWL. DFS is entering into this Consent Decree solely for the purpose of avoiding further litigation costs and expenses.

V. SCOPE AND DURATION OF THE CONSENT DECREE

16. This Decree will become effective as of the date of entry by the Court (hereinafter, the "Effective Date") and remain in effect for two (2) years from the Effective Date (the "Term").

17. This Decree shall be binding upon the Defendant and its present and future directors, officers, managers, agents, successors, and assigns. During the Term of this Decree, the Defendant shall provide a copy of this Decree to any organization or person that proposes to merge with it or acquire a majority or all of its stock or substantially all its assets, prior to the effectiveness of any such merger or acquisition.

VI. RELEASE

18. In consideration of the Defendant's obligations under this Consent Decree, the OAG shall release and discharge DFS and its owner, agents, managers, supervisors, employees, attorneys and insurers from all causes of action that the OAG may have for any and all claims under the IMWL on behalf of or in relation to the individuals listed in Exhibit A pursuant to the OAG's authority under 15 ILCS 205/6.3(b). This release shall include any action for civil penalties due under the IMWL to the individuals listed in Exhibit A, as well as any claim for costs incurred by the OAG in this investigation.

19. Nothing shall preclude the OAG from taking legal action to enforce the terms of this Decree; bringing a separate action should the OAG discover additional violations of the IMWL outside the scope of conduct covered by this Decree; or referring complaints or allegations of non-compliance with other applicable state or federal laws, outside the Scope of this Decree, to appropriate state or federal agencies.

20. In accordance with 15 ILCS 205/6.3(d), neither the State of Illinois nor any individual listed in Exhibit A shall be entitled to recover any amount from Defendants based on the claims raised in the Complaint beyond that set forth in this Decree. The release provided in the preceding Paragraph 17 is binding upon all such individuals.

VII. ENFORCEMENT

21. If the OAG believes that Defendant has not fulfilled its obligations under the Decree, it may file a motion with the Court to enforce the terms of the Decree against the party allegedly in breach.

22. If the OAG believes that DFS failed to comply with any other provision of this Decree, the OAG shall notify the Defendant of its alleged noncompliance in writing and give the Defendant 15 calendar days to remedy the noncompliance to the OAG's satisfaction. If the parties do not reach an agreement at the end of the 15-day period, the OAG may apply to the court for all appropriate relief.

23. The OAG may seek all appropriate relief in a motion to enforce, including but not limited to a monetary judgment for outstanding payments owed under the Decree, an injunction directing compliance with the requirement of the Decree, and attorneys' fees and costs expended in enforcing of the Decree.

VIII. INJUNCTIVE TERMS

A. GENERAL PROVISIONS

24. The Defendant, its officers, agents, employees, and all persons acting in concert with the Defendant, are enjoined from engaging in violations of the overtime pay requirements of the IMWL.

B. RECORD-KEEPING

25. Within 30 days of the Effective Date, the Defendant shall begin maintaining documents reflecting the wages paid to each Employee, including, but not limited to:

- a. The employee's regular rate of pay along with an explanation of the basis of pay, including whether the rate of pay is (i) per hour, (ii) per day, (iii) per piece, (iv) based on commission on sales, or (v) other basis;
- b. The hours worked by the employee each week;
- c. Total weekly straight-time earnings or wages paid for hours worked during the week, exclusive of premium overtime compensation;
- d. Total premium paid over and above straight-time earnings for overtime hours;
- e. Total additions to or deductions from wages paid each pay period, including but not limited to, purchase orders, tax withholdings, or wage assignments.
- f. Total dollar amount of wages paid each pay period;
- g. Date(s) of payments identified and the pay period covered by each payment; and
- h. Date and amount of any bonus or other compensation paid to the Employee.

26. Within 30 days of the Effective Date, the Defendant shall ensure that, at a minimum, the information referenced in Paragraph 23 is reflected in the paychecks or paystubs issued to the Defendant's employees.

C. DISTRIBUTION OF POLICIES AND NOTICE TO EMPLOYEES

27. The Defendants shall announce to its Employees its overtime policy and post Exhibit B, in English and Spanish, on all places where notices are customarily posted, within 30 calendar days of the Effective Date. The Defendants must make all reasonable efforts to ensure that the posting is not altered, defaced, or covered by other materials.

28. The Defendants shall provide a certification to the OAG of its compliance with the requirements of this Section of the Decree within 30 days of the Effective Date.

D. RIGHT TO AUDIT

29. For purposes of monitoring the Defendant's compliance with this Decree, DFS shall permit the OAG access to Defendant's place of business upon reasonable notice for the purposes inspecting the premises to ensure compliance with this Decree, inspecting notices and posters required by this Decree, or any other purpose consistent with the objectives of this Decree. In addition, DFS agrees to permit the OAG access to Defendant's lunchroom during non-working hours on two occasions within the ninety (90) day period after the Entry of the Consent Decree for the purpose of meeting them and informing them of the Consent Decree, on a voluntary basis.

IX. MONETARY TERMS

A. THE FUND

30. No later than twenty-one (21) calendar days after the entry of the Consent Decree, DFS shall transmit \$250,000.00 by wire transfer to the Administrator for deposit into the Settlement Account. Under no circumstances shall DFS be required to pay, or be liable for, any amount above \$250,000.00, including, but not limited to, any tax liability arising from these payments. Further, under no circumstances shall DFS be held liable for any mistakes, errors or omissions made by the Administrator in its dispensation of funds to the Employees.

31. No other funds shall be added to or comingled with the Settlement Account. In no event shall the Administrator withdraw, transfer, pledge, impair or otherwise make use of the funds in the Settlement Account except as expressly provided in this Consent Decree.

32. The Settlement Account is intended to be a "qualified settlement fund" under Section 468B of the Internal Revenue Code, 26 U.S.C. § 468B, and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, and will be administered by the Administrator as such. All interest accruing thereon shall become part of the Settlement Account.

33. The Settlement Account shall be used to pay:

- a. Court-approved Settlement Payments to the Claimants;

- b. The Administrator's fees and costs;
- c. Any taxes due in connection with the Settlement Payments, including, but not limited to, Employee withholdings and the Employer's FICA and Medicare; and
- d. Any other additional expenses incurred in connection with the administration of this Consent Decree.

B. CLAIMS ADMINISTRATOR

34. The actions of the Administrator shall be governed by the terms of this Consent Decree. The OAG may provide relevant information and guidance as needed by the Administrator in the performance of its duties and engage in related communications with the Administrator.

35. The Administrator will be responsible for:

- a. Receiving and logging claims received from Claimants;
- b. Reporting on the status of the administration of the Decree to the OAG;
- c. Preparing any declaration regarding its due diligence in the claims administration process as may be required by the Court;
- d. Providing the OAG with all data requested;
- e. Setting up, administering, and making payments from the Settlement Account;
- f. Running skip traces as necessary to locate Employees whose last known contact information is not current.
- g. Distributing Payments to Claimants, and withholding therefrom the Claimants' share of taxes, and remitting such funds to the appropriate taxing authorities, along with any associated tax reporting, return, and filing requirements; and
- h. Performing such additional duties as the OAG may direct.

36. All disputes relating to the Administrator's performance of its duties shall be referred to the Court, if necessary.

C. TAX TREATMENT

37. One third of the Settlement Payments shall be treated as wages. Two thirds of the Settlement represent treble damages penalties and liquidated damages required under 820 ILCS 105/12(a) and 29 U.S.C. § 216(c), respectively, and not back wages.

38. The portion of the Settlement Payments considered damages and penalties are not remuneration for employment under Revenue Ruling 72-268, 1972-1 C.B. 313 (1972).

X. CLAIMS PROCEDURE

39. The Administrator shall prepare a claim form containing information concerning this Consent Decree in a form directed by the OAG.

40. The Defendant shall provide to the Administrator and the OAG contact information, including all available physical and email addresses and telephone numbers, for the Employees listed in Exhibit A within 15 days of the Effective Date (“Notice Deadline”). The Defendant shall continue to provide any new employee contact information to the Administrator and the OAG as it becomes available. The OAG may also provide employee contact information to the Administrator if it becomes available to the OAG.

41. Within 21 days of the Effective Date, the Administrator shall prepare a notice and claim form as directed by the OAG, which shall be sent via U.S. Regular mail and email to all Employees with information about how to obtain a Settlement Payment under this Consent Decree. The available payment method is delivery of a check.

42. After an Employee has correctly filed a notice and claim form as under Paragraph 40, the Employee will be deemed a Claimant and be entitled to Settlement Payments as described in Paragraphs 44. The OAG reserves the right to verify the identity of all Claimants and take appropriate action.

43. The Employees shall have 90 days from the Effective Date to submit a claim form and thereby become a Claimant.

44. The Administrator shall disburse the Claimants’ Settlement Payment within 105 days of the Effective Date.

45. For each Employee who does not submit a claim from with 90 days of the Effective Date, the Administrator shall deliver a check to the OAG for the Employee’s Settlement Payment, which will be calculated in the same manner as the Claimants’ payments set forth in the previous paragraph. Each check shall be made payable to the “[Employee Name] or the Illinois Department of Labor.”

46. Each Settlement Payment shall be calculated pursuant to the following formula at the time of the Settlement Payment:

$$(\text{Settlement Account Balance} - \text{Administration Costs}) \times \frac{\text{Claimant's Minimum Share}}{\text{Settlement Amount}}$$

47. The Administrator shall provide regular updates to the OAG on the number of payments successfully made to Claimants.

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XI. MISCELLANEOUS PROVISIONS

48. This Consent Decree constitutes the entire understanding and agreements among the parties. This Decree may not be amended except by written consent of the parties.

49. Neither the OAG nor the Defendant shall be deemed to be the author of this Decree or any particular term, provision, or condition of this Decree.

50. The parties consent to the exclusive jurisdiction of and venue in the Circuit Court of Cook County, Illinois for the purposes of adjudicating any matter arising out of or relating to this Decree. This consent and waiver of any objections to jurisdiction or venue extends to the underlying litigation.

51. The OAG and the Defendant represent and warrant that they have the full right and authority to execute this Decree. The signatories hereto represent and warrant that they have been granted specific authority by their respective principals to execute the Decree.

52. In the event any portion of this Decree is declared void by a court, such portion shall be severed from this Decree, and the remaining provisions shall remain in effect.

53. Facsimiles and electronic (PDF) copies are deemed acceptable, binding signatures for the purposes of this Decree. This Decree may be executed in counterparts, each of which will be deemed an original document, and all of which will constitute one and the same agreement.

THE OFFICE OF THE ILLINOIS ATTORNEY
GENERAL

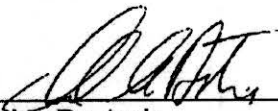
KWAME RAOUL
Attorney General of the State of Illinois

Dated: 10/22/24

By: 

Alvar Ayala
Chief, Workplace Rights Bureau
115 S. La Salle Street
Chicago, Illinois 60603
(312) 343-0099
alvar.ayala@ilag.gov

Dated: 10-16-24

By: 

DFS, INC.
Nick De Astis
President

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Exhibit A

LIST OF THE EMPLOYEES

First Name	Last Name	Minimum Claimant Share
Adlin	Baez	\$225.01
Andreyina	Zamora	\$1,726.77
Angelica	Naranjo	\$3,543.97
Anthony	Sierra	\$175.01
Brenda	Garcia	\$31.25
Carm	Roppo	\$39,471.15
Cory	Stone	\$1,208.41
Daniel	Villamil	\$975.06
Dinora	Lucas	\$731.29
Edgar	Lugo	\$866.72
Elvira	Carmona	\$8,443.85
Fabian	Araque	\$2,875.18
Hilda	Castillo	\$3,950.24
Humberta	Flores	\$3,583.55
Jazmin	Perez	\$2,806.42
Jesus	Nino	\$1,568.85
Jerry	Roppo	\$75.00
Jesus	Ramirez	\$5,964.53
Jorge	Garcia	\$15,709.29
Jorge	Gilbert	\$218.76
Jose	Garcia	\$2,318.89
Katherine	Romero	\$881.30
Lennin	Oliva	\$62.50
Lorena	Lux	\$3,156.44
Loren	Leon	\$975.06
Lucinda	Gomez	\$481.28
Luis	Rojas	\$2,162.63
Magaly	Najera	\$1,043.81
Marcela	Bustamante	\$2,418.90
Maria	Rocio	\$12.50
Marietta	Alvarez	\$81.25
Maria	Salgado	\$206.26
Maritza Olea	Bravo	\$668.79
Maritza	Ramos	\$806.30
Marleny	Martinez	\$3,287.70
Mayer	Rincon	\$575.04

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First Name	Last Name	Minimum Claimant Share
Miguel	Rodriguez	\$1,631.35
Milena	Mendoza	\$1,093.82
Misael	Carrillo	\$225.01
Paul	Mastrodomenice	\$2,665.16
Paula	Ramos	\$3,983.58
Pedro	Martinez	\$1,365.50
Perla	Santana	\$6.67
Rocio	Medrano	\$4,446.10
Rodolfo	Ramos	\$1,204.24
Roxana	Garcia	\$17,369.39
Rudy	Ramos	\$71,188.50
Sandra	Valenzuela	\$3,271.45
Sofia	Alvarez	\$1,387.58
Wilson	Lopez	\$10,405.63
Zarai	Hernandez	\$3,100.19
Joseph	Urbano	\$13,366.85
	TOTAL	\$ 250,000.00

Exhibit B



NOTICE TO ALL EMPLOYEES

This notice is being distributed pursuant to a Consent Decree between the Illinois Attorney General and DFS, Inc.

We hereby notify our employees of the following:

Employees have a right to be paid at time and half (1.5) their regular rate for all time worked in excess of forty hours per week. Employees also have the right to know their hourly rate of pay.

If you feel you have not been paid for all time worked in excess of forty hours per week at time and a half your regular rate of pay, or you have been the victim of any other violation of the Illinois Minimum Wage Law, you may contact the Office of the Illinois Attorney General's Workplace Rights Bureau or the Illinois Department of Labor to report any such violations at the numbers below:

Office of the Illinois Attorney General, Workplace Rights Bureau
844-740-5076
(TTY) 1-800-964-3013

Illinois Department of Labor
312-793-2800
(TTY) 1-800-526-0844



TODOS LOS EMPLEADOS

Este aviso se distribuye en conformidad con un Decreto de Consentimiento entre la Oficina del Procurador General de Illinois y DFS, Inc.

Por la presente notificamos a nuestros empleados sobre lo siguiente:

Los Empleados tienen derecho a ser pagados tiempo y medio (1.5) su tasa regular de pago por cada hora que trabajan más allá de 40 horas por semana. Los Empleados también tienen derecho a conocer su tasa regular de pago.

Si siente que no se le ha pagado a tiempo y medio (1.5) su tasa regular de pago por cada hora que trabajan más allá de 40 horas por semana, o que ha sido víctima de cualquier otra violación del Acta de Salario Mínimo de Illinois, usted puede comunicarse con la Oficina del Procurador General de Illinois o con el Departamento de Trabajo de Illinois a los siguientes números.

Oficina del Procurador General de Illinois, Buro de Derechos Laborales:

844-740-5076

(TTY) 1-800-964-3013

Departamento de Trabajo de Illinois

312-793-2800

(TTY) 1-800-526-0844