

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\*\*\*\*\*

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

Plaintiff, \*

v. \*

UNITED COMB AND NOVELTY CORPORATION, \*  
d/b/a UNITED SOLUTIONS and UNITED PLASTICS; \*  
EDWARD W. ZEPHIR, JR., Owner and President; \*  
GREGORY POJANI, Vice President of Operations and \*  
Distribution; JOHN BERGERON, Plant Manager; \*

ASI STAFFING GROUP CORPORATION, \*  
d/b/a ASI GROUP CORPORATION; MOHAMMED \*  
(a/k/a ERIC) ISLAM, Vice President of Operations; \*

Defendants. \*

\*\*\*\*\*

Civil Action No.

Injunctive Relief Sought

COMPLAINT

Plaintiff, Secretary of Labor, United States Department of Labor, brings this action to enjoin Defendants from violating the provisions of Sections 7, 11, 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938 (the “Act”), 29 U.S.C. §§ 207, 211, 215(a)(2), and 215(a)(5), and to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the Act, 29 U.S.C. §§ 215(a)(2), 216(c).

I

Jurisdiction of this action is conferred upon this Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. § 1345.

II

The period covered by this complaint is November 1, 2011 to October 19, 2014.

III

Defendant UNITED COMB AND NOVELTY CORPORATION, d/b/a UNITED SOLUTIONS and UNITED PLASTICS (collectively, "United Plastics"), is, and at all times hereinafter mentioned was, a corporation having an office and place of business located at 33 Patriots Circle, Leominster, Massachusetts 01453, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business and elsewhere, including in Sardis, Mississippi and Gilbert, Arizona, in the operation of plants specializing in the fabrication of molded plastic products for commercial, governmental, and residential uses.

IV

Defendant EDWARD W. ZEPHIR, JR. resides at 437 West Street, Leominster, Massachusetts 01453, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, president, treasurer, secretary, director and registered agent of Defendant United Plastics and owner of that business, and as such actively manages, supervises, and directs the business affairs and operations of said business in its plants located in Massachusetts, Arizona, and Mississippi, including hiring and firing of vice presidents and upper management employees, running the corporation along with vice presidents and upper management, making upper-level decisions about labor costs and production, including contract labor, and actively participating in the development of policies and/or practices governing the hours worked and payment of both in-house and contract employees. Defendant Zephir has acted at all times material herein directly and indirectly in the interest of Defendant United Plastics in

relation to its employees, including contract employees, and was and is, therefore, an employer of said employees, including contract employees, within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

V

Defendant GREGORY POJANI, is now, and at all times hereinafter mentioned was, vice president of operations and distribution of Defendant United Plastics, which has a plant located at 33 Patriots Circle, Leominster, Massachusetts 01453, within the jurisdiction of this Court, and as such actively manages, supervises, and directs the day-to-day business affairs and operations of Defendant United Plastics in its plants located in Massachusetts, Arizona, and Mississippi, including hiring employees and directing the activities and payment of employees, including contract labor employees, directing others in charge of hiring and firing employees, including contract employees, negotiating staffing agreements with contract labor agencies, running the corporation along with Defendant Zephir and upper management, and making decisions about labor costs and production, including contract labor. Defendant Pojani has acted at all times material herein directly and indirectly in the interest of Defendant United Plastics in relation to its employees, including contract employees, and was and is, therefore, an employer of said employees, including contract employees, within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

VI

Defendant JOHN BERGERON resides at 24 Baldwinville Road, Winchedon, Massachusetts 01475, within the jurisdiction of this court, and is now, and at all times hereinafter mentioned was, plant manager of the Leominster location of Defendant United Plastics, within

the jurisdiction of this Court, and as such actively manages, supervises, and directs the day-to-day business affairs and operations of said business in the factory located in Leominster, Massachusetts, including hiring and firing employees and directing the activities, supervision and payment of employees, including contract labor employees. Defendant Bergeron has acted at all times material herein directly and indirectly in the interest of Defendant United Plastics in relation to its employees, including contract employees, and was and is, therefore, an employer of said employees, including contract employees, within the meaning of Section 3(d) the Act, 29 U.S.C. § 203(d).

## VII

Defendant ASI STAFFING GROUP CORPORATION, d/b/a ASI GROUP CORPORATION (collectively, “ASI”), is, and at all times hereinafter mentioned was, a corporation having an office and place of business located at 345 Central Street, Leominster, Massachusetts 01453, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business and elsewhere in the provision of contract labor, mainly for Defendant United Plastics and in all of United Plastics’ plant locations.

## VIII

Defendant MOHAMMED (a/k/a ERIC) ISLAM resides at 20 Watertown Street, Watertown, Massachusetts 02472, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, the vice president of operations of Defendant ASI, which has a contract labor placement office and place of business located at 345 Central Street, Leominster, Massachusetts 01453, as well as work space located in the building of Defendant United Plastics’ plant in Mississippi. As vice president of operations, Defendant Islam actively

managed, supervised, and directed the day-to-day business affairs and operations of ASI, including negotiating with upper management of Defendant United Plastics regarding placement and payment of contract employees. Defendant Islam has acted at all times material herein directly and indirectly in the interest of Defendant ASI in relation to its employees, and was and is, therefore, an employer of said employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

IX

Defendants United Plastics, Zephir, Pojani, and Bergeron are, and at all times hereinafter mentioned were, engaged in related activities performed through unified operation or common control for a common business, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r).

X

At all times hereinafter mentioned, Defendants United Plastics, Zephir, Pojani, and Bergeron employed employees, including contract employees employed jointly with Defendant ASI, in the activities of said enterprise, which is engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Therefore, said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act, 29 U.S.C. § 203(s).

XI

Defendants ASI and Islam are, and at all times hereinafter mentioned were, engaged in related activities performed through unified operation or common control for a common business, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 3(r).

XII

At all times hereinafter mentioned, Defendants ASI and Islam employed employees, including contract employees employed jointly with Defendant United Plastics, in the activities of said enterprise, which is engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Therefore, said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act, 29 U.S.C. § 203(s).

XIII

All Defendants have willfully and repeatedly violated the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a), by jointly employing and failing to properly compensate approximately five hundred and sixty-eight (568) contract employees working at the United Plastics plants in Massachusetts and Mississippi, performing such jobs as machine operators, maintenance workers for the molding equipment, molding technicians, color mixers, and quality control workers. Approximately two hundred and sixty-eight (268) contract

employees worked at the United Plastics plant in Massachusetts and approximately two hundred and ninety-eight (298) contract employees worked at the United Plastics plant in Mississippi. These employees worked for workweeks longer than forty (40) hours, and received compensation from Defendants for their employment in excess of forty (40) hours in said workweeks at rates less than one and one-half times the regular rate at which they were compensated.

XIV

Specifically, Defendant Islam developed a scheme to avoid the payment of overtime by creating shell subcontractors through which he would pay employees for hours worked in excess of 48 hours per week at less than one and one-half times the regular rate at which the employees were compensated. Sometimes Defendant Islam would utilize those shell subcontractors to pay certain employees for all hours worked at straight time, including hours worked in excess of 40 hours in a workweek. Defendant Islam controlled or controls each of these shell contractors, which had or has the names: AMAA Associates, Inc.; US Staffing Corp.; Remlon, Inc.; AIM, Inc.; and Nationwide Employment Services.

XV

Defendant Islam continued to fail to pay overtime premiums to employees even after a private lawsuit was filed against ASI and others in April of 2013 for the nonpayment of overtime to employees placed by ASI at United Plastics.

XVI

Defendants United Plastics, Zephir, Pojani, and Bergeron had a general practice or policy of paying for only up to 8 hours of overtime per week for contract employees. Defendants United

Plastics, Zephir, Pojani, and Bergeron were aware that ASI workers were employed at United for more than 48 hours per week. As a general practice or policy, Defendant United Plastics did not pay one and one-half times the regular rate for hours worked over 48 hours per week for those workers.

XVII

Defendants have willfully and repeatedly violated the provisions of Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), in that they failed to make, keep, and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment, as prescribed by regulations duly issued pursuant to authority granted in the Act and found in Title 29, Part 516 of the Code of Federal Regulations. Defendants' records failed to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek with respect to many employees, and also failed to show the regular rates at which they were employed. Defendant ASI's payroll and time-keeping records were missing for a number of months in Massachusetts and for the majority of the investigative period in Mississippi.

XVIII

Throughout this period, Defendants have willfully and repeatedly violated the aforesaid provisions of the Act as alleged, and a judgment enjoining such violations is expressly authorized by Section 17 of the Act, 29 U.S.C. § 217.

XIX

WHEREFORE, cause having been shown, Plaintiff prays judgment permanently enjoining and restraining Defendants, their agents, servants, employees, and those persons in

active concert or participation with them, or acting in their interest and behalf, from violating Sections 7, 11, 15(a)(2), and 15(a)(5) of the Act, 29 U.S.C. §§ 207, 211, 215(a)(2), and 215(a)(5), and for such other and further relief as may be necessary or appropriate, including the restraint of any withholding of payment of overtime compensation found by the Court to be due employees under the Act.

XX

Throughout this period, Defendants have willfully and repeatedly violated the aforesaid provisions of the Act. Plaintiff further seeks an award of the unpaid overtime compensation owed and an equal amount as liquidated damages, as specifically authorized by Section 16(c) of the Act, 29 U.S.C. § 216(c).

XXI

WHEREFORE, cause having been shown, Plaintiff prays judgment ordering payment of unpaid wages found by the Court to be due employees listed in the attached Exhibit A, plus an equal amount as liquidated damages, and costs.

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

/s/ Susan G. Salzberg  
Susan G. Salzberg  
Senior Trial Attorney  
salzberg.susan@dol.gov  
MA BBO No. 556437

/s/ Mark A. Pedulla  
Mark A. Pedulla  
Trial Attorney  
pedulla.mark.a@dol.gov

MA BBO No. 685925

U.S. Department of Labor  
Attorneys for Petitioner

Post Office Address:  
JFK Federal Building—Room E-375  
Boston, Massachusetts 02203  
TEL: (617) 565-2500  
FAX: (617) 565-2142