

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GIOVANNI ("HENRY") MONTOYA,
et al.,

On behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

S.C.C.P. PAINTING CONTRACTORS,
INC., et al.,

Defendants.

Case No. 1:07-cv-0455 (CCB)

CONSENT DECREE

Named Plaintiffs Montoya, Figueroa, Carrera, and Aplicano filed this action on February 21, 2007 claiming unpaid wages and unpaid overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. § 3-401 *et seq.* ("MWHL"), the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. § 3-501 *et seq.* ("MWPCCL"), the D.C. Minimum Wage law, D.C. Code Ann. § 32-1001 *et seq.* ("DCMWL"), the D.C. Payment and Collection of Wages Law, D.C. Code Ann. § 32-1301 *et seq.* ("DCPCWL"), as well as violations under Maryland and District of Columbia common law. Defendants filed answers to the claims, denying any and all liability.

The Named Plaintiffs brought their claims on their own behalf, as well as on behalf of a class of similarly-situated individuals. They moved for conditional class certification pursuant to 29 U.S.C. § 216(b) for the class of "all individuals who are or have been employed by Defendants as non-exempt,

hourly-paid employees for the three years immediately prior to the date of conditional certification.” (ECF No. 35.) On February 26, 2008, this Court granted the Motion for Conditional Class Certification and authorized notice to issue so that additional plaintiffs could opt into the lawsuit. (ECF Nos. 51, 52.) A number of additional individuals opted into the lawsuit. There are currently 19 individuals, including the Named Plaintiffs, who are participating in this lawsuit as members of the current Plaintiff class (hereinafter “Plaintiffs”).

On December 16, 2008, the Court issued an Order and accompanying Memorandum (ECF Nos. 90 and 91) granting Plaintiffs’ Motion for Partial Summary Judgment, holding that Plaintiffs were covered FLSA employees when they worked for Defendant S.C.C.P., and as a result Defendant S.C.C.P. is liable to the Plaintiffs for underpayment of overtime wages, the amounts, if any, to be determined at trial. The Court also granted Plaintiffs’ Motion for Leave to Amend Complaint to correct a misnomer and make clear that Ascenzo (“John”) Sulmonte (not Giovanni Sulmonte, Ascenzo’s father) is the individually-named Defendant in this case.

On February 10, 2009, the Named Plaintiffs, on behalf of Plaintiffs, and Defendants, through their respective counsel, agreed upon the terms of settlement reflected in this Decree. Defendants did so without admitting liability, but in order to fully and finally resolve all disputes. In reliance upon the representations contained herein, and in consideration of the mutual promises, covenants and obligations set forth in this Decree, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Plaintiffs and the Defendants (hereinafter, “the Parties”) hereby stipulate and agree as follows.

I. Jurisdiction

1.1 This Court has jurisdiction over the subject matter of this action and jurisdiction over the Parties pursuant to 28 U.S.C. § 1331, 29 U.S.C. § 216(b), and 28 U.S.C. § 1367.

II. General Provisions

2.1 This Consent Decree constitutes both an Order of the Court and a contract.

2.2 The Parties are simultaneously executing a Stipulated Order of Dismissal in the form attached hereto as Exhibit A ("Stipulated Order of Dismissal"). Counsel for the Parties shall not separately file the Stipulated Order of Dismissal until the time specified in this Consent Decree.

2.3 The Parties are also simultaneously executing a Stipulated Final Judgment in the form attached hereto as Exhibit B ("Stipulated Final Judgment"), which shall not be filed unless the Settlement Payments (described below) are not timely paid.

2.4 The Court shall retain jurisdiction over this action and this Consent Decree until all the terms have been satisfied and the Plaintiffs' claims have been dismissed with prejudice.

2.5 The Court has the authority to award (as described below), in its discretion, fees and costs attendant to any motions by any of the Parties to enforce the terms of this Consent Decree or any of its attachments.

2.6 If the Court declines to approve this Consent Decree, its terms shall be vacated *nunc pro tunc*, and the action shall proceed without prejudice to the Parties' rights.

2.7 This Consent Decree may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

III. Settlement Payments

3.1 Defendants shall make a total settlement payment to Plaintiffs in the amount of two hundred thousand U.S. dollars (\$200,000) (the "Settlement Amount"), which, if paid pursuant to the terms herein, constitutes full satisfaction of all claims, damages, costs and attorneys' fees related to this action.

3.2 Defendants shall pay the Settlement Amount in monthly installments over the course of twenty (20) months, beginning in March 2009. Defendants shall pay a total of \$15,000 per month for the first seven (7) months, beginning March 15, 2009, and shall pay a total of \$95,000 over the course of the subsequent 13 months in equal monthly installments.

3.3 Defendants shall pay the Settlement Amount according to the schedule attached hereto as Exhibit C. On or before the dates that the Settlement Amount payments become due, Defendants shall issue individual checks in accordance with Exhibit C. To the extent that a payment date falls on a weekend or court holiday, the due date for the payment shall be the immediately following day that is not a weekend or court holiday. These checks shall be delivered to Laura E. Varela at the Washington Lawyers' Committee for Civil Rights and Urban Affairs, 11 Dupont Circle, NW, Suite 400, Washington, D.C. 20036. All individual income tax obligations shall rest with the individual Plaintiffs.

3.4 Within fifteen (15) days after payment of the full Settlement Amount, the Parties shall file with the Court the fully executed Stipulated Order of Dismissal, attached hereto as Exhibit A.

3.5 Plaintiffs shall not issue press releases or hold news conferences about this action, or terms of settlement thereof, with any media outlets, although Plaintiffs and counsel for Plaintiffs may engage in ordinary and customary publishing about this action in newsletters, updates, and on the website of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. In response to

questions from any media sources, Plaintiffs and counsel for Plaintiffs shall direct all inquiries to public sources and public materials on file.

3.6 In the event that Defendants fail to make a payment when due, the entire Settlement Amount less any payments previously made shall become immediately due and owing, and the fully executed Stipulated Final Judgment (attached hereto as Exhibit B) may be filed directly with the Court, which the Court shall enter immediately in favor of Plaintiffs and against Defendants in a sum equal to the entire Settlement Amount less any payments previously made, plus interest thereon at the federal post-judgment rate from the date of default until paid, plus costs associated with filing the Stipulated Final Judgment, plus reasonable attorneys' fees and collection expenses associated with execution of the Stipulated Final Judgment. Defendants waive the benefit of any statute, ordinance, or rule of Court conferring upon Defendants any right or privilege of exemption, appeal, stay of execution or supplementary proceedings, and any other relief from the enforcement of the Stipulated Final Judgment or proceedings related thereto.

IV. Releases

4.1 Upon completion of the terms of this Consent Decree, and in consideration of the promises and covenants set forth herein, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs, on behalf of themselves and their respective predecessors, successors, assigns, affiliates, heirs, executors, administrators, parents, subsidiaries, partners, shareholders, principals, beneficiaries, trustees, officers, directors, servants, representatives, employees and agents, FULLY AND FOREVER RELEASE, ACQUIT AND DISCHARGE Defendants, as well as each of Defendant's respective predecessors, successors, assigns, affiliates, heirs, executors, administrators, parents, subsidiaries, partners, shareholders, principals, beneficiaries, trustees, officers,

directors, servants, representatives, employees and agents, from any and all legally waivable claims, liabilities, damages, demands, and causes of action or liabilities of any nature or kind, whether now known or unknown, arising out of or in any way pertaining to wages claimed to be or actually owed prior to the date of execution of this Consent Decree, including but not limited to all claims that were or could have been asserted in this action. It is understood and agreed that this release shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, assigns, affiliates, partners, shareholders, principals, beneficiaries, trustees, officers, directors, servants, representatives, employees and agents.

4.2 Upon completion of the terms of this Consent Decree, and in consideration of the promises and covenants set forth herein, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Defendants, on behalf of themselves and their respective predecessors, successors, assigns, affiliates, heirs, executors, administrators, parents, subsidiaries, partners, shareholders, principals, beneficiaries, trustees, officers, directors, servants, representatives, employees and agents, FULLY AND FOREVER RELEASE, ACQUIT AND DISCHARGE Plaintiffs, as well as each Plaintiff's respective predecessors, successors, assigns, affiliates, heirs, executors, administrators, parents, subsidiaries, partners, shareholders, principals, beneficiaries, trustees, officers, directors, servants, representatives, employees and agents from any and all legally waivable claims, liabilities, damages, demands, and causes of action or liabilities of any nature or kind, whether now known or unknown, arising out of or in any way pertaining to wages claimed to be or actually owed prior to the date of execution of this Consent Decree, including but not limited to all claims that were or could have been asserted in this action. It is understood and agreed that this release shall be binding upon and inure to the benefit of the Parties and their respective predecessors, successors, assigns, affiliates, partners,

shareholders, principals, beneficiaries, trustees, officers, directors, servants, representatives, employees and agents.

V. Final Settlement

5.1 Upon approval and entry of this Consent Decree and exhibits attached hereto, and upon the Parties' completion of the terms herein, this Consent Decree shall constitute a final settlement of all claims in this action.

SO ORDERED THIS 19th DAY OF March, 2009



United States District Judge