

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EUGENE SCALIA, Secretary of Labor,
United States Department of Labor,¹

Plaintiff,

v.

US PACK LOGISTICS, LLC AND FRANK
POWELL,

Defendants.

Civil Action No. 4:20-cv-40009-TSH

CONSENT JUDGMENT AND ORDER

Plaintiff Secretary of Labor, United States Department of Labor (the “Secretary”), filed an Amended Complaint in this case under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”). The Secretary alleged that Defendants misclassified approximately 62 of their courier drivers at the Shrewsbury, Massachusetts facility, a list of whom are attached to the Amended Complaint as Exhibit A, as independent contractors and sought minimum wage, overtime compensation, and liquidated damages. (ECF No. 24). Defendants US Pack Logistics, LLC (“US Pack”) and Frank Powell (collectively, “Defendants”) answered that Amended Complaint. (ECF No. 25). Defendants neither admit nor deny that they violated the FLSA in the manners the Secretary alleged in his Amended Complaint.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary of Labor Martin J. Walsh is automatically substituted as the proper Plaintiff in this case. For ease of reference, the Secretary and his pertinent predecessors will be referred to herein as the “Secretary.”

Defendants admit that the Court has personal jurisdiction over them. The Court finds that it has jurisdiction to enter this Consent Judgment and Order (the “Consent Judgment”), and the Secretary and Defendants agree to its terms.

It is therefore ORDERED, ADJUDGED, and DECREED, that:

1. Defendants and their successors, assigns, agents, servants, employees, and all persons in active concert or participation with them or acting or claiming to act in their interest and behalf agree to the following:

a. Defendants shall not, contrary to Sections 6 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206 and 215(a)(2), pay any employees who in any workweek are engaged in commerce or in 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 FLSA, wages at rates less than the applicable minimum wage under the FLSA.

b. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in 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 FLSA, for workweeks longer than 40 hours, unless such employees receive compensation for their employment in excess of 40 hours in a workweek at rates not less than one-and-one-half times the employees’ regular rates of pay.

c. Defendants shall not fail to make, keep, and preserve records of 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 Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), and found in 29 C.F.R. Part 516.

d. Defendants shall not fail to cooperate with the United States Department of Labor in any investigation conducted pursuant to Section 11(a) of the FLSA, 29 U.S.C. § 211(a), and commenced after the entry of this Consent Judgment.

Defendants shall provide truthful responses and other information and documents to the United States Department of Labor. Defendants shall provide the United States Department of Labor access to all records that are required to be maintained pursuant to Section 11(c) of the FLSA, 29 U.S.C. § 211(c), and 29 C.F.R. Part 516, and shall provide access to other information necessary for the proper execution of any United States Department of Labor investigation.

Nothing contained in this Consent Judgment, including the requirement to cooperate as set forth in this Paragraph, abrogates Defendants' rights under the United States Constitution.

e. Defendants shall not, contrary to Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the FLSA, has testified or is about to testify in any such proceeding, or has otherwise engaged in protected activity under the FLSA.

2. Further, the Court finds that the Defendants have agreed to pay alleged back wages and liquidated damages in the total amount of \$575,000.00 (inclusive of \$287,500.00 in

alleged back wages and \$287,500.00 in alleged liquidated damages). The Court therefore orders that Defendants are restrained from withholding said alleged back wages and shall pay, jointly and severally, said alleged back wages and liquidated damages in accordance with the terms set forth herein.

3. The alleged back wage and alleged liquidated damages provisions of this Consent Judgment only cover: (a) the period from May 16, 2017 to July 15, 2018 (the “time period”); (b) the individuals named in Exhibit A1 (the “courier drivers”); and (c) the courier drivers’ who performed services for Defendants during the time period relating to the provision of delivery services from the Shrewsbury, Massachusetts facility of Omnicare, Inc. This Consent Judgment shall have no effect upon any back wages and liquidated damages that: (a) may have allegedly accrued outside the time period; (b) are allegedly owed to any individual not named on Exhibit A1; or (c) relate to any work performed that was not delivery services for Defendants from the Shrewsbury, Massachusetts facility of Omnicare, Inc.

4. Within 14 days of the Court’s entry of this Consent Judgment, Defendants shall pay a total of \$287,500.00 in alleged gross back wages, less any lawful required deductions, and also a total of \$287,500.00 in alleged liquidated damages, to the individuals listed on Exhibit A1 in accordance with the amounts set forth next to each individual’s name listed on that Exhibit A1. USPack will use a Third Party Administrator to make those payments.

5. To comply with the payment provisions contained in the preceding Paragraph, Defendants shall deliver by check or electronic transfer to each courier driver listed on Exhibit A1 the total amounts of alleged back wages and alleged liquidated damages listed next to each individual’s name, less any lawful required deduction from the alleged back wage amounts.

USPack will use a Third Party Administrator to make those payments.

6. Within 30 days of the Court's entry of this Consent Judgment, Defendants shall provide the Secretary with preliminary evidence of the alleged back wage and alleged liquidated damages payments made, which will consist of a report that lists the courier drivers' names, check numbers or electronic transfer numbers, the amounts of alleged back wages paid to each driver, and the amounts of alleged liquidated damages paid to each courier driver.

7. Within 45 days of the Court's entry of this Consent Judgment, Defendants shall provide the Secretary with the following:

- a. Electronic proof of each payment required to be made under Paragraphs 4 and 5 above and Exhibit A1 in the form of a copy of the front and back of each cancelled check related to such payments or electronic transfer evidence of each payment from a bank to a courier driver;
- b. Separate payments for the total net amount of any alleged back wages and the total amount of any alleged liquidated damages that cannot be distributed to courier drivers listed in Exhibit A1, or to their estates if that be necessary, because of inability of the parties to locate the proper persons; any such payment to the Secretary shall be made online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77689032>; and
- c. A document containing the names of each courier driver to whom alleged back wages and alleged liquidated damages could not be distributed, which shall include the individual's alleged back wages due, amount of alleged liquidated damages due, last known address, social security

number only if currently known to Defendants, and a description of what attempts were made to locate the individual(s); any such document shall be sent to the following address: United States Department of Labor, Wage and Hour Division, Boston District Office, JFK Federal Building, 15 New Sudbury Street, Room 525, Boston, MA 02203, Attention District Director.

8. When recovered alleged wages or alleged liquidated damages have not been claimed by a courier driver within three years, because of inability to locate the courier driver or because of the courier driver's refusal to accept such sums, the Secretary shall deposit the alleged wages or alleged liquidated damages into the United States Treasury as miscellaneous receipts, pursuant to [29 U.S.C. § 216\(c\)](#).

9. Defendants shall not, in any way, solicit, demand, accept, or keep any amount paid or payable to any courier driver under this Consent Judgment or in any manner attempt to recover any amounts paid to such driver in connection with this Consent Judgment. In the event any such amount is received from any courier driver, Defendants shall immediately remit such amount to the United States Department of Labor at the following address: United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Madelyn Flores.

10. Defendants agree that they understand the requirements of the FLSA and will continue to make reasonable good faith efforts to comply with all applicable provisions of the FLSA in the future at all of their locations, including reviewing the law and their practices in an ongoing manner to ensure that courier drivers are properly classified in compliance with the FLSA. USPack expressly acknowledges that it will continue to review the applicable statutory

and regulatory provisions as well as case law concerning the employment relationship under the FLSA. USPack further agrees that it will make reasonable good faith efforts to ensure that all new contracts it enters into with any courier driver and all contracts it currently has with courier drivers are consistent with the FLSA.

11. Nothing in this Consent Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint or Amended Complaint in this matter in any future investigation, enforcement action, or legal action.

12. Nothing in this Consent Judgment precludes Defendants from arguing that USPack classifies drivers appropriately under the law and in good faith.

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

SO ORDERED, this 28 day of September, 2022.

/s/ Timothy S. Hillman
Hon. Timothy S. Hillman
United States District Judge
District of Massachusetts

FOR THE SECRETARY:

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Solicitor of Labor

Maia S. Fisher
Regional Solicitor

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U.S. Department of Labor
Dated: 8/22/2022

FOR DEFENDANTs US Pack Logistics, LLC. and Frank Powell

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