

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA, OMAHA DIVISION**

**JULIE A. SU,
ACTING SECRETARY OF LABOR,
UNITED STATES DEPARTMENT
OF LABOR,**

Plaintiff,

v.

NOAH'S ARK PROCESSORS, LLC,

Defendant.

Civil Action No. 8:23-cv-529

CONSENT ORDER AND JUDGMENT

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Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), has filed a *Complaint* under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201, *et seq.*) (“FLSA”), against Defendant Noah’s Ark Processors, LLC (“Defendant”) has appeared by counsel, and waive any defenses which it may have, and agrees to the entry of this *Consent Order and Judgment* without contest.

Defendant admits and the Court finds Defendant is engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendant admits and the Court finds Defendant is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendant admits and the Court finds Defendant is an employer as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion of attorneys for the Acting Secretary and Defendant and for cause shown, it is:

ORDERED, ADJUDGED, AND DECREED, pursuant to Section 217 of the FLSA that Defendant, its officers, agents, servants, and all persons acting or claiming to act on its behalf and interest be, and it hereby is, permanently enjoined and restrained from violating the provisions of Sections 207, 211, 215(a)(2), and 215(a)(3) of the FLSA, in any of the following manners:

1. Defendant shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees, including but not limited to, any of their covered employees working at Noah's Ark Processors, LLC, or at any business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed. Defendant shall also compensate all of its employees for any compensable pre and/or post-shift work, including the modification of gang time paid to covered workers for integral duties performed, as identified in Counsel Bulow's email correspondence dated May 31, 2023, which is incorporated herein by reference.

2. Defendant shall make, keep, and preserve adequate records of its employees and of the wages, hours, and other conditions and practices of employment maintained by them including, but not limited to, any of their employees working at Noah's Ark Processors, LLC, or at any covered business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, as prescribed by the Regulations issued

pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Defendant shall make such records available at all reasonable times to representatives of the Acting Secretary.

3. Pursuant to 29 U.S.C. § 215(a)(3), Defendant shall not discharge or take any retaliatory action against any of its employees, whether or not directly employed by Defendant, because the employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Defendant or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA, by the Defendant or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to Section 216(c) of the Act, in favor of the Acting Secretary and against Defendant in the total amount of \$230,000.00.

4. The Acting Secretary shall recover from Defendant the sum of \$230,000.00 in unpaid overtime compensation and liquidated damages covering the period from September 26, 2021, through February 4, 2023, for Defendant's current and former employees whose names are listed in the *Exhibit A* of the *Complaint*.

a. Within thirty (30) days of entry of this *Consent Order and Judgment*, Defendant shall deliver payment in the amount of \$19,166.67 using WHD Case No. 1903073, by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or www.pay.gov and searching “WHD Back Wage Payment – Midwest Region”;

1. Thereafter, in accordance with the following table, Defendants shall make eleven (11) additional payments, in the amount of \$210,833.33 on the dates specified herein:

Date	Payment	Date	Payment
February 15, 2024	\$19,166.67	August 15, 2024	\$19,166.67
March 15, 2024	\$19,166.67	September 15, 2024	\$19,166.67
April 15, 2024	\$19,166.67	October 15, 2024	\$19,166.67
May 15, 2024	\$19,166.67	November 15, 2024	\$19,166.67
June 15, 2024	\$19,166.67	December 15, 2024	\$19,166.63
July 15, 2024	\$19,166.67		
		Total	\$210,833.33

b. Defendant shall also furnish to the Acting Secretary the full name, last-known address, last-known phone number, and social security number for each employee named in *Exhibit A* of the *Complaint*.

c. Upon receipt of full payment from Defendant, representatives of the Acting Secretary shall distribute such amounts, less appropriate deductions for federal income withholding taxes and the employee’s share of the social security (“FICA”) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of Section 216(c) of the FLSA. Defendant remains responsible for the employer’s share of FICA arising from or related to the back wages distributed by the Acting Secretary.

d. Neither Defendant nor anyone acting on its behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this *Consent Order and Judgment*. Any such amount shall be immediately paid to the Acting Secretary for deposit as above, and Defendant shall have no further obligations with respect to such returned monies.

e. Any monies not disbursed by the Department of Labor after three (3) years from the date of payment by Defendant, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to Section 216(c) of the FLSA.

f. The provisions of this *Consent Order and Judgment* shall not in any way affect any legal right of any individual not named on *Exhibit A* to the *Complaint*, nor shall the provisions in any way affect any legal right of any individual named on *Exhibit A* to the *Complaint* to file any action against Defendant for any violations alleged to have occurred outside the relevant period or any action which could not be brought under the FLSA.

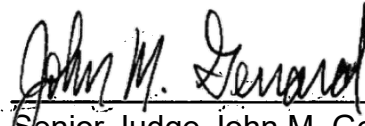
5. By entering into this *Consent Order and Judgment*, the Acting Secretary does not waive their right to conduct future investigations of Defendant under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

6. The entry of this *Consent Order and Judgment* constitutes a compromise and settlement of disputed claims and obligations. The terms of any associated Order shall not be regarded as an admission of liability or fault by any Party, including Defendant.

a. Defendant specifically denies that it violated any statute, regulation, or common law alleged, and asserts that it has strong defenses to the claims alleged herein.

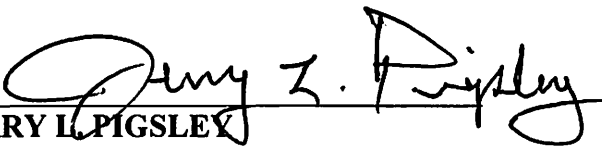
It is FURTHER ORDERED that each Party shall bear their own costs, fees and other expenses incurred by such Party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated this 19th day of Dec. , 2023.

A handwritten signature in black ink, reading "John M. Gerrard". The signature is written in a cursive style with a horizontal line underneath it.

Senior Judge John M. Gerrard
United States District Judge

Entry of this Judgment
is hereby consented to:

By 
JERRY L. PIGSLEY
Attorney

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