

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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

Plaintiff,

v.

SMOKERS HAVEN INC. and BRETT  
SCOTT,

Defendants.

Civil Action No. 1:22-cv-26

**CONSENT JUDGMENT AND ORDER**

Plaintiff Secretary of Labor, United States Department of Labor (the “Secretary”), has filed a Complaint in this case under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA” or “Act”). Defendants Smokers Haven Inc. and Brett Scott (collectively, the “Defendants”), have received a copy of the Complaint and waived service of process.

Defendants admit that they violated Sections 7 and 15(a)(3) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(3).

The Court concludes 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, hereby are permanently enjoined and restrained from violating the FLSA, in any of the following manners.

- a. 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 at rates not less than one-and-one-half times the employees' regular rates of pay.
- b. 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.
- c. 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). 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.

d. Defendant shall not violate Section 15(a)(3) of the FLSA, [29 U.S.C. § 215\(a\)\(3\)](#), including by terminating or threatening to terminate the employment of any employee who complains about wage-related issues or otherwise engages in protected activity under the Act.

2. Further, the Court orders Defendants to pay their employees back wages in the total amount of \$2,327.24, as shown on the attached Exhibit A1, which is incorporated in and made a part of this Consent Judgment, and that Defendants are restrained from withholding said back wages.

3. In addition, the Court orders Defendants to pay their former employee Mark Wheeler back pay in the amount of \$2,177.02 and punitive damages in the amount of \$50,000.00 for Defendants' violations of Section 15(a)(3) of the FLSA, [29 U.S.C. § 215\(a\)\(3\)](#), and specifically Defendants' unlawful termination of Mark Wheeler's employment.

4. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the FLSA since October 22, 2021. In resolving the amount of back wages in this Consent Judgment, the Secretary has relied on this representation and, accordingly, the back wage provisions of this Consent Judgment shall have no effect upon any back wages which may have accrued since October 22, 2021.

5. The back wage provisions of this Consent Judgment only cover the period from October 13, 2019 to October 12, 2021 for the individuals named in Exhibit A1, and this Consent Judgment shall have no effect upon any back wages that may have accrued outside that time period or for any individual not named on Exhibit A1.

6. When recovered wages or liquidated damages have not been claimed by an employee within three years, because of inability to locate the employee or because of the

employee's refusal to accept such sums, the Secretary shall deposit the wages or liquidated damages into the United States Treasury as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

7. Defendants shall not, in any way, solicit, demand, accept, or keep any amount paid or payable to any employee or former employee under this Consent Judgment, or in any manner attempt to recover or otherwise influence any employee or former employee to forfeit any amounts paid to such employee or former employee in connection with this Consent Judgment. In the event any such amount is received from any employee or former employee, 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.

8. Defendants have certified that their employment practices are currently in compliance with all applicable provisions of the FLSA as interpreted by the Secretary. If this representation is determined to be false, and Defendants are found to be in violation of the FLSA, additional civil money penalties may be owed, in addition to back wages, liquidated damages, and other damages as appropriate.

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

10. Nothing in this Consent Judgment precludes the Secretary from bringing any enforcement action against Defendants for any violation of the FLSA not specifically set forth in the Secretary's Complaint in this case.

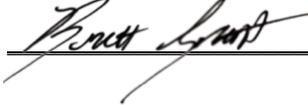
11. Each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED, this 28th day of January, 2022.

\_\_\_\_\_  
Joseph N. Laplante  
United States District Judge

\*\*\*\*\*

**FOR ALL DEFENDANTS:**

  
\_\_\_\_\_

Dated: January 20, 2022

**FOR THE SECRETARY:**

Seema Nanda  
Solicitor of Labor

Maia S. Fisher  
Regional Solicitor

/s/ Mark A. Pedulla  
Mark A. Pedulla  
Counsel for Wage & Hour  
pedulla.mark.a@dol.gov  
MA BBO No. 685925

U.S. Department of Labor  
Attorneys for Plaintiff  
Post Office Address:  
JFK Federal Building—Room E-375  
Boston, Massachusetts 02203  
TEL: (617) 565-2500  
FAX: (617) 565-2142

Dated: January 24, 2022