

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION**

<p>R. ALEXANDER ACOSTA, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,</p> <p style="text-align: center;">PLAINTIFF,</p> <p>v.</p> <p>METAL ROCK CONSTRUCTION, INC., a Utah corporation,</p> <p style="text-align: center;">DEFENDANT.</p>	<p>CASE NO. 2:18-cv-00907-JNP</p> <p style="text-align: center;">CONSENT JUDGMENT AND INJUNCTION</p>
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Plaintiff, R. Alexander Acosta, Secretary of Labor for the United States Department of Labor (the “Secretary”), and Defendant, Metal Rock Construction, Inc. (“Metal Rock”), have agreed to resolve the matters in controversy in this civil action and consent to the entry of this Consent Judgment and Injunction (“Judgment”).

A. The Secretary filed a Complaint in the above-captioned proceeding alleging that Defendant violated provisions of Sections 7, 11, and 15 of the Fair Labor Standards Act of 1938, as amended (“FLSA”), 29 U.S.C. §§ 207, 211, and 215. Defendant, having received a copy of the Complaint and in light of the settlement reached herein, waives issuance of service of the Summons, waives its Answer to the Complaint, and stipulates to its inclusion in this action.

B. The Secretary and Defendant agree to the entry of this Judgment in settlement of this action without further contest.

C. Defendant agrees to pay their employees in compliance with the FLSA’s minimum wage and overtime provisions, and to comply with the FLSA’s record-keeping provisions.

NOW, therefore, upon motion of the Secretary, and for cause shown, it is hereby:

ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice

of this injunction be, and each of them hereby is, permanently enjoined and restrained from violating the provisions of §§ 7, 11(c), 15(a)(2), and 15(a)(5) of the FLSA in any of the following manners:

1. Defendant shall not, contrary to §§ 7 and 15(a)(2) of the FLSA, employ any non-exempt employees in commerce or in the production of goods for commerce or in an enterprise engaged in commerce or the production of goods for commerce, within the meaning of the FLSA, for workweeks longer than forty (40) hours without compensating such non-exempt employees for their employment in excess of forty (40) hours per workweek at rates not less than one and one-half times the regular rates at which they are employed.

2. Defendant shall not, contrary to §§ 11(c) and 15(a)(5) of the FLSA, fail to make, keep, and preserve adequate and accurate records of its non-exempt employees, and of the wages, hours, and other conditions and practices of employment maintained by Defendant as prescribed by the regulations issued and from time to time amended pursuant to § 11(c) of the FLSA (29 C.F.R. Part 516). Defendant shall make such records available at all reasonable times to representatives of the Plaintiff.

3. Defendant is hereby enjoined from withholding and is ordered to pay to the Secretary the total sum of \$50,000 in back wages for unpaid overtime compensation and \$50,000 in liquidated damages that is hereby due under the FLSA and this Judgment to the individuals and in the amounts on Exhibit A appended to the Stipulated Motion for Entry of Judgment [Docket 3-2.] Defendants will pay the aggregate amount of \$100,000, with interest, in seven (7) installments in the amounts and on or before the dates designated as follows:

Date	Principal Amount and Allocation to Liquidated Damages/Back Wages	Interest Allocation (1%)	Payment Amount
Dec. 10, 2018	\$25,000 (LD)	\$0	\$25,000.00
Jan. 10, 2019	\$12,500 (LD)	\$75.00	\$12,575.00
Feb. 11, 2019	\$12,500 (LD)	\$62.50	\$12,562.50
March 11, 2019	\$12,500 (BW)	\$50.00	\$12,550
April 10, 2019	\$12,500 (BW)	\$37.50	\$12,537.50
May 10, 2019	\$12,500 (BW)	\$25.00	\$12,525.00
June 10, 2019	\$12,500 (BW)	\$12.50	\$12,512.50
TOTAL	\$100,000	\$262.50	\$100,262.50

Defendant will pay each installment by placing a cashier's check or other certified funds payable to **“U.S. Department of Labor – Wage and Hour Division,”** with the words **“Metal Rock Construction, Inc. – BW/LD”** stated on the check, in the U.S. Mail, first-class, postage pre-paid, on or before the dates above and addressed to **U.S. DOL Wage Hour Division, 525 So. Griffin, Suite 800, Dallas, TX 75202.** If any installment payment is more than five (5) days late, Defendant will be in default if Defendant cannot show that such payment was mailed as described above. Any defaulted balance shall be subject to the assessment of interest and penalty interest rates, and collections costs, as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134).

4. Within 20 calendar days from the entry of this Judgement, Defendant will provide to the Secretary the employee identification information on file (as required to be kept under 29 C.F.R. Part 516) for each individual on Exhibit A, including full name, last known address, and social security number.

5. Defendant shall not in any way directly or indirectly, demand, require or accept any of the back wages or liquidated damages from any of its past or current employees, including without limitation those listed on Exhibit A. Defendant shall not threaten or imply that adverse action will be taken against any employee because of their receipt of funds to be paid under this Judgment.

6. The Secretary, for back wages owed, will compute the tax deductions, consisting of federal income tax withholding and the employee's share of the social security (FICA) tax, provide an itemization thereof, and distribute the monies to the employees or former employees identified on Exhibit A (which includes the corresponding amount owed to each individual) or their legal representatives as their interests may appear. Defendant is responsible for the employer's share of the FICA tax with regard to the back wages distributed by the Secretary.

7. Any sums which cannot be distributed to the employees, or to their personal representatives because of the inability of either the Secretary or Defendant to locate the proper persons or because of any person's refusal to accept payment, shall be deposited by the Secretary in a special deposit account to be paid to the rightful employee. If such sums are not claimed by the employee (or a personal representative of the employee) within three years, the Secretary shall deposit them into the United States Treasury as miscellaneous receipts.

8. Within twenty (20) calendar days after the entry of this Judgment, Defendant shall provide written information to all then-existing employees that discusses the FLSA generally and

employees' entitlement to minimum wages and overtime compensation under the FLSA, including specific examples of how overtime is computed for hourly employees, and that includes references to the Wage and Hour Division website. (www.dol.gov/whd). This information may be provided to employees in paper form, may use DOL Fact Sheet No. 13 or may be included in any Employee Handbook that Defendant provides to its employees.

Each party hereby agrees to bear his, her, or its own costs, fees, and expenses incurred in connection with any stage of this proceeding.

Dated December 19, 2018.

BY THE COURT:


United States District Judge