

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

.....
JULIE A. SU, Acting Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

P & B PARTITIONS, INC.; RONALD
BIGLIN, JR.; and ARTURO BRIONES,

Defendants.
.....

Civil Action No. 1:23-cv-11839

Injunctive Relief Sought

CONSENT JUDGMENT AND ORDER

Plaintiff Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Secretary”), has filed a Complaint in this case under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA” or “Act”). Defendants P & B Partitions, Inc.; Ronald Biglin, Jr.; and Arturo Briones, (collectively, the “Defendants”), have received a copy of the Complaint and waive service of process. Defendants neither admit nor deny that they violated Sections 7, 11, and 15(a)(3) of the FLSA, 29 U.S.C. §§ 207, 211, and 215(a)(3).

Defendants also acknowledge assessment by the Secretary of civil money penalties in the amount of \$197,030.00 for willful/repeat violations under Section 16(e) of the FLSA, to which Defendants filed a notice of exception. *See* 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, 580.1–580.18.

The Court concludes that it has jurisdiction to enter this Consent Judgment and Order (the “Consent Judgment”), and the Secretary and Defendants agree to its terms.

It is therefore ORDERED, ADJUDGED, and DECREED that:

1. Defendants and their successors, assigns, agents, servants, employees, and all persons in active concert or participation with them or acting or claiming to act in their interest and behalf, hereby are permanently enjoined and restrained from violating the FLSA, in any of the following manners.
 - a. Defendants shall not, contrary to Sections 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), employ any employees who in any workweek are engaged in commerce or in the production of goods for commerce, or who are employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than 40 hours, unless such employees receive compensation for their employment in excess of 40 hours at rates not less than one-and-one-half times the employees' regular rates of pay. For example, Defendants shall not use two or more entities to pay employees in such a manner that the total amount of payment per hour to those employees does not include one and one-half times the employees' regular rate of pay for each hour worked over 40 in a workweek.
 - b. Defendants shall not fail to make, keep, and preserve records of employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the regulations issued, and from time to time amended, pursuant to Sections 11(c) and 15(a)(5) of the FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), and found in 29 C.F.R. Part 516.
 - c. Defendants shall not fail to cooperate with the United States Department of Labor in any investigation conducted pursuant to Section 11(a) of the FLSA, 29 U.S.C.

§ 211(a), and commenced after the entry of this Consent Judgment. Defendants shall provide truthful responses and other information and documents to the United States Department of Labor. Defendants shall provide the United States Department of Labor access to all records that are required to be maintained pursuant to Section 11(c) of the FLSA, 29 U.S.C. § 211(c), and 29 C.F.R. Part 516, and shall provide access to other information necessary for the proper execution of any United States Department of Labor investigation. Nothing contained in this Consent Judgment, including the requirement to cooperate as set forth in this Paragraph, abrogates Defendants' rights under the United States Constitution.

- d. Defendants shall not violate the provisions of Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3). Among other prohibited acts of retaliation, Defendants and any other persons subject to this permanent injunction shall not:
 - i. Terminate or threaten to terminate any employee because the employee engaged in or is about to engage in protected activity under the FLSA;
 - ii. Threaten any employee or former employee or their family, verbally or in writing, because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
 - iii. Inflict physical harm or verbal abuse on any employee or former employee or their family because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;

- iv. Report or threaten to report any employee or former employee to immigration authorities because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
- v. Threaten to have any employee or former employee deported because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
- vi. Use against any employee or former employee the employee or former employee's immigration status, citizenship, work authorization status, or lack of government documents (including a driver's license) because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
- vii. Disparage or threaten to disparage any employee or former employee to other employers because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
- viii. Blacklist any employee or former employee, such as by interfering with that employee or former employee's ability to obtain other employment, because the employee or former employee engaged in or is about to engage in protected activity under the FLSA;
- ix. Make any employee's working conditions less favorable, including by reducing any employee's hours of work or pay, because the employee engaged in or is about to engage in protected activity under the FLSA;
- x. Instruct any employee or former employee not to speak to, or to provide false information to, the United States Department of Labor, or otherwise

influence any employee or former employee with respect to their participation in any investigation conducted or legal proceeding brought by the United States Department of Labor;

- xi. Ask any employee or former employee whether they have communicated with the Department of Labor or what the content may have been of any communications with the Department of Labor; and
- xii. Retaliate or discriminate against any employee or former employee or their family in any other way because the employee or former employee engaged in or is about to engage in protected activity under the FLSA.

2. Further, Defendants shall pay their employees back wages and liquidated damages in the total amount of \$283,492.40 plus interest, as shown on the attached Exhibits A1 and B1, which are incorporated in and made a part of this Consent Judgment. Defendants are restrained from withholding said back wages and shall pay, jointly and severally, said back wages and liquidated damages.

3. Defendants represent that, to the best of their knowledge and following diligent review and inquiry, they have been in compliance with Section 7 of the FLSA since March 25, 2021. In resolving the amount of back wages in this Consent Judgment, the Secretary has relied on this representation and, accordingly, the back wage and liquidated damages provisions of this Consent Judgment shall have no effect upon any back wages and liquidated damages which may have accrued since March 25, 2021.

4. The back wage and liquidated damages provisions of this Consent Judgment only cover the period from October 3, 2019 to March 24, 2021 for the individuals designated as being owed such back wages and liquidated damages in Exhibit A1, for work performed work at the

Caldwell Monroe Street Project in Lynn, Massachusetts, and this Consent Judgment shall have no effect upon any back wages and liquidated damages that may have accrued outside that time period or at any other location during any time period or for any individual not designated as being owed back wages and liquidated damages on Exhibit A1.

5. The back wage and liquidated damages provisions of this Consent Judgment shall be deemed satisfied when Defendants deliver to the Secretary: \$141,746.20 in gross back wages plus interest (as set out in Exhibits A1 and B1) from which deductions for Defendants' employees' share of social security and federal withholding taxes will be made by the United States Department of Labor with no deduction for the employees' state withholding tax, and separate payment totaling \$141,746.20 in liquidated damages plus interest (as set out in Exhibits A1 and B1) none of which is subject to deductions. Defendants, jointly and severally, shall further pay the employers' share of FICA to the appropriate authorities for the back wages paid pursuant to this Consent Judgment after presentation of the United States Department of Labor's quarterly summary of employee payments made.

6. Defendants may make the back wage, liquidated damages, and related interest payments required by this Consent Judgment online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77689032> or by going to <http://www.pay.gov> and searching for WHDBWNE. Alternatively, payments made be made in the form of certified checks made payable to "Wage and Hour Division—Labor," and delivered to the United States Department of Labor, Wage and Hour Division, 1835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio. Any certified check shall have Case No. 1906722 written on the face of the certified check.

7. The Secretary will distribute the back wages, liquidated damages, and related

interest to the employees in this case in accordance with the total amounts set out in Exhibits A1 and B1.

8. With respect to the back wage, liquidated damages, and related interest payments, Defendants shall first pay \$51,980.82 to the Secretary within 14 days of the Court entering this Consent Judgment. Defendants shall then make the balance of the back wage, liquidated damages, and related interest payments to the Secretary in accordance with the Installment Amortization Schedule set out in Exhibit B1.

9. In addition, the Court, finding that employee Alfredo Hernandez is due punitive damages in the amount of \$23,253.80 for Defendants' violations of Section 15(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), orders that Defendants, jointly and severally, shall pay to the Secretary said punitive damages and related interest, according to the terms set forth herein.

10. The Court, finding that employee Juan Guerra is due punitive damages in the amount of \$23,253.80 for Defendants P & B Partitions, Inc. and Ronald Biglin Jr.'s violations of Section 15(a)(3), 29 U.S.C. § 215(a)(3), orders Defendants P & B Partitions, Inc. and Ronald Biglin Jr. to pay, jointly and severally, to the Secretary said punitive damages, and related interest, according to the terms set forth herein.

11. Upon receipt of these punitive damages amounts from Defendants, the Secretary shall then distribute to Alfredo Hernandez and Juan Guerra the punitive damages amounts above.

12. The punitive damages provisions of this Consent Judgment shall be deemed satisfied when Defendants deliver to the Secretary the amount of \$23,253.80 plus interest (as set out in Exhibits A1 and B1) in punitive damages for Alfredo Hernandez, and Defendants P & B Partitions, Inc. and Ronald Biglin, Jr. deliver to the Secretary the amount of \$23,253.80 plus interest (as set out in Exhibits A1 and B1) in punitive damages for Juan Guerra.

13. With respect to the punitive damages payments, Defendants shall first pay \$20,019.18 to the Secretary within 14 days of the court entering this Consent Judgment. Defendants shall then make the balance of the punitive damages and interest payments to the Secretary in accordance with the Installment Amortization Schedule set out in Exhibit B1.

14. Defendants may make the punitive damages and related interest payments required by this Consent Judgment online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77689032> or by going to <http://www.pay.gov> and searching for WHDBWNE. Alternatively, payments may be made in the form of certified checks made payable to “Wage and Hour Division—Labor,” and delivered to the United States Department of Labor, Wage and Hour Division, 1835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio. Any certified check shall have Case No. 1906722 written on the face of the certified check.

15. In addition, Defendants shall pay, jointly and severally, to the Secretary civil money penalties pursuant to Section 16(e) of the FLSA, 29 U.S.C. § 216(e), and 29 C.F.R. §§ 578.1–578.4, in the amount of \$30,000.00 plus interest (as set out in Exhibit C1).

16. The civil money penalty portion of this Consent Judgment will be deemed satisfied when Defendants deliver said penalty amount plus interest to the Secretary in accordance with Exhibit C1.

17. To comply with the civil money penalty and related interest payment provisions set forth above, Defendants may pay online by ACH transfer, credit card, debit card, or digital wallet by going to <https://pay.gov/public/form/start/77734516> or by going to www.pay.gov and searching “WHD CMP Payment - NE Region.” Defendants also have the option to provide to the Secretary a certified check, bank check, or money order, and that check or money order shall be

made payable to “Wage and Hour Division—Labor” and mailed to: United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania, Attn: Linda Estacio. Any such check or money order shall have Case Number 1906722 and CMP Case Number 59688 written on the face of the check or money order.

18. In the event Defendants fail to make any of the payments within fourteen days of the dates set out in this Consent Judgment, Defendants consent to the entry of a Writ of Execution, pursuant to Rule 69 of the Federal Rules of Civil Procedure, to enforce the monetary terms of this Consent Judgment. 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 \$2,000.00 or more and the locations of such property, including any bank account numbers, for purposes of the Secretary seeking a Writ of Execution in accordance with this Paragraph of the Consent Judgment.

19. If Defendants fail to make any of the payments within fourteen days of the dates set out in this Consent Judgment, upon notice to the Defendants, the Court shall appoint a Receiver to effectuate all of the terms of this Consent Judgment. In the event a Receiver is appointed:

a. Defendants shall cooperate with the Receiver in all respects and shall provide to the Receiver any and all information which the Receiver may require to carry out its appointment and in accordance with the authority given to the Receiver pursuant to applicable law at the time of appointment.

b. All the expenses of the Receiver shall be borne solely by Defendants.

c. If the Court appoints a Receiver, the Receiver shall serve until the payment of the monetary terms of this Consent Judgment are satisfied.

d. The Receiver shall have full authority to: (i) collect the Defendants' assets and report findings to the Court and the parties; (ii) redeem and/or liquidate the Defendants' assets and turn over the proceeds to the Secretary; (iii) if the asset is a debt that is due, collect it and turn over the proceeds to the Secretary; (iv) analyze all indebtedness and where deemed appropriate seek restructuring; (v) analyze all transfers of Defendants' assets; (vi) prevent waste or fraud; and (vii) do all acts and take all measures necessary or proper for the efficient performance of the duties under this Consent Judgment.

20. On or before 14 days from the parties' execution of this Consent Judgment, Defendants shall deliver to the United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio, a statement showing the following: employers' Federal ID number(s), the name of each employee listed in Exhibit A1, and each employee's current address and social security number (only to the extent currently known by Defendants).

21. When recovered wages or liquidated damages have not been claimed by an employee within three years, because of inability to locate the employee or because of the employee's refusal to accept such sums, the Secretary shall deposit the wages or liquidated damages into the United States Treasury as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c).

22. Defendants shall not, in any way, solicit, demand, accept, or keep any amount paid or payable to any employee or former employee under this Consent Judgment, or in any manner attempt to recover or otherwise influence any employee or former employee to forfeit

any amounts paid to such employee or former employee in connection with this Consent Judgment. In the event any such amount is received from any employee or former employee, Defendants shall immediately remit such amount to the United States Department of Labor at the at the following address: United States Department of Labor, Wage and Hour Division, 835 Market Street, 19th Floor, Philadelphia, Pennsylvania 19103-2968, Attn: Linda Estacio.

23. Defendants have certified that their employment practices are currently in compliance with all applicable provisions of the FLSA as interpreted by the Secretary. If this representation is determined to be false, and Defendants are found to be in violation of the FLSA, additional civil money penalties may be owed, in addition to back wages, liquidated damages, and other damages as appropriate.

24. Nothing in this Consent Judgment precludes the Secretary from using evidence discovered in the investigation that led to the Complaint in this matter in any future investigation, enforcement action, or legal action.

25. Nothing in this Consent Judgment precludes the Secretary from bringing any enforcement action against Defendants for any violation of the FLSA not specifically set forth in the Secretary's Complaint in this case.

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

SO ORDERED, this 21 day of August, 2023.

/s/ Leo T. Sorokin

United States District Judge

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Dated: August 11, 2023

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Dated: August 11, 2023