

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MARTIN JOSEPH WALSH, Secretary of Labor,
United States Department of Labor,¹

:

: Civil Action No.

Plaintiff,

:

: 19-cv-3435 (FB)(RER)

v.

:

MAIO BUILDING CORP; and JOHN MAIO,
Individually,

:

Defendants.

:

CONSENT JUDGMENT

Plaintiff Martin Joseph Walsh, Secretary of Labor, United States Department of Labor (“the Secretary”), has filed his complaint and defendants Maio Building Corp. and John Maio, individually, (collectively “Defendants”), have appeared through counsel and agree to entry of this Consent Judgment in full settlement of the claims that have been made or asserted in this action. Defendants acknowledge that they have notice of and understand the provisions of this Consent Judgment, acknowledge their responsibilities pursuant to this Consent Judgment, and acknowledge that they will be subject to sanctions in contempt of this Court and may be subject to punitive damages if they fail to comply with the provisions of this Consent Judgment.

1. The Secretary’s complaint alleges that Defendants violated Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.*) (the “Act” or “FLSA”) by failing to pay their employees they employed as masons, laborers, foremen, mechanics, and office staff overtime wages, and by failing to make, keep, and preserve adequate and accurate records of employees’ actual hours worked and regular hourly rate of pay.

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary of Labor Martin Joseph Walsh is automatically substituted as plaintiff.

2. Defendants agree that, during the relevant time, they were a covered enterprise under Sections 3(r) and 3(s) of the Act and that the provisions of the Act applied to Defendants.

3. Defendant John Maio agrees that, during the relevant time, he was an employer of the employees under Section 3(d) of the Act and that the provisions of the Act applied to him.

4. Defendant Maio Building Corp. agrees that, during the relevant time period, it was an employer of the employees under Section 3(d) of the Act and that the provisions of the Act applied to it.

5. Defendants neither admit nor deny the allegations of violations set forth in the Secretary's complaint. Defendants agree to the provisions of this Consent Judgment to avoid the burden and expense of protracted litigation.

6. Defendants submit to the jurisdiction of this Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enter and enforce this Consent Judgment and that this Court is the most appropriate venue for any enforcement action that may be required as a result of this Consent Judgment.

It is, therefore, upon motion of the attorneys for the Secretary and for good cause shown, ORDERED, ADJUDGED, AND DECREED that:

7. Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them be and hereby 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 Act in any of the following manners:

- (a) 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.

- (b) Defendants shall not, contrary to Section 7 of the Act, employ any of their non-exempt employees 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 non-exempt 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.
- (c) 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 Sections 11(c) and 15(a)(5) of the Act and found at 29 C.F.R. Part 516.
- (d) Defendants shall not discharge or take any retaliatory action against any employee because the employee engages in, or is believed to have engaged in, any of the following activities:
 - i. Discloses, protests, or threatens to disclose or protest to a supervisor or to a public agency any activity, policy, or practice of Defendants, 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;
 - ii. 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

Defendants or another employer with whom there is a business relationship;
or

iii. Objects to, or refuses to participate in any activity, policy or practice that the employee reasonably believes is in violation of the Act or a rule or regulation promulgated pursuant to the Act.

(e) Defendants, along with their officers, agents, and managers, shall not tell any of their employees not to speak to representatives of the U.S. Department of Labor, or tell any of their employees to provide untruthful information to the U.S. Department of Labor regarding the terms or conditions of their employment, or otherwise obstruct or interfere with any investigative activities of the U.S. Department of Labor.

8. Upon the parties' agreement that unpaid overtime back wages are owed and shall be paid to the current and former employees listed on Exhibit A, which is attached hereto, in the amount of \$250,000.00, plus an equal amount of liquidated damages of \$250,000.00, for a total amount of \$500,000.

ORDERED that Defendants and all persons acting on their behalf are enjoined and restrained from withholding the payment of \$250,000.00 in unpaid overtime back wages owed to their employees in the amounts listed opposite their names on Exhibit A. In addition, Defendants shall pay an equal amount of liquidated damages of \$250,000.00 to their employees in the amounts listed opposite their names on Exhibit A. These payments shall be made by Defendants in accordance with Paragraph 9 below.

9. The provisions of this Consent Judgment relative to back wages and liquidated damages shall be deemed satisfied when Defendants fully comply with the terms of payment set

forth below:

- (a) Defendants shall pay \$500,000.00 within 30 days of the date of entry of this Judgment. Payment may be made online by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or www.pay.gov. Alternatively, payment may be in the form of a certified check, bank check, or money order in the amount of \$500,000 made payable to the order of “Wage and Hour Division – Labor” and mailed to:

**U.S. Department of Labor
Wage and Hour Division NE RO
1835 Market Street
Mailstop WHD/19
Philadelphia, PA 19103**

If paying by check or money order, the check or money order shall bear the following reference: Case ID 1858804.

- (b) The Secretary shall distribute Defendants’ back wage and liquidated damages payments, less any legal deductions, to the former and current employees, or to their estates, as set forth in Exhibit A. Any amounts of unpaid compensation and liquidated damages not distributed within a period of three years from the date of receipt shall, pursuant to Section 16(c) of the Act, be deposited into the Treasury of the United States as miscellaneous receipts. Defendants remain responsible for paying the employer’s share of any applicable taxes to the appropriate state and federal revenue authorities.
- (c) 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 entry of this Judgment.

(d) Defendants and anyone acting on their behalf shall not in any way, 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 threaten or imply that adverse action will be taken against any employees or former employees' because of their 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.

(e) ORDERED that Defendants shall post the attached Exhibit B in English and Spanish at the Defendants' storage yard located at or near 307 Middle Island Road, Medford, New York 11716. Defendants shall display Exhibit B where employees may easily view them within 30 days of the date of entry of this Judgment and shall maintain Exhibit B in a conspicuous place at Defendants' yard for at least six months from the date that it is posted. .

10. Neither the commencement of this action nor the provisions of this Consent 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 Consent Judgment, be they current or former employees, to file any action against any of Defendants under Section 16(b) of the Act, or likewise for any current or former employee listed in Exhibit A of this Consent Judgment to file any action against any of Defendants under Section 16(b) of the Act for any violations alleged to have occurred after June 26, 2020.

11. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

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

DATED: April 30, 2021, ~~XXX~~
BROOKLYN, NEW YORK

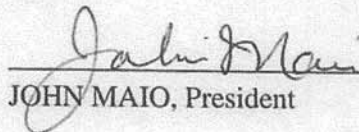
SO ORDERED:

/S/ Frederic Block
HONORABLE FREDERIC BLOCK
UNITED STATES DISTRICT JUDGE

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

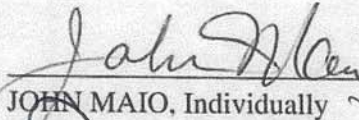
MAIO BUILDING CORP.,

BY:


JOHN MAIO, President

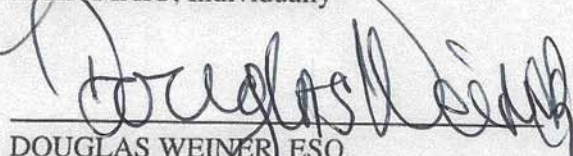
DATE:

4/29/21


JOHN MAIO, Individually

DATE:

4/29/21


DOUGLAS WEINER ESQ.
Douglas Weiner Law, P.C.
19 Mary's Lane
Centerport, NY 11721
Email: weiner.wagelaw@optimum.net
Attorney for Defendants

DATE:

April 29, 2021

STATE OF NY)
COUNTY OF Suffolk) :SS:

On the 29 day of April 2021 before me came **JOHN MAIO**, to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer of **MAIO BUILDING CORP.**, described in and which executed the foregoing instrument, that he signed his name thereto by like order.

SUSAN L. LANE
Notary Public, State of New York
No. 4860073
Qualified in Suffolk County
Commission Expires May 27, 2022

Susan Lane
NOTARY PUBLIC

STATE OF NY)
COUNTY OF Suffolk) :SS:

SUSAN L. LANE
Notary Public, State of New York
No. 4860073
Qualified in Suffolk County
Commission Expires May 27, 2022

On the 29 day of April 2021 before me came **JOHN MAIO**, 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.

Susan Lane
NOTARY PUBLIC

SUSAN L. LANE
Notary Public, State of New York
No. 4860073
Qualified in Suffolk County
Commission Expires May 27, 2022

EXHIBIT B
Notice to Employees - English

Maio Building Corp. and John Maio (together "Defendants") have settled a lawsuit with the U.S. Department of Labor and entered into a settlement agreement pertaining to their employees. The settlement agreement has been approved by a judge.

Under the settlement agreement, Defendants will pay the U.S. Department of Labor back wages for certain current and former employees who worked as masons, laborers, foreman, and office staff at Maio Building from June 11, 2016, to June 11, 2019, and the Department of Labor will distribute the back wages directly to the employees.

You have the right to receive the full amount of any back wages (after taxes) and liquidated damages you are owed. It is against the law for the Defendants, or any person acting on their behalf, to ask for this money back or ask you to give up your current or future wages to get money from the settlement.

You are protected by the Fair Labor Standards Act (FLSA), and it is also against the law for your employer to fire you, report you to immigration, retaliate against you in any way, or threaten to do any of these things for accepting settlement money or refusing to return any money paid to you as part of the settlement with the U.S. Department of Labor. Your employer is also prohibited from retaliating against you for providing information to the U.S. Department of Labor and/or complaining about not receiving minimum wage or overtime for the hours that you worked. Your employer must pay employees for all hours worked, including overtime for all hours worked over 40 in a workweek at a rate of at least 1.5 times the employee's regular rate of pay.

If you are an employee and are not paid for all of your hours worked, are not paid minimum wage for all the hours you work, are not paid overtime, if you have been asked to return your settlement money, if you have been retaliated against, or if you need to update your contact information, please call Investigator Abby Peña at the U.S. Department of Labor at (516) 876-6355. Your name will be kept confidential to the maximum extent permitted by law.

ANEXO B
AVISO A LOS EMPLEADOS

Maio Building Corp. and John Maio y sus propietarios han resuelto una demanda con el Departamento de Trabajo de Estados Unidos y entró en un acuerdo de solución, que ha sido aprobado por un juez. En virtud de este acuerdo, Maio Building Corp. pagará el dinero del Departamento de Trabajo para los empleados actuales y anteriores que trabajaron en Maio Building Corp. desde el 11 de Junio de 2016, y el Departamento de Trabajo distribuirá el dinero directamente a los empleados. Este acuerdo resuelve las reclamaciones concernientes a la Ley de Normas Razonables de Trabajo durante el período del 11 de Junio de 2016 al 11 de Julio de 2019.

John Maio, no podrá pedir que devuelva este dinero para ellos. Si usted es un empleado de la Maio Building Corp. y deja este trabajo, por favor llame al Departamento de Trabajo de Estados Unidos al (212) 264-8185 para actualizar su información de contacto. Maio Building debe pagar a sus empleados no exentos al menos el salario mínimo por todas las horas trabajadas, y esto incluye el tiempo que usted está obligado a estar en las obligaciones laborales del lugar de trabajo y escénicas. Además, Maio Building debe pagar a sus trabajadores no exentos por todas las horas trabajadas más de 40 en una semana de trabajo, a razón de tiempo y medio de la tasa regular

Los empleados que regularmente y habitualmente reciben propinas deben ser pagado al menos el salario mínimo. Siempre y cuando se paga el salario mínimo, el salario puede incluir un salario efectivo pagado por el empleador y propinas. El salario en efectivo y propinas juntos debe ser igual al menos el salario mínimo aplicable. Además, propinas recibidas por los empleados que reciben propinas deben ser retenidos por ellos a excepción de un acuerdo de agrupación punta válida limitado a los empleados que habitual y regularmente reciben propinas.

Maio Building y sus empleados no pueden despedir, amenazar con despedir, tomar represalias (incluyendo represalias a través de la asignación de horas o turnos), o discriminar a los empleados de cualquier otra manera porque el empleado cooperó con el Departamento de Trabajo o ejercieron sus derechos a pagar salario mínimo, horas extras, y proporcionar información al Departamento de Trabajo. Si usted es un empleado y no le pagan el salario mínimo por todas las horas que trabajó o no se pagan las horas extras a tiempo y medio o necesita actualizar su información de contacto, o si cualquier persona asociada con Maio Building toma represalias contra los empleados o le dice a los empleados a regresar a su salarios, por favor llame al

Departamento de Trabajo de Estados Unidos al (212) 264-8185. Su nombre será confidencial y no divulgado.