

Accordingly, the Acting Secretary of Labor, United States Department of Labor (the “Secretary”), brings this Petition for Adjudication of Civil Contempt to enforce provisions of the Consent Judgment and Order in this case. The Consent Judgment and Order requires Defendants, inter alia, to pay employees \$2,359,685.10 (inclusive of \$1,179,842.55 in gross back wages and \$1,179,842.55 in liquidated damages), plus interest, as a result of their violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. (the “FLSA”).² In support of his Petition, the Secretary respectfully represents the following and submits an accompanying Memorandum of Law:

1. The Secretary is charged with the duties, responsibilities, and authority the provisions of the FLSA vest in him.

2. Defendant Force Corporation has been a corporation having an office and place of business located at 140 Leominster Shirley Road, Lunenburg, Massachusetts 01462, 52D Cummings Park, Woburn, Massachusetts 01801, and/or 20 Main Street, Suite 2A, Leominster, Massachusetts 01453, within the jurisdiction of this Court, and engaged at that place of business and elsewhere in commercial and institutional building construction.

3. Defendant AB Construction Group Inc. is a corporation having an office and place of business located at 140 Leominster Shirley Road, Lunenburg, Massachusetts 01462 and/or 27 Willis Street, Framingham, Massachusetts 01702, within the jurisdiction of this Court, and engaged at that place of business and elsewhere in the provision of labor for Defendant Force Corporation for commercial and institutional building construction.

² The Secretary does not seek recovery of liquidated damages in this equitable contempt proceeding. The Secretary reserves the right to seek the liquidated damages in other proceedings.

4. Defendant Juliano Fernandes's last known residential address is 376 Water Street, Clinton, Massachusetts 01510, within the jurisdiction of this Court, and he was General Manager of Defendant Force Corporation. Defendant Fernandes actively managed, supervised, and directed the business affairs and operations of Defendants Force Corporation and AB Construction Group Inc.

5. Defendant Anderson dos Santos's last known residential address is 5 Crown Street, Fitchburg, Massachusetts 01420, within the jurisdiction of this Court, and he is now, and at all times hereinafter mentioned was, Owner and President of Defendant AB Construction Group Inc. Defendant dos Santos has also been General Manager of Defendant Force Corporation. Defendant dos Santos actively supervised and directed employees of Defendants Force Corporation and AB Construction Group Inc.

6. On July 18, 2016, the Secretary filed a Complaint in this case, which sought to enjoin Defendants under Section 17 of the FLSA, 29 U.S.C. § 217, from violating the provisions of Sections 7, 11, 15(a)(2) and (5) of the statute, 29 U.S.C. §§ 207, 211, 215(a)(2) & (5), and also sought to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the FLSA, 29 U.S.C. §§ 215(a)(2) & 216(c). Compl., ECF No. 1. The Secretary alleged that Defendants created Defendant AB Construction Group Inc. to provide much of the labor for Defendant Force Corporation. *Id.* at 4, ¶ X. To avoid paying the overtime premium required by the FLSA, Defendants misclassified employees as independent contractors, paid employees from both Defendant Force Corporation and Defendant AB Construction Group Inc. during the same workweek, and used a combination of payroll checks and cash/check payments to pay employees. *Id.* at 4-5, ¶¶ IX-X. In addition, Defendants failed to keep adequate and accurate

records of the hours employees worked each workday and the premium pay they earned for overtime hours, among other things. Id. at 5, ¶ XI.

7. On the same day the Secretary filed the Complaint, the Secretary also filed a proposed Consent Judgment and Order executed by all the parties to resolve the case. Proposed Consent J. & Order, ECF No. 2.

8. On August 1, 2016, the Honorable Timothy S. Hillman approved and entered the Consent Judgment and Order. Consent J. & Order, ECF No. 6. The Consent Judgment and Order enjoins Defendants from violating provisions of the FLSA and requires them, among other things, to pay \$2,359,685.10 (inclusive of \$1,179,842.55 in gross back wages and \$1,179,842.55 in liquidated damages), plus interest, to four hundred and seventy-eight (478) employees. Id. at 2-4.

9. The Consent Judgment and Order also requires Defendants to pay civil money penalties issued pursuant to Section 16(e) of the FLSA, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1-578.4 and 580.1-580.18, in the amount of \$262,900.00, plus interest, to the Wage and Hour Division of the United States Department of Labor. Consent J. & Order, ECF No. 6 at 3.

10. Under the Consent Judgment and Order, Defendants are to pay the compensation due to employees (back wages and liquidated damages), civil money penalties, and interest under the following payment schedule:

Number	Date Due	Amount	Interest Due	Total Due
Back Wages and Liquidated Damages				
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

Id. at 3-4. The payments are first allocated to the liquidated damages (plus interest), second to the back wages (plus interest), and lastly to the civil money penalties (plus interest). Id. at 4.

11. Since entry of the Consent Judgment and Order, Defendants have failed to comply with payments two (2) through thirteen (13) required under the payment schedule. See Decl. of District Director Carlos Matos ¶ 6, attached hereto as **Exhibit A**. Defendants have made payments totaling \$477,900.00, which were allocated to liquidated damages pursuant to the Consent Judgment and Order. Id. ¶¶ 5-6. Defendants owe a total of \$1,754,129.79 plus interest. Id. ¶ 6. \$1,179,842.55 in gross back wages, plus interest, remains due. Id.

12. Since 2016, the Secretary has made numerous efforts to resolve this matter without the necessity of this proceeding. See Decl. of Attorney Celeste C. Moran ¶¶ 2-3, attached hereto as **Exhibit B**. Such efforts include many oral and written communications, an in-person meeting, requesting and reviewing certain financial documentation, waiting for payments from multiple projects, and allowing time to apply for business mortgage loans (which were denied). Id. On July 31, 2019, the Secretary sent a final demand letter to Defendants. Id. ¶ 4. The final demand

letter stated the amount due and the Secretary's intention to file this action for contempt, if Defendants did not make payment to satisfy the Consent Judgment and Order. Id.

13. Defendants continue to fail to comply with the Consent Judgment and Order by failing to pay the amounts due.

14. The Secretary understands that Attorney Paul Ross of the Law Office of Paul Ross and Attorney Sam Calandra of Calandra, P.C. no longer represent any Defendants in this matter. The Secretary further understands that Attorney Brian Casaceli of Mirick, O'Connell, DeMallie & Lougee, LLP currently represents Defendant Juliano Fernandes.

WHEREFORE, the Secretary respectfully requests that:

1. The Court issue an Order to Show Cause directing Defendants to appear before this Court to show cause, if any exists, why the Court should not adjudge them in civil contempt of this Court;

2. Upon service of the Order to Show Cause, and upon appearance of Defendants, the Court find Defendants in civil contempt of this Court and further order:

- a. Defendants to pay the Secretary \$1,179,842.55 (representing the total gross back wages owed), plus interest, within seven (7) days of any Order this Court issues to purge their contempt;
- b. The United States Marshall to arrest the individual Defendants and hold them in custody until Defendants purge their contempt, if Defendants fail to make payment in accordance with the Court's contempt-purging order;
- c. Defendants to pay a coercive daily fine as the Court may fix until Defendants purge their contempt, if Defendants fail to make payment in accordance with the Court's contempt-purging order; and,

d. Any other equitable and further relief the Court deems appropriate.

3. If Defendants assert an inability to pay, the Secretary requests that the Court allow the Secretary to conduct discovery on that issue.

Respectfully submitted,

Kate S. O'Scannlain
Solicitor of Labor

Maia S. Fisher
Regional Solicitor

/s/Celeste C. Moran
Celeste C. Moran (MA BBO No. 682937)
Senior Trial Attorney
moran.celeste@dol.gov

U.S. Department of Labor
Office of the Solicitor
JFK Federal Building, Room E-375
Boston, Massachusetts 02203

Telephone: (617) 565-2500
Facsimile: (617) 565-2142

Date: September 6, 2019