

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF MICHIGAN

THOMAS E. PEREZ , Secretary of Labor,	:	
United States Department of Labor,	:	
	:	
Plaintiff,	:	
v.	:	
	:	Case No. 1:14-cv-00772-RHB
SOPHIA'S KALAMAZOO, LLC.	:	
d/b/a SOPHIA'S HOUSE OF PANCAKES ,	:	
a limited liability corporation and	:	
JOHN P. FILIS , an individual,	:	
	:	Hon. Robert Holmes Bell
and	:	United States District Judge
	:	
SOPHIA'S III, INC., d/b/a SOPHIA'S HOUSE	:	
OF PANCAKES , a corporation, and	:	
JOHN P. FILIS , an individual, and	:	
PETER P. PHILIS , an individual,	:	
	:	
Defendants.	:	

CONSENT JUDGMENT

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor, having filed his complaint against **JOHN P. FILIS** (“**FILIS**”), **PETER P. PHILIS** (“**PHILIS**”), **SOPHIA'S III, INC.** (“**SOPHIA'S BENTON HARBOR**”), and **SOPHIA'S KALAMAZOO, LLC.** (“**SOPHIA'S KALAMAZOO**”) (collectively “defendants”), having appeared by counsel, having answered, and having been duly advised in the premises, agree to the entry of this judgment without contest under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, (hereinafter the “Act” or “FLSA”).

Defendants hereby admit and the Court finds that Corporate Defendants **SOPHIA'S KALAMAZOO, LLC.** d/b/a **SOPHIA'S HOUSE OF PANCAKES** and **SOPHIA'S III, INC.** d/b/a **SOPHIA'S HOUSE OF PANCAKES**, are and at all times hereinafter mentioned, were an enterprise or comprised an enterprise engaged in commerce within the meaning of sections 3(r) and 3(s)(1)(A) of the Act. 29 U.S.C. §§ 203(r), 203(s)(1)(A).

Defendants hereby admit and the Court finds that individual defendant **JOHN FILIS** is an individual "employer" under section 3(d) of the Act for **SOPHIA'S KALAMAZOO** and individual defendant **PETER PHILIS** is an individual "employer" under section 3(d) of the Act for **SOPHIA'S BENTON HARBOR**.

NOW, therefore, upon motion for the attorneys for plaintiff and defendants, and for cause shown,

JUDGMENT IS HEREBY ENTERED against defendants pursuant to sections 16(c) and 17 of the Act as follows.

IT IS HEREBY ORDERED AND ADJUDGED, pursuant to section 17 of the Act, that the defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them be and hereby are, permanently enjoined and restrained from violating the provisions of the Act, in any of the following manners.

I

Defendants shall not, contrary to sections 6 and 15(a)(2) of the Act, pay any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less than \$7.25 per hour (or

at a rate less than such other applicable minimum rate as may hereinafter be established by amendment to the Act).

II

Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any of their employees who in any workweek are engaged in commerce or the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than 40 hours, unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rates at which he is employed. The "regular rate" includes all sums paid for all hours worked and such sums divided by all hours worked.

III

Defendants shall not fail to make, keep and preserve records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations issued, and from time to time amended, pursuant to section 11(c) of the Act and found in 29 CFR Part 516. This includes, but is not limited to, maintaining records of all hours worked by each employee in each workday and each workweek, and records of compensation paid to each employee in each workweek, whether payment is made by a payroll check, personal check, cash or a combination thereof. The records maintained by defendants shall also include, but not be limited to, the full name and last-known mailing address of all employees, the daily starting and stop time of each employee, and the specific method of payment made to each employee.

IV

A. Defendants shall use a computer system or point-of-service system that records hours worked and tips received for all tipped employees and require all employees to clock-in, clock-out, and declare daily tip amounts. In addition, the system shall keep all records required by section 11(c) of the Act and found in 29 CFR Part 516 for at least three years. Defendants shall comply with section 3(m) of the Act and 29 C.F.R. § 531.59. Defendants acknowledge that the failure to accurately record the amount of tips reported by each employee will nullify any entitlement to a tip credit under section 3(m) of the Act.

B. Defendants shall provide each employee on each pay date with a pay stub reflecting specific dates of the pay period, total hours worked and paid, rate of pay, gross amounts paid and all deductions taken by defendants, including any deductions taken for any repayment of loans, uniforms, or meal costs made by defendants to employees. All pay and deductions must be shown whether they were made in the form of cash or check. Each pay stub shall be accompanied by the employee's record of daily and weekly hours for the corresponding pay period.

C. Defendants shall provide its current employees and every new employee with the following information in both English and Spanish:

- (1) A copy of the U.S. Department of Labor, Wage & Hour Division Publication WH-1282, Handy Reference Guide to the Fair Labor Standards Act and found at <http://www.dol.gov/whd/>, which sets forth employee's rights and responsibilities under the Act;
- (2) A copy of the Work Hours Recordkeeper book (WH-1497), published by the Department of Labor and found at <http://www.dol.gov/whd/>, which can be used by employees to record their hours worked;
- (3) Wage and Hour law training by a person qualified by education or experience on the tip credit provisions within 30 days of the date of this

order and again 180 days after the day of this order. Defendants shall notify the Grand Rapids District Office in advance of the training and provide copies of all training materials; and

V

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of the plaintiff and against the defendants, in the total amount of **\$245,000.00**.

A. Defendants shall pay to the plaintiff the sum of **\$122,500.00** which represents the unpaid minimum wage, overtime compensation, and lost wages for the § 15(a)(3) violation of the Act with respect to Erica Campbell, hereby found to be due for the period October 1, 2010 through December 31, 2012, to the present and former employees named in **Exhibit A**, attached hereto and made a part hereof, in the amounts set forth therein.

B. Defendants shall further pay to plaintiff, as liquidated damages, the additional sum of **\$122,500.00** hereby found to be due for the period October 1, 2010 through December 31, 2012, to the present and former employees named in **Exhibit A**, in the amounts set forth therein.

VI

The monetary provisions of this judgment shall be deemed satisfied upon defendants' delivery to the plaintiff's representative of the following:

(1) Defendants shall pay the above amounts with interest as identified herein to the plaintiff in one initial payment and 12 additional installment payments in accordance with the schedule attached hereto as **Exhibit A**. The initial payment of \$80,000 shall be paid to the plaintiff by defendants submitting a certified check or cashier's check payable to "United States Department of Labor - Wage and Hour Division" within 10 days of entry of this judgment. Defendants shall pay the remaining balance due of principal and interest to the plaintiff in the

gross amounts listed according to the installment schedule set forth herein. The payments shall be made on or before the following dates in the following amounts plus interest as set forth below.

<u>Date</u>	<u>Amount</u>
May 15, 2016	\$120,000 (plus interest)
June 15, 2016	\$5,000 (plus interest)
July 1, 2016	\$5,000 (plus interest)
August 1, 2016	\$5,000 (plus interest)
September 1, 2016	\$5,000 (plus interest)
October 1, 2016	\$5,000 (plus interest)
November 1, 2016	\$5,000 (plus interest)
December 1, 2016	\$5,000 (plus interest)
January 1, 2016	\$5,000 (plus interest)
February 1, 2016	\$5,000 (plus interest)

On or before each installment date, defendants shall deliver to the United States Department of Labor, a certified or cashier's check made payable in the gross amount of each installment payment identified herein, to "United States Department of Labor – Wage and Hour Division- Labor," Defendants' payment of the initial payment and each of the 10 installments shall be sent to the following address: United States Department of Labor, Midwest Regional Office, Wage and Hour Division, P.O. Box 2638, Chicago, Illinois 60690-2638.

(2) The DOL shall distribute the proceeds of each installment back wage check (less legal deductions for each employee's share of social security and federal withholding taxes) to the persons enumerated in **Exhibit A**, or to their estates, if that be necessary, and any amounts of

unpaid overtime compensation, liquidated damages or lost wages not so paid within a period of three (3) years from the date of receipt thereof shall, pursuant to section 16(c) of the Act, be covered into the Treasury of the United States as miscellaneous receipts.

VII

Should defendants fail to make any of the installments referenced herein on or before the due date provided herein, the entire outstanding amount of unpaid compensation, liquidated damages or lost wages shall become immediately due and payable without further notice or demand by plaintiff against defendants. Defendants have a five-day grace period on each payments due date before this paragraph may be enforced.

Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed. In the event of default, the DOL intends to pursue enforcement of this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

Finally, in the event that defendants sell, transfer any interest, liquidate any part of, or otherwise discontinue the operations of Sophia's Pancake House in Kalamazoo or Benton Harbor, Michigan, any proceeds for the sale, transfer, or liquidation of the business or any of its assets are to be immediately applied to any outstanding balance owed to the Department of Labor under this Consent Judgment. Such sums shall be tendered to the Wage and Hour Division at the address set forth in Paragraph VII within 30 days of sale, transfer or liquidation. Defendants

shall provide written notice of any sale, transfer, liquidation, or discontinuation of business referenced herein within 30 days prior to such action. Written notice should be provided to Wage and Hour Division at the address set forth in paragraph VII above.

VIII

Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any employee to return or to offer to return to the defendants or to someone else for the defendants, any money in the form of cash, check, or any other form, for wages previously due or to become due in the future to said employee under the provisions of this judgment or the Act; nor shall defendants accept, or receive from any employee, either directly or indirectly, any money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to said employee under the provisions of this judgment or the Act; nor shall defendants discharge or in any other manner discriminate, nor solicit or encourage anyone else to discriminate, against any such employee because such employee has received or retained money due to him from the defendants under the provisions of this judgment or the Act.

IX

Defendants, their agents, officers or employees shall not, contrary to section 15(a)(3) of the Act, threaten, retaliate, or discriminate in any way against any current or former employee of defendants for exercising any rights under the FLSA, including, but not limited to, employee complaints regarding FLSA compliance made to defendants or to the Wage and Hour Division of the United States Department of Labor, or cooperation with an investigation conducted by the Wage and Hour Division.

X

FURTHER, it is agreed by the parties herein and hereby **ORDERED** that each party bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs, including, but not limited to, any and all costs referenced under the Equal Access to Justice Act, as Amended.

FURTHER, this Court shall retain jurisdiction of this matter to enforce the terms of this final judgment pursuant to Federal Rule of Civil Procedure 54.

Dated February 14, 2016, 2016

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
United States District Court Judge

The parties, by themselves or their undersigned Counsel, hereby consent to the entry of this Consent Judgment and Order:

RESPECTFULLY SUBMITTED,

THOMAS E. PEREZ
Secretary of Labor,
U.S. Department of Labor,
Plaintiff,

By: s/ Emelda Medrando
EMELDA MEDRANO, Esq.

By: s/ Bruce C. Canetti
BRUCE C. CANETTI, Esq.
Attorneys for the Plaintiff
U.S. Department of Labor
Office of the Solicitor, 8th Floor
230 S. Dearborn St.
Chicago, Illinois 60604
(312) 353-1169
(312) 353-3271
medrano.emelda@dol.gov
canetti.bruce@dol.gov
FAX: (309) 827-3991

SOPHIA'S KALAMAZOO, LLC.,
SOPHIA'S III, INC., JOHN P. FILIS,
an individual, and **PETER P. PHILIS**,
an individual, Defendants,

By: s/ Gregory N. Longworth
GREGORY N. LONGWORTH, Esq.

Attorney for Defendants
Clark Hill, PLC.
200 Ottawa Avenue, NW
Suite 500
Grand Rapids, MI 49503
(616) 608-1104
GLongworth@ClarkHill.com
FAX: (616) 608-11184

By: s/ John P. Filis
JOHN P. FILIS, individually and on behalf of
SOPHIA'S KALAMAZOO, LLC. d/b/a SOPHIA'S
HOUSE OF PANCAKES

By: s/ Peter P. Philis
PETER P. PHILIS, individually and on behalf of
SOPHIA'S III, INC. d/b/a SOPHIA'S
HOUSE OF PANCAKES

Local Counsel:
W. FRANCESCA FERGUSON
Assistant U. S. Attorney
330 Ionia NW, 5th Floor
Grand Rapids, MI 49501-0208
(616) 456-2404, ext. 12020

EXHIBIT A

Sophia's Kalamazoo:

First Name	Last Name	BWs	LDs	Total Due
Juan Miguel	Aguilar	\$2,354.51	\$2,354.51	\$4,709.02
Enrique	Antemate	\$19.27	\$19.27	\$38.54
Ema	Arana-Heisler	\$195.56	\$195.56	\$391.12
Marci	Baker	\$219.09	\$219.09	\$438.18
Sikiu	Bakita	\$50.68	\$50.68	\$101.36
Balboa	Andrea	\$263.76	\$263.76	\$527.52
Roxann	Bartholomew	\$4,470.61	\$4,470.61	\$8,941.22
Sonya	Baysinger	\$1,375.05	\$1,375.05	\$2,750.10
Denise	Bigelow	\$221.35	\$221.35	\$442.70
Carly	Bila	\$2,053.23	\$2,053.23	\$4,106.46
Brianna	Cantu (Bland)	\$3,127.10	\$3,127.10	\$6,254.20
Cintia	Bujanos-Salas	\$32.56	\$32.56	\$65.12
Suzanne	Cook	\$552.91	\$552.91	\$1,105.82
Jennifer	Cuyler	\$1,101.25	\$1,101.25	\$2,202.50
Luis	De Luna	\$857.03	\$857.03	\$1,714.06
Spring	Deboer	\$62.83	\$62.83	\$125.66
Erik	Deluna	\$1,353.96	\$1,353.96	\$2,707.92
Zachary	Devour	\$1,061.70	\$1,061.70	\$2,123.40
Dominick	Dibari	\$1,199.23	\$1,199.23	\$2,398.46
Audre	Dixon	\$468.02	\$468.02	\$936.04
Jessica	Flinn	\$173.97	\$173.97	\$347.94
Fuentes Sanchez	Juan	\$1,821.01	\$1,821.01	\$3,642.02
Danielle	Gardner	\$2,618.32	\$2,618.32	\$5,236.64
Krista	Geer	\$66.70	\$66.70	\$133.40
Fidel	Gonzalez	\$643.86	\$643.86	\$1,287.72
Daniel	Gonzalez	\$10.28	\$10.28	\$20.56
Kassandra	Graham	\$79.75	\$79.75	\$159.50
Sunnese	Granados	\$2,464.70	\$2,464.70	\$4,929.40
Katy	Harris	\$1,777.35	\$1,777.35	\$3,554.70
Ashlin	Hartson	\$160.85	\$160.85	\$321.70
Christina	Hayes	\$2,500.62	\$2,500.62	\$5,001.24
Heather	Hilsenbeck	\$1,824.90	\$1,824.90	\$3,649.80
Roxanne	Holkeboer	\$2,847.39	\$2,847.39	\$5,694.78
Soula	Karabtsos	\$491.14	\$491.14	\$982.28
Taylor	Kifer	\$583.88	\$583.88	\$1,167.76
Michelle	King	\$167.68	\$167.68	\$335.36
Paul	Knowlton	\$60.84	\$60.84	\$121.68

Lydia	Koehler	\$4,748.50	\$4,748.50	\$9,497.00
Stefanie	Koehler	\$724.26	\$724.26	\$1,448.52
Casey	Lane	\$1,114.00	\$1,114.00	\$2,228.00
Meaghan	Lewis	\$1,458.66	\$1,458.66	\$2,917.32
Juan	Lopez	\$188.30	\$188.30	\$376.60
Amber	Martin	\$1,699.24	\$1,699.24	\$3,398.48
Gerardo	Martinez	\$395.01	\$395.01	\$790.02
Natasha	Maxon	\$430.90	\$430.90	\$861.80
McFadden	Kathy	\$174.53	\$174.53	\$349.06
Katelyn	McGee	\$842.13	\$842.13	\$1,684.26
Rosa	Medina	\$256.37	\$256.37	\$512.74
Cindora	Michels	\$558.09	\$558.09	\$1,116.18
Samanda	Miura	\$1,291.57	\$1,291.57	\$2,583.14
Nicholas	Mumma	\$79.16	\$79.16	\$158.32
Gabriell	Nee	\$345.51	\$345.51	\$691.02
Brenda	Ojeda	\$4,396.16	\$4,396.16	\$8,792.32
Zakiya	Parker	\$1,257.48	\$1,257.48	\$2,514.96
Gabriela	Portillo	\$159.27	\$159.27	\$318.54
Madeline	Powers	\$947.25	\$947.25	\$1,894.50
Meagan	Roberts	\$293.15	\$293.15	\$586.30
Leticia	Rodriguez	\$358.02	\$358.02	\$716.04
Maria de Jesus	Rodriguez	\$417.26	\$417.26	\$834.52
Ricardo	Rodriguez	\$1,130.80	\$1,130.80	\$2,261.60
Daniel	Ruiz Rodriguez	\$30.93	\$30.93	\$61.86
Norma	Sanchez	\$8.43	\$8.43	\$16.86
Angie	Smith	\$86.15	\$86.15	\$172.30
Autume	Smith	\$298.71	\$298.71	\$597.42
Carmen	Smoke	\$48.85	\$48.85	\$97.70
Shemika	Stanford	\$2,271.09	\$2,271.09	\$4,542.18
Virgie	Stinson	\$208.89	\$208.89	\$417.78
Margaret	Tuka	\$493.90	\$493.90	\$987.80
Jeanne	Van Lear	\$31.66	\$31.66	\$63.32
Morgan	Washington	\$87.40	\$87.40	\$174.80
Angela	Webster	\$1,343.91	\$1,343.91	\$2,687.82
Annalice	White	\$811.21	\$811.21	\$1,622.42
Michelle	Windischman	\$151.02	\$151.02	\$302.04
Kalamazoo Totals		\$68,470.71	\$68,470.71	\$136,941.42

Sophia's Benton Harbor:

First Name	Last Name	BWs	LDs	Total Due
Antonio	Abarca	\$2,276.46	\$2,276.46	\$4,552.92
Graciela	Alvarez	\$46.77	\$46.77	\$93.54
Francisco	Basabe	\$1,259.42	\$1,259.42	\$2,518.84
Romelio	Basave	\$2,276.46	\$2,276.46	\$4,552.92
Sonya	Baysinger	\$240.90	\$240.90	\$481.80
Melinda	Blackwell	\$108.72	\$108.72	\$217.44
Carlye	Bushen	\$302.99	\$302.99	\$605.98
Sara	Calderon	\$418.84	\$418.84	\$837.68
Erica	Campbell	\$2,911.91	\$2,911.91	\$5,823.82
Bobbie	Cantrell	\$319.05	\$319.05	\$638.10
Jody	Cox	\$296.36	\$296.36	\$592.72
Amanda	Curtis	\$504.34	\$504.34	\$1,008.68
Jennifer	Cuyler	\$443.54	\$443.54	\$887.08
Hugo	De la Paz	\$75.36	\$75.36	\$150.72
Charase	Dorsey	\$351.23	\$351.23	\$702.46
Annette	Forrester	\$1,838.56	\$1,838.56	\$3,677.12
Melissa	Fritz	\$245.99	\$245.99	\$491.98
April	Gagliardo	\$938.45	\$938.45	\$1,876.90
Cynthia	Gales	\$4,206.03	\$4,206.03	\$8,412.06
Pablo	Gamino	\$1,913.74	\$1,913.74	\$3,827.48
Azucena	Garcia	\$64.77	\$64.77	\$129.54
Ashley	Green	\$3,476.84	\$3,476.84	\$6,953.68
Stacey	Hanley	\$684.83	\$684.83	\$1,369.66
Tiffany	Hartline	\$989.99	\$989.99	\$1,979.98
Donita	Lock	\$2,123.32	\$2,123.32	\$4,246.64
Juan	Lopez Cero	\$457.40	\$457.40	\$914.80
Dana	Mast	\$1,951.72	\$1,951.72	\$3,903.44
Erica	Martin	\$1,330.18	\$1,330.18	\$2,660.36
Reyna	Martinez	\$284.23	\$284.23	\$568.46
Kathy	McFadden	\$1,586.25	\$1,586.25	\$3,172.50
Virgina	Mesa	\$108.72	\$108.72	\$217.44
Nicole	Miller	\$450.10	\$450.10	\$900.20
Cynthia	Mott	\$821.71	\$821.71	\$1,643.42
Fred	Mumper	\$717.74	\$717.74	\$1,435.48
Lisa	Musto	\$2,664.06	\$2,664.06	\$5,328.12
Luis	Perez	\$391.42	\$391.42	\$782.84
Christina	Perkins	\$4,126.17	\$4,126.17	\$8,252.34
Alisha	Saracona	\$1,231.28	\$1,231.28	\$2,462.56
Kathryn	Scheper	\$297.45	\$297.45	\$594.90

Nicole	Summerton	\$440.35	\$440.35	\$880.70
Michelle	Thomas	\$3,339.28	\$3,339.28	\$6,678.56
Kylie	Trowbridge	\$622.02	\$622.02	\$1,244.04
Velvet	Walker	\$177.66	\$177.66	\$355.32
Shelly	Williamson	\$2,895.12	\$2,895.12	\$5,790.24
Benton Harbor				
Totals		\$52,207.73	\$52,207.73	\$104,415.46

Sophia's Benton Harbor 29 U.S.C. § 215(a)(3):

First Name	Last Name	BWs	LDs	Total Due
Erica	Campbell	\$1,821.56	\$1,821.56	\$3,643.12

Totals:

Sophia's Kalamazoo	\$136,941.42
Sophia's Benton Harbor	\$104,415.46
Sophia's Benton Harbor 29 U.S.C. § 215(a)(3)	\$3,643.12
Grand Total	\$245,000.00