

Walsh v. Fullerton Landscapes, LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARTIN J. WALSH, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

FULLERTON LANDSCAPES, LLC
d/b/a FULLERTON LANDSCAPE ARCHITECTS; and
DOUGLAS B. FULLERTON, individually,

Defendants.

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CONSENT JUDGMENT

No. 2:21-CV-12114 (JMV, JBC)

1. Plaintiff, MARTIN J. WALSH, the Secretary of Labor ("Plaintiff"), has filed his Complaint and Defendants FULLERTON LANDSCAPES, LLC d/b/a FULLERTON LANDSCAPE ARCHITECTS and DOUGLAS B. FULLERTON ("Defendants") appeared by Counsel and agree to the entry of this Consent Judgment without contest.

2. Defendants agree that they are a covered enterprise under sections 3(r) and 3(s) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et seq.) (the "Act" or the "FLSA") and that the provisions of the Act apply to Defendants.

3. Defendants agree that between August 24, 2016 through August 23, 2019, the relevant time period, Defendant Douglas B. Fullerton regulated the employment of all persons employed by Defendant Fullerton Landscapes, LLC and is thus an employer within the meaning of section 3(d) of the Act.

4. 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 Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order.

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5. Defendants acknowledge and admit that they violated certain provisions of the Act. Specifically, Defendants acknowledge and admit that between August 24, 2016 through August 23, 2019, certain employees worked in excess of 40 hours per week without receiving additional premium pay for overtime hours.

6. Defendants further acknowledge and admit that between August 24, 2016 through August 23, 2019, they did not make, keep, and preserve all records of wages, hours, and other conditions and practices of employment maintained by them as required by sections 11(c) and 15(a)(5) of the Act, and as prescribed by the regulations found in 29 C.F.R. Part 516 that are issued, and from time to time amended, pursuant to section 11(c) of the Act.

7. Defendants acknowledge that they have notice of, and understand, the provisions of this Consent Judgment, and acknowledge their responsibilities pursuant to this Consent Judgment, and acknowledge that they may 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. This Consent Judgment hereby resolves all remaining claims in this matter.

It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown ORDERED that:

I. Defendants, their officers, employees, agents, and all persons acting or claiming to act in Defendants' behalf and interest, be, and hereby are, permanently enjoined and restrained from violating the provisions of sections 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the Act, in any of the following manners:

- (1) Defendants shall not, contrary to section 7 of the Act, employ any of their non-exempt employees in any workweek for workweeks longer than the hours now, or which in the future become, applicable under sections 7 and 15(a)(2) of the Act,

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- 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.
- (2) 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.
- (3) 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:
- a. 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;
 - 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 Defendants 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.

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II. Upon the parties' agreement that unpaid overtime back wages are owed and shall be paid to the employees listed in the attached Exhibit A in the amount of **\$200,000.00**, plus an equal additional amount of liquidated damages of **\$200,000**, for a total amount of **\$400,000**, it is:

ORDERED that Defendants and all persons acting on their behalf are enjoined and restrained from withholding the payment of **\$200,000** in unpaid overtime back wages due Defendants' current and former employees listed in Exhibit A. Further, Defendants shall pay a total of **\$200,000** in liquidated damages to Defendants' employees listed in Exhibit A. These payments shall be made by Defendants in accordance with Paragraph III of this Consent Judgment.

III. The provisions of this Consent Judgment related to back wage payments and liquidated damages shall be deemed satisfied when Defendants fully comply with the terms of payments set forth below and in the attached Exhibit B. Payment of the monies owed shall be made beginning with a down payment of **\$200,000** made by May 17, 2022. The remaining balance of **\$200,000** shall be made in fifteen (15) monthly installment payments, due on the first day of each month, according to the schedule set forth in the attached Exhibit B. All payments shall be paid by Defendants by credit card, debit card, or bank account transfer by completing the following steps:

(1) For electronic payment of the back wages and liquidated damages balance due to employees totaling **\$200,000.00**, Defendants shall follow the following instructions: Go to <https://pay.gov/public/form/start/77689032>, select "Continue to Form" and complete the required fields. For "BW Case Number" Defendants should enter the number "1890648." For the "Date of Assessment", Defendants should insert the date this Consent Judgment is approved by the Court.

IV. The Secretary shall distribute Defendants' payments for back wages and liquidated damages, less any legal deductions, to the former and current employees, or to their estates, as set forth in Exhibit A. Any sums not distributed within a period of three years from the date of receipt

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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 paying the employer's share of any applicable taxes to the appropriate state and federal revenue authorities.

V. 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 person listed in Exhibit A or from their personal representatives or estates. Defendants, and anyone acting on their behalf, shall not threaten or imply that adverse action will be taken against any person because of his or her receipt of funds due under the provisions of this Consent Judgment or the Act. Violation of this Paragraph V may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

VI. Defendants shall assist the Plaintiff in the distribution of the back wages and liquidated damages due by providing the last known addresses and social security numbers, if such is available, of the current and former employees listed in Exhibit A within twenty-one (21) calendar days of the date of entry of this Consent Judgment.

VII. In the event that Defendants fail to make any of the payments as set forth in Paragraph III of this Consent Judgment within seven (7) calendar days of its due date, Defendants shall be considered in default status. In the event Defendants are in default of any of the payments, Plaintiff shall provide written notice of Defendants' default to Defendants' counsel by e-mail to Robert K. Chewning, Esq., robert.chewning@esqnj.com, Maurice W. McLaughlin, Esq., maurice.mclaughlin@esqnj.com. Defendants shall be provided five calendar days from the date Plaintiff notifies Defendant's counsel to cure the default. If Defendants fail to cure the default, Defendants consent to the entry of a Writ of Execution, consistent with the terms of this Consent Judgment and pursuant to Rule 69 of the Federal Rules of Civil Procedure, to enforce the monetary

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terms of this Consent Judgment. Such a writ of execution shall be limited to the pending remaining balance of the Defendants' monetary obligations under this Consent Judgment at the time such writ is issued. The Secretary may represent in filing for such a writ that Defendants consent to its issuance. Upon request from the Secretary, Defendants agree to furnish a complete and accurate list of their real, personal, and business property with an estimated value of \$5,000.00 or more and the locations of such property for purposes of the Secretary seeking a Writ of Execution in accordance with this Paragraph of the Consent Judgment.

VIII. ORDERED that Defendants shall distribute a copy of the attached Exhibit C in English and Spanish to each current employee within twenty (21) calendar days of the date of entry of this Consent Judgment.

IX. 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 not listed in Exhibit A of this Consent Judgment, be they current or former employees, to file any action against 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 Defendants under section 16(b) of the Act for violations alleged to have occurred after August 23, 2019.

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

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


DATED: _____, 2022
Newark, New Jersey


SO ORDERED:

HONORABLE JAMES B. CLARK
UNITED STATES MAGISTRATE JUDGE

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

BY:


FULLERTON LANDSCAPES, LLC
By: DOUGLAS B. FULLERTON, Managing Member


DOUGLAS B. FULLERTON, Individually


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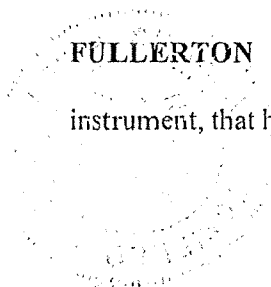
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STATE OF NEW JERSEY) :SS:

COUNTY OF ~~MORRIS~~)

On the 25 day of ~~March~~ ^{April} 2022 before me came **DOUGLAS B. FULLERTON**, to me

known, who, being by me duly sworn, did depose and say that he is a duly authorized officer of **FULLERTON LANDSCAPES, LLC**, described in and which executed the foregoing instrument, that he signed his name thereto by like order.



Silvana Antonello
NOTARY PUBLIC

SILVANA ANTONIELLO
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2433475
My Commission Expires 5/2/2023