

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING

2015 FEB 18 AM 9 24

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

STEPHAN HARRIS, CLERK
CHEYENNE

THOMAS E. PEREZ, SECRETARY OF LABOR)
UNITED STATES DEPARTMENT OF LABOR,)

Plaintiff,)

No: 12-CV-261-J

v.)

MOUNT RUSHMORE BROADCASTING, INC.,)
and JAN CHARLES GRAY, individually,)

Defendants.)

CONSENT JUDGMENT AND INJUNCTION

Plaintiff, THOMAS E. PEREZ, the Secretary of Labor, United States Department of Labor ("Plaintiff"), having filed his Complaint and Defendants, having appeared by counsel and answered the Plaintiff's Complaint ("Complaint") (collectively with Defendants, the "Parties"), without admitting to any allegations in the Complaint, agree to the entry of this Consent Judgment and Injunction.

NOW, therefore, upon motion of Plaintiff, and for cause shown, it is hereby:

ORDERED, ADJUDGED, AND DECREED, pursuant to section 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (the "FLSA"), 29 U.S.C. § 217, that Defendants, their officers, agents, servants, employees, and all persons in active concert or

participation with them are hereby permanently enjoined and restrained from violating the provisions of the FLSA in any of the following manners:

I – Compliance with the FLSA

A. Defendants shall not, contrary to sections 6 and 15(a)(2) of the FLSA, pay any of their employees, who in any workweek are engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, wages at a rate less than \$7.25 per hour (or at a rate less than such other applicable minimum rate as may hereafter be established by amendment to the FLSA);

B. Defendants shall not, contrary to sections 7 and 15(a)(2) of the FLSA, employ any non-exempt employees in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than forty (40) hours without compensating such non-exempt employees for their employment in excess of forty (40) hours per workweek at rates not less than one and one-half times the regular rates at which they are employed.

C. Defendants shall not, contrary to sections 11(c) and 15(a)(5) of the FLSA, fail to make, keep, and preserve adequate and accurate records of their non-exempt employees, and of the wages, hours, and other conditions and practices of employment as prescribed by the regulations issued and from time to time amended pursuant to section 11(c) of the FLSA (29 C.F.R. Part 516). Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

D. Defendants shall not, contrary to section 15(a)(3) of the FLSA, in any way discriminate, retaliate or take any adverse employment action, or threaten or imply that adverse action will be taken against any employee who exercises or asserts his or her rights under the FLSA (including without limitation, providing information to any public agency investigating

compliance with the FLSA, filing any complaint or instituting or causing to be instituted any proceeding under or related to the FLSA, testifying or about to testify in any such proceeding, or serving or about to serve on an industry committee). Violation of this Paragraph I(D) may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

II –Enhanced FLSA Compliance Provisions

A. Section II of this Consent Judgment and Injunction provides for enhanced compliance with the FLSA. Section II shall remain in effect for three years from the date of entry of this Judgment and Injunction. These provisions apply to all businesses in which Defendant Jan Charles Gray holds an interest, either directly, indirectly, or through any LLC, corporation, partnership, or other entity, of fifty (50) percent or greater.

B. Defendants agree to provide their employees (current employees and future hires) with information concerning the FLSA's requirements on minimum wage and overtime pay as follows: (1) Basic Information Fact Sheet; and (2) Fact Sheet #23 - Overtime Pay Requirements of the FLSA.

C. Defendants shall post the two fact sheets referenced above, and attached as Exhibits B and C to this Consent Judgment and Injunction, in the Mount Rushmore Broadcasting, Inc., business office, in an area where employees commonly congregate and where the fact sheets are clearly visible and can be viewed by employees. In addition, Defendants shall post these two fact sheets at any business in which Defendant Jan Charles Gray holds an interest either directly, indirectly, or through an LLC, corporation, partnership, or other entity of fifty (50) percent or greater, in an area where employees commonly congregate and where the fact sheets are clearly visible and can be viewed by employees.

D. Defendants shall post Wage Hour's local telephone contact number in the Mount Rushmore Broadcasting, Inc., business office, in an area where employees commonly congregate and where the fact sheets are clearly visible and can be viewed by employees. In addition, Defendants shall post Wage Hour's local telephone contact number at any business in which Defendant Jan Charles Gray holds an interest either directly, indirectly, or through an LLC, corporation, partnership, or other entity of fifty (50) percent or greater, in an area where employees commonly congregate and where the fact sheets are clearly visible and can be viewed by employees. A copy of the posting is attached to this Consent Judgment and Injunction as Exhibit D.

E. Defendants shall train their current and future managers on the FLSA's minimum wage and overtime requirements as it applies to their employees as delineated in the United States Department of Labor's regulations found in the Code of Federal Regulations (29 C.F.R.) in order to ensure good faith compliance with such requirements.

III – FLSA Monetary Relief

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 17 of the FLSA, 29 U.S.C. § 217, Defendants hereby are enjoined from withholding and are ordered to pay the total sum of \$4,827.53 in minimum wage and overtime compensation for FLSA violations that occurred during the period covering April 1, 2008, through March 31, 2011.

Defendants shall pay to Plaintiff the sum of \$4,827.53, which represents the unpaid back wages and overtime compensation hereby found to be due for the period from April 1, 2008, to March 31, 2011, to the present and former employees named and in the amounts set forth in Exhibit A, attached hereto and made a part hereof.

A. Defendants shall deliver to Plaintiff a cashier's check made payable to the order of the "Wage and Hour Div., Labor," and equal to the gross amounts due as set forth above. The aforesaid payment shall be tendered to Plaintiff's representative at the time this Consent Judgment and Injunction is executed by the Parties.

B. Plaintiff shall distribute the proceeds of the gross amounts due as set forth above (less legal deductions for each employee's share of Social Security and Federal withholding taxes) to the persons enumerated in Exhibit A or to their estates, if necessary, and any amounts of unpaid compensation not so paid within a period of (3) years from the date of receipt thereof shall, pursuant to 16(c) of the FLSA, be covered into the Treasury as miscellaneous receipts. Defendants remain responsible for paying their share of any applicable taxes to the appropriate State and Federal Revenue authorities.

C. Defendants shall not request, solicit, suggest or coerce, directly or indirectly, any 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 in any other form, for wages previously due or to become due in the future to said employees under the provisions of this judgment or the FLSA; 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 judgment or the FLSA; 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 the Defendants under the provisions of this judgment or the FLSA.

E. Upon receipt of the full payment of back wages, Plaintiff's counsel will file with the Court a certificate of payment. Plaintiff will compute the tax deductions, consisting of

federal income tax withholding and the employee's share of the social security (FICA) tax, provide an itemization thereof, and distribute the monies to the employees or former employees identified on Exhibit A (which includes the corresponding amount owed to each individual) or their legal representatives as their interests may appear. Defendants are responsible for the employer's share of the FICA tax with regard to the back wages distributed by Plaintiff.

F. Any sums, which cannot be distributed to the employees, or to their personal representatives because of the inability of either Plaintiff or Defendant to locate the proper persons or because of any person's refusal to accept payment, shall be deposited by Plaintiff in a special deposit account to be paid to the rightful employee. If such sums are not claimed by the employee (or a personal representative of the employee) within three years, Plaintiff shall deposit them into the United States Treasury as miscellaneous receipts.

G. Upon receipt of the full payment of back wages, Plaintiff will bring no other claims against Defendant or its officers, agents or employees for the payment of back wages or liquidated damages, pursuant to the FLSA, for any alleged violations occurring during the time period from April 1, 2008, to the effective date of this Consent Judgment and Injunction, which shall be the date of the U.S. District Court judge's signature hereto (the "Effective Date").

H. The Parties agree that nothing in this Consent Judgment and Injunction precludes Defendants' current or former employees from exercising their rights under section 16(b) of the FLSA with respect to violations alleged to have occurred after March 31, 2011.

I. Defendants shall not request, solicit, suggest or coerce, directly or indirectly, any employee 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 in any other form, for wages previously due or to become due in the future to said employees under the provisions of this

judgment or the FLSA; 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 judgment or the FLSA; 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 the Defendants under the provisions of this judgment or the FLSA.


J. This debt is subject to the assessment of interest, administrative cost charges and penalties in accordance with the Debt Collection Improvement Act of 1996 and departmental policies. Interest will be assessed at the Treasury Tax and loan account rate on any principal that becomes delinquent. This rate is currently 1.00%. Administrative cost charges will be assessed to help defray the Government's cost. A penalty at the rate of 6.00% will be assessed on any portion of the debt remaining delinquent for more than 90 days. In the event of default, the Department intends to pursue additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

IV – Miscellaneous Provisions

A. By entering into this Consent Judgment and Injunction, the United States Department of Labor does not waive its right to conduct future investigations under the FLSA and to take appropriate enforcement action with respect to any violations occurring after the Effective Date disclosed by such investigations, including, but not limited to, assessment of civil money penalties.

B. This Court shall retain jurisdiction over this action and the parties hereto as may be necessary to enforce the provisions of the judgment.

C. **FURTHER**, it is agreed by the parties herein and hereby **ORDERED** that each party bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding to date with no costs, including, but not limited to, any costs referenced under the Equal Access to Justice Act, as amended.



HON. ALAN B. JOHNSON
UNITED STATES DISTRICT COURT JUDGE

DATED: 2/17/15

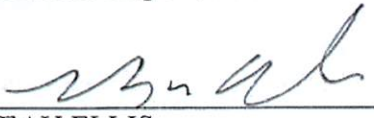
Entry of the foregoing judgment and injunction is hereby consented to:

FOR THE SECRETARY OF LABOR:

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

JOHN RAINWATER
Associate Regional Solicitor



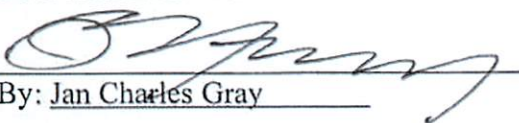
BEAU ELLIS
Trial Attorney

DATED: 2/11/2015

Office of the Solicitor
U.S. Department of Labor
1244 Speer Boulevard, Suite 515
Denver, CO 80204

The undersigned represents he is the person named below and has the authority to sign this document on behalf of the entity named and consents to the entry of this Consent Judgment and Injunction on behalf of each named Defendant herein.

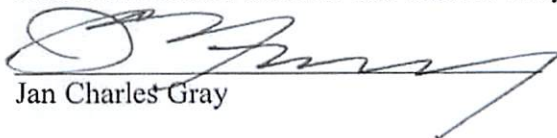
FOR THE DEFENDANT: Mount Rushmore Broadcasting, Inc.


By: Jan Charles Gray

DATED: 2/11/2015

Its: Owner

FOR THE DEFENDANT: Jan Charles Gray:


Jan Charles Gray

DATED: 2/11/2015

Individual