

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARTIN J. WALSH, Secretary of Labor,)
United States Department of Labor,)
)
Plaintiff,)
) Civil Action No. 1:17-cv-203
v.)
)
G.E.M. INTERIORS, INC., et. al.,) Judge Barrett
)
Defendants.)
)

CONSENT ORDER AND JUDGMENT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor, has filed a complaint under the Fair Labor Standards Act of 1938 as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), and Defendants G.E.M. Interiors, Inc. (“G.E.M.”), Gregory E. Massie, Lisa Pack, and Melissa Hayes, individually, (collectively “Defendants”) have appeared by counsel, and waive formal service of process of the Summons and Complaint, waive their Answer and any defenses which they may have, and agree to the entry of this Consent Order and Judgment without contest.

Defendants admit and the Court finds Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit and the Court finds Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendants admit and the Court finds Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion by attorneys for the Secretary and Defendants and for cause shown, it is: **ORDERED, ADJUDGED, AND DECREED**, pursuant to section 17 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they 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 FLSA, in any of the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 206, and 215(a)(2) pay to any of their employees including, but not limited to, any of their employees working at G.E.M. Interiors, Inc., or at any business owned, operated, and/or controlled by Defendants, who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in a position that would qualify as an employer under Section 3(d) of the FLSA in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, wages at rates less than those that are now, or that in the future might become, applicable under Sections 6 and 15(a)(2) of the Act.

2. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their non-exempt employees including, but not limited to, any of their non-exempt employees working at G.E.M. Interiors, Inc., or at any business owned, operated, and/or controlled by Defendants, in any workweek when they are engaged in commerce or commerce, or employed in a position that would qualify as an employer under Section 3(d) of the FLSA in an enterprise engaged in commerce or in the production of goods for in the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless such non-exempt

employee receives compensation for his/her employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which he/she is employed.

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 including, but not limited to, any of their employees working at G.E.M. Interiors, Inc., or at any business owned, operated, and/or controlled by Defendants, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R.

Part 516. Defendants shall make such records available for inspection by representatives of the Plaintiff upon reasonable notice which shall be made to Defendants and to legal counsel identified by Defendants. Defendants maintain and reserve all objections to any such requests or inspections available under any federal law or the federal rules of civil procedure and evidence. Plaintiff maintains his right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action with respect to any violations disclosed by such investigations.

4. Defendants shall not request, solicit, suggest, or coerce, directly or indirectly, any employee to return or offer to return to Defendants or to someone on behalf of Defendants, any money in the form of cash, check, or any other form, for wages previously due or due in the future to said employee under this 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 this 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/her from Defendants under this Judgment or the Act.

5. 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.

6. Defendants shall not withhold payment of any compensation owed to individuals identified in the attached Exhibit A pursuant to this Judgment for the period and in the amounts set forth following each individual's name in the attached Exhibit A.

7. Defendants agree that they will not hire, retain, or contract any individual to perform services as an independent contractor. All subcontractors must be corporate entities registered to do business in the appropriate state where they are engaged to perform services.

8. Defendants agree that, until January 1, 2026, they shall ensure the subcontractors engaged to perform services to Defendants comply with the FLSA as set forth in Paragraph 9 herein.

9. Until April 1, 2026, Defendants must retain a third-party to audit GEM Interiors, Inc.'s payroll and its subcontractors' compensation practices for compliance with the FLSA every three months, with results to be sent within 15 days after each audit is completed to the Department of Labor, Wage and Hour Division, Cincinnati Area Office, 550 Main St., Suite 10-277, Cincinnati, OH 45202, Attention: Assistant District Director. The records to be submitted for G.E.M. Interiors, Inc. will be its payroll and time records. The records to be submitted for G.E.M. Interiors, Inc.'s subcontractors will be G.E.M. Interiors, Inc.'s payment records and hours recorded on G.E.M. Interiors, Inc.'s job sites for each subcontractor's worker and an

attestation from the subcontractor that its workers were paid in accordance with the FLSA for all hours worked for G.E.M. Interiors, Inc. Accompanying each quarterly submission to the Wage and Hour Division shall be an attestation by at least one individual Defendant as to the accuracy of G.E.M. Interiors, Inc.'s records submitted to the third-party conducting the audits, a listing of all subcontractors utilized by Defendants during the preceding three-month period, and attestations by a representative of each subcontractor as to their compliance with the FLSA.

FURTHER ORDERED, ADJUDGED and DECREED that:

10. Defendant GEM Interiors Inc. is enjoined and restrained from withholding gross back wages in the sum total amount of \$132,500 due to certain employees and former employees listed and identified in Exhibit A.

FURTHER, JUDGMENT IS HEREBY ENTERED, pursuant to section 16(c) of the Act, in favor of the Secretary and against Defendant GEM Interiors, Inc. in the total amount of \$307,000.00, plus post-judgment interest as set forth in Exhibit A.

11. The Secretary shall recover from Defendant GEM Interiors, Inc. the sum of \$132,500.00 in unpaid minimum wage and overtime compensation ("Back Wages") for Defendants' current and former employees whose names are listed in the attached Exhibit A, the additional sums of \$132,500.00 in liquidated damages ("Liquidated Damages"), and \$42,000 in civil money penalties pursuant to section 16(e) of the Act ("CMPs") covering the period from March 27, 2014, to June 27, 2015 ("Relevant Period").

- a. At the time of Defendants' execution of this Consent Order and Judgment, Defendant GEM Interiors, Inc. shall deliver an initial payment towards the Back Wages and Liquidated Damages ("BWs/LDs") in the amount of \$37,491.47 by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or

www.pay.gov and searching “WHD Back Wage Payment – Midwest Region”. At the same time, Defendant GEM Interiors, Inc. shall deliver an initial payment towards the CMPs in the amount of \$2,508.53 by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77734516> or www.pay.gov and searching “WHD CMP Payment – Midwest Region”

- b. On or before April 1, 2023, Defendant GEM Interiors, Inc. shall deliver the first of 36 monthly payments. These payments shall continue on the first day of every month, until March 1, 2026. A 15 calendar-day grace period shall be allowed for receipt of each payment that is required by this paragraph. If Defendant GEM Interiors, Inc. fails to make any payment within that 15 calendar-day grace period, all remaining installment payments (and minus payments made pursuant to this Consent Order and Judgment) shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Defendant GEM Interiors, Inc. hereby expressly waives. All payments shall be delivered by ACH transfer, credit card, debit card, or digital wallet to either BWs/LDs or CMPs at www.pay.gov as described in Paragraph 11(a) of this Consent Order and Judgment. The 36 monthly payments shall be made on the dates and in the amounts set forth in the payment schedule attached hereto as Exhibit B.
- c. Defendants shall also furnish to the Secretary the social security number and last known address, if known and available to Defendants, for each individual named in Exhibit A within 30 days of the entry of this Consent Order and Judgment and/or advise counsel for the Secretary that Defendants have no such information to provide for that individual.
- d. Upon receipt of payment from Defendant GEM Interiors, Inc., representatives of the Secretary shall distribute such amounts, less appropriate deductions for federal income

withholding taxes and the employee's share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 16(c) of the FLSA.

- e. Defendant GEM Interiors, Inc. shall be responsible for the employer's share of FICA, Medicare, and other applicable taxes and any other necessary payments to the appropriate federal and state revenue authorities for the individuals listed on Exhibit A.
- f. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Order and Judgment. Any such amount shall be immediately paid to the Secretary for deposit as above, and Defendants shall have no further obligations with respect to such returned monies.
- g. Any monies not disbursed by the Department of Labor after three years from the date of payment by Defendant GEM Interiors, Inc., because of the inability to locate the proper persons to accept payment or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to section 16(c) of the FLSA.
- h. The provisions of this Consent Order and Judgment shall not in any way affect any legal right of any individual not named on Exhibit A, nor shall the provisions in any way affect any legal right of any individual named on Exhibit A to file any action against Defendants for any violations alleged to have occurred outside the Relevant Period. Defendants hereby reserve all objections, defenses, and claims they may assert against claims filed by such individuals.

12. Plaintiff shall maintain collateral in the form of a security interest in G.E.M.'s account receivable to secure the indebtedness to the Secretary as long as money is owed to the Secretary

pursuant to this Consent Order and Judgment. Defendant Massie, on behalf of Defendant G.E.M., has executed the Security Agreement attached hereto as Exhibit C ("Security Agreement"). Through this Security Agreement, Defendants aver their account receivable, the proceeds of which are currently located within a deposit account ending -1801 currently held at 5/3 Bank. In order to perfect the Secretary's interest in the account receivable in accordance with UCC § 9-104(a)(2), Defendant Massie agrees to cooperate with the Secretary and 5/3 Bank in the execution of an authenticated record that 5/3 Bank will comply with instructions originated by the Secretary directing disposition of the funds in the account receivable without further consent by Defendants and in accordance with the Security Agreement and applicable law for execution on such collateral. If Defendant Massie fails to cooperate in the execution of an authenticated record for this purpose, this shall constitute contempt of this Consent Order and Judgment. In such a case, the entire sum of \$307,000.00 (minus payments made pursuant to this Consent Order and Judgment) shall immediately become due and payable together with post-judgment interest pursuant to 28 U.S.C. §1961. The Security Agreement is incorporated into the terms of this Consent Order and Judgment.

13. The parties agree that the instant action is deemed to solely cover Defendants' business and operations for the Relevant Period for all claims raised in the Complaint as a result of the Secretary's investigation. The parties agree that the filing of this action and the provisions of this Judgment shall not, in any way, affect, determine, or prejudice any and all rights of any person specifically named in Exhibit A or the Secretary for any period after June 27, 2015, or any persons, be they current or former employees, not specifically named in Exhibit A, insofar as such rights are conferred and reserved to said employees by reason of Section 16(b) of the Act.

14. By entering into this Consent Order and Judgment, Plaintiff does not waive his right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of additional civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

15. By entering into this Consent Order and Judgment, Defendants do not waive their right to defend and reserve all rights, defenses and objections to any allegation of wrongdoing or claim by Plaintiff against Defendants under the provisions of the FLSA, including assessment of additional civil money penalties pursuant to 29 U.S.C. § 216(e).

16. This Consent Order and Judgment constitutes the entire agreement of the parties and resolves the issues in the Complaint including the back wages due for only those employees and only those periods of time listed in this Judgment.

17. Exhibits A and B attached hereto shall be incorporated into this Consent Order and Judgment by reference.

18. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms and conditions of this Judgment.

It is FURTHER ORDERED that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated this 13th day of March, 2023.

/s/ Michael R. Barrett

Michael R. Barrett
United States District Judge

Entry of this judgment
is hereby consented to:

Theresa Nelson
/s/ *by Daniel E Burke*

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G.E.M.
/s/ **GREGORY E. MASSIE**
For G.E.M. Interiors, Inc.

G.E.M.
/s/ **GREGORY E. MASSIE**

Lisa Pack
/s/ **LISA PACK**

Melissa Hayes
/s/ **MELISSA HAYES**

Adam Lubow
/s/

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SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

LEAH A. WILLIAMS
Associate Regional Solicitor

EXHIBIT B

PAYMENT SCHEDULE

Installment	Date Due	Amount Due	Payment Destination
1	4/1/2023	\$4,750.00	BWs/LDs
2	5/1/2023	\$4,750.00	BWs/LDs
3	6/1/2023	\$4,750.00	BWs/LDs
4	7/1/2023	\$4,750.00	CMPs
5	8/1/2023	\$4,750.00	BWs/LDs
6	9/1/2023	\$4,750.00	BWs/LDs
7	10/1/2023	\$4,750.00	BWs/LDs
8	11/1/2023	\$4,750.00	CMPs
9	12/1/2023	\$4,750.00	BWs/LDs
10	1/1/2024	\$4,750.00	BWs/LDs
11	2/1/2024	\$4,750.00	BWs/LDs
12	3/1/2024	\$4,750.00	CMPs
13	4/1/2024	\$8,333.33	BWs/LDs
14	5/1/2024	\$8,333.33	BWs/LDs
15	6/1/2024	\$8,333.33	BWs/LDs
16	7/1/2024	\$8,333.33	BWs/LDs
17	8/1/2024	\$8,333.33	BWs/LDs
18	9/1/2024	\$8,333.33	CMPs
19	10/1/2024	\$8,333.33	BWs/LDs
20	11/1/2024	\$8,333.33	BWs/LDs
21	12/1/2024	\$8,333.33	BWs/LDs
22	1/1/2025	\$8,333.33	BWs/LDs
23	2/1/2025	\$8,333.33	BWs/LDs
24	3/1/2025	\$8,333.33	CMPs
25	4/1/2025	\$9,166.67	BWs/LDs
26	5/1/2025	\$9,166.67	BWs/LDs
27	6/1/2025	\$9,166.67	BWs/LDs
28	7/1/2025	\$9,166.67	BWs/LDs
29	8/1/2025	\$9,166.67	BWs/LDs
30	9/1/2025	\$9,166.67	CMPs
31	10/1/2025	\$9,166.67	BWs/LDs
32	11/1/2025	\$9,166.67	BWs/LDs
33	12/1/2025	\$9,166.67	BWs/LDs
34	1/1/2026	\$9,166.67	BWs/LDs
35	2/1/2026	\$9,166.67	BWs/LDs
36	3/1/2026	\$11,841.06	BWs/LDs

All payments shall be made to the principal of the debt owed, except for Installment #36, which shall be for \$9,166.67 towards principal and \$2,674.39 in interest.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARTIN J. WALSH, Secretary of Labor,)	
United States Department of Labor,)	
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Plaintiff,)	
)	Civil Action No. 1:17-cv-2033
v.)	
)	
G.E.M. INTERIORS, INC., et. al.,)	Judge Barrett
)	
Defendants.)	
)	

SECURITY AGREEMENT

1. DEFINITIONS.

“Consent Order and Judgment” means the Consent Order and Judgment in the above-captioned matter, executed on March 8, 2023.

“Security Agreement” means this instant document, which serves as Exhibit C of the Consent Order and Judgment.

Unless otherwise specified, all terms used in this Agreement will have the meanings ascribed to them under the Official Text of the Uniform Commercial Code, as it may be amended from time to time (“UCC”).

“Debtor” means G.E.M. Interiors, Inc.

“Secured Party” means Martin J. Walsh, Secretary of Labor, U.S. Department of Labor, Wage and Hour Division.

2. GRANT OF SECURITY INTEREST.

For value received, the Debtor grants to the Secured Party a security interest in the property described below in paragraph 4 (the “Collateral”).

3. OBLIGATIONS SECURED.

This Agreement secures the payment and performance of: (a) all obligations under a Note dated March 8, 2023 made by the Secured Party, made payable to the Debtor, in the amount of \$307,000.00, plus \$2,674.39 for interest, for a total of \$309,674.39 (“Note”), and (b) any

modifications, renewals, refinancings, or extensions of the foregoing obligations. The payments and timing, including the 15-day grace period for receipt of any payment, on the Note are set forth in the Consent Order and Judgment Paragraphs 11(a) and 11(b) and Exhibit B attached thereto. The Note and all other obligations secured hereby are collectively called the "Obligations."

4. COLLATERAL DESCRIPTION.

The Collateral in which this security interest is granted is the Debtor's account receivable, the proceeds of which are currently contained in 5/3 Bank account ending -1801 together with all replacements, accessions, proceeds, and products.

5. RESTRICTIONS ON COLLATERAL TRANSFER.

Debtor will not sell, lease, license or otherwise transfer (including by granting security interests, liens, or other encumbrances in) all or any part of the Collateral or Debtor's interest in the Collateral without Secured Party's written or electronically communicated approval, except that Debtor may sell inventory in the ordinary course of business on customary terms. Debtor may collect and use amounts due on accounts and other rights to payment arising or created in the ordinary course of business, until a Default has occurred under the Security Agreement and the Secured Party has provided notice to Debtor in writing or by electronic communication of the Default and the revocation of authority of the Debtor to collect and use amount due on accounts and other rights to payment arising or created in the ordinary course of business.

6. MAINTENANCE AND LOCATION OF COLLATERAL; INSPECTION; INSURANCE.

Debtor must promptly notify Secured Party by written or electronic communication of any change in location of the Collateral, specifying the new location. Debtor hereby grants to Secured Party the right to inspect the Collateral at all reasonable times and upon reasonable notice. The Secured Party's rights to the Collateral remain the same regardless of whether the location is changed.

7. CHANGES TO DEBTOR'S LEGAL STRUCTURE, PLACE OF BUSINESS, JURISDICTION OF ORGANIZATION, OR NAME.

Debtor must notify Secured Party by written or electronic communication not less than 30 days before taking any of the following actions: (a) changing or reorganizing the type of organization or form under which it does business; (b) moving, changing its place of business or adding a place of business; (c) changing its jurisdiction of organization; or (d) changing its name. Debtor will pay for the preparation and filing of all documents, Secured Party deems necessary to maintain, perfect and continue the perfection of Secured Party's security interest in the event of any such change.

8. PERFECTION OF SECURITY INTEREST.

Debtor consents, without further notice, to Secured Party's filing or recording of any documents necessary to perfect, continue, amend or terminate its security interest. Upon request of Secured Party, Debtor must sign or otherwise authenticate all documents that Secured Party deems

necessary at any time to allow Secured Party to acquire, perfect, continue or amend its security interest in the Collateral. Debtor will pay the filing and recording costs of any documents relating to Secured Party's security interest. Debtor ratifies all previous filings and recordings, including financing statements and notations on certificates of title. Debtor will cooperate with Secured Party in obtaining a Control Agreement satisfactory to Secured Party with respect to any Deposit Accounts or Investment Property, or in otherwise obtaining control or possession of that or any other Collateral. This includes cooperation (including potential signature) in the execution of an authenticated record that 5/3 Bank will comply with instructions originated by the Secured Party directing disposition of the funds in the Collateral without further consent by Debtor in the event of a Default.

9. DEFAULT.

Debtor is in default under this Agreement if: (a) Debtor fails to pay, perform or otherwise comply with any provision of this Agreement; (b) Debtor makes any materially false representation, warranty or certification in, or in connection with, this Agreement, the Note, or any other agreement related to the Note or this Agreement; (c) another secured party or judgment creditor exercises its rights against the Collateral; or (d) an event defined as a "default" under the Obligations as more specifically set forth in the Consent Order and Judgment occurs. In the event of default and if Secured Party requests, Debtor must assemble and make available all Collateral at a place and time designated by Secured Party. Upon default and at any time thereafter, Secured Party may declare all Obligations, minus payments received from Debtor, secured hereby immediately due and payable, and, in its sole discretion, may proceed to enforce payment of same and exercise any of the rights and remedies available to a secured party by law including those available to it under Article 9 of the UCC that is in effect in the jurisdiction where Debtor or the Collateral is located.

10. FEDERAL RIGHTS.

This Agreement will be construed and enforced under federal law. Secured Party may use state or local procedures for filing papers, recording documents, giving notice, enforcing security interests or liens, and for any other purposes. By using such procedures, Secured Party does not waive any federal immunity from state or local control, penalty, tax or liability. As to this Agreement, Debtor may not claim or assert any local or state law against Secured Party to deny any obligation, defeat any claim of Secured Party, or preempt federal law.

11. SECURED PARTY RIGHTS

All rights conferred in this Agreement on Secured Party are in addition to those granted to it by law, and all rights are cumulative and may be exercised simultaneously. Failure of Secured Party to enforce any rights or remedies will not constitute an estoppel or waiver of Secured Party's ability to exercise such rights or remedies. Unless otherwise required under applicable law, Secured Party is not liable for any loss or damage to Collateral in its possession or under its control, nor will such loss or damage reduce or discharge the Obligations that are due, even if Secured Party's actions or inactions caused or in any way contributed to such loss or damage.

13. SEVERABILITY.

If any provision of this Agreement is unenforceable, all other provisions remain in effect.

14. DEBTOR CERTIFICATIONS.

Debtor certifies that: (a) its Name (or Names) as stated above is correct; (b) all Collateral is owned or titled in the Debtor's name and not in the name of any other organization or individual; (c) Debtor has the legal authority to grant the security interest in the Collateral; (d) Debtor's ownership in or title to the Collateral is free of all adverse claims, liens, or security interests (unless expressly permitted by Secured Party); (e) none of the Obligations are or will be primarily for personal, family or household purposes; (f) none of the Collateral is or will be used, or has been or will be bought primarily for personal, family or household purposes; and (g) Debtor has read and understands the meaning and effect of all terms of this Agreement.

15. CONSENT ORDER AND JUDGMENT.

Debtor's obligations under the Consent Order and Judgment remain unaltered by this Security Agreement. Debtor is fully bound by the terms set forth in the Consent Order and Judgment.

Dated: March 8, 2023

For the Debtor

/s/

GREGORY MASSIE
President
G.E.M. Interiors, Inc.

For the Secured Party:

/s/

ADAM LUBOW
KORTNEY MOSLEY
Trial Attorneys
US Department of Labor

OF COUNSEL:

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Solicitor of Labor

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