

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\*\*\*\*\*  
 THOMAS E. PEREZ, SECRETARY OF LABOR, \*  
 United States Department of Labor, \*  
 \*  
 Plaintiff, \*  
 \* Civil Action No.  
 v. \*  
 \*  
 FORCE CORPORATION; \*  
 AB CONSTRUCTION GROUP INC.; \*  
 \*  
 JULIANO FERNANDES, Individually; and, \*  
 ANDERSON DOS SANTOS, Individually, \*  
 \*  
 Defendants. \*  
 \*\*\*\*\*

COMPLAINT

Plaintiff, Secretary of Labor, United States Department of Labor, brings this action to enjoin Defendants from violating the provisions of Sections 7, 11, 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938 (the “Act”), 29 U.S.C. §§ 207, 211, 215(a)(2), and 215(a)(5), and to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the Act, 29 U.S.C. §§ 215(a)(2) and 216(c).

I.

Jurisdiction of this action is conferred upon this Court by Section 17 of the Act, 29 U.S.C. § 217, and by 28 U.S.C. § 1345.

II.

The period covered by this Complaint is August 4, 2013 to November 14, 2015.

III.

Defendant FORCE CORPORATION is, and at all times hereinafter mentioned was, a corporation having an office and place of business located at 140 Leominster Shirley Road, Lunenburg, Massachusetts 01462 or 52D Cummings Park, Woburn, Massachusetts 01801, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business and elsewhere, in commercial and institutional building construction.

IV.

Defendant AB CONSTRUCTION GROUP INC. is, and at all times hereinafter mentioned was, a corporation having an office and place of business located at 27 Willis Street, Framingham, Massachusetts 01453 and/or 140 Leominster Shirley Road, Lunenburg, Massachusetts 01462, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business and elsewhere, in the provision of labor for Defendant Force Corporation for commercial and institutional building construction.

V.

Defendant JULIANO FERNANDES resides at 376 Water Street, Clinton, Massachusetts 01510, within the jurisdiction of this Court, and at all times hereinafter mentioned was General Manager of Defendant Force Corporation. Defendant Fernandes actively managed, supervised, and directed the business affairs and operations of Defendants Force Corporation and AB Construction Group Inc. including, but not limited to, making decisions about labor costs and production, hiring and firing employees, authorizing pay increases and decreases for employees, authorizing the processing of payroll, signing checks for payments to employees, and actively participating in the development of policies and/or practices governing the hours worked and

payment of employees. Defendant Fernandes has acted at all times material herein directly and indirectly in the interest of Defendants Force Corporation and AB Construction Group Inc., in relation to their employees and was and is, therefore, an employer of said employees, within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

VI.

Defendant ANDERSON DOS SANTOS resides at 5 Crown Street, Fitchburg, Massachusetts 01420, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, Owner and President of Defendant AB Construction Group Inc. Defendant Dos Santos actively supervises and directs employees of Defendants Force Corporation and AB Construction Group Inc. including, but not limited to, hiring and firing employees, authorizing pay increases and decreases, and having authority to sign checks for AB Construction Group Inc. Defendant Dos Santos has acted at all times material herein directly and indirectly in the interest of Defendants Force Corporation and AB Construction Group Inc., in relation to their employees, and was and is, therefore, an employer of said employees within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

VII.

Defendants are, and at all times hereinafter mentioned were, engaged in related activities performed through unified operation or common control for a common business, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r).

VIII.

At all times hereinafter mentioned, Defendants employed employees in the activities of said enterprise, which is engaged in commerce or in the production of goods for commerce,

including employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Therefore, said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act, 29 U.S.C. § 203(s).

IX.

Defendants have willfully and repeatedly violated the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees for workweeks longer than forty (40) hours without compensating them for their employment in excess of forty (40) hours in said workweeks at rates not less than one and one-half times the regular rate at which they were employed. Defendants failed to pay approximately four hundred and seventy-eight (478) employees the required rate for overtime hours worked. Defendants routinely paid employees the regular rate without the overtime premium for overtime hours worked.

X.

Specifically, Defendants created AB Construction Group Inc. to provide much of the labor workforce for Defendant Force Corporation. Defendant AB Construction Group Inc. is 100% financially dependent on Defendant Force Corporation. Defendant Force Corporation prepares all payroll and cash/check payments, maintains the payroll and payment accounts, and maintains all hours and rates of pay for Defendants Force Corporation and AB Construction Group Inc. Defendants used the following payroll and payment procedures with respect to overtime hours worked, inter alia:

- a. Defendants misclassified employees as independent contractors. These employees were paid at the regular hourly rate without the overtime premium for some or all overtime hours worked in a workweek.
- b. Employees were paid by both Defendant Force Corporation and Defendant AB Construction Group Inc. during the same workweek, such that overtime hours worked in the workweek were paid at the regular hourly rate.
- c. Defendants used a combination of payroll checks and cash/check payments to pay employees to avoid overtime premium payments.

XI.

Defendants have willfully and repeatedly violated the provisions of Sections 11 and 15(a)(5) of the Act, 29 U.S.C. §§ 211 and 215(a)(5), in that they failed to make, keep, and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment, as prescribed by regulations duly issued pursuant to authority granted in the Act and found in Title 29, Part 516 of the Code of Federal Regulations. Defendants' records failed to show adequately and accurately, among other things, the hours worked each workday and premium pay owed for overtime hours for the full period of investigation.

XII.

Throughout this period, Defendants have willfully and repeatedly violated the aforesaid provisions of the Act as alleged, and a judgment enjoining such violations is expressly authorized by Section 17 of the Act, 29 U.S.C. § 217.

XIII.

WHEREFORE, cause having been shown, Plaintiff prays judgment permanently enjoining and restraining Defendants, their agents, servants, employees, and those persons in

active concert or participation with them, or acting in their interest and behalf, from violating Sections 7, 11, 15(a)(2), and 15(a)(5) of the Act, 29 U.S.C. §§ 207, 211, 215(a)(2), and 215(a)(5), including but not limited to enjoining Defendants from evading their responsibilities under the Act by misclassifying any of their employees as independent contractors, and for such other and further relief as may be necessary or appropriate.

XIV.

Throughout this period, Defendants have willfully and repeatedly violated the aforesaid provisions of the Act. Plaintiff further seeks an award of the unpaid overtime compensation owed and an equal amount as liquidated damages, as specifically authorized by Section 16(c) of the Act, 29 U.S.C. § 216(c).

XV.

WHEREFORE, cause having been shown, Plaintiff prays judgment ordering payment of unpaid wages found by the Court to be due to employees listed in the attached Exhibit A, plus an equal amount as liquidated damages, and costs.

Respectfully submitted,

M. Patricia Smith  
Solicitor of Labor

Michael D. Felsen  
Regional Solicitor

/s/Celeste C. Moran  
Celeste C. Moran  
Senior Trial Attorney  
MA BBO No. 682937

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Date: July 18, 2016