

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

<b>THOMAS E. PEREZ</b> , Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	Civil Case No.: 1:15-cv-06722
v.	)	
	)	Magistrate Judge Susan E. Cox
	)	
<b>MIKE’S REFINISHING CORPORATION</b> ,	)	
an Illinois corporation, <b>MIKE’S DECORATING</b>	)	
<b>AND PAINTING, INC.</b> , an Illinois corporation,	)	
and <b>MICHAEL NASTEPNIAK</b> , an individual,	)	
	)	
Defendants.	)	

**CONSENT JUDGMENT**

Plaintiff, **THOMAS E. PEREZ**, Secretary of Labor, United States Department of Labor (“Plaintiff”), having filed his Complaint and Defendants **MIKE’S REFINISHING CORPORATION** and **MIKE’S DECORATING AND PAINTING, INC.**, corporations, and **MICHAEL NASTPENIAK**, an individual, (collectively, “Defendants”), having appeared by counsel, having answered, and having been duly advised in the premises, agree to the entry of this Consent Judgment without contest under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*, (hereinafter the “Act” or “FLSA”).

Defendants hereby admit and the Court finds that corporate Defendants **MIKE’S REFINISHING CORPORATION** and **MIKE’S DECORATING AND PAINTING, INC.** are and at all times hereinafter mentioned, were enterprises or comprised enterprises engaged in

commerce within the meaning of sections 3(r) and 3(s)(1) of the Act. 29 U.S.C. §§ 203(r), 203(s)(1)(A).

Defendants hereby admit and the Court finds that individual Defendant **MICHAEL NASTEPNIAK** is an individual “employer” under section 3(d) of the Act for **MIKE’S REFINISHING CORPORATION** and was an “employer” of **MIKE’S DECORATING AND PAINTING, INC.**

**NOW**, therefore, upon motion for the attorneys for Plaintiff and Defendants, and for cause shown,

**JUDGMENT IS HEREBY ENTERED** against Defendants pursuant to sections 16(c), 16(e), and 17 of the Act.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**, pursuant to section 17 of the Act, that Defendants, their officers, agents, servants, employees and all other persons in active concert or participation with them are hereby permanently enjoined and restrained from violating the provisions of the Act in any of the following manners.

**I**

Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, employ any employees who in any workweek are engaged in commerce or 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 40 hours, unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rates at which he is employed.

## II

Defendants shall not fail to make, keep, and preserve records of their 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 and found at 29 C.F.R. part 516. This includes, but is not limited to, maintaining records of all hours worked by each employee on each workday and in each workweek, and records of compensation paid to each employee in each workweek. Defendants shall also post the Wage and Hour Division Publication 1088.

## III

A. From June 15, 2016 through June 15, 2018, Defendants shall provide the following Wage and Hour fact sheets to all current and future employees: Fact Sheet #21 (Recordkeeping Requirements under the Fair Labor Standards Act); Fact Sheet #22 (Hours Worked under the Fair Labor Standards Act); and Fact Sheet #23 (Overtime Pay Requirements of the Fair Labor Standards Act). These fact sheets are available at:

<https://www.dol.gov/whd/regs/compliance/whdcomp.htm>.

B. From June 15, 2016 through June 15, 2018, Defendants shall provide annual training, at their own expense, on hours worked, breaks, and time-keeping requirements to all supervisors and non-supervisory employees.

C. Defendants shall cease paying non-exempt employees in cash and shall, at their own expense, implement a centralized payroll system within 60 days after execution of this Consent Judgment.

D. Defendants shall require all non-exempt employees to keep weekly records of hours worked and shall ensure that those records accurately record the start and stop times, as well as a daily and weekly total of hours worked.

#### IV

**FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to section 16(c) of the Act, in favor of Plaintiff and against Defendants in the total amount of **\$126,923.02**.

A. Defendants shall pay to Plaintiff the sum of **\$63,461.51**, which represents the unpaid gross overtime compensation and post-judgment interest hereby found to be due, for the period from March 11, 2012 through March 8, 2015, to the present and former employees named and in the amounts set forth in **Exhibit A**, attached hereto and made a part hereof.

B. Defendants shall further pay to Plaintiff the sum of **\$63,461.51**, which represents the liquidated damages and post-judgment interest hereby found to be due, for the period March 11, 2012 through March 8, 2015, to the present and former employees named in **Exhibit A**, in the amounts set forth therein.

#### V

The monetary provisions of Paragraph IV of this Consent Judgment shall be deemed satisfied, upon Defendants' delivery to the Plaintiff's representative of the following:

A. A schedule, in duplicate, showing the name, last-known address, social security number, gross amount of wages due, amounts deducted from gross wages for social security and withholding taxes, gross amount of liquidated damages due and the net amount of such payment. Nothing in this Consent Judgment precludes Defendants from complying with court-issued wage deduction and child support orders from the payments being made pursuant to this Consent Judgment.

B. The initial payment of \$50,000 was delivered to Plaintiff's counsel at the time this judgment was filed with the court, by Defendants submitting a certified check or cashier's check payable to "U.S. Dept. of Labor—Wage and Hour Div.—Labor." Once the Court approves the parties' consent judgment, Plaintiff will distribute the proceeds of this check to the persons enumerated in **Exhibit A**, or to their estates, if that be necessary. Defendants remain responsible for their employer share of applicable taxes.

C. Defendants shall pay the remaining balance due of principal and interest to the Plaintiff in the gross amounts listed in the installment schedule set herein. The payments shall be made on or before the following dates in the following amounts below, until the full amount with interest has been paid in full. If Defendants wish to pay off the remaining balance during the payment plan, they may contact the Secretary and receive a pay-off amount that will only have interest accrued through the date of the final payment.

No.	Date	Principal	Interest	Payment
1	8/1/2016	\$12,500	\$ 130.63	<b>\$12,630.63</b>
2	11/1/2016	\$12,500	\$ 130.63	<b>\$12,630.63</b>
3	2/1/2017	\$12,500	\$ 130.63	<b>\$12,630.63</b>
4	5/1/2017	\$12,500	\$ 130.63	<b>\$12,630.63</b>
5	8/1/2017	\$12,500	\$ 130.63	<b>\$12,630.63</b>
6	11/1/2017	\$12,500	\$ 130.63	<b>\$12,630.63</b>
7	2/1/2018	\$1,127.46	\$ 11.78	<b>\$1,139.24</b>

D. On or before each installment date, Defendants shall deliver to the United States Department of Labor, a certified or cashier's check made payable in the gross amount of each installment payment identified herein, to "U.S. Dept. of Labor—Wage and Hour Div.—Labor." Defendants' payment of each of the **7 installments** shall be sent to the following address: United States Department of Labor, Midwest Regional Office, Wage and Hour Division, P.O. Box 2638, Chicago, IL 60690-2638.

E. The Plaintiff shall distribute the proceeds of each installment back wage check (less legal deductions for each employees' share of social security and federal withholding taxes) to the persons enumerated in **Exhibit A**, or to their estates, if that be necessary, and any amounts of unpaid overtime compensation and liquidated damages not so paid within a period of three (3) years from the date of receipt thereof shall, pursuant to section 16(c) of the Act, be covered into the Treasury of the United States as miscellaneous receipts. Defendants remain responsible for their employer share of applicable taxes.

**VI**

**FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to section 16(e)(2) of the Act, in favor of the Plaintiff and against the Defendants in the total amount of **\$24,122.02**, which represents the civil money penalties owed, as well as post-judgment interest at the rate of one percent. Defendants shall pay the civil money penalties to Plaintiff according to the installment schedule set forth herein. The payments shall be made on or before the following dates in the following amounts below, until the full amount with interest has been paid in full.

No.	Date	Principal	Interest	Payment
1	2/1/2018	\$11,372.54	\$ 118.85	<b>\$ 11,491.39</b>
2	5/1/2018	\$12,500	\$ 130.63	<b>\$ 12,630.63</b>

The provisions of this paragraph shall be deemed satisfied by Defendants delivering to Plaintiff a certified check or cashier's check made payable to the order of the "Wage and Hour Division, Labor" with a notation of "penalties" written on the check. Defendants shall forward said checks to the U.S. Department of Labor—Wage Hour Division, P.O. Box 2638, Chicago, IL 60690-2638.

**VII**

In order to provide Plaintiff with assurances of the payments referenced in paragraphs IV

through VI of this Judgment, Defendants shall execute the following:

A. In the event that Michael Nastepniak receives any dividend distributions from **MIKE'S REFINISHING CORPORATION** or **MIKE'S DECORATING AND PAINTING, INC.** after the date on which this Consent Judgment is executed but before payment in full is made to Wage and Hour as required pursuant to paragraphs IV through VI of the Consent Judgment, Defendant Michael Nastepniak shall cause such distributions to be immediately sent to the Wage and Hour Division at the address set forth in paragraph V above to be applied to any outstanding balance owed to Plaintiff under this Consent Judgment.

B. In the event that Defendants sell, transfer any interest, liquidate any part of, or otherwise discontinue the operations of **MIKE'S REFINISHING CORPORATION** or **MIKE'S DECORATING AND PAINTING, INC.**, any proceeds for the sale, transfer, or liquidation of the business or any of its assets are to be immediately applied to any outstanding balance owed to Plaintiff under this Consent Judgment. Defendants shall provide written notice of any sale, transfer, liquidation, or discontinuation of business referenced herein within 30 days prior to such action. Written notice should be provided to the Wage and Hour Division at the address set forth in paragraph V above. Such sums shall also be tendered to the Wage and Hour Division at the address set forth in paragraph V within 30 days of sale, transfer or liquidation.

### VIII

Should Defendants fail to make any of the installments referenced in paragraphs V and VI of this Judgment, on or before the due date provided herein:

A. The entire outstanding amount of unpaid compensation, liquidated damages, and civil money penalties shall become immediately due and payable without further notice or demand by Plaintiff against Defendants.

B. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed. In the event of default, Plaintiff intends to pursue enforcement of this agreement and/or any 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.

## IX

Defendants shall not request, solicit, suggest, or coerce, directly, or indirectly, any current 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 any other form, for wages previously due or to become due in the future to said employee under the provisions of this Consent Judgment or the Act; 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 Consent Judgment or the Act; 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 to him from the Defendants under the provisions of this Consent Judgment or the Act.

## X

Defendants, their agents, officers, or employees shall not, contrary to section 15(a)(3) of the Act, threaten, retaliate, or discriminate in any way against any current or former employee of

Defendants for exercising any rights under the FLSA, including, but not limited to, employee complaints regarding FLSA compliance made to Defendants or to the Wage and Hour Division of the United States Department of Labor, or cooperation with an investigation conducted by the Wage and Hour Division.

**XI**

Plaintiff's complaint is amended to remove Anthony Leach and Jose Gomes from inclusion in this action and to include Kelly Siegers and Roberto Mendez in this action. The filing of this action shall neither be construed as terminating any rights of Anthony Leach and Jose Gomes arising under section 16(b) of the Act nor serve a res judicata purpose in an action brought by them. Furthermore, for Mr. Leach and Mr. Gomes, the statute of limitations, as set forth in section 6 of the Portal-to-Portal Act of 1947 shall be tolled for the period from the time this lawsuit was commenced on July 31, 2015, to the date this judgment is entered by the court.

**XII**

**FURTHER**, it is agreed by the parties herein and hereby **ORDERED** that each party bears 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 and all costs referenced under the Equal Access to Justice Act, as Amended.

**XIII**

The Court retains jurisdiction for purposes of enforcing compliance with the terms of this final judgment pursuant to Federal Rule of Civil Procedure 54.

DATED

6/14/2016



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**SUSAN E. COX**  
UNITED STATES MAGISTRATE JUDGE

The parties hereby consent to the entry of this Consent Judgment:

**FOR THE SECRETARY OF LABOR:**

**M. PATRICIA SMITH**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

/s/ Catherine L. Homolka  
**CATHERINE L. HOMOLKA**

DATED: 6/1/16

P.O. ADDRESS:  
Office of the Solicitor  
U.S. Department of Labor  
230 S. Dearborn St., Room 844  
Chicago, IL 60604  
P: (312) 886-5260  
F: (312) 353-5698

**FOR THE DEFENDANTS:**

**FOR MIKE'S REFINISHING CORPORATION:**

/s/ Michael Nastepniak  
**MICHAEL NASTPENIAK**  
Owner

DATED: 5/31/16

**FOR MIKE'S DECORATING AND  
PAINTING, INC.**

DATED: 5/31/16

/s/ Michael Nastepniak \_\_\_\_\_  
**MICHAEL NASTEPNIAK**  
Owner

**APPROVED AS TO FORM  
COUNSEL FOR DEFENDANTS:**

/s/ Chester Foster \_\_\_\_\_

DATED: 5/31/16

**CHESTER FOSTER**  
Attorney for Mike's Refinishing Corporation,  
Mike's Decorating and Painting, Inc. and  
Michael Nastepniak, an individual

Foster Legal Services, PLLC  
16311 Byron Dr.  
Orland Park, IL 60462  
Phone: (708) 403-3800  
Fax: (708) 403-4095

**EXHIBIT A**  
**DAMAGES OWED**

<b>Employee</b>	<b>Back Wages</b>	<b>Liquidated Damages</b>	<b>Total</b>
1. Abrica, Ado	\$7,159.30	\$7,159.30	\$14,318.60
2. Abrica, Martin	\$1,376.09	\$1,376.09	\$2,752.18
3. Anguiano, Jaime	\$52.98	\$52.98	\$105.96
4. Barajas, Cesar	\$276.54	\$276.54	\$553.08
5. Bustamante, Felipe	\$1,222.79	\$1,222.79	\$2445.58
6. Calderon, Fabian	\$36.25	\$36.25	\$72.50
7. Carrera, Hector	\$263.90	\$263.90	\$527.80
8. Carter, Robert	\$38.03	\$38.03	\$76.06
9. Castro, Melvin	\$45.78	\$45.78	\$91.56
10. Chase, Sean	\$156.87	\$156.87	\$313.74
11. Cuevas, Carlos	\$29.96	\$29.96	\$59.92
12. Cuevas, Cesar	\$1,378.92	\$1,378.92	\$2,757.84
13. Diaz, Gerardo	\$222.32	\$222.32	\$444.64
14. Espinoza, Jose Carmen	\$1,048.70	\$1,048.70	\$2,097.40
15. Garcia, Hanz	\$1,129.73	\$1,129.73	\$2,259.46
16. Garcia, Juan (Ivan)	\$260.98	\$260.98	\$521.96
17. Guzman, Denas	\$1,958.28	\$1,958.28	\$3,916.56
18. Guzman, Joaquin	\$3,312.39	\$3,312.39	\$6,624.78
19. Hernandez, Alberto	\$828.35	\$828.35	\$1,656.70
20. Hernandez, Aurelio	\$541.95	\$541.95	\$1083.90
21. Hernandez, Juan	\$478.61	\$478.61	\$957.22
22. Hernandez, Salvador	\$1,967.99	\$1,967.99	\$3,935.98
23. Hernandez, Vicente	\$420.75	\$420.75	\$841.50
24. Johnson, Andrew	\$392	\$392	\$784
25. Lara, Johnny	\$62.15	\$62.15	\$124.30
26. Lopez, Julio Cesar	\$1,324.18	\$1,324.18	\$2,648.36
27. Lopez, Octavio	\$885.99	\$885.99	\$1,771.98
28. Magana, Hector	\$210.11	\$210.11	\$420.22
29. Marroquin, Jose	\$4,156.37	\$4,156.37	\$8,312.74
30. Mendez, Roberto	\$3,027.99	\$3,027.99	\$6,055.98
31. Murillo, Sergio	\$76.37	\$76.37	\$152.74
32. Nagy, Bill	\$96.47	\$96.47	\$192.94
33. Nunez, Miguel	\$2,002.56	\$2,002.56	\$4,005.12
34. Olmos, Francisco	\$1,273.47	\$1,273.47	\$2,546.94
35. Pantoja, Jesus	\$2,711.27	\$2,711.27	\$5,422.54
36. Patino, Jaime	\$423.22	\$423.22	\$846.44
37. Renteria, Victor	\$425.37	\$425.37	\$850.74
38. Rodriguez, Ivan	\$115.15	\$115.15	\$230.30
39. Rodriguez, Javier	\$168.35	\$168.35	\$336.70

40. Rodriguez, Juan	\$3,315.42	\$3,315.42	\$6,630.84
41. Salazar, Juan	\$2,254.07	\$2,254.07	\$4,508.14
42. Sarabia, Jose R.	\$291.82	\$291.82	\$583.64
43. Sarabia, Juan	\$2,368.84	\$2,368.84	\$4,737.68
44. Serna Lara, Antonio	\$2,404.54	\$2,404.54	\$4,809.08
45. Siegers, Kelly	\$71.40	\$71.40	\$142.80
46. Valdez, Daniel	\$783.26	\$783.26	\$1,566.52
47. Valdez, Fabian	\$5,149.72	\$5,149.72	\$10,299.44
48. Valdez, Pedro	\$1,428.45	\$1,428.45	\$2,856.90
49. Vega, Jorge	\$1,118.57	\$1,118.57	\$2,237.14
50. Wyma, Tyler	\$25.05	\$25.05	\$50.10
51. Zavala, Antonio	\$1,122	\$1,122	\$2,244
52. Zavala, Juan	\$1,172.11	\$1,172.11	\$2,344.22
<b>Totals:</b>	<b>\$63,063.73</b>	<b>\$63,063.73</b>	

**Total: \$126,127.46**

*\* The above amounts reflect the gross amounts due before the deduction of federal and state taxes and before the addition of post-judgment interest*