

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JULIE A. SU,
Acting Secretary of Labor,
U.S. Department of Labor,

Plaintiff,

v.

Case No. 23-C-1167

FLORENCE HARDWOODS, LLC,

Defendant.

CONSENT ORDER AND JUDGMENT

This Consent Order and Judgment resolves a civil action filed by Plaintiff Julie A. Su, Acting Secretary of Labor, U.S. Department of Labor (“Department of Labor” or “Secretary”) to enforce the provisions of 12(a), 12(c), 15(a)(4) and 17 of the Fair Labor Standards Act of 1938, as amended (“FLSA” or “Act”), 29 U.S.C. §§ 212(c), 215(a)(4) and 217, against Florence Hardwoods, LLC (“Florence Hardwoods” or “Defendant”).

Defendant stipulates that it is subject to the FLSA and consents to the entry of the judgment below.

Defendant admits and the Court finds Defendant, and its operation in Wisconsin, 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.

Defendant admits and the Court finds Defendant is 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.

Defendant admits and the Court finds it has jurisdiction over this matter and Defendant.

Defendant admits and the Court finds, under the FLSA's "hot goods" provision at 29 U.S.C. § 212(a), producers, manufacturers, and dealers are prohibited from shipping or delivering for shipment in commerce any goods produced in an establishment in or about which any oppressive child labor has been employed.

Florence Hardwoods agreed to voluntarily refrain from shipping certain goods on July 7, 2023, after receipt of the Department of Labor's July 6, 2023 "Objection to Shipment letter," notifying Defendant of possible child labor violations pursuant to 29 C.F.R. Part 570.61 at Florence Hardwood's facility in Florence, Wisconsin.

It is hereby ORDERED, ADJUDGED and DECREED that Defendant, its agents, servants, employees, successors, and all persons in active concert or participation with Defendant, including sub-contractors employed for the purpose of providing labor, who receive actual notice hereof, are permanently enjoined from violating Sections 12(a), 12(c), and 15(a)(4) of the FLSA, in any of the following manners, at Defendant's workplace in Wisconsin.

1. Defendant, its officers, agents, servants, successors, and all persons acting or claiming to act on its behalf and interest, including sub-contractors employed for the purpose of providing labor, shall not, contrary to the provisions of §§ 12(a), 12(c), and 15(a)(4) of the Act, 29 U.S.C. §§ 212(a), 212(c), and 215(a)(4), and any provision of 29 C.F.R. Part 570, engage in oppressive child labor as defined by Section 203(l), including but not limited to, employing any individual in violation of the age, hours, or occupational restrictions set forth in Part 570, at any of Defendant's facilities in the United States.

2. Defendant shall not, contrary to Sections 12(a), 12(c), and 15(a)(4) of the Act: (1) employ oppressive child labor in commerce or in the production of goods for commerce or in any

enterprise engaged in commerce or in the production of goods for commerce, or (2) ship or deliver for shipment in commerce goods produced in any of its establishments in or about which within 30 days prior to the removal of such goods oppressive child labor has been employed.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, pursuant to Section 17 of the FLSA that Defendant, its officers, agents, servants, successors, and all persons acting or claiming to act on Defendant's behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 11(c) and 15(a)(5) of the FLSA.

4. Defendant represents it has terminated all individuals under the age of 18 at the Florence, Wisconsin facility as of June 30, 2023, and voluntarily agrees to employ only individuals who are 18 years of age or older. Defendant represents there are no minors currently employed.

5. In the event Defendant determines it intends to employ minors – including through vocational educational programs for apprentices or student-learners – Defendant shall notify the District Director of the Wage Hour Division's Minneapolis District Office at least 30 days in advance of such hiring by notifying the District Director in writing at the following address: U.S. Department of Labor, Wage and Hour Division, Tri-Tech Center, Suite 920, 331 Second Avenue South, Minneapolis, MN 55401-2233. The provisions in this paragraph shall remain in effect for a period of ten years from the date of the entry of this Consent Order and Judgment.

6. Defendant shall not employ any minors under the age of 16. In the event Defendant employs minors between the ages of 16 and 18 years of age under the apprentice or student-learner exemptions in occupations declared particularly hazardous, 29 C.F.R. 570 Subpart E, Defendant must strictly comply with the requirements of the exemptions set forth in 29 C.F.R. § 570.50(b), 570.50(c), including, but not limited to ensuring: 1) such work is incidental to their training; 2)

that such work shall be intermittent and for short periods of time; and 3) under the direct and close supervision of a journeyman or a qualified and experienced person.

7. Defendant, its officers, agents, servants, and all persons acting or claiming to act on Defendant's behalf and interest, shall make, keep, and preserve records showing the wages, hours and other conditions of work for each of its employees in accordance with 29 U.S.C. § 211(c), including accurate records of the date of birth of all employees under the age of 19 in accordance with 29 C.F.R. § 516.2(a)(3). Defendant shall make such records available to representatives of the Secretary within 72 hours following notice from the Administrator, unless otherwise specified.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that:

8. Within 30 days of the entry of this Consent Order and Judgment, Defendant shall affix special stickers, as found in the Wage and Hour Division's Tools for Employers in the Youth Employment Compliance Assistance Toolkit (available at <https://www.dol.gov/agencies/whd/youthrules/young-worker-toolkit>), to all machinery that constitutes hazardous equipment at its Florence, Wisconsin facility in order to alert workers that no one under 18 years of age may operate the equipment pursuant to Hazardous Occupation Orders.

9. Within 30 days of the entry of this Consent Order and Judgment, Defendant shall place signs at each entrance to the sawmill and planer buildings at its Florence, Wisconsin facility stating, "STOP! You must be at least 18 years of age to enter this building." The signs must be large enough to be legible from a distance of ten feet.

10. Plaintiff specifically reserves the right to investigate Defendant's future compliance with the terms of this Consent Order and Judgment and any subsequent claims of Defendant employing oppressive child labor.

11. Defendant agrees to permit unannounced entry during any shift for the purposes of investigation by the Wage and Hour Division, in accordance with Plaintiff's power of investigation under § 11(a) of the FLSA. 29 U.S.C. 211(a), without requiring a warrant. Defendant further agrees to produce all documents requested by the Wage and Hour Division within 72 hours without requiring a subpoena. The provisions of this paragraph shall remain in effect for a period of five years from the date of the entry of this Consent Order and Judgment.

12. Defendant agrees that it shall not take any retaliatory action against any of its employees, including family members or guardians of minor children employed by Defendant, in violation of 29 U.S.C. §215(a)(3) of the FLSA because an employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to the FLSA, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

13. Within three days of the entry of this Consent Order and Judgment, Defendant shall post this Consent Order and Judgment where employee notices are customarily posted and it shall remain posted for a period of not less than 60 days. Defendant shall provide the Wage and Hour Fact Sheet # 43 regarding the child labor provisions of the FLSA, Fact Sheet # 77A regarding the prohibition of retaliation under the FLSA, and the "Employer Pocket Guide on Youth Employment," to each of its employees and shall otherwise maintain all existing postings required by the Department of Labor.

14. To lift the objection to shipment of "hot goods" as discussed in Wage and Hour's July 6, 2023 "Objection to Shipment" letter, Defendant agrees to pay \$190,696 in civil money penalties ("CMPs") pursuant to 29 U.S.C. § 216(e) related to violations for employing four minors 14 and 15 years of age to work outside the hours permitted by 29 C.F.R. § 570.35 and in prohibited

occupations, 29 C.F.R. § 570.35; employing nine minors under the age of 18 years in the operation of machinery in violation of Hazardous Orders 4 and 5, 29 C.F.R. § 570.54-.55; and resulting in injuries to three minors and the death of one minor at the Florence facility during the investigation period. The entry of this Consent Order and Judgment and agreement to pay the CMPs shall relieve Defendant of any obligation to refrain from shipment of any “hot goods” as designated in Wage and Hour’s July 6, 2023 “Objection to Shipment” letter. Defendant shall pay the CMPs as follows:

a. Defendant has made a payment of \$57,211.00 toward the CMPs prior to the entry of this Consent Judgment;

b. Defendant shall make a payment of \$44,495.00 toward the CMPs within 30 days of the entry of this Consent Judgment;

c. Defendant shall make a payment of \$44,495.00 toward the CMPs within 60 days of the entry of this Consent Judgment;

d. Defendant shall make a payment of \$44,495.00 toward the CMPs within 90 days of the entry of this Consent Judgment;

e. If Defendant sells any lumber produced or manufactured from June 6, 2023, to July 6, 2023 (the “Hot Goods”), it agrees that it shall pay all proceeds from the sale(s) to pay down any remaining CMPs owed pursuant to paragraph 14 within five business days of receiving such proceeds; any proceeds paid toward the CMPSs from sale of Hot Goods shall be made in addition to the payments required in subparagraphs (b) through (d) above, but in no event shall Defendants be required to pay more than \$190,696 in CMPs;

f. All proceeds from the sale of the Hot Goods will be applied to the \$190,696 in CMPs and shall proportionally reduce any remaining payments required in subparagraphs (b) through (d) above;

g. In the event Defendant pays the full \$190,696 in CMPs within 90 days of the entry of this Consent Judgment, all remaining proceeds from the sale of the Hot Goods shall be released to Defendant;

h. In the event Defendant fails to make any of the installments on or before the due dates referenced in this paragraph, the entire outstanding amount of CMPs shall become immediately due and payable without further notice or demand by the Secretary against Defendant; and

i. All payments made pursuant to this paragraph shall be paid online by ACH transfer, credit card, debit card, or digital wallet by going to <http://www.pay.gov/public/form/start/77734516> or by going to www.pay.gov and searching “WHD CMP Payment – Midwest Region.”

15. Each party shall bear such other of its own costs and attorney’s fees and expenses incurred by such party in connection with any stage of this case, including but not limited to, attorney’s fees which may be available under the Equal Access to Justice Act, as amended.

16. The Court shall retain jurisdiction of this matter solely to enforce the Consent Order and Judgment.

Dated at Green Bay, Wisconsin this 6th day of September, 2023.

s/ William C. Griesbach

William C. Griesbach
United States District Judge

Entry of this Consent Order and Judgment is
Hereby Consented to:

For Defendant:

FLORENCE HARDWOODS, LLC

s/ Robert Minerick
ROBERT MINERICK
Member, Florence Hardwoods, LLC

Date: 8/29/23

s/ Margaret Minerick
MARGARET MINERICK
Member, Florence Hardwoods, LLC

Date: 8/29/23

s/ Jodi Arndt Labs
JODI ARNDT LABS
Attorney
Law Firm of Conway, Olejniczak & Jerry, S.C.
231 S. Adams Street
P.O. Box 23200
Green Bay, WI 54305

Attorneys for Defendant Florence Hardwoods,
LLC

Date: 8-30-23

For Plaintiff:

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

s/ Kevin M. Wilemon
KEVIN M. WILEMON
Senior Trial Attorney

Date: August 31, 2023

s/ Ambriel Renn-Scanlan
AMBRIEL RENN-SCANLAN
Senior Trial Attorney

Date: August 31, 2023

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