

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

MARTIN J. WALSH, Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)

v.)

Case No. 3:21-cv-03239-SEM-KLM

MAYA RESTAURANT, INC., d/b/a)
MAYA MEXICAN RESTAURANT,)
an Illinois corporation, and;)
RIGOBERTO COBAIN, an individual,)
)
Defendants.)

CONSENT ORDER AND JUDGMENT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), has filed a complaint under the Fair Labor Standards Act of 1938 as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”), and Defendants Maya Restaurant, Inc. d/b/a Maya Mexican Restaurant, an Illinois Corporation, and Rigoberto Cobian, individually, (collectively “Defendants”) waive their Answer and any defenses which they may have and agree to the entry of this Consent Order and Judgment without contest.

Defendants admit and the Court finds Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit and the Court finds Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendants admit and the Court finds Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion of the parties and for cause shown, it is:

ORDERED that Plaintiff's Motion to Approve Consent Judgment (d/e 12) be GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to § 17 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of §§ 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the FLSA, in any of the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 206 and 215(a)(2), 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 FLSA, wages at rates less than \$7.25 an hour, or any rate subsequently made applicable by amendment to the FLSA.

2. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees including, but not limited to, any of their employees working at Maya Restaurant, Inc. d/b/a Maya Mexican Restaurant, or at any business location owned, operated, and/or controlled by Defendants, and at any other business location at which their employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed.

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 including, but not limited to, any of their employees working at Maya Restaurant, Inc. d/b/a Maya Mexican Restaurant, or at any business location owned, operated, and/or controlled by Defendants, and at any other business location at which their employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

4. Pursuant to 29 U.S.C. § 215(a)(3), Defendants shall not discharge or take any retaliatory action against any of their employees or former employees because the employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Defendants or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA, by the Defendants or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

5. Defendants shall comply with the FLSA at all current and future establishments in the State of Illinois and State of Missouri.

6. This Consent Order and Judgment shall be posted at all of Defendants' establishments, at a location where employee notices are customarily posted, and shall remain posted for a period of not less than six (6) months.

7. Defendants shall comply with 29 C.F.R. § 516.4 by posting the FLSA poster in both English and Spanish.

8. 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.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to § 16(c) of the Act, in favor of the Secretary and against Defendants in the total amount of \$42,500.

9. The Secretary shall recover from Defendants the sum of \$15,000 in back wages for unpaid minimum wage and overtime compensation for the period of November 11, 2018, through November 7, 2020, and an additional sum of \$15,000 in liquidated damages for Defendants' current and former employees whose names are listed in the attached Exhibit A.

a. At the time of Defendants' execution of this Consent Order and Judgment, Defendants shall make a preliminary payment of \$15,000 in back wages by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching "WHD Back Wage Payment – Midwest Region". Within 30 calendar days of the entry of this Consent Order and Judgment, Defendants shall deliver the first of four monthly payments of liquidated damages, each in the amount of \$3,750, by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching "WHD Back Wage Payment – Midwest Region". A two calendar-day grace period shall be allowed for receipt of each payment that is required by this paragraph. If

Defendants fail to make any payment within that two calendar-day grace period, all remaining installment payments shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Defendants hereby expressly waive. The complete payment schedule is attached hereto and made part of the parties' consent judgment.

b. At the time of Defendants' execution of this Consent Order and Judgment, Defendants shall also furnish to the Secretary the social security number and last- known address for each employee named in Exhibit A.

c. The Secretary shall distribute the above payments, less appropriate deductions for federal income withholding taxes and the employee's share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of § 16(c) of the FLSA. Defendants remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages distributed by the Secretary.

d. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Order and Judgment. Any such amount shall be immediately paid to the Secretary for deposit as above, and Defendants shall have no further obligations with respect to such returned monies.

e. Any monies not disbursed by the Department of Labor after three years from the date of payment by Employers, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to § 16(c) of the FLSA.

f. The provisions of this Consent Order and Judgment shall not in any way affect any legal right of any individual not named on Exhibit A to the Secretary's Complaint, nor shall the provisions in any way affect any legal right of any individual named on Exhibit A to file any action

against Defendants for any violations alleged to have occurred outside the relevant period.

10. By entering into this Consent Order and Judgment, the Secretary does not waive his right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

11. FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to § 16(e)(2) of the Act, in favor of the Plaintiff and against the Defendants in the total amount of \$12,500, which represents civil money penalties. Within 150 days of the entry of this Consent Order and Judgment, Defendants shall deliver first of two monthly payments of civil money penalties, each in the amount of \$6,250, by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching “WHD Back Wage Payment – Midwest Region”. A two calendar-day grace period shall be allowed for receipt of each payment that is required by this paragraph. If Defendants fail to make any payment within that two calendar-day grace period, all remaining installment payments shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Defendants hereby expressly waive. The complete payment schedule is attached hereto and made part of the parties’ consent agreement.

12. Upon the Court’s entry of the parties’ Consent Order and Judgment, the parties shall jointly file a report with the U.S. Department of Labor’s Office of Administrative Law Judges notifying that Office of the resolution of this matter and Defendants’ withdrawal of their Request for a Hearing on the Secretary’s assessment of civil money penalties pursuant to this resolution.

FURTHER, it is agreed by the parties herein and hereby ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage

of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

IT IS SO ORDERED.

ENTERED: January 18, 2023

FOR THE COURT

/s/ Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE

PAYMENT SCHEDULE

The following constitutes the complete payment scheduled agreed to by the parties in

¶¶ 9.a and 11 of the foregoing Consent Order and Judgment:

Payment Deadline	Amount Due	Nature of Payment
Execution of Consent Order & Judgment (“COJ”)	\$15,000	Back Wages
30 Days After Entry of COJ	\$3,750	Liquidated Damages
60 Days After Entry of COJ	\$3,750	Liquidated Damages
90 Days After Entry of COJ	\$3,750	Liquidated Damages
120 Days After Entry of COJ	\$3,750	Liquidated Damages
150 Days After Entry of COJ	\$6,250	Civil Money Penalties
180 Days After Entry of COJ	\$6,250	Civil Money Penalties