

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<b>THOMAS E. PEREZ</b> , Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:15cv842
	)	
<b>BEST AIRE COMPRESSOR SERVICES</b>	)	Hon. Robert J. Jonker
<b>INC.</b> , a Michigan corporation, and	)	
<b>THOMAS RUSSELL</b> , an individual,	)	
	)	
Defendants.	)	

**CONSENT JUDGMENT**

Plaintiff **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor (“Plaintiff”), having filed a complaint, and Defendants **BEST AIRE COMPRESSOR SERVICES, INC.**, and **THOMAS RUSSELL**, an individual (collectively, “Defendants”), hereby appearing by counsel, acknowledge receipt of a copy of the complaint and waive service thereof, having answered, and having been duly advised in the premises, agree to the entry of this Consent Judgment without contest. Now, therefore, upon motion of attorneys for Plaintiff and Defendants, and for cause shown:

**JUDGMENT IS HEREBY ENTERED** against Defendants pursuant to sections 16(c) and 17 of the Fair Labor Standards Act of 1938, as Amended, 29 U.S.C. § 201 *et seq.* (the “Act”) as follows:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**, pursuant to section 17 of the Act, that Defendants, their officers, agents, servants, employees and all other persons in active concert or participation with them are hereby permanently enjoined and restrained from violating the provisions of the Act in any of the following manners.

## I

Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any employees who in any workweek are engaged in commerce or 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 40 hours, unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rates at which he is employed. Specifically, Defendants shall not pay their service technicians an overtime rate based on workdays longer than 8 hours. Instead, Defendants shall pay their service technicians weekly overtime rates not less than one and one-half times their regular rates for hours worked in excess of 40 in a workweek. Further, Defendants shall not classify parts managers, accounting clerks, and receptionists as exempt from the overtime provisions of the Act under the administrative exemption pursuant to section 13(a)(1) of the Act.

## II

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 at 29 C.F.R. Part 516. This includes, but is not limited to, maintaining records of all hours worked by each employee on each workday and in each workweek, and records of compensation paid to each employee in each workweek, whether payment is made by a payroll check, personal check, cash, or a combination thereof. The records maintained by Defendants shall also include, but not be limited to, the full name and last-known mailing address of all

employees, the daily starting and stop time of each employee, and the specific method of payment made to each employee.

### III

A. If Defendants intend to claim an exemption to the overtime requirements of the Act, prior to claiming such exemption, Defendants shall notify each affected employee in writing. Defendants shall inform such employees of the exemption Defendants intend to claim and the basis for claiming the exemption.

B. For a period of two years commencing with the date this Consent Judgment is entered, Defendants shall provide the following Wage and Hour Division Fact Sheets to all current and future employees: #17C (Administrative Exemption); #17G (Salary Basis, Part 541 Exemptions); #21 (Recordkeeping Requirements under the Fair Labor Standards Act); and #23 (Overtime Pay Requirements of the Fair Labor Standards Act), which are available at <https://www.dol.gov/whd/fact-sheets-index.htm>. Defendants shall also provide the following Wage and Hour Fact Sheet to all current and future employees: Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees (May 2016), which is available at <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf> (explaining that on December 1, 2016, the standard salary level required for the administrative exemption will increase from \$455 to \$913 per week).

#### IV

The Defendants hereby acknowledge and the Court finds that:

A. Defendant **BEST AIRE COMPRESSOR SERVICES, INC.**, is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the Act.

B. Defendant **BEST AIRE COMPRESSOR SERVICES, INC.**, is engaged in related activities performed through unified operation or common control for a common business purpose, and is and, at all times hereinafter mentioned, was an enterprise within the meaning of section 3(r) of the Act.

C. Defendant **THOMAS RUSSELL** acted directly or indirectly in the interest of the corporate Defendant **BEST AIRE COMPRESSOR SERVICES, INC.**, and is an “employer” under section 3(d) of the Act and is, as such, individually responsible for the obligations contained in this Consent Judgment.

#### V

**FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to section 16(c) of the Act, in favor of Plaintiff and against Defendants in the total amount of **\$13,603.46**.

A. Defendants have paid Plaintiff the sum of **\$1,808.21**,<sup>1</sup> which represents the unpaid gross overtime compensation hereby found to be due to the present and former employees named and in the amounts set forth for the time periods set forth in Exhibit A, attached hereto and made a part hereof.

B. Defendants have paid Plaintiff the sum of **\$1,808.21**, which represents the liquidated damages hereby found to be due to the present and former employees named and in

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<sup>1</sup> During the course of litigation, Defendants paid the following employees a total of \$9,987.04 for their back wages and liquidated damages due: Len Burchett, Ben Coutcher, Dawn Cowell, Benjamin Deloach, Scott Jacobs, Nancy Johnson, Amy Lutman, Matt Pedler, Marc Wilkinson, and Dave Yeoman.

the amounts set forth for the time periods set forth in Exhibit A, attached hereto and made a part hereof.

## VI

The monetary provisions of Paragraph V of this Consent Judgment shall be deemed satisfied, upon Defendants' delivery to the Plaintiff's representative of the following:

A. A schedule, in duplicate, showing the name, last known address, social security number, gross amount of wages due, amounts deducted from gross wages for social security and withholding taxes, net amount due, gross amount of liquidated damages due, and the total amount due. Defendants shall pay said deductions from gross wages to the appropriate State and Federal revenue authorities. Nothing in this Consent Judgment precludes Defendants from complying with court-issued wage deduction, child support orders, or other garnishments required by law from the payments being made pursuant to this Consent Judgment.

B. Separate checks for each employee named in Exhibit A made payable to the order of the employee or "Wage and Hour Div., Labor," as alternative payees (*e.g.*, "PAY TO THE ORDER OF JANE DOE or WAGE AND HOUR DIV., LABOR") and equal to the net amount of back wages and liquidated damages due employees. Defendants remain responsible for paying their share of any applicable taxes to the appropriate State and Federal revenue authorities.

C. Defendants have also reimbursed Plaintiff for his payment of \$300.00 in unnecessary standard case evaluator fees by submitting a separate check for \$300.00 made payable to "U.S. Department of Labor, Office of the Solicitor."

**VII**

Plaintiff shall distribute the proceeds of the checks referred to in Paragraph VI hereof to the persons enumerated in Exhibit A or to their estates, if that be necessary and any amounts of unpaid compensation and liquidated damages not so paid within a period of three (3) years from the date of receipt thereof shall, pursuant to section 16(c) of the Act, be covered into the Treasury of the United States as miscellaneous receipts.

**VIII**

Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any current or former employee to return or to offer to return to the Defendants or to someone else for the 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 Consent 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 Consent 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 from the Defendants under the provisions of this Consent Judgment or the Act.

**DATED** July 20, 2016

/s/ Robert J. Jonker  
HON. ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE

**FOR THE SECRETARY OF LABOR:**

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

s/Kevin M. Wilemon

DATED: 7/4/2016

**KEVIN M. WILEMON**  
Attorney

P.O. ADDRESS:  
Office of the Solicitor  
U.S. Department of Labor  
230 S. Dearborn St., Room 844  
Chicago, IL 60604

**Local Counsel:**

**PATRICK A. MILES, JR.**  
United States Attorney

s/W. Francesca Ferguson

**W. Francesca Ferguson**  
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**FOR THE DEFENDANTS:**


FOR BEST AIRE COMPRESSOR SERVICES, INC.:

Dated: JUNE 30, 2016

  
\_\_\_\_\_  
THOMAS RUSSELL, as President and Sole Owner

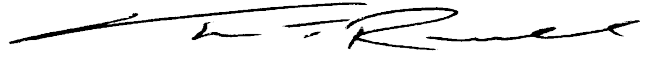
FOR THOMAS RUSSELL:

Dated: JUNE 30, 2016

  
\_\_\_\_\_  
THOMAS RUSSELL

COUNSEL FOR DEFENDANTS:

Dated: June 30, 2016



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TRAVIS RUSSELL, ESQ.  
Russell Law Firm, P.C.  
2040 Raybrook Ave SE  
Suite #204  
Grand Rapids, MI 49546



**EXHIBIT A**

**DAMAGES OWED**

<b>Employee</b>	<b>Period Covered by Workweek Ending Dates</b>	<b>Back Wages Due<sup>2</sup></b>	<b>Liquidated Damages Due</b>	<b>Total</b>
1. Schings, Dustin	June 28, 2014, to August 16, 2014	\$123.53	\$123.53	\$247.06
2. Seldomridge, Steve	June 7, 2014, to January 24, 2015	\$1,325.07	\$1,325.07	\$2,650.14
3. Tyson, Michelle	February 15, 2014, to May 17, 2014	\$359.61	\$359.61	\$719.22

**Total: \$3,616.42**

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<sup>2</sup> These amounts reflect the gross amounts due before the deduction of federal and state taxes.