

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 01 2018 ★

R. ALEXANDER ACOSTA, Secretary of Labor, :  
United States Department of Labor, :

LONG ISLAND OFFICE

Plaintiff,

v.

: **CONSENT JUDGMENT**

FARMINGDALE AUTO COLLISION, INC., and :  
JOSEPH VERDI, Individually and as Owner, :  
JOANNE EISENBERG, Individually and as Officer, :  
BRUCE EISENBERG, Individually, and RICHARD :  
VERDI, Individually and as Officer, :

: **No. 16-cv-07172 (JMA/AYS)**

Defendants.

**CONSENT JUDGMENT**

WHEREAS, Plaintiff, R. ALEXANDER ACOSTA, the Secretary of Labor, has filed his complaint and defendants FARMINGDALE AUTO COLLISION, INC., JOSEPH VERDI, Individually and as Owner, JOANNE EISENBERG, Individually and as Officer, BRUCE EISENBERG, Individually, and RICHARD VERDI, Individually and as Officer (collectively, "Defendants") have appeared by counsel, and hereby agree to the entry of this Consent Judgment without contest in full settlement of the claims which have been made or asserted in this action. By executing this Consent Judgment, defendants JOANNE EISENBERG, BRUCE EISENBERG, and RICHARD VERDI waive formal service of process of the summons and complaint, and all defendants waive service of the Second Amended Complaint.

WHEREAS defendants engaged in the automotive body repair business in New York State, and

WHEREAS, prior to approximately June 2015, Defendants failed to keep accurate records of hours worked by auto body shop workers in their employ, and

**WHEREAS, prior to approximately June 2015, Defendants failed to pay auto body shop workers time and a half overtime compensation as required by the Fair Labor Standards Act, and**

**WHEREAS, Defendants acknowledge their responsibilities pursuant to this Judgment, and acknowledge that they will be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Judgment. It is, therefore, upon motion of the attorneys for plaintiff and for cause shown, ORDERED, ADJUDGED, AND DECREED that:**

**I. Defendants and their officers, agents, employees, successors, and all persons acting or claiming to act in their behalf and interest (“Defendants”) are permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Section 201 et seq.), (the Act), in any of the following manners:**

- 1. Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Section 6 of the Act.**
- 2. Defendants shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek who are engaged in commerce or in the production of goods for commerce, or 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 the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the employees receive**

compensation for their employment in excess of the prescribed hours at rates not less than one and one-half times the employees' regular rates.

3. Defendants shall make, keep, and preserve adequate 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 pursuant to Section 11(c) of the Act and found at 29 C.F.R. Part 516.
4. Defendants shall not discharge or take any retaliatory action against an employee, including soliciting the repayment of minimum wages and overtime compensation paid to any employee, because the employee engaged in or is believed to have engaged in any of the following activities:
  - a. Discloses, protests, or threatens to disclose or protest, to a supervisor or to a public agency, any activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act or a rule or regulation promulgated pursuant to the Act;
  - b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by the employer or another employer with whom there is a business relationship; or
  - c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act.

II. Further, the Court finding, as not contested by Defendants, that unpaid overtime compensation is owed and shall be paid to the employees listed on Exhibit A in the total amount of \$153,000.00 plus an equal additional total amount of liquidated damages of \$153,000.00 for a grand total amount (“Total Amount Due”) of \$ 306,000.00, it is:

1. ORDERED that Defendants and all persons acting or claiming to act in their behalf and interest are enjoined and restrained from withholding the payment of \$153,000.00 in unpaid overtime compensation owed to their current and former employees in the amounts listed opposite their names on Exhibit A.
2. It is further ORDERED that Defendants shall pay \$153,000.00 in liquidated damages owed to their current and former employees in the amounts listed opposite their names on Exhibit A.

III. To accomplish the requirements of paragraph II, Defendants shall pay \$306,000 in back wages and liquidated damages within twenty (20) days of the date of execution of this Judgment.

1. Payments shall be by cashier or certified check made payable to “Wage and Hour Division – Labor.” Defendants shall write “FLSA Case No. 1738737” on each check.
2. Defendants shall deliver payments using a method with tracking information to:

United States Department of Labor – Wage & Hour Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317.  
Attn: Mary Doughty

3. Defendants shall send a copy of each payment and cover letter to:

Francisco Marchan, Assistant District Director  
U.S. Department of Labor, Wage & Hour Division

Long Island District Office  
1400 Old Country Road - Suite 410  
Westbury, NY 11590

- IV. The Secretary shall distribute defendants' payments less any legal deductions to the former and current employees, or to their estates, as set forth in Exhibit A. Any sums not distributed to the employees or to their personal representatives or estates within a period of three years, because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited in the Treasury of the United States as miscellaneous receipts pursuant to 29 U.S.C. § 216(c). Defendants remain responsible for paying their share of any applicable taxes to the appropriate state and federal revenue authorities.
- V. Defendants shall provide to the Secretary the social security numbers, if such is available, and the last known addresses of each former or current employee listed in Exhibit A within 20 days of the date of execution of this Judgment.
- VI. ORDERED that neither defendants nor any one on acting on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Judgment. Defendants, and anyone acting on their behalf, shall not in any way directly or indirectly, demand, require or accept any of the back wages or liquidated damages from any of the employees listed on the attached Exhibit A. Defendants, and anyone acting on their behalf, shall not threaten or imply that adverse action will be taken against any employee because of his or her receipt of funds due under the provisions of this Consent Judgment or the Act. Violation of this Paragraph may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

- VII. If defendants fail to make payment as required by this Consent Judgment, a seven (7) calendar-day grace period shall be allowed for receipt of such payment. In the event that the U.S. Department of Labor does not receive a payment by the eighth calendar day after which it is due, the U.S. Department of Labor's representatives will notify defendants through their attorney, Frank Brennan, by email at FBrennan@ForchelliLaw.com.
- VIII. Defendants are responsible for timely notifying the U.S. Department of Labor of any change in the identity or contact information of their attorney. If the U.S. Department of Labor does not receive payment within ten days of notifying defendants' attorney of an overdue payment, upon notice to Defendants, the Court will appoint a Receiver. No action or non-action by the Secretary shall constitute a waiver of this paragraph.
- IX. In the event a Receiver is appointed, it is ORDERED that:
- (1) Defendants shall produce to the court-appointed Receiver all books and records and any other information the Receiver requires to carry out the provisions of this Judgment. In addition, the defendants shall submit to an accounting by an independent certified public accountant and/or the Receiver, and shall testify, if the accountant or Receiver so decides.
  - (2) All the expenses of the accountant or Receiver shall be borne solely by defendants.
  - (3) The Receiver shall serve until the payment of the monetary terms of this Judgment is satisfied.
  - (4) The Receiver shall have full authority to: collect the defendants' assets and report his/her findings to the Court and the parties; to redeem and/or liquidate defendants' assets and turn over the proceeds to the Secretary; if the asset is a

debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring; to analyze all transfers of defendants' assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under their judgment.

- X. Neither the commencement of this action nor the provisions of this Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees of defendants not listed in Exhibit A of this Judgment, be they current or former employees, to file any action against defendant under section 16(b) of the Act or likewise for any current or former employee listed on Exhibit A of this Judgment to file any action against the defendants under section 16(b) of the Act for any violations alleged to have occurred after June 26, 2015.
- XI. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

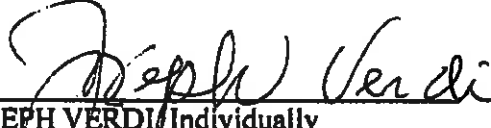
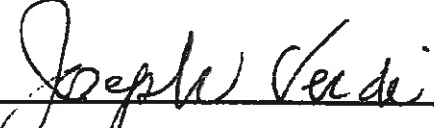

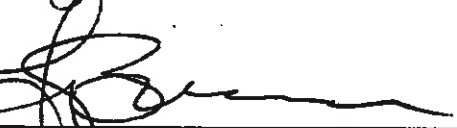


XII. The Court retains jurisdiction over this matter for the purposes of enforcing this Consent Judgment.

SO ORDERED:

DATED: February 1, 2018  
CENTRAL ISLIP, NY

s/Joan M. Azrack  
HONORABLE JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE

Defendants have appeared by the undersigned counsel and hereby consent to the entry of this Judgment.


BY:  JOSEPH VERDI, Individually	FARMINGDALE AUTO COLLISION, INC. By: 
 JOANNE EISENBERG, Individually	 Frank W. Brennan, Esq. Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP The Omni 333 Earle Ovington Boulevard, Suite 1010 Uniondale, New York 11553
 BRUCE EISENBERG, Individually	
 RICHARD VERDI, Individually	



STATE OF New York )  
 :SS:  
COUNTY OF Nassau )

On the 19 day of January, 2018 before me came Joseph R. Verdi to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer of FARMINGDALE AUTO COLLISION, INC., described in and which executed the foregoing instrument, that he signed his name thereto by like order.


GREGORY S. LISI  
NOTARY PUBLIC, State of New York  
No. 02LI5053067  
Qualified in Nassau County  
Commission Expires December 11, 2018

  
NOTARY PUBLIC

STATE OF New York )  
 :SS:  
COUNTY OF Nassau )

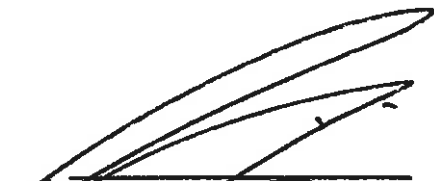
On the 19 day of January, 2018 before me came JOSEPH VERDI, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

GREGORY S. LISI  
NOTARY PUBLIC, State of New York  
No. 02LI5053067  
Qualified in Nassau County  
Commission Expires December 11, 2018

  
NOTARY PUBLIC

STATE OF NY )  
 )  
 ) :SS:  
COUNTY OF Nassau )

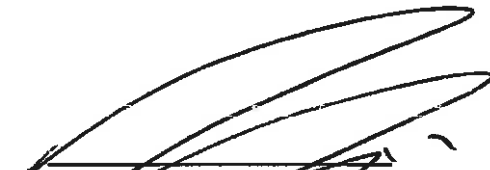
On the 22<sup>nd</sup> day of January, 2018 before me came JOANNE EISENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

STATE OF NY )  
 )  
 ) :SS:  
COUNTY OF Nassau )

GREGORY S. LISI  
NOTARY PUBLIC, State of New York  
No. 0215053067  
Qualified in Nassau County  
Commission Expires December 11, 2018

On the 22<sup>nd</sup> day of January, 2018 before me came BRUCE EISENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

GREGORY S. LISI  
NOTARY PUBLIC, State of New York  
No. 0215053067  
Qualified in Nassau County  
Commission Expires December 11, 2018

STATE OF NY )  
 )  
COUNTY OF NASSAU ) :SS:  
 )

On the 20<sup>th</sup> day of January, 2018 before me came RICHARD VERDI, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

~~NOTARY GREGORY S. LISI  
New York  
County  
Commission Expires December 11,~~

~~NOTARY PUBLIC~~

GREGORY S. LISI  
NOTARY PUBLIC, State of New York  
No. 0215053067  
Qualified in Nassau County  
Commission Expires December 11, 2018