

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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THOMAS E. PEREZ, Secretary of Labor, :  
United States Department of Labor, :

Plaintiff, :

v. :

Civil Action No. 1:15 Civ. 07712 (RJS)

EXCLUSIVE BEAUTY SUPPLY INC.; :  
EXCLUSIVE BEAUTY SUPPLY 2 INC. d.b.a. :  
VIRGIN BEAUTY SUPPLY; EXQUISITE :  
HEALTH & BEAUTY SUPPLIES INC.; :  
HASSAN M. ESSKANDER, Individually; and :  
MAHDHAR ESSKANDER, Individually; :

Defendants. :  
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**CONSENT JUDGMENT**

Plaintiff, THOMAS E. PEREZ, the Secretary of Labor, has filed his Complaint and Defendants EXCLUSIVE BEAUTY SUPPLY INC.; EXCLUSIVE BEAUTY SUPPLY 2 INC. d.b.a. VIRGIN BEAUTY SUPPLY; EXQUISITE HEALTH & BEAUTY SUPPLIES INC.; HASSAN M. ESSKANDER; and MAHDHAR ESSKANDER (“Defendants”) appeared by Counsel and agreed to the entry of the Consent Judgment without contest.

Defendants have failed to make, keep, and preserve records of all wages, hours, and other conditions and practices of employment maintained by them as required by Sections 11(c) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) (“the Act”), and as prescribed in regulations found in 19 C.F.R. Part 516 that are issued, and from time to time amended, pursuant to Section 11(c) of the Act.

Defendants have willfully violated the provisions of Sections 6, 7, and 15(a)(2) of the Act. Defendants acknowledge that they employed employees in an enterprise engaged in commerce

without paying employees time and a half overtime premium pay for their hours worked in excess of forty (40) in a workweek, and without paying some employees the required federal minimum wage.

Defendants acknowledge that they have notice of, and understand, the provisions of this Consent Judgment, and acknowledge their responsibilities pursuant to this Consent Judgment, and acknowledge that they will be subject to sanctions in contempt of this Court and may be subject to punitive damages if they fail to substantially and materially comply with the provisions of this Consent Judgment.

It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown ORDERED that:

I. Defendants, their officers, employees, agents, and all persons acting or claiming to act in Defendants' behalf and interest, be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 6, 7, 11(b), 11(c), 15(a)(2), and 15(a)(5) of the Act, in any of the following manners:

- (1) Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Section 6 of the Act.
- (2) Defendants shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless

the employees receive compensation for their employment in excess of the prescribed hours at rates not less than one and one-half times the employees' regular rates.

- (3) Defendants shall make, keep, and preserve adequate 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 pursuant to Section 11(c) of the Act and found at 29 C.F.R. Part 516.
- (4) Defendants shall not discharge or take any retaliatory action against any employee because the employee engages in, or is believed to have engaged in, any of the following activities:
  - a. Discloses, protests, or threatens to disclose or protest, to a supervisor or to a public agency, any activity, policy, or practice of Defendants, or another employer with whom there is a business relationship, that the employee reasonably believes is in violation of the Act or a rule or regulation promulgated pursuant to the Act;
  - b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by Defendants or another employer with whom there is a business relationship;  
or
  - c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act.

- (5) Defendants, along with their officers, agents, and managers, shall not tell any employees not to speak to representatives of the U.S. Department of Labor, nor tell any employees to provide untruthful information to the U.S. Department of Labor regarding the terms or conditions of their employment, nor otherwise obstruct or interfere with any investigative activities of the U.S. Department of Labor.

II. Further, the Court finding that unpaid overtime back wages are owed and shall be paid to the employees listed on Exhibit A, which is attached hereto, in the total amount of \$109,000.00 plus an equal additional total amount of liquidated damages of \$109,000.00 for a total amount of \$218,000.00, it is:

ORDERED that Defendants and all persons acting on their behalf are enjoined and restrained from withholding the payment of \$109,000.00 in unpaid overtime back wages owed to their employees in the amounts listed opposite their names on Exhibit A. In addition, Defendants shall pay \$109,000.00 in liquidated damages owed to their employees in the amounts listed opposite their names on Exhibit A. These payments shall be made by Defendants in accordance with Paragraph III of this Consent Judgment.

III. The provisions of this Consent Judgment relative to back wage payments and liquidated damages shall be deemed satisfied when Defendants fully comply with the terms of payment set forth below and in Exhibit B:

- (1) Payment of the minimum wage and overtime compensation shall be made beginning with a down payment of \$30,000.00 made by August 10, 2016. The remaining balance of \$188,000.00 shall be made in three (3) separate installments of \$70,000.00, \$59,000.00, and \$59,000.00 plus post-judgment interest at the rate

of 0.53% per annum. The three (3) installment payments shall be made according to the following schedule:

- a. The first installment payment of \$70,000.00 plus \$84.62 post-judgment interest shall be made by September 10, 2016;
- b. The second installment payment of \$59,000.00 plus \$104.52 post-judgment interest shall be made by November 10, 2016; and
- c. The third installment payment of \$59,000.00 plus \$78.82 post-judgment interest shall be made by February 10, 2017.

- (2) All payments shall be made by delivery of a certified check or money order made payable to "Wage and Hour Division -- Labor" for the required amount, paid to the Plaintiff's representative:

U.S. Department of Labor/Wage & Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

- (3) Each check or money order shall have the following reference numbers on it:  
1698140 & 1690219.
- (4) Copies of each certified check or money order and cover letter shall be simultaneously sent to Debbie Lau, Assistant District Director, U.S. Department of Labor, Wage & Hour Division, New York City District Office, 26 Federal Plaza, Room 3700, New York, NY 10278.

IV. Plaintiff shall deliver the proceeds of each check less any legal deductions to the employees named on the attached Exhibit A. Any sums not distributed to the employees or to their personal representatives or estates within a period of three (3) years, because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited in

the Treasury of the United States as miscellaneous receipts pursuant to 29 U.S.C. § 216(c).

V. Upon request, Defendants shall make available to Plaintiff the social security number and the last known telephone number and mailing address of each employee or former employee named on the attached Exhibit A.

VI. Defendants, and anyone acting on their behalf, shall not in any way directly or indirectly, demand, require or accept any of the back wages or liquidated damages from any of the employees listed on the attached Exhibit A. Defendants, and anyone acting on their behalf, shall not threaten or imply that adverse action will be taken against any employee because of his or her receipt of funds due under the provisions of this Consent Judgment or the Act. Violation of this Paragraph may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

VII. If Defendants fail to make the payments, as set forth in Paragraph III of this Consent Judgment, without Court approval, all remaining installment payments become due immediately.

VIII. Defendant Hassan M. Esskander owns a residential property located at 148-41 86th Avenue, Briarwood, NY 11435 (Borough: Queens; Block: 9726; Lot: 40) (“the Property”). The Property shall serve as security for the payments referenced in paragraphs II and III of this Consent Judgment.

- (1) Defendant Hassan M. Esskander represents that the Property is unencumbered by any claims, liens or debts, other than First American International Bank mortgage with account number 9107293. This subparagraph is a material representation upon which the Secretary expressly relies in entering this Consent Judgment.
- (2) By operation of this Consent Judgment, Defendant Hassan M. Esskander hereby grants the Secretary a lien on the Property for up to \$218,000.00, less any amounts

received by the Secretary pursuant to paragraphs III and IV of this Consent Judgment (“the Lien”).

- (3) Defendant Hassan M. Esskander waives any right to protest, contest, or otherwise challenge the enforcement of the Lien in the event that the Secretary moves to enforce the Lien pursuant to this Consent Judgment.
- (4) Defendant Hassan M. Esskander agrees to cooperate with the Secretary in the filing of all documents necessary to file, record or enforce the Lien.
- (5) No action or non-action by the Secretary shall constitute a waiver of this paragraph.
- (6) Upon complete payment of the monetary terms outlined in Paragraph III of this Consent Judgment, a Notice of Lien Release will be issued within thirty (30) days.

IX. If Defendants fail to make the payments, as set forth in Paragraph III of this Consent Judgment, then, in addition to the provisions of Paragraph VII, upon notice to Defendants, the Court shall appoint a Receiver to effectuate all of the terms of this Consent Judgment. In the event a Receiver is appointed, it is ORDERED that:

- (1) Defendants shall cooperate with the Receiver in all respects, and shall provide to the Receiver any and all reasonable information which the Receiver may require to carry out its appointment and in accordance with the authority given to the Receiver pursuant to applicable law at the time of appointment.
- (2) All the expenses of the accountant or Receiver shall be borne solely by Defendants.
- (3) The Receiver shall serve until the payment of the monetary terms of this Consent Judgment are satisfied.
- (4) The Receiver shall have full authority to: collect Defendants’ assets and report his/her findings to the Court and the parties; to redeem and/or liquidate Defendants’

assets and turn over the proceeds to the Secretary; if the asset is a debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring; to analyze all transfers of Defendants' assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under this Consent Judgment.

X. ORDERED that Defendants shall display in conspicuous places throughout their establishments for their employees' viewing the poster "Employee Rights Under the Fair Labor Standards Act" issued by the U.S. Department of Labor in both English and Spanish. Defendants shall maintain these postings permanently.

XI. ORDERED that Defendants shall display in a conspicuous place in their establishments for their employees' viewing the attached Exhibit C in both English and Spanish. Defendants shall maintain this posting for a period of three (3) years from entry of this Consent Judgment.

XII. ORDERED that Defendants shall provide all of their employees each of the following documents, in the employees' choice of Spanish or English, the flyer "Employee Rights Under the Fair Labor Standards Act" as issued by the U.S. Department of Labor; and "Fact Sheet #23: Overtime Pay Requirements of the FLSA" as issued by the U.S. Department of Labor. Defendants shall provide these documents to its current employees within fifteen (15) days of the entry of this Consent Judgment. Thereafter, Defendants shall provide to any new employees, at the time that they hire them, each of those documents, in the employees' choice of Spanish or English.

XIII. ORDERED that Defendants shall implement the following provisions to ensure

their compliance with the Act:

- (1) Defendants shall amend their payroll and recordkeeping practices to comply with the Act, including as follows:
  - a. Defendants shall utilize a time clock or other automated timekeeping system at each store to accurately record all hours worked by all employees.
  - b. Defendants' time records shall include and record all hours worked by employees.
  - c. Defendants' time records shall record the daily start and stop times for all hours worked by each employee.
  - d. Defendants shall ensure that their time records include the start and stop times of any non-compensable rest period during the workday, including, but not limited to, lunch breaks. Defendants shall treat all employee breaks and rest periods as compensable hours worked, unless the break is more than twenty (20) minutes in duration and the employee is completely relieved from work duty during the break.
  - e. Defendants shall not request, require, or otherwise cause employees to perform work during designated non-compensable rest periods, unless such time is included in the employees' hours worked and compensated accordingly.
  - f. Defendants shall not request, require, or otherwise cause employees to perform work "off the books" (not recorded in the time records).
  - g. Defendants shall pay wages to each employee based on the hours actually worked by the employee during the applicable workweek, as recorded in

Defendants' time records.

- h. When any employee of Defendants works for Defendants at two (2) or more stores in a single workweek, Defendants shall aggregate the total hours that each such employee worked at the stores during the workweek in order to determine whether the employee worked more than forty (40) hours in total.
- i. For each workweek, Defendants shall provide each employee with a printed statement, generated from Defendants' automated timekeeping systems, of hours worked by each employee for each day of the workweek ("Weekly Work Hours Summary"). Defendants shall give each employee the opportunity to review his or her Weekly Work Hours Summary and write in corrections if necessary. Defendants shall provide each employee with a copy of his or her Weekly Work Hours Summary. Each employee will be given his or her Weekly Work Hours Summary to review at least four (4) hours before the employee receives his or her pay for the workweek. Each Weekly Work Hours Summary shall contain or be accompanied by a statement in English and Spanish that:

"Your employer must pay you minimum wage, and at time and a half for all hours that you work over 40 in a workweek. If you think your employer has not paid you properly for all hours that you worked, you can call the U.S. Department of Labor to make a confidential complaint at 1-866-4US-WAGE."
- j. Defendants shall maintain all time and payroll records for a period of not less than three (3) years.
- k. No later than September 10, 2016, Defendants shall provide to the Wage and Hour Division a complete sample, for a single continuous two-week period,

of time records and payroll records for all of Defendants' employees, that comply with this Paragraph XIII and with the Regulations found at 29 C.F.R. Part 516, as amended from time to time. The records shall be sent to Debbie Lau, Assistant District Director, U.S. Department of Labor, Wage & Hour Division, New York City District Office, 26 Federal Plaza, Room 3700, New York, NY 10278.

- (2) Defendants shall not treat any employees as exempt from the overtime compensation requirements of the Act pursuant to the exemptions set forth in Section 13(a)(1) of the Act, unless Defendants ensure that such employees qualify for the exemptions claimed, based on the employees' actual job duties and method of compensation, as prescribed by the Regulations found at 29 CFR Part 541.
- (3) No later than September 10, 2016 Defendants shall retain a third-party examiner knowledgeable about the FLSA, who is acceptable to Plaintiff, to perform quarterly audits of Defendants' compliance with the Act and regulations issued under the Act. The third-party examiner will conduct quarterly audits of Exclusive Beauty Supply Inc., Exclusive Beauty Supply 2 Inc., and Exquisite Health & Beauty Supplies for a period of one (1) year. The third-party examiner will prepare a written report which summarizes the steps taken to complete the audit, and the finding of the audit as to Defendants' compliance with the Act. Upon request, the third-party examiner shall provide a copy of the report to Debbie Lau, Assistant District Director, U.S. Department of Labor, Wage & Hour Division, New York City District Office, 26 Federal Plaza, Room 3700, New York, NY 10278. The first such report shall be completed by November 1, 2016, followed by three

quarterly reports thereafter.

- a. The third-party examiner shall have the ability to communicate with Defendants' employees in their native language, or shall be provided with an interpreter in order to be able to communicate with employees in a language they can understand, at Defendants' expense.
- b. Defendants shall cooperate in full with the third-party examiner, including providing the third-party with access to Defendants' stores, employees, payroll, and time records, and any other records required by the third-party examiner to complete the audit.
- c. If the third-party examiner finds violations of the Act, or regulations issued under the Act, that result in back wages due, Defendants shall pay the wages due within fifteen (15) calendar days from the examiner's findings, absent protest or objection submitted by Defendants to the examiner and to the Department of Labor.
- d. The third-party examiner may investigate and report incidents or allegations or complaints of retaliation to Defendants. If not resolved in a satisfactory manner, the third-party examiner shall report the incidents to the U.S. Department of Labor.
- e. The third-party examiner shall conduct interviews with a representative sample of Defendants' employees from each store, including at least some off-site interviews; such interviews, and other communications between employees and the third-party examiner shall be kept confidential, except that they may be disclosed to authorized representatives of the U.S.

Department of Labor; and copies of all notes and interviews conducted by the third-party examiner may be turned over to the U.S. Department of Labor.

- f. Discrimination or retaliation by Defendants against any employee for cooperating or communicating with the third-party examiner is prohibited to the fullest extent of the law, as provided in Section 15(a)(3) of the Act.

XIV. Neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees of Defendants not listed on Exhibit A of this Consent Judgment, be they current or former employees, to file any action against defendants under section 16(b) of the Act or likewise for any current or former employee listed on Exhibit A of this Consent Judgment to file any action against Defendants under section 16(b) of the Act.

XV. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

XVI. The Court retains jurisdiction over this matter for the purposes of enforcing this Consent Judgment.

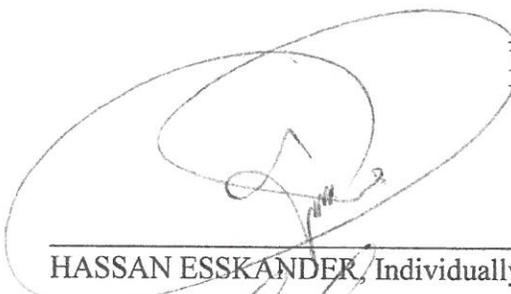
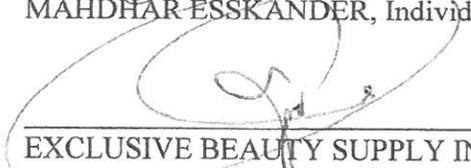
DATED: August 11, 2016  
NEW YORK, NEW YORK

SO ORDERED:



HONORABLE RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE

BY:

  
\_\_\_\_\_  
HASSAN ESSKANDER, Individually  
\_\_\_\_\_  
MAHDHAR ESSKANDER, Individually  
\_\_\_\_\_  
EXCLUSIVE BEAUTY SUPPLY INC.;  
EXCLUSIVE BEAUTY SUPPLY 2 INC.  
d.b.a. VIRGIN BEAUTY SUPPLY;  
EXQUISITE HEALTH & BEAUTY SUPPLIES INC.

By: Hassan Esskander, Corporate Officer

DATED: August 10, 2016  
NEW YORK, NEW YORK

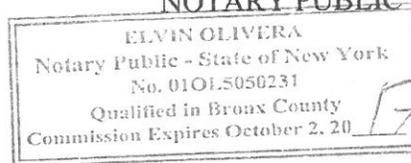
STATE OF New York )  
COUNTY OF Bronx ) :SS:

On the 10 day of August, 2016 before me came **HASSAN ESSKANDER**, to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer of **EXCLUSIVE BEAUTY SUPPLY INC., EXCLUSIVE BEAUTY SUPPLY 2 INC., and EXQUISITE HEALTH & BEAUTY SUPPLIES INC.**, described in and which executed the foregoing instrument, that he signed his name thereto by like order.

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NOTARY PUBLIC



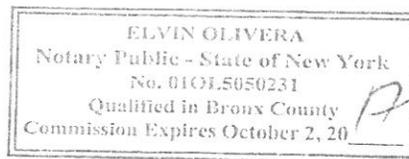
STATE OF New York )  
COUNTY OF Bronx ) :SS:

On the 10 day of August, 2016 before me came **HASSAN ESSKANDER**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NOTARY PUBLIC

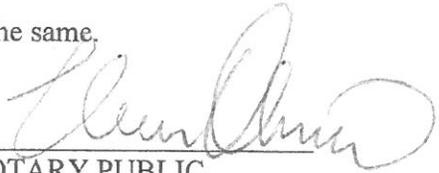


:SS:

COUNTY OF Bronx

On the 10 day of August, 2016 before me came MAHDHAR ESSKANDER,  
to me known and known to me to be the individual described in and who executed the foregoing  
instrument and he duly acknowledged to me that he executed the same.

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NOTARY PUBLIC

ELVIN OLIVERA  
Notary Public - State of New York  
No. 01OLS050231  
Qualified in Bronx County  
Commission Expires October 2, 2017

