



Issue Date: 04 January 2019

CASE NO.: 2017-CLA-00005

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR
DIVISION, U.S. DEPARTMENT OF
LABOR,**

Plaintiff,

vs.

**OCEDON III LLC dba BURGER
KING,**

Respondent.

ORDER APPROVING CONSENT FINDINGS

This is an action for recovery of a civil penalty under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 212, 216(e). The parties have mediated this matter and submit Consent Findings for my approval. I hereby approve those Consent Findings, set forth below:

1. By notice dated April 12, 2017, pursuant to section 16(e) of the Fair Labor Standards Act, as amended (29 U.S.C. §216(e)) (hereinafter "the Act"), and in accordance with 29 C.F.R. Part 579, civil penalties in the amount of \$11,189.00 were assessed by Plaintiff against Respondent as a result of the alleged employment of a minor in violation of the child labor provisions of section 12 of the Act (29 U.S.C. § 212) and the regulations issued thereunder (29 C.F.R. Part 570).

2. Respondent filed a timely exception to the assessed civil money penalties pursuant to 29 U.S.C. § 216(e) and 29 C.F.R. § 580.6.

3. Subsequent to the filing of the exception, the Regional Solicitor, by Order of Reference, referred this case to the Chief Administrative Law Judge, pursuant to 29 C.F.R. 580.10.

4. Upon reconsideration of the amount of penalties assessed for employment of the minor in this case, Plaintiff hereby modifies the letter assessing the penalties of \$11,189.00 by reducing the assessment of civil money penalties

to \$6,500.00.

5. Respondent agrees to:

- a) Train current and future managers, assistant managers, and supervisors regarding the FLSA's child labor provisions and conduct refresher training with such individuals annually. Training materials are attached hereto as Exhibit A;
- b) Inform current and future employees verbally, in a language the employees understand, that Respondent does not permit underage minors to perform work not permitted under Section 12 of the FLSA, nor does Respondent employ any workers under age 18 in any hazardous occupation;
- c) Within thirty (30) days of the Agreement Date, which shall be the date of the last signature hereto, and again one (1) year later, conduct a child labor audit to ensure that no child labor practices in violation of the FLSA are occurring. The results of these audits shall be available to WHD upon request;
- d) Permanently post in a conspicuous place in or about its premises at all places where posters for employees are customarily posted, including electronically if the employer routinely posts notices to employees electronically, WHD Fact Sheet 2A, *Child Labor Rules for Employing Youth in Restaurants and Quick Service Establishments under the Fair Labor Standards Act*. This posting is attached hereto as Exhibit B, and is available electronically at <https://www.dol.gov/whd/reg/compliance/whdfs2a.pdf>; and
- e) Permanently post in a conspicuous place in or about its premises at all places where posters for employees are customarily posted, including electronically if the employer routinely posts notices to employees electronically, Wage Hour's local telephone contact number . The posting is attached as Exhibit C to this Agreement.

6. Respondent hereby waives and withdraws any and all exceptions to the assessment of civil money penalties, as amended by these consent findings, and agree that said amended penalties shall be the final determination of the Secretary. Respondent makes this waiver and withdrawal for the express

and limited purpose of these consent findings only, subject to the non-admission language below and preserving its exceptions for later use in any other case.

7. The amended civil money penalties shall be paid by Respondent no later than February 1, 2019, by forwarding a certified or cashier's check, made out to the U.S. Department of Labor - Wage and Hour Division, in the amount of \$6,500.00 to: United States Department of Labor, Wage and Hour Division, Denver District Office, 1999 Broadway Blvd., Suite 710, Denver, CO 80202.

8. Pursuant to 29 C.F.R. 18.9(b)(2), the entire record upon which these Consent Findings and Order are based consists solely of the letter assessing the penalties, as modified herein, the Order of Reference, and these Consent Findings.

9. All further procedural steps before the Administrative Law Judge and any rights to challenge or contest the validity of these Consent Findings or any Order issued pursuant thereto are hereby waived except to the extent provided herein in paragraph 6.

10. These consent findings in no way constitute an admission of liability by Respondent or an admission that it has violated or required to comply with any statute(s), regulation(s), or any legal authority or guidance in relation to its compliance with the provisions of the Fair Labor Standards Act.

11. The parties recognize that the Department of Labor and the Wage and Hour Division are free to use the Department of Labor's investigation and investigation findings as the basis for any future legal actions, including, but not limited to the assessment of civil money penalties assessed as the result of future investigations, and, to the extent otherwise properly admissible, as evidence in administrative proceedings for civil money penalties that may result from such future investigations.

12. Each party agrees to bear its own fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding.

13. It is further agreed that the Order in this case shall have the same force and effect as an order made after full hearing.

SO ORDERED.

CHRISTOPHER LARSEN
Administrative Law Judge