

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

R. ALEXANDER ACOSTA,)	
Secretary of Labor, United)	
States Department of Labor,)	
)	Case No. 3:16-CV-2875
Plaintiff)	
)	
v.)	
)	
SMILEY DENTAL ASSOCIATES, INC.,)	
KIM SMILEY, GEORGE WESLEY SMILEY,)	
and GEORGE WESLEY SMILEY d/b/a)	
SMILEY TOOTH SPA, INC.,)	
)	
Defendants)	

PERMANENT INJUNCTION AND ORDER TO PAY

This matter is before the Court on the Plaintiff's Motion for Entry of Permanent Injunction and Order to Pay. The parties have advised the Court that they have resolved this matter with an agreement that the Defendants will pay \$50,000 in back wages and liquidated damages over the course of one year, with one third due within 30 days of the entry of this Order, and the remaining amount paid in installments over the remainder of one year (Docket Entries 29, 34, and 35). The Defendants have also agreed to the entry of a permanent injunction restraining future violations of the Fair Labor Standards Act as set forth below. *Id.* The Defendants have failed to execute the Consent Order and Permanent Injunction as required by this Court's Order of October 17, 2018 (Docket Entry 40).

The Plaintiff's motion is granted. It is therefore

ORDERED, ADJUDGED and DECREED that Defendants, Smiley Dental Associates, Inc., Kim Smiley, George Wesley Smiley, and George Wesley Smiley d/b/a Smiley Tooth Spa, Inc., their agents, servants, employees, and all persons in active concert or participation with them who receive actual notice hereof, are permanently enjoined from violating the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.*, hereinafter referred to as the Act, in any of the following manners:

1. They shall not, contrary to §§ 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), employ any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for more than 40 hours in a workweek unless such employee is compensated for such hours in excess of 40 at an overtime rate of at least one and one-half times the regular rate at which such employee is employed.

2. They shall not, contrary to §§ 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), employ any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, unless such employee is compensated at the applicable minimum hourly rate.

3. They shall not, contrary to §§ 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep, and preserve adequate and accurate employment records as prescribed by Regulation, found at 29 C.F.R. Part 516.

It is FURTHER ORDERED, ADJUDGED and DECREED that Plaintiff shall recover damages from Defendants totaling \$50,000.00 over a period of 12 months as set forth herein. This amount represents back wages in the amount of \$25,000.00 and liquidated damages in the amount of \$25,000.00. These damages are being paid to compensate the individuals listed on Exhibit A to the Complaint. These individuals were employed by the Defendants during the time periods listed on Schedule A attached hereto. The private rights under the Act of any person not named or for periods not stated shall not be terminated or otherwise affected by this proceeding.

To comply with this provision of the order, Defendants shall issue checks to the employees (or former employees), as provided in Schedule B. The checks shall be issued to "[the name of the individual employee] or Wage and Hour Division - Labor." The checks shall be issued in the amounts indicated, less any applicable deductions.¹ Defendants shall provide the checks to Plaintiff within five days of issuance. Upon receipt of the checks, Plaintiff may distribute the checks to the employees (or former employees) or to

¹ For all deductions, Defendants shall provide Plaintiff with documentation showing the deductions and the amounts thereof.

their personal representatives.² Any amounts not so distributed by Plaintiff 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 F.I.C.A. or other applicable taxes arising from or related to the back wages paid hereunder.

It is FURTHER ORDERED that in the event of default by Defendants in the payment of any of the installments listed on Schedule B, the total balance then remaining unpaid shall become due and payable immediately, with no further notice or demand required, and post judgment interest shall be assessed against such remaining unpaid balance, in accordance with 28 U.S.C. § 1961, from the date of default until paid in full.

It is FURTHER ORDERED that Defendants shall not request, solicit, suggest or coerce, directly or indirectly, any employee to return or to offer to return to Defendants, or to someone else for Defendants, any money in the form of cash, check or in any other form, for wages previously due or to become due in the future to said employees under the provisions of this order; nor shall Defendants accept, or receive from any employee, either directly or indirectly,

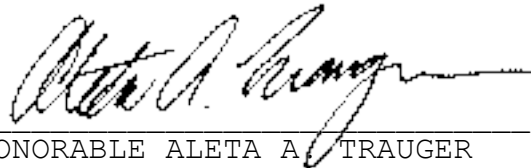
² In the event that one of the checks expires prior to being negotiated, the Defendants shall, at the request of the Plaintiff, reissue said check.

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 order; 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 from Defendants under the provisions of this order.

It is FURTHER ORDERED that each party shall bear its own attorney fees and expenses incurred by such party in connection with any stage of this proceeding, including but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

This Court shall retain jurisdiction of this action for the purposes of enforcing compliance with the terms of this order.

Entered this 21st day of November, 2018.



HONORABLE ALETA A. TRAUGER
UNITED STATES DISTRICT JUDGE

Schedule A

Employee	Period Covered	Back wages owed	Liquidated Damages	Total Due Employee
Benitez, Nancy	1/2/2013-5/24/2014	\$3,640.49	\$3,640.49	\$7,280.98
Collier, Thomesia	1/5/2014-11/15/2015	\$994.93	\$994.93	\$1,989.86
Escobar, Jennifer	1/27/2013-7/5/2015	\$4,970.34	\$4,970.34	\$9,940.69
Ferguson, Shamiah	4/20/2014-8/9/2015	\$3,370.41	\$3,370.41	\$6,740.82
Foster, Joanna	9/21/2014-8/30/2015	\$858.04	\$858.04	\$1,716.08
Gaw, Fairia Brook	9/8/2013-11/9/2014	\$5,713.41	\$5,713.41	\$11,426.81
Hurt, Brandon	1/27/2013-5/26/2013	\$1,385.10	\$1,385.10	\$2,770.20
Miles, Jasmine B.	11/23/2014-12/20/2015	\$364.80	\$364.80	\$729.60
Ping, Christina	1/27/2013-10/25/2015	\$3,669.99	\$3,669.99	\$7,339.98
Primerro, Rosybel	6/14/2015-7/5/2015	\$32.49	\$32.49	\$64.98
TOTALS:		\$25,000.00	\$25,000.00	\$50,000.00

Schedule B
(Page 1 of 2)

Payment 1

Checks to be delivered to Plaintiff within 30 days of the order:

Employee	Amount
Benitez, Nancy	\$2,184.29
Collier, Thomesia	\$596.96
Escobar, Jennifer	\$2,982.21
Ferguson, Shamiah	\$2,022.25
Foster, Joanna	\$514.82
Gaw, Fairia Brook	\$3,428.04
Hurt, Brandon	\$831.06
Miles, Jasmine B.	\$729.60
Ping, Christina	\$3,312.45
Primero, Rosybel	\$64.98
GROSS:	\$16,666.66

Payment 2

Checks to be delivered to Plaintiff within 60 days of order:

Employee	Amount
Benitez, Nancy	\$463.34
Collier, Thomesia	\$126.63
Escobar, Jennifer	\$632.59
Ferguson, Shamiah	\$428.96
Foster, Joanna	\$109.21
Gaw, Fairia Brook	\$727.16
Hurt, Brandon	\$176.29
Ping, Christina	\$366.14
GROSS:	\$3,030.32

Payments 3 through 11 shall be identical to Payment 2.

Schedule B
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Payment 12

Checks to be delivered to Plaintiff as the twelfth and final payment:

Employee	Amount
Benitez, Nancy	\$463.29
Collier, Thomesia	\$126.60
Escobar, Jennifer	\$632.58
Ferguson, Shamiah	\$428.97
Foster, Joanna	\$109.16
Gaw, Fairia Brook	\$727.17
Hurt, Brandon	\$176.24
Ping, Christina	\$366.13
GROSS:	\$3,030.14