

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|------------------------------------|---|--------------------------|
| MILTON AL STEWART ¹ , |) | |
| ACTING SECRETARY OF LABOR, |) | |
| UNITED STATES DEPARTMENT OF LABOR, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 20-1309 |
| |) | |
| HENKELS & MCCOY, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

STIPULATED CONSENT JUDGMENT

Plaintiff, Secretary of Labor, United States Department of Labor, hereinafter referred to as “Plaintiff” or “the Secretary,” has filed his Complaint alleging violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter “the Act”). Defendant named above, hereinafter referred to as “Defendant” or “Employer,” has appeared by counsel, and hereby agrees to the entry of this Consent Judgment without contest. It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown:

ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, and all persons acting or claiming to act on its behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 6, 7, 11(c), and 15 of the Act, in any manner, specifically:

1. Defendant 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

¹ Mr. Stewart is substituted for former Secretary of Labor Eugene Scalia. Fed. R. Civ. P. 25(d).

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 Sections 6 and 15(a)(2) of the Act.

2. Defendant shall not, contrary to Section 7 of the Act, employ any of its employees including, but not limited to, any of its employees working at any business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, but excluding any employees who are exempt from the overtime provisions of the Act, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the Act, 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 said employees receive compensation for their employment in excess of the prescribed hours at a rate equivalent to one and one-half times the regular rates applicable to them.

3. Defendant shall not, contrary to Section 7(e) of the Act, fail to include all compensation paid to employees as part of employees' regular rates for purposes of calculating overtime premium pay. Defendant shall not fail to include all compensation labeled as a "per diem" as part of employees' regular rates unless and only if such payments are for travel or work-related expenses actually incurred in furtherance of Defendant's interests and properly reimbursable by Defendant as prescribed by the Regulations issued pursuant to Section 7 and 15(a)(2) of the Act and found at 29 C.F.R. Part 778.217 and 29 C.F.R. Part 778.224. Pursuant to such regulations, the amount of such payments must reasonably approximate the expense incurred. Defendant shall not fail to include all compensation labeled as "truck rental pay" or "Personal Owned Vehicle (POV) Allowance" as part of employees' regular rates unless and only if such payments are legitimate reimbursements for actual usage or rental of employees'

personal vehicles.

4. Defendant shall not fail to make, keep, and preserve adequate records of its employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of its employees working at any business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, as prescribed by the Regulations issued pursuant to Section 11(c) and 15(a)(5) of the Act and found at 29 C.F.R. Part 516.

5. Defendant shall not fail to keep records of the amount and nature of any travel or work-related expenses employees actually incurred in furtherance of Defendant's interests and properly reimbursable by Defendant that Defendant excludes from employees' regular rates; pursuant to the above-referenced Regulations, the amount of such payments must reasonably approximate the expense incurred.

6. Defendant shall not discharge or take any retaliatory action against any of its employees, whether or not directly employed by Defendant, because the employee engages in any of the following activities pursuant to Section 15(a)(3) of the Act:

i. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Employers 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;

ii. 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 the Employers or another employer with whom there is a business relationship;

iii. 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.

It is further ORDERED, ADJUDGED and DECREED by the Court that:

7. Defendant is enjoined and restrained from withholding gross back wages in the sum total amount \$542,915.08, and is liable for the payment of \$542,915.08 in liquidated damages, due certain employees and former employees of Defendant set forth and identified in the Schedule A, which is attached hereto and made a part hereof.

8. Defendant shall pay gross back wages and liquidated damages in the total amount of \$1,085,830.16, for alleged violations of the overtime provisions of the Act by Defendant alleged to have occurred during the period beginning February 14, 2017, and ending October 9, 2020 ("relevant period"). This amount shall represent the full extent of overtime back wages and liquidated damages owed by Defendant for the relevant period to the employees set forth and identified on the attached Schedule A. It is further agreed that the overtime compensation and liquidated damage payments by the Defendant in the amounts as specified above are in the nature of back wages and liquidated damages pursuant to the provisions of the Act.

9. The provisions of this Consent Judgment relative to back wage and liquidated damages payments shall be deemed satisfied when Defendant delivers to the employees identified in the attached Schedule A the aggregate amount of \$1,085,830.16 within thirty (30) days of the entry of this Judgment by the Court. Defendant shall make payment directly to the identified employees in accordance with the amounts listed in the Schedule A, and in accordance with the following procedures:

i. Within 30 days of the Court's entry of the Consent Judgment, Defendant shall pay directly to the employees the amounts set forth in the Schedule A, less the appropriate payroll deductions for back wages. Defendant shall remain responsible for all tax payments considered to be the "employer's share," including but not limited to the Federal Insurance Contributions Act (FICA) tax and Unemployment Insurance (UI) tax;

ii. Within 30 days of making the payments pursuant to Paragraph 9(i), Defendant shall furnish to the U.S. Department of Labor, Wage and Hour Division, Wilkes-Barre District Office, Stegmaier Building – Suite 373M, 7 N. Wilkes-Barre Blvd., Wilkes-Barre, PA 18702, a list of all employees who have not been paid (due to missing address or otherwise). The list shall include the employee's last known address, social security number, and the attempts made to locate each person;

iii. In conjunction with the direct deposit or delivery of the checks to the employees listed in the Schedule A, within 30 days of issuing payment to the employees, Defendant shall furnish to the U.S. Department of Labor, Wage and Hour Division, Wilkes-Barre District Office, Stegmaier Building – Suite 373M, 7 N. Wilkes-Barre Blvd., Wilkes-Barre, PA 18702, payroll records demonstrating payment to the employees. The payroll records will show the employee name, address, social security number (to the extent known), and the gross and net compensation amounts paid to each such employee. Furthermore, Defendant shall provide to the Wage and Hour District Office copies of each of the cancelled checks delivered to or the confirmations of direct deposit payments to the employees no later than 7 days from Defendant's receipt of such information from its/their financial institution(s), or within 35 days of the entry of

this Judgment by the Court, whichever comes later. The information maintained and provided by Defendant shall be sent to the Wage and Hour Division at the above address.

iv. If, for any reason (e.g., because of inability to locate an employee or because of his/her refusal to accept it) Defendant is unable to make payment to any employee as required herein, Defendant shall submit one aggregate payment by ACH transfer, credit card, or debit card at <https://www.pay.gov/public/form/start/77689032> or at www.pay.gov, referencing **Case Identification No. 1834363**. Furthermore, Defendant shall provide to the Wage and Hour District Office a schedule identifying the name(s) and amount(s) due to the employee(s) to whom payments under this Consent Judgment were not made, to the U.S. Department of Labor, Wage and Hour Division, Wilkes-Barre District Office, Stegmaier Building – Suite 373M, 7 N. Wilkes-Barre Blvd., Wilkes-Barre, PA 18702. Defendant shall have up to 30 days following the 30-day expiration period prescribed by Paragraph 9(i) of this Consent Judgment to re-issue the aggregate payment to Wage and Hour.

v. The Wage and Hour division will distribute the proceeds referred to in Paragraph 9(iv) to the persons identified on the Schedule A, or to their estates, if necessary. To the extent any amounts of unpaid compensation are not so paid within a period of 3 years from the date of receipt thereof, because of inability to locate the proper persons or because of their refusal to accept the back wages, such amounts shall be delivered into the Treasury of the United States as miscellaneous receipts pursuant to 29 U.S.C. 216(c).

10. The provisions of this Consent Judgment shall not in any way affect any legal

right of any individual not named in Exhibit A, nor shall the provisions in any way affect any legal right of any individual named in Exhibit A to file any action against Defendant for any violations alleged to have occurred outside the relevant period.

11. Neither Defendant nor anyone on its behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Judgment. Any such amount shall be immediately paid to the Secretary for deposit as above, and Defendant shall have no further obligations with respect to such returned monies. If recovered wages have not been claimed by the employee or the employee's estate within three years of the entry of this Consent Judgment, the Secretary shall deposit such money with the Treasury in accordance with Section 16(c) of the Act.

12. Further, the parties agree that the instant action is deemed to solely cover Defendant's business and operations for the relevant period for all claims raised in the Complaint as a result of the Secretary's investigation. The parties agree that the filing of this action and the provisions of this Judgment shall not, in any way, affect, determine, or prejudice any and all rights of any person specifically named on Schedule A or the Secretary for any period before February 14, 2017, and after October 9, 2020, or any persons, be they current or former employees, not specifically named on Schedule A, insofar as such rights are conferred and reserved to said employees by reason of Section 16(b) of the Act. The parties agree that the filing of this action and the provisions of this Consent Judgment shall not, in any way affect, determine or prejudice any and all rights, or defenses of Defendant as to any employee or Defendant not covered by this Consent Judgment, or as to any employee covered by this Consent Judgment for any claim outside the relevant period.

13. Defendant agrees that is an employer within the meaning of Section 3(d) of

the Fair Labor Standards Act, 29 U.S.C. § 203(d).

14. By entering into this Consent Judgment, Plaintiff does not waive his right to conduct future investigations of Defendant under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to Section 16(e) of the FLSA, with respect to any violations disclosed by such investigations.

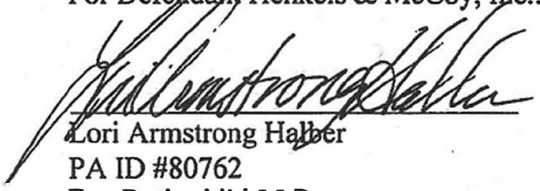
It is FURTHER, ORDERED, ADJUDGED, AND DECREED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney fees that may be available under the Equal Access to Justice Act, as amended.

UNITED STATES DISTRICT JUDGE

Dated: _____, 2021

Defendant hereby consents to the entry of this Judgment.

For Defendant Henkels & McCoy, Inc.:


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Attorney for Defendant
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Dated: February 12, 2021

For the Secretary:

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Dated: February 12, 2021