

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Martin J. Walsh,¹ *Secretary of Labor,*
United States Department of Labor,

Case No. 20-cv-1259 (WMW/KMM)

Plaintiff,

**ORDER APPROVING CONSENT
JUDGMENT**

v.

Alliance HHC & Nursing Service LLC, *a*
Minnesota Limited Liability Company, and
Robin Nyangena, *an individual,*

Defendants.

This matter is before the Court on the parties' joint motion for approval of consent judgment. (Dkt. 18.) Because the Court concludes that the proposed consent judgment is procedurally and substantively fair, reasonable, and consistent with governing law, the motion for approval and entry of consent judgment is granted.

BACKGROUND

Plaintiff Secretary of Labor, United States Department of Labor (DOL), commenced this action against Defendants Alliance HHC & Nursing Service LLC and Robin Nyangena on May 27, 2020, alleging that Defendants violated Sections 7, 11, and 15 of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201 *et seq.*, by failing to

¹ By operation of law, Secretary of Labor Martin J. Walsh is substituted for former Secretary of Labor Eugene Scalia. Fed. R. Civ. P. 25(d).

pay overtime wages owed to 82 employees, employed as healthcare workers.² 29 U.S.C. § 207(a)(1); 29 U.S.C. § 216(c). The complaint also alleges that Defendants failed to make and preserve adequate records of employees, wages, hours, and other conditions and practices of employment. The parties jointly move for the Court's approval and entry of their proposed consent judgment.

ANALYSIS

In cases implicating important public interests, district courts have a role in approving settlement agreements. *See, e.g., EEOC v. Prod. Fabricators, Inc.*, 666 F.3d 1170, 1172–74 (8th Cir. 2012) (reversing district court's rejection of consent decree involving alleged violation of Americans with Disabilities Act); *United States v. BP Amoco Oil PLC*, 277 F.3d 1012, 1018–21 (8th Cir. 2002) (affirming approval of consent decree involving environmental cleanup). “Public law settlements are often complicated documents designed to be carried out over a period of years, . . . so any purely out-of-court settlement would suffer the decisive [disadvantage] of not being subject to continuing oversight and interpretation by the court.” *Prod. Fabricators*, 666 F.3d at 1173 (quoting *Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 524 n.13 (1986)). The decision whether to approve a consent judgment rests within the discretion of the district court. *Id.* at 1172.

² The Secretary's memorandum of law suggests that there are 87 employees. However, the exhibit attached to the complaint lists 82 employees. In light of this seeming discrepancy, the Court utilizes the figures supported by the record.

Here, the proposed consent judgment implicates significant public interests—namely, ensuring that the public benefits from the protections afforded by minimum wage laws and overtime provisions. The proposed consent judgment includes obligations to be fulfilled over a period of time. These obligations include the collection of funds from Defendants and the subsequent distribution of those funds. Such obligations may require continuing oversight and interpretation by a court. “Although the law favors settlements, federal courts in adopting consent [judgments] are not mere ‘recorders of contracts from whom parties can purchase injunctions.’ ” *Angela R. by Hesselbein v. Clinton*, 999 F.2d 320, 324 (8th Cir. 1993) (quoting *Local No. 93*, 478 U.S. at 525). Accordingly, before entering a consent judgment, this Court must find that the proposed judgment is (1) procedurally fair, (2) substantively fair, (3) reasonable and (4) consistent with the governing law. See *United States v. Hercules, Inc.*, 961 F.2d 796, 800 (8th Cir. 1992); *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 85–93 (1st Cir. 1990).

A. Procedural Fairness

“To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance.” *Cannons*, 899 F.2d at 86; accord *BP Amoco*, 277 F.3d at 1020. The reviewing court should determine whether the government and the settling defendant were “negotiating in good faith and at arm’s length” when crafting the proposed consent judgment. *BP Amoco*, 277 F.3d at 1020.

Here, both parties represent that the proposed consent judgment is the result of settlement negotiations. The record reflects that the parties, both represented by counsel,

jointly signed the proposed consent judgment. Moreover, Defendants have not challenged the Secretary of Labor's representations regarding the settlement process, despite ample time and opportunity to do so. *See United States v. N.Y.C. Hous. Auth.*, 326 F.R.D. 411, 417 (S.D.N.Y. 2018) (“[A]ny arguments regarding whether the Proposed Consent Decree is fair, reasonable, and in the public interest should be addressed by opposing the pending motion for approval of the Proposed Consent Decree.”). Accordingly, the proposed consent judgment is procedurally fair.

B. Substantive Fairness

“Substantive fairness introduces into the equation concepts of corrective justice and accountability: a party should bear the cost of the harm for which it is legally responsible.” *BP Amoco*, 277 F.3d at 1020 (quoting *Cannons*, 899 F.2d at 87). When reviewing a consent judgment for substantive fairness, the district court does not examine “whether the settlement is one [that] the court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute.” *Cannons*, 899 F.2d at 84.

Here, if the Court enters the proposed consent judgment, Defendants will pay \$483,165.24, plus post-judgment interest, which reflects the full amount of unpaid wages and liquidated damages sought by the Secretary of Labor, and Defendants will be enjoined from future violations of specified labor laws. On this record, the proposed consent judgment is substantively fair.

C. Reasonableness

A court evaluating a proposed consent judgment for fairness and reasonableness should, at minimum, assess (1) the basic legality of the proposed consent judgment; (2) whether the terms of the proposed consent judgment, including its enforcement mechanism, are clear; (3) whether the proposed consent judgment reflects a resolution of the actual claims in the complaint; and (4) whether the proposed consent judgment is tainted by improper collusion or corruption. *SEC v. Citigroup Glob. Mkts., Inc.*, 752 F.3d 285, 294–95 (2d Cir. 2014)); *accord Acosta v. Bratcher*, 343 F. Supp. 3d 108, 112 (W.D.N.Y. 2018) (discussing the standard for assessing fairness and reasonableness in the context of alleged labor-law violations). Protection of the public interest is an important, overarching consideration. *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991) (involving a consent decree in the environmental context). “[T]he function of the reviewing court is not to substitute its judgment for that of the parties to the decree but to assure itself that the terms of the decree are fair and adequate and are not unlawful, unreasonable, or against public policy.” *United States v. Hooker Chems. & Plastics Corp.*, 540 F. Supp. 1067, 1072 (W.D.N.Y. 1982).

The Secretary of Labor asserts that the proposed consent judgment is reasonable because the consent judgment is clear, reflects a full resolution of the claims in the complaint and bears no taint of corruption. Injunctive relief and back wages are appropriate forms of relief obtained in cases such as this. *See Mitchell v. Sw. Eng’g Co.*, 271 F.2d 427, 432 (8th Cir. 1959) (directing the district court to enter an injunction when the injunction

sought was remedial and not punitive in the context of alleged violations of the FLSA); *Bratcher*, 343 F. Supp. 3d at 114 (approving proposed consent judgment that included injunctive and monetary relief); *Acosta v. NABPCO Auto Parts of Lindstrom*, No. 17-cv-04029 (PAM/BRT), 2017 WL 3972475, at *2 (D. Minn. Sept. 8, 2017) (approving consent judgment awarding unpaid overtime compensation and liquidated damages); *see also Goldberg v. Willmark Serv. Sys., Inc.*, 215 F. Supp. 577, 586 (D. Minn. 1961) (“Certainly, the Court would not err if it granted an injunction [under the FLSA] as requested.”). Moreover, injunctive relief and back wages are forms of relief consistent with the relief sought in the complaint. And the record reflects that \$241,582.62 constitutes the full amount of unpaid wages sought by the Secretary of Labor.

Under the FLSA, the Secretary of Labor also is entitled to seek liquidated damages. 29 U.S.C. § 216(c). Here, as part of the proposed consent judgment, Defendants are to pay to the Secretary as liquidated damages an additional sum of \$241,582.62, pursuant to a schedule agreed upon by the parties. The Secretary of Labor indicates that, when determining the reasonableness of the proposed consent judgment, the Secretary of Labor considered the delay and risk associated with future litigation, as well as Defendants’ financial disclosures. The proposed use of a payment plan to collect the liquidated damages is reasonable as it represents the full amount sought and allows for the collection of liquidated damages in light of the Defendants’ inability to pay the full amount of liquidated damages at the time of the entry of judgment.

The terms of the proposed consent judgment are clear. The terms specifically address how much Defendants are ordered to pay, the method of payment, the schedule for doing so, and how the Secretary of Labor will distribute the payments.

The consent judgment resolves the claims in the complaint. The consent judgment resolves the Secretary of Labor's claim for an injunction under 29 U.S.C. § 217 and resolves the Secretary of Labor's claim for back wages and liquidated damages under 29 U.S.C. § 216(c). Accordingly, the proposed consent judgment resolves the actual claims in the complaint.

Finally, nothing in the records suggests that the proposed consent judgment is tainted by improper collusion or corruption.

For all the foregoing reasons, the proposed consent judgment is reasonable.

D. Consistency with Governing Law

A consent judgment also must be consistent with the overarching principles of the governing law. *See Cannons*, 899 F.2d at 90–93. In cases alleging violations of labor laws, district courts have authority to grant appropriate injunctive and monetary relief. *See* 29 U.S.C. §§ 216–17. An injunction may be appropriate even when violations have ceased unless the district court concludes that there is no reasonable probability that the violations will reoccur. *Marshall v. Van Matre*, 634 F.2d 1115, 1118 (8th Cir. 1980). As addressed above, Defendants allegedly violated the FLSA, specifically the FLSA's overtime requirements. As such, the proposed consent judgment requiring Defendants to repay the amount due in overtime and liquidated damages and subjecting Defendants to a permanent

injunction barring future violations of specified provisions of the FLSA is consistent with the principles governing the FLSA.

In summary, the proposed consent judgment is procedurally fair, substantively fair, reasonable, and consistent with governing law.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The parties' joint motion for approval and entry of consent judgment, (Dkt. 18), is **GRANTED**.

2. The Clerk of Court is directed to enter judgment in favor of Plaintiff and against Defendants under the terms specified in the parties' consent judgment, (Dkt. 18), as reproduced below.

3. **IT IS HEREBY ORDERED AND ADJUDGED**, pursuant to Section 17 of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, that Defendants, their officers, agents, servants, successors, 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 FLSA, in any of the following manners.

- a. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), 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 any enterprise engaged in commerce or in the production

of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 201 *et seq.*, for workweeks longer than forty hours, unless such employee receives compensation for his or her employment in excess of forty hours at a rate not less than one and one-half times the regular rates at which he or she is employed.

- b. 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 29 U.S.C. § 211(c), and found in 29 C.F.R. § 516.

4. **FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to 29 U.S.C. § 216(c), in favor of the Secretary and against Defendants, in the total amount of \$483,165.24, plus the post-judgment interest set forth in Exhibit B, attached hereto and made a part hereof.

- a. At the time of Defendants' execution of this judgment, Defendants shall pay to the Secretary the sum of \$241,582.62, which represents the unpaid overtime compensation hereby found to be due for the period of August 13, 2016, to August 10, 2018, to the present and former employees named in Exhibit A, attached hereto and made a part hereof, in the amounts set forth therein.

- b. Subject to the payment plan terms and limitations set forth in Exhibit B, attached hereto and made a part hereof, Defendants shall further pay to the Secretary as liquidated damages the additional sum of \$241,582.62, hereby found to be due for the period of August 13, 2016, to August 10, 2018, to the present and former employees named in Exhibit A, attached hereto and made a part hereof, in the amounts set forth therein.
- c. Defendants have made voluntary financial disclosures to the Secretary demonstrating their inability to pay the full amount of the liquidated damages at the time of execution of this judgment. The Secretary has relied on these financial disclosures. Should any of these financial disclosures be materially false or any of the declarations referenced in Exhibit B, paragraph 3, be materially false, the Secretary shall be entitled to immediately receive, without contest, the full remaining balance of liquidated damages owed, as well as post-judgment interest, and the payment plan set forth in Exhibit B shall be immediately nullified and void.

5. The monetary provisions of this judgment shall be deemed satisfied upon Defendants' delivery to the Secretary's representative of the following:

- a. The payment of unpaid overtimes wages of \$241,582.62, via online payment at Pay.gov (by credit card, debit card, ACH transfer, or

digital wallet options) using the payment form available at <https://pay.gov/public/form/start/77692637>. This form is also available at www.pay.gov by searching for “WHDBWMW” in the “Find Forms, Agencies . . .” search box, locating “WHD Back Wage Payment Form – Midwest Region” and clicking on the red “Continue to the Form” button.

- b. A schedule in duplicate delivered to the United States Department of Labor showing the full name, last-known address, last-known phone number, and social security number for each employee named in Exhibit A. Defendants remain responsible for paying their share of any applicable taxes to the appropriate state and federal revenue authorities.
- c. On or before each payment date set forth in Exhibit B, Defendants shall deliver to the United States Department of Labor the notarized declaration described in Exhibit B as well as 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.” Defendants’ payment of each installment 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.

- d. The Plaintiff shall distribute the proceeds of each installment payment pursuant to paragraphs “5.a.” and “5.c.” (less legal deductions for each employee’s share of social security and Federal withholding taxes for back wages) to the persons identified in Exhibit A, or to their estates, if that be necessary; and any amounts referenced above of unpaid compensation and liquidated damages not so paid within a period of three years from the date of receipt thereof shall, pursuant to 29 U.S.C. § 216(c), be covered into the Treasury of the United States as miscellaneous receipts.
- e. 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 FLSA; 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 FLSA; 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 the employee from the Defendants under the provisions of this judgment or the FLSA.

6. **FURTHER**, Defendants, their agents, officers or employees shall not, contrary to 29 U.S.C. § 215(a)(3), threaten, retaliate, or discriminate in any way against any current or former employee of Defendants for exercising any rights under the FLSA, 29 U.S.C. §§ 201 *et seq.*, 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.

7. **FURTHER**, it is agreed by the parties herein and hereby **ORDERED** that each party bear its own fees and other expenses incurred by each 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.

8. **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.

9. All remaining claims in this action are **DISMISSED WITH PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 5, 2021

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge