

active concert or participation with them are hereby permanently enjoined and restrained from violating the provisions of the Act in any of the following manners.

I

Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any 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. Specifically, Defendants shall not “bank” hours that employees work in excess of 40 hours in a workweek. Instead, Defendants shall pay employees for all hours worked during the pay periods in which those hours were worked.

II

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 at 29 C.F.R. Part 516. This includes, but is not limited to, maintaining records of all hours worked by each employee on each workday and in 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.

III

A. If Defendants intend to claim an exemption to the overtime requirements of the Act, prior to claiming such exemption, Defendants shall notify each affected employee in writing. Defendants shall inform such employees of the exemption Defendants intend to claim and the basis for claiming the exemption.

B. From April 1, 2016 through February 1, 2018, Defendants will advise all current and future employees both verbally and in writing that their overtime hours will not be banked, and Defendants will have each of those employees sign a document that states that the employee has received this notice. Defendants will maintain a copy of these signed documents in each employee's file for a period of two years.

C. From April 1, 2016 through February 1, 2018, Defendants will provide the following Wage and Hour fact sheets to all current and future employees: #13 (Employment Relationship under the Fair Labor Standards Act); #17B (Executive Exemption); #17C (Administrative Exemption); #17G (Salary Basis, Part 541 Exemptions); #21 (Recordkeeping Requirements under the Fair Labor Standards Act); #22 (Hours Worked under the Fair Labor Standards Act); #23 (Overtime Pay Requirements of the Fair Labor Standards Act).

D. Defendants shall retain, at their own cost, a certified public accounting firm to conduct annual audits of Defendants' pay practices to determine compliance with the Act in accordance with the following requirements:

1. The audit should include a review of each worker's status (i.e. an employee, independent contractor, or exempt under Part 541, etc.);

2. The audit shall include a review of all payroll records for the previous six-month period to determine compliance with the provisions of this Consent Judgment and the recordkeeping regulations of the Department of Labor found at 29 C.F.R. Part 516;

3. The audits shall be scheduled to ensure the availability of the maximum number of workers for the period of each audit;

4. The auditor will prepare two reports, both of which shall be submitted to the U.S. Department of Labor, Wage and Hour Division, 800 Monroe Ave., NW, Suite 315, Grand Rapids, Michigan, 49503;

5. The first report will be submitted on or before December 15, 2016, and will cover the period from May 1, 2016 through October 31, 2016; and

6. The second report will be submitted by on or before December 15, 2017, and will cover the period from May 1, 2017 through October 31, 2017.

7. Acceptance of the audit reports shall not be construed as acceptance by the Department of Labor of the findings of any audit nor limit in any way the authority of the Plaintiff to enforce the provisions of this Consent Judgment or of the Act and to conduct any investigation or take any remedial actions authorized by the Act.

IV

The Defendants hereby acknowledge and the Court finds that:

A. Defendant **H&H LAWN SERVICE AND SNOWPLOWING, LLC**, is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the Act.

V

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of Plaintiff and against Defendants in the total amount of **\$38,000.01**.

A. Defendants have paid Plaintiff the sum of **\$13,110.12**, which represents the unpaid gross overtime compensation hereby found to be due, for the period May 15, 2012 through February 25, 2014, to the present and former employees named and in the amounts set forth in Exhibit A, attached hereto and made a part hereof.

B. Defendants shall further pay to Plaintiff the sum of **\$24,962.53**,¹ which represents the liquidated damages and post-judgment interest hereby found to be due, for the period May 15, 2012 through February 25, 2014, to the present and former employees named and in the amounts set forth in Exhibits A and B, attached hereto and made a part hereof.

VI

The monetary provisions of Paragraph V of this Consent Judgment shall be deemed satisfied, upon Defendants' delivery to the Plaintiff's representative of the following:

A. A schedule, in duplicate, showing the name, last-known address, social security number, gross amount of wages due, amounts deducted from gross wages for social security and withholding taxes, gross amount of liquidated damages due and the net amount of such payment. Nothing in this Consent Judgment precludes Defendants from complying with court-issued wage deduction and child support orders from the payments being made pursuant to this Consent Judgment.

B. Defendants have paid the overtime compensation by providing separate checks for each employee named in Exhibit A made payable to the order of the employee or "Wage and

¹ At the time Plaintiff filed the Complaint in this matter, the amount of liquidated damages sought equaled the amount of back wages. However, during the course of litigation, Defendants paid certain employees their back wages, but not their liquidated damages, which accordingly reduced the amount of back wages owed.

Hour Div., Labor,” as alternative payees (*e.g.*, “PAY TO THE ORDER OF JANE DOE or WAGE AND HOUR DIV., LABOR”) and equal to the net amount of back wages due employees, after deducting the amount of legal deductions as listed on the schedule referred to hereinabove from the gross amount of back wages for each employee named on Exhibit A. Said deductions shall be paid by Defendants to the appropriate State and Federal revenue authorities. Defendants remain responsible for paying its share of any applicable taxes to the appropriate state and Federal revenue authorities.

C. Defendants shall pay the liquidated damages with post-judgment interest as identified herein to the Plaintiff in six installment payments in accordance with the schedule attached hereto as Exhibit B and incorporated by reference. The initial payment of **\$4,139.68** shall be paid to the Plaintiff by Defendants submitting a cashier’s or certified check, made payable to “The U.S. Department of Labor-Wage and Hour Division” which shall be submitted no later than **June 1, 2016**. 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 in Exhibit B. Said payments shall be made by cashier’s or certified check and mailed to the U.S. Department of Labor, Wage and Hour Division, P.O. Box 2638, Chicago, Illinois 60690.

VII

Plaintiff shall distribute the proceeds of the checks referred to in Paragraph VI hereof (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 compensation and liquidated damages 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. Defendants remain responsible for

paying their share of any applicable taxes to the appropriate State and Federal revenue authorities.

VIII

Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any current or former 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 Consent 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 Consent 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 Consent Judgment or the Act.

IX

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 overtime compensation, and liquidated damages shall become immediately due and payable without further notice or demand by Plaintiff to Defendants.

X

FURTHER, it is agreed by the parties herein and hereby **ORDERED** that each party bears 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.

DATED April 29, 2016

/s/ Phillip J. Green
PHILLIP J. GREEN
UNITED STATES MAGISTRATE JUDGE

The parties hereby consent to the entry of this Consent Judgment:

FOR THE SECRETARY OF LABOR:

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

/s/ Kevin M. Wilemon
KEVIN M. WILEMON

DATED: 4/14/16

/s/ Catherine L. Homolka
CATHERINE L. HOMOLKA

DATED: 4/14/16

P.O. ADDRESS:
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., Room 844
Chicago, IL 60604
P: (312) 886-5260

F: (312) 353-5698

Local Counsel:

PATRICK A. MILES, JR.
United States Attorney

W. FRANCESCA FERGUSON
Assistant U.S. Attorney
330 Ionia NW, 5th Floor
P.O. Box 208
Grand Rapids, MI 49501-0208
P: (616) 456-2404, ex. 12110
F: (616) 456-2510

FOR THE DEFENDANTS:

FOR H&H LAWN SERVICE AND SNOWPLOWING, LLC:

/s/ Darrell Hinken
DARRELL HINKEN

DATED: 4/12/16

FOR DARRELL HINKEN:

DATED: 4/12/16

/s/ Darrell Hinken
DARRELL HINKEN

**APPROVED AS TO FORM
COUNSEL FOR DEFENDANTS:**

/s/ Christopher M. Trebilcock

DATED: 4/13/16

CHRISTOPHER M. TREBILCOCK
Attorney for H&H Lawn Service, LLC,
and Darrell Hinken, an individual

Miller Canfield
150 W. Jefferson, Suite 2500
Detroit, MI 48226

T: (313) 496-7647

F: (313) 496-8452

EXHIBIT A

DAMAGES OWED

Employee	Back Wages	Liquidated Damages	Total
1. Blank, Matt	\$3,038	\$3,038	\$6,076
2. Dutcher, Ernest	\$908.37	\$1,452.75	\$2,361.12
3. Halasinski, James	\$0	\$4,899.38	\$4,899.38
4. Hudson, Robert	\$2,175	\$2,175	\$4,350
5. Laisure, Bradley	\$1,229.63	\$1,229.63	\$2,459.26
6. Misner, Joshua	\$123.50	\$123.50	\$247
7. Orcutt, Curtis	\$140.62	\$140.62	\$281.24
8. Shelder, Barry	\$0	\$496.13	\$496.13
9. Smith, Brian	\$5,495	\$5,495	\$10,990
10. Vargo, David	\$0	\$4,494.38	\$4,494.38
11. Whelpley, Richard	\$0	\$1,345.50	\$1,345.50
Totals:	\$13,110.12	\$24,889.89	

Total: \$38,000.01

EXHIBIT B

Installment Details

Number	Due Date	Principal	Interest	Payment	Balance
1	6/1/2016	\$4,139.68	\$20.74	\$4,160.42	\$20,750.21
2	7/1/2016	\$4,143.13	\$17.29	\$4,160.42	\$16,607.08
3	8/1/2016	\$4,146.58	\$13.84	\$4,160.42	\$12,460.50
4	9/1/2016	\$4,150.04	\$10.38	\$4,160.42	\$8,310.46
5	10/1/2016	\$4,153.49	\$6.93	\$4,160.42	\$4,156.97
6	11/1/2016	\$4,156.97	\$3.46	\$4,160.43	\$0.00

Total Due:		\$24,889.89	\$72.64	\$24,962.53	
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** The above amounts reflect the gross amounts due before the deduction of federal and state taxes*