

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

THOMAS E. PEREZ, SECRETARY OF LABOR,
United States Department of Labor,

Plaintiff,

v.

FORCE CORPORATION;
AB CONSTRUCTION GROUP INC.;

JULIANO FERNANDES, Individually; and,
ANDERSON DOS SANTOS, Individually,

Defendants.

Civil Action No. 16-cv-40103-TSH

CONSENT JUDGMENT AND ORDER

Plaintiff, Secretary of Labor, United States Department of Labor, has filed a Complaint and Defendants have received a copy of Plaintiff's Complaint and waived service of process. Defendants also acknowledge assessment by Plaintiff of civil money penalties in the amount of \$262,900.00, have received notice and service of the issuance of the civil money penalties, and waive exception to those civil money penalties, all under Section 16(e) of the Fair Labor Standards Act of 1938 (the "Act"), 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4 and 580.1–580.18. The Court finds that it has jurisdiction to enter this Consent Judgment and Order, and Plaintiff and Defendants agree to its terms.

It is, therefore, ORDERED, ADJUDGED, and DECREED that Defendants, their agents, servants, employees, and all persons acting or claiming to act on their behalf and interest be, and hereby are, permanently enjoined and restrained from violating the provisions of the Act, in any of the following manners:

Defendants shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. § 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in 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 forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the employee's regular rate of pay.

Defendants shall not evade their responsibilities under the Act by misclassifying as an independent contractor, or in any other manner, any person employed, as defined at Section 3(g) of the Act, 29 U.S.C. § 203(g), by any of them. All such persons shall be treated as employees subject to the protections of the Act.

Defendants shall not fail to make, keep, and preserve records of 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, 29 U.S.C. § 211(c), and found in Title 29, Part 516 of the Code of Federal Regulations.

Further, the Court, finding that the employees are due compensation in the amount of \$2,359,685.10 (inclusive of gross back wages and liquidated damages), as shown on attached Exhibit A which is incorporated in and made a part hereof, it is ORDERED, ADJUDGED, and DECREED that Defendants, jointly and severally, shall pay said compensation, plus 1% per annum interest, compounded annually, on any unpaid balance, in accordance with the terms set forth herein. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with the Act since November 15, 2015. In

resolving the amount of back wages and liquidated damages in this judgment, Plaintiff has relied on this representation and, accordingly, the back wage and liquidated damages provisions of this judgment shall have no effect upon any back wages and liquidated damages which may have accrued since that date. The back wage and liquidated damages provisions of this judgment shall be deemed satisfied when Defendants deliver to Plaintiff \$1,179,842.55 in gross back wages, plus 1% per annum interest, compounded annually, on any unpaid balance, from which deductions for Defendants' employees share of social security and federal withholding taxes will be made by the United States Department of Labor with no deduction for the employees' state withholding tax for which the employees shall be responsible, and \$1,179,842.55 in liquidated damages, plus 1% per annum interest, compounded annually, on any unpaid balance, none of which is subject to deductions. Defendants, jointly and severally, shall further pay the employers' share of social security and withholding taxes to the appropriate authorities for the back wages paid pursuant to this judgment after presentation of the United States Department of Labor's quarterly summary of employee payments made.

It is also ORDERED, ADJUDGED and DECREED that Defendants shall pay, jointly and severally, the civil money penalties issued pursuant to Section 16(e) of the Act, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, in the amount of \$262,900.00, plus 1% per annum interest, compounded annually, on any unpaid balance, to the Wage and Hour Division.

The payments (back wages, liquidated damages, and civil money penalties, plus 1% per annum interest) shall be made in the form of certified checks in the gross amounts due, made payable to "Wage and Hour Division—Labor" with Case No. 1774979 written on the face of the checks, as follows:

Number	Date Due	Amount	Interest Due	Total Due
1	08/1/2016	\$250,000.00	\$0.00	\$250,000.00
2	10/01/2016	\$250,000.00	\$0.00	\$250,000.00
3	01/01/2017	\$154,973.76	\$806.99	\$155,780.75
4	04/01/2017	\$154,973.76	\$1,550.23	\$156,523.99
5	07/01/2017	\$154,973.76	\$2,657.58	\$157,631.34
6	10/01/2017	\$154,973.76	\$2,792.12	\$157,765.88
7	01/01/2018	\$154,973.76	\$2,843.64	\$157,817.40
8	04/01/2018	\$154,973.76	\$2,266.94	\$157,240.70
9	07/01/2018	\$154,973.76	\$2,699.84	\$157,673.60
10	10/01/2018	\$154,973.76	\$3,015.94	\$157,989.70
11	01/01/2019	\$154,973.76	\$2,873.16	\$157,846.92
12	04/01/2019	\$154,973.76	\$2,973.92	\$157,947.68
13	07/01/2019	\$154,973.76	\$2,838.07	\$157,811.83
14	10/01/2019	\$154,973.74	\$2,901.32	\$157,875.06
	Total:	\$2,359,685.10	\$30,219.75	\$2,389,904.85
Civil Money Penalties	1/1/2020	\$262,900.00	\$2,629.00	\$265,529.00

The first payment will be due on August 1, 2016. The payments will first be allocated to the liquidated damages (plus 1% per annum interest), second to the back wages (plus 1% per annum interest), and lastly to the civil money penalties (plus 1% per annum interest).

Defendants may make separate voluntary additional payments ("Voluntary Acceleration Payments") outside of those payments defined in the payment plan above. For Voluntary Acceleration Payments in excess of \$300,000.00, Plaintiff shall recalculate the remaining required quarterly payment amounts. The remaining principal amount, to the extent it includes liquidated damages, back wages, and/or civil money penalties, shall be divided equally over the remaining payment due dates to reduce the amount due for each payment. Interest at the rate of 1% per annum, compounded annually, on any unpaid balance, shall continue to accrue and be payable with each payment. Plaintiff shall provide an updated payment schedule for the

remaining quarterly payments within thirty (30) days after the Defendants' funds have been collected by Plaintiff.

The certified checks for liquidated damages, back wages, and civil money penalties shall be sent directly to:

U.S. Department of Labor
Wage and Hour Division
Northeast Region
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317
Attention: Mary Doughty

A copy of said checks shall also be mailed to the following address: U.S. Department of Labor, Wage and Hour Division, Boston District Office, JFK Building, Room 525, 15 New Sudbury Street, Boston, MA 02203.

On or before ten (10) days from the entry of this judgment, Defendants shall deliver jointly and severally to the United States Department of Labor at the Boston District Office of the Wage and Hour Division at the Boston, MA address set forth above, a statement showing the following: employers' Federal ID number(s), the name of each employee listed in Exhibit A, and each employee's current address and social security number (to the extent known by Defendants).

When recovered wages and/or liquidated damages have not been claimed by an employee within three (3) years, because of inability to locate the employee or because of the employee's refusal to accept such sums, Plaintiff shall deposit the wages and/or liquidated damages into the United States Treasury as miscellaneous receipts pursuant to 29 U.S.C. § 216(c).

Defendants shall not, under any circumstances, solicit repayment of any amount paid to any employee in connection with this judgment. In the event any such amount is received from

any employee, Defendants shall immediately remit such amount to the United States Department of Labor at the Philadelphia, PA address set forth above.

It is also ORDERED, ADJUDGED, and DECREED that on or before thirty (30) days from the entry of this judgment, Defendants Force Corporation and AB Construction Group Inc. shall engage one or more qualified independent consultant(s) with specific knowledge and experience regarding the requirements of the Act. The consultant(s) shall provide an initial consultation to create a system or systems which will ensure that each of said Defendants' pay and recordkeeping practices are in compliance with the Act's requirements, and will, on a quarterly basis, beginning on or before sixty (60) days from the entry of this judgment and ending two (2) years plus sixty (60) days from the date of entry of this judgment, review said Defendants' pay and recordkeeping practices for the period of time after the initial consultation and the creation of the system or systems referenced above and submit a report to the District Director of the Boston District Office of the Wage and Hour Division at the Boston, MA address set forth above, which report shall address any and all pay and/or recordkeeping problems revealed by the review, and shall detail any and all corrective actions taken by Defendants.

It is further ORDERED, ADJUDGED and DECREED that each party shall bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

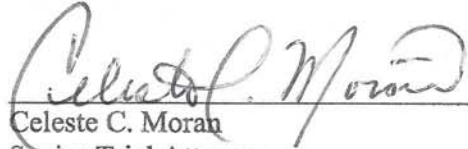
Dated: 8/1/16

/s/ Timothy S. Hillman
United States District Judge

Plaintiff moves for entry of this judgment:

M. Patricia Smith
Solicitor of Labor

Michael D. Felsen
Regional Solicitor



Celeste C. Moran
Senior Trial Attorney
MA BBO No. 682937

07-18-2016
Date

U.S. Department of Labor
Office of the Solicitor
John F. Kennedy Federal Building, Room E-375
Boston, MA 02203
Telephone: (617) 565-2500
Facsimile: (617) 565-2142
E-mail: moran.celeste@dol.gov

Defendants hereby consent to the entry of this judgment:

Force Corporation
Defendant

By its Attorneys,



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North Andover, MA 01845
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Facsimile: (978) 824-2310
E-mail: lawofficeofpaulross@comcast.net

7/19/16
Date

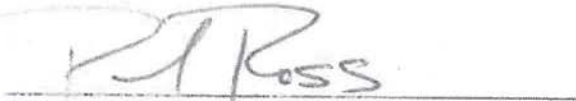


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7/14/16
Date

AB Construction Group Inc.
Defendant

By its Attorney,



Paul Ross
Law Office of Paul Ross

7/14/16
Date

Juliano Fernandes
Defendant



Juliano Fernandes

07-14-16
Date

Anderson Dos Santos
Defendant



Anderson Dos Santos

07.14.16
Date