

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

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

Plaintiff, )

v. )

R&S DAIRY QUEENS, INC., D/B/A )  
DAIRY QUEEN )

Defendant. )

CIVIL ACTION NO.

**CONSENT JUDGMENT AND ORDER**

Plaintiff, Martin J. Walsh, Secretary of Labor, U.S. Department of Labor (the “Secretary”) has filed his complaint against Defendant R&S Dairy Queens, Inc., d/b/a Dairy Queen to secure an injunction for future compliance and payment of back wages for minimum wage and overtime violations of Sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (“FLSA” or “the Act”). During a Department of Labor investigation, Defendant owned and operated nineteen Dairy Queen restaurants in San Antonio, Texas and the surrounding areas. The Secretary and Defendant have agreed that Defendant will pay back wages for the period of December 1, 2018 – December 31, 2020 to Defendant’s employees listed on Exhibit “A.”

Defendant, without admitting it violated any provision of the Act, has agreed to the entry of judgment without contest. It is, therefore, upon motion of the Secretary and for cause shown,

ORDERED, ADJUDGED and DECREED that Defendant, its officers, agents, servants, employees, and all persons in active concert or participation with them be permanently enjoined

from violating the provisions of Sections 6, 7, 15(a)(2), and 15(a)(5) of the Act, in any of the following manners:

1. Defendant shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less than the minimum hourly rates required by Section 6 of the Act.

2. Defendant shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), employ any employee 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 (40) hours, unless the employee receives compensation for his or her employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which they are employed.

3. Defendant is enjoined from withholding minimum wage and overtime compensation in the amount of \$357,753.59, less income tax and social security deductions, plus additional interest in the amount of \$447.32, that is due to Defendant's employees named in Exhibit "A" for the period of December 1, 2018 – December 31, 2020.

To comply with this provision, Defendant shall deliver payment to the Secretary by cashier's or certified check payable to "U.S. Department of Labor, Wage and Hour Division," at 525 S. Griffin St., Suite 800, Dallas, Texas 75202. Defendant also has the option to pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77705201>.

4. Defendant agrees to deliver the payments in the amounts and the times set forth below:

- a. An initial payment of \$89,438.40 shall be made on or before August 15, 2021.
- b. Defendant will pay three (3) consecutive monthly installments in accordance with the following schedule:

Payment No.	Date Due	Amount Due	Interest Due	Total Due
1	09/02/2021	\$89,363.90	\$223.60	\$89,587.50
2	10/02/2021	\$89,438.37	\$149.13	\$89,587.50
3	11/02/2021	\$89,512.92	\$74.59	\$89,587.51
Totals:		<u>\$268,315.19</u>	<u>\$447.32</u>	<u>\$268,762.51</u>

c. The Secretary shall make the appropriate distribution to the employees, or their estate if necessary, less income tax and social security deductions. The Secretary shall provide proof of the employee's portion of income tax and social security deductions to Defendant.

5. In the event that any of the money cannot be distributed and paid by the Secretary within three (3) years because of inability to locate the proper persons or because of their refusal to accept, the money shall be deposited with the Treasurer of the United States.

6. In the event of default by Defendant on any of the installment payments described in paragraph 4 above, the total balance shall then become due and interest shall be assessed against the unpaid balance at the rate provided by 28 U.S.C. § 1961 from the date of this judgment until the total amount is paid in full.

7. The right of Defendant's employees not specifically named in the attached Exhibit A to bring an action under Section 16(b) of the Act, 29 U.S.C. § 216(b), shall be restored and neither the filing of this action nor the entry of this judgment shall bar such action. The parties

agree the filing of this action and provisions of this judgment shall not be interpreted to prejudice or preclude the rights of any of Defendant's employees to seek redress for violations of the Act alleged to have occurred after December 31, 2020.

8. Defendant represent that as of the entry of this Consent Judgment, the nineteen Dairy Queen locations are now in compliance with all aspects of the Fair Labor Standards Act.

9. Each party agrees to bear his or her own attorneys' fees, costs and other expenses in connection with any stage of this proceeding, including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

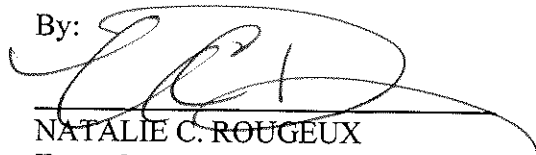
Dated this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Respectfully Submitted,

R&S DAIRY QUEENS, INC.

By:

  
NATALIE C. ROUGEUX  
Texas State Bar No. 24041828

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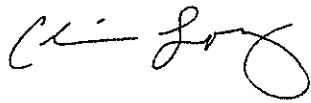
Respectfully Submitted,

SEEMA NANDA  
Solicitor of Labor

JOHN RAINWATER  
Regional Solicitor

MARGARET TERRY CRANFORD  
Counsel for Wage and Hour

By:

  
CHRISTOPHER D. LOPEZ-LOFTIS  
Trial Attorney  
Texas State Bar No. 24086924

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Dairy Queen

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Attorneys for Secretary

RSOL Case No. 0640-210-0083

**EXHIBIT A**

Jimmy Abernathy  
Jose Alaniz  
Shaun Bowen  
Eugene Briseno  
Mark Cain  
Juan Castillo  
Louis Chapa  
Edith De La Garza  
Cynthia Diaz  
Connie Dodson  
Edria Dreschel  
Heather Flaharty  
Leonardo Gonzalez  
Linda Lang  
Terril Gonzales  
Johnna Holcomb  
Bradley Jones  
Sandra Mejia  
Scott Middleton  
Ismael Olivo  
Derek Preston  
Ernesto Ponce  
Andres Ramos  
Robert Resendez  
Estevan Reyes  
Cynthia Sancho  
Penny Smith  
Christina Sotelo  
Stephen Stewart  
Dawn Thornton  
Jose Trevino  
Reneisha Turner  
Lisa Wright