

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SECRETARY OF LABOR,
U.S. DEPARTMENT OF LABOR,

Plaintiff,

Case No. 1:23-cv-133
JUDGE DOUGLAS R. COLE

v.

EPHIPHANY HOME CARE @
BEST, LLC, et al.,

Defendants.

CONSENT ORDER AND JUDGMENT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Secretary”), filed a complaint, alleging Ehiphany Home Care @ Best, LLC and ShaRhonda Moore (collectively “Defendants”), violated Sections 7, 11, and 15 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“Act” or “FLSA”). Defendants have appeared and waive formal service of process of the Summons and Complaint, waive their Answer and any defense which they may have and hereby agree to the entry of this Judgment without contest. Defendants also admit to the jurisdiction of this Court over them and the subject matter of this action.

NOW, therefore, upon motion of attorneys for the Secretary and Defendants, and for cause shown, it is hereby:

ORDERED AND JUDGMENT IS HEREBY ENTERED against Defendants pursuant to Sections 16(c) and 17 of the FLSA as follows:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the Act, Defendants, their agents, servants, successors, assigns and all persons in active concert or participation with them be, and they hereby are, permanently enjoined and restrained from violating the provisions of the Act, in any of the following manners:

1. Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any of their 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 Act, for workweeks longer than forty hours, unless such employee receives compensation for his/her employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which he/she is employed.

2. 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 section 11(c) of the Act and found in 29 CFR Part 516. This includes, but is not limited to, maintaining accurate records of all hours worked by each employee in each workweek.

3. Defendants shall not request, solicit, suggest, or coerce, directly or indirectly, any employee to return or offer to return to Defendants or to someone else for 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 Act; 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 Act; 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 him/her from Defendants under the provisions of this judgment or the Act.

4. Defendants, their agents, officers or employees shall not, contrary to Section 15(a)(3) of the Act, threaten, retaliate, or discriminate in any way against any current or former employee of Defendants for exercising any rights under the FLSA, 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.

5. Defendants shall not withhold payment of any compensation owed to employees pursuant to this Judgment listed in the attached Exhibit 1.

II

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

6. Defendants are enjoined and restrained from withholding gross back wages in the sum total amount of \$9,966.67 due to certain employees and former employees of Defendants listed and identified in Exhibit 1.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Section 16(c) of the Act, in favor of the Secretary and against Defendants in the total amount of \$22,000.00 (“Recovery Amount”) as follows:

7. The Recovery Amount represents \$9,966.67 in back wages (“Back Wages”), \$9,966.67 in liquidated damages (“Liquidated Damages”), and \$2,066.66 in civil money penalties (“Penalties”) pursuant to section 13(e) of the Act, for violations of the overtime provisions of the Act by Defendants alleged to have occurred November 1, 2018, through October 31, 2021 (“relevant period”). The Back Wages and Liquidated Damages shall represent the full extent of back wages and liquidated damages owed by Defendants for the relevant period to the employees set forth and identified on the attached Exhibit 1. It is further agreed that the overtime compensation payments by Defendants in the amount as specified above are in the nature of back wages and liquidated damages pursuant to the provisions of the Act.

8. Defendants shall distribute the money to the employees listed in Exhibit 1 (or to their estates, if necessary), less applicable deductions for employees’ share of FICA, Medicare, and withholding taxes within thirty (30) days of Defendants’ execution of this Consent Order and Judgment.

9. Defendants shall be responsible for the employer’s share of FICA, Medicare, and other applicable taxes and any other necessary payments to the appropriate federal and state revenue authorities for the individuals listed on Exhibit 1.

10. Defendants shall pay the Back Wages and Liquidated Damages in accordance with Exhibit 1, which is attached hereto and incorporated herein.

11. To comply with Paragraphs 8, 9, and 10 of this Order, the Defendants shall issue payroll checks to all persons currently employed by them that are listed in Exhibit 1. Checks shall be issued in in the amounts indicated on Exhibit 1, less all

legally mandated deductions to the Back Wages, including, but not limited to, the employee's share of FICA and other taxes. For persons no longer employed by the Defendants that are listed on Exhibit 1, Defendants shall issue checks in the amounts listed on Exhibit 1, less all legally mandated deductions to the Back Wages, including, but not limited to, the employee's share of FICA and other taxes, and mail the checks to each employee's last known address by first class U.S Mail. Payments will be made according to Exhibit 1.

12. Within 60 days of mailing and/or distributing each check, Defendants shall provide the Secretary with a copy of the checks issued (along with a schedule showing any deductions that were made and the amounts thereof), report to the Secretary regarding whether each check has been negotiated and/or cleared the issuing financial institution, and provide the Secretary with proof of such negotiation.¹ For all checks that were not negotiated or cashed, Defendants shall reissue a single check to "Wage and Hour Division – Labor" to cover the net due to all employees who did not negotiate or cash their checks.² The "net due" is the total payment amount shown on Exhibit 1, less any applicable deductions from back wages. Defendants shall thereafter provide the check to the Secretary, along with a

¹ Defendants shall provide this information to: Assistant District Director, U.S. Department of Labor, Wage and Hour Division, 550 Main Street, Suite 10-277, Cincinnati, OH 45202.

² Defendants may also pay online by ACH transfer, credit card, debit card, or digital wallet by going to www.pay.gov/public/form/start/77692637 or by going to www.pay.gov and searching "WHD Back Wage Payment – Midwest Region." In the event that the Defendants elect to pay in this manner, they are still responsible for providing the Secretary with a schedule listing the names of the employees for whom payment is being made, the employees' last known address, social security number (if possible), and the gross and net amount due to each employee.

schedule listing the names of the employees for whom payment is being made, the employees' last known address, social security number (if possible), and the gross and net amount due to each employee.³ Upon receipt of the check, the Secretary may distribute the funds to the employees or to their personal representatives. Any amounts not so distributed by the Secretary within three years after the date of this order, because of inability to locate the proper persons or because of such persons' refusals to accept such sums, shall be deposited into the Treasury of the United States as miscellaneous receipts. Defendants shall remain responsible for the employer's share of any FICA or other applicable taxes arising from or related to the back wages paid hereunder. Defendants may issue "stop payment" orders with their financial institution as to those checks that were not negotiated or cashed if they so desire.

13. Within thirty (30) days of Defendants' execution of this Consent Order and Judgment, Defendants shall pay the Penalties (\$2,066.66) online by ACH transfer, credit card, debit card, or digital wallet by going to www.pay.gov/public/form/start/77692637 or by going to www.pay.gov and searching "WHD Back Wage Payment – Midwest Region."

14. The Defendants may, at their own expense, use a third-party administrator to comply with the terms of this Consent Order. The use of such a third party shall not relieve the Defendants of any obligations to comply with the terms of this Consent Order.

³ In the event that the check expires prior to being negotiated, the Defendants shall, at the request of the Secretary, reissue said check.

III.

15. Each party shall bear its/his/her own fees and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs and expenses, including, but not limited to, any and all costs and expenses referenced under the Equal Access to Justice Act, as amended.

IV.

16. The provisions of this Judgment shall not in any way affect any legal right of any individual not named on Exhibit 1, nor shall the provisions in any way affect any legal right of any individual named on Exhibit 1 to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

17. The parties agree that the instant action is deemed to solely cover Defendants' 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 in Exhibit 1 or the Secretary for any period after October 31, 2021, or any persons, be they current or former employees, not specifically named in Exhibit 1, insofar as such rights are conferred and reserved to said employees by reason of Section 16(b) of the Act.

18. By entering into this 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 Section 16(e) of the FLSA, with respect to any violations disclosed by such investigations.

V.

19. Defendants agree that they are employers within the meaning of Section 3(d) of the Fair Labor Standards Act, 29 U.S.C. § 203(d).

20. This Judgment constitutes the entire agreement of the parties and resolves the issues in the Complaint, including the back wages due for only those employees and only those periods of time listed in this Judgment.

21. Exhibit 1 is attached hereto shall be incorporated into this Judgment by reference.

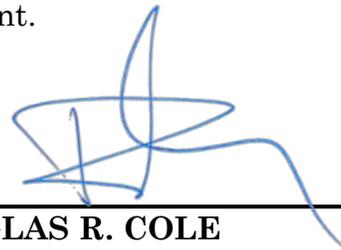
VI.

22. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms and conditions of this Judgment.

SO ORDERED.

March 9, 2023

DATE



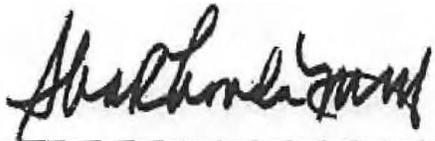
DOUGLAS R. COLE

UNITED STATES DISTRICT JUDGE

Respectfully submitted,

FOR DEFENDANTS:

The undersigned represents he/she is the person named below and has the authority to sign this document on behalf of each entity or individual named and consents to the entry of this Consent Judgment against each named defendant herein.



SHARHONDA MOORE
Individually and on behalf of
Ephiphany Home Care @ Best, LLC

155 Tri County Parkway, Suite 250
Springdale, Ohio 45014

/s/ Stacey L. Graus
STACEY L. GRAUS (0058861)
Adams Law, PLLC
40 W. Pike Street
Covington, KY 41011
(859) 394-6200
(859) 392-7253 (fax)
sgraus@adamsattorneys.com

FOR THE SECRETARY:

OF COUNSEL

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

LEAH A. WILLIAMS
Associate Regional Solicitor

/s/ Rina R. Russo
RINA R. RUSSO (0087761)
Counsel for Wage & Hour and Civil
Rights
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199
(216) 522-2447
(216) 522-7172 (fax)
Russo.Rina.R@dol.gov