

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARTIN J. WALSH, Secretary of Labor, :
United States Department of Labor, :
: **CONSENT JUDGMENT**
Plaintiff, :
v. :
TRANS EXPRESS, INC., : 1:19-cv-01423-SJ-RER
: :
Defendant. :
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Plaintiff MARTIN J. WALSH, Secretary of Labor, United States Department of Labor (“Secretary”), has filed his Complaint and Defendant Trans Express Inc. (“Defendant”) has appeared by counsel and agrees to the entry of this Consent Judgment in full settlement of the claims which have been made or asserted in this action. Defendant acknowledges that it has notice of, and understands, the provisions of this Consent Judgment, acknowledges its responsibilities pursuant to this Consent Judgment, and acknowledges that it may be subject to sanctions in contempt of this Court if it fails to comply with the provisions of this Consent Judgment.

1. The Secretary’s Complaint alleges that Defendant violated sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.) (the “Act” or “FLSA”) by failing to pay certain of its employees overtime wages, and failing to make, keep, and preserve adequate and accurate records.

2. Defendant admits that, during the relevant time, it was a covered enterprise under Sections 3(r) and 3(s) of the Act and that the provisions of the Act applied to Defendant.

3. Defendant admits that during the relevant time period, it did not pay bus drivers overtime compensation at one and one-half the regular hourly rate for hours in excess of forty per week. Defendant maintains it did not pay its bus drivers overtime compensation because it classified them as exempt under the FLSA's Motor Carrier Act exemption, **29 U.S.C. § 213(b)**.

4. Defendant admits that during the relevant time period it did not keep daily and weekly hours and rates of pay for its bus drivers it classified as exempt under the FLSA's Motor Carrier Act exemption.

5. Defendant neither admits nor denies it violated the FLSA.

6. Defendant submits to the jurisdiction of this Court over it and over the subject matter of this action. Defendant admits that this Court has the authority to approve, enter and enforce this Consent Judgment and that this Court is the most appropriate venue for any enforcement action that may be required as a result of this Consent Judgment.

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

I. Defendant, is permanently enjoined and restrained from violating the provisions of Section 7(a), 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) in the following respects:

(1) Defendant shall not, contrary to the FLSA, employ employees 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.

(2) Defendant shall make, keep, and preserve adequate records as required by the FLSA and its implementing regulations and shall make such records available to authorized agents of the Secretary for inspection, transcription, and/or copying, upon their demand for such access, as prescribed by regulations issued pursuant to sections 11(c) and 15(a)(5) of the Act and found at 29 C.F.R. Part 516.

(3) Defendant shall not solicit the repayment of compensation paid to an employee pursuant to this Consent Judgment nor retaliate against any of its employees in any way under 29 U.S.C. § 215(a)(3) and applicable law.

II. The parties agree that unpaid overtime back wages shall be paid to the current and former bus drivers listed on Second Amended Exhibit A to the Complaint in the gross total amount of \$371,250.00 (minus applicable legal deductions as computed by Defendant) plus an equal amount of liquidated damages of \$371,250.00 for a total gross amount owed of \$742,500.00 ("Total Payment Amount"). Therefore, it is ORDERED Defendant is enjoined and restrained from withholding the gross payment of \$371,250.00 in overtime back wages in the amounts listed opposite their names on Exhibit 1. In addition, Defendant shall pay an equal amount of liquidated damages of \$371,250.00 in

the amounts listed opposite their names on Exhibit 1. These payments shall be administered as set forth below:

(1) Prior to the filing of this Consent Judgment with the Court, Defendant shall, upon receiving permission from the Court, deposit with the Clerk of the Court within fourteen days the sum of \$583,472.51, which is the net amount of back wages due and the total liquidated damages due under this Consent Judgment.¹

(2) Upon issuance of an Order entering this Consent Judgment, the Clerk of the Court shall remit the funds deposited to the Secretary.

(3) Within 30 days after issuance of an order entering this Consent Judgment, Defendant shall provide the Secretary with a spreadsheet detailing for each current and former employee listed on Second Amended Exhibit A (i) full name, (ii) social security number, (iii) last known address, (iv) last known telephone number, (v) last known e-mail address, (vi) gross back pay amount, (vii) net back pay amount, (viii) federal, state and local withholdings from gross overtime back wages, (ix) any other legal deductions and (x) liquidated damages payment amount.²

¹ Attached as Exhibit 1 is a summary chart detailing the agreed-upon amounts of gross overtime back wages, net overtime back wages, and liquidated damages due to each current and former employee listed on Second Amended Exhibit A. The Secretary relies upon Defendant's representations that it properly computed legal deductions for purposes of the net back wages owed under this Consent Judgment. The Parties agree the payment terms of this Consent Judgment will be fully satisfied upon complete and timely payment as per Paragraph II(1) of the liquidated damages and net overtime back wages in the amounts computed by Defendant and set forth in Exhibit 1. The Secretary takes no position as to whether Defendant properly computed its legal deductions under applicable law.

² All documentation that must be delivered to the Secretary under paragraph II(2) shall be delivered to: U.S. Department of Labor Wage and Hour Division, New York City District Office, Attn: Jorge Alvarez, 26 Federal Plaza, Room 3838, New York, NY 10278. Defendant may alternately send such documentation electronically to alvarez.jorge.r@dol.gov.

(4) The Secretary shall distribute the net back wages and liquidated damages to the former and current employees, or to their estates, as set forth in Exhibit 1. Any amounts of unpaid back wages and liquidated damages not distributed within a period of three years from the date of receipt shall, pursuant to section 16(c) of the Act, be covered into the Treasury of the United States as miscellaneous receipts. Defendant remains responsible for paying the employers' share of any applicable taxes to the appropriate state and federal revenue authorities.

III. Defendant shall not treat any employees as exempt from the overtime compensation requirements of the Act pursuant to the exemptions set forth in the FLSA, unless Defendant in good faith determines that such employees meet applicable exemptions.

IV. 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 Defendant not listed in Second Amended Exhibit A, be they current or former employees, to file or participate in any action against Defendant under section 16(b) of the Act, including any private class or collective actions, or participate in any settlement thereof. Likewise, 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 for any current or former employee listed on Second Amended Exhibit A to file or participate in any action against Defendant under section 16(b) of the Act for any violations alleged to have occurred before March 12, 2017 or after July 19, 2019 or participate in any settlement thereof. Neither the commencement of this action nor the

provisions of this Consent Judgment shall in any way prejudice any rights of Defendant to defend itself in any such actions.

V. The Parties agree the Secretary has brought claims in this action exclusively under the FLSA. The Parties further agree the Secretary has not asserted any claims under the New York Labor Law or under any other state wage and hour law in this matter.

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

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

SO ORDERED:

DATED: January 24, 2022
Brooklyn, New York

Ramon E. Reyes, Jr.

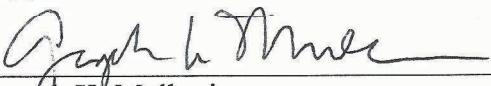
Digitally signed by Ramon E. Reyes,
Jr.
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HONORABLE RAMON E. REYES
UNITED STATES MAGISTRATE JUDGE

Defendant has appeared and hereby agrees to the terms of and consents to entry of
this Judgment.

TRANS EXPRESS INC.

BY:




Joseph K. Mulherin
Counsel for Trans Express Inc.

Plaintiff has appeared and hereby agrees to the terms of and consents to the entry
of this Judgment.

MARTIN J. WASLH,
Secretary of Labor,
United States Department of Labor,

BY:



David Rutenberg,
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor