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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

SETH D. HARRIS <sup>1</sup> , Acting Secretary of Labor, United States Department of Labor,	)	Case No.: 11-2075-PHX-SRB
	)	
Plaintiff,	)	CONSENT JUDGMENT
vs.	)	
DS WATERS OF AMERICA, INC.	)	
Defendant.	)	

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Plaintiff Seth D. Harris, Acting Secretary of Labor (“Secretary”), has filed the Complaint in this matter and Defendant DS Waters of America, Inc., (Defendant or “DS Waters”) has appeared through counsel and answered the Complaint. Plaintiff and Defendant, having been duly advised on the proceedings, agree to resolve all matters in controversy in this action, waive the entry of any findings of fact and conclusions of law except as otherwise set forth herein, and agree to the entry of this Consent Judgment in settlement of this case.

1. Plaintiff alleges that for the purposes of section 101(4) of the Family Medical Leave Act (“Act” or “FMLA”), 29 U.S.C. § 2611(4), and relevant regulations, including 29 C.F.R. § 825.107, Defendant is a

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<sup>1</sup> Seth D. Harris was appointed as Acting Secretary of Labor on January 24, 2013. Pursuant to Fed. R. Civ. P. 25(d) the caption has been changed to reflect the appointment.

1 successor in interest to O Waters LLC, which was doing business as O  
2 Premium Waters. Plaintiff further alleges Defendant interfered with Mr.  
3 Peter Lyle's rights under sections 102, 104, and 105 of the Act, 29 U.S.C.  
4 §§ 2612, 2614, 2615, and 29 C.F.R. §§ 825.211, 825.214, 825.215,  
5 825.220 and other relevant regulations by failing to hire Mr. Lyle, by  
6 failing to continue Mr. Lyle's group health benefits during his FMLA  
7 leave, and by failing to reinstate Mr. Lyle at the conclusion of his FMLA  
8 leave.  
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- 11 2. Defendant admits to the jurisdiction of this Court over it and over the  
12 subject matter of this action. Defendant admits that this Court has  
13 authority to enter and enforce the attached Consent Judgment and that this  
14 Court is the most appropriate venue for any enforcement action which  
15 may be required as a result of the attached Consent Judgment.  
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- 18 3. The Consent Findings filed by the parties and this Consent Judgment  
19 represent a complete settlement of all the Secretary's claims asserted in  
20 this action against Defendant. The Consent Findings filed by the parties  
21 and this Consent Judgment are not binding upon any government agency  
22 or claimant other than the U.S. Department of Labor and only resolve  
23 claims arising out of this action.  
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- 26 4. Each party shall bear all fees, including attorneys' fees, and other  
27 expenses (including court costs), incurred by such party in connection  
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1 with any stage of this proceeding, and shall waive all rights to relief in this  
2 case under the Equal Access to Justice Act of 1980, as amended (28  
3 U.S.C. § 2412 et seq.).  
4

5 Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that:

6 (A) Defendant, its officers, agents, servants, employees, and all persons  
7 acting or claiming to act in its behalf and interest be, and hereby are,  
8 permanently enjoined and restrained from violating sections 102, 104, and  
9 105 of the Act, 29 U.S.C. §§ 2612, 2614, 2615, and its Regulations  
10 published at 29 C.F.R. Part 825, including in any of the following  
11 manners:  
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13  
14 (i) Defendant shall not, contrary to sections 102, 104, and 105 of the Act, 29  
15 U.S.C. §§ 2612, 2614, 2615, fail to reinstate an employee to the same or  
16 equivalent position of employment he held prior to commencement of  
17 his FMLA-qualifying leave; and  
18

19 (ii) With respect to reinstatement after FMLA-qualifying leave, Defendant  
20 shall not, contrary to sections 104 and 105 of the Act, 29 U.S.C. §§ 2614,  
21 2615 and 29 C.F.R. § 825.312, require a fitness-for-duty certification  
22 from a person other than the health care provider of the employee.  
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25 (B) In full settlement of the Secretary's claim:  
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- (i) Defendant shall, consistent with 29 C.F.R. § 825.300(d)(3) provide to Mr. Lyle a list of the essential functions of the Route Sales Representative position.
- (ii) Mr. Lyle shall seek a fitness for duty certification from his health care provider, Dr. Douglas Hartzler, or, if Dr. Hartzler is not available, another physician of Mr. Lyle's choosing. Such fitness for duty certification shall include a certification that Mr. Lyle is able to perform the essential functions of the Route Sales Representative position consistent with 29 C.F.R. §§ 825.305, 825.312(b).
- (iii) Defendant shall cover the costs of Dr. Hartzler seeing Mr. Lyle to evaluate his fitness to return to duty notwithstanding 29 C.F.R. § 825.312(c).
- (iv) Immediately upon receipt of the fitness for duty certification referenced above, Defendant shall make an offer to employ Peter Lyle immediately as a Route Sales Representative at 1740 West Broadway Road, Mesa, Arizona with full seniority credit for employment as if he had been continuously employed by Defendant as a full-time Route Sales Representative since December 14, 2009. Such seniority credit shall include but not be limited to offering to Mr. Lyle, at the same cost as benefits

1 offered to other Route Sales Representatives, family medical,  
2 dental, and vision benefits to be effective immediately. Such  
3 seniority credit shall also include Defendant's award of accrued  
4 vacation time to Mr. Lyle as though Defendant had continuously  
5 employed Mr. Lyle since December 14, 2009 and the use a hire  
6 date of December 14, 2009, for all purposes, including  
7 calculation of commission or other payments and assignment of  
8 work. Mr. Lyle shall have 10 days to decide whether to accept  
9 this job offer. Defendant shall immediately remove any adverse  
10 references pertaining to the subject matter of this action from  
11 any records Defendant maintains regarding Peter Lyle.  
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16 (v) Defendant shall pay the following amounts to Plaintiff:

17 \$26,871.87, for back wages due to Mr. Lyle, less the  
18 employee's share of payroll and other withholding taxes, and  
19 \$31,464.46 for employment benefits due to Mr. Lyle.  
20

21 (C) Payment pursuant to paragraph (B)(v) shall be made payable to "Wage and  
22 Hour Div., Labor or Peter Lyle" by certified check or cashier's check and  
23 shall be sent by overnight delivery for receipt by no later than February 26,  
24 2013 to:  
25

26 Sirena Bazile  
27 FMLA Regional Enforcement Coordinator  
28 Wage and Hour Division

1 Department of Labor  
2 90 7th Street, Suite 13-100  
3 San Francisco, CA 94103

4 Defendant shall enclose with such check a letter identifying the case name  
5 as *SOLIS v. DS WATERS OF AMERICA, INC.*, listing Defendant's tax  
6 identification number, and listing legal deductions made from the gross  
7 amount due. Defendant will be also responsible for computing and  
8 paying all relevant employer payroll taxes, including any applicable  
9 federal, state or local taxes.

10 Neither Defendant nor anyone on its behalf shall directly or indirectly  
11 solicit or accept the return or refusal of any sums paid under the attached  
12 Consent Judgment.

13 (D) Should Defendant fail to make the aforesaid payment set forth above for  
14 receipt by February 26, 2013, the entire balance remaining shall become due  
15 and owing without further notice by Plaintiff to Defendant and that amount  
16 shall be subject to post-judgment interest at the rate of ten percent per  
17 annum.

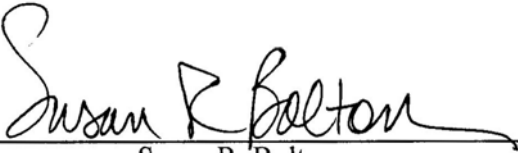
18 (E) The amount received pursuant to paragraphs (B) and (C) shall be used by  
19 the Secretary to satisfy the obligations imposed under the provisions of  
20 section 107(b)(3) of the Act, 29 U.S.C. § 2617(b)(3), and shall be  
21 distributed to Mr. Lyle (or to his heir or estate). Any money not  
22 distributed by the Wage and Hour Division because of a failure to locate  
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Mr. Lyle or because of Mr. Lyle's failure to accept said distribution shall be deposited with the Treasurer of the United States, pursuant to 28 U.S.C. § 2041.

**It is so ordered.**

Dated this 13th day of February, 2013.

  
\_\_\_\_\_  
Susan R. Bolton  
United States District Judge