

LAW OFFICES OF JACQUES G. BRONZE

A Professional Corporation

Unit A, 151 W Harmon Industrial Park Rd

Tamuning, Guam 96913

Telephone: (671) 649-2392

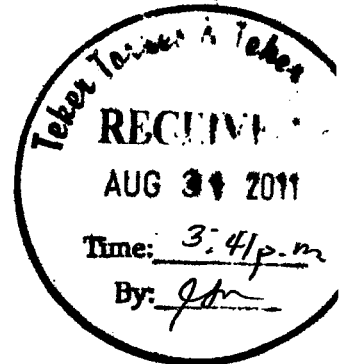
Facsimile: (671) 649-2394

Attorney for Defendants

FILE

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SUPERIOR COURT OF GUAM



IN THE
SUPERIOR COURT OF GUAM

EDDIE YOKENO, also known as MATAO
YOKENO, as Trustee and Secretary-Treasurer
of Able Industries of the Pacific; and ABLE
INDUSTRIES OF THE PACIFIC,

Plaintiff,

v.

ELMORE COTTON, JOAQUIN LEON
GUERRERO, JENNIFER DUFFIE,
PATRICIA MAE COTTON, and
FRANCISCO FLORIG,

Defendants.

CIVIL CASE NO. CV1163-09

~~DECLARATION OF JOAQUIN LEON
GUERRERO IN SUPPORT OF
MOTION TO DISMISS CASE FILED
IN THE COURT REGISTRY ACCOUNT~~

I, JOAQUIN LEON GUERRERO, hereby declare and state as follows:

1. I have personal knowledge of the facts stated in this Declaration.
2. I am the current Chief Executive Officer of Able Industries of the Pacific ("Able").
3. I was selected as the Chief Executive Officer for Able Industries on or about June 2009.

4. On or about April 2011, the U.S. Department of Labor notified Able Industries that it was conducting an audit of the payroll records of Able Industries to ensure that Able Industries was in compliance with all applicable federal labor laws and regulations.

5. This audit was conducted over a period of 5 months and the initial notices indicated issues of underpayment of health and welfare benefits to approximately 150 employees.

6. After holding a series of meetings with investigators from the U.S. Department of Labor, the agency eventually issued written notices outlining their findings and that Able Industries had underpaid certain employees for health and welfare benefits mandated under the Service Contract Act.

7. Attached as Exhibit "1" is a true and correct copy of a written letter, dated August 24, 2011, issued by the U.S. Department of Labor to Able Industries of the Pacific.

8. Attached as Exhibit "2" is a true and correct copy of a written letter, dated August 24, 2011, issued by the U.S. Department of Labor to Able Industries of the Pacific.

9. Attached as Exhibit "3" is a true and correct copy of a written letter, dated August 24, 2011, issued by the U.S. Department of Labor to Able Industries of the Pacific.

10. I have spoken to at least one contracting officer who has oversight of several contracts of Able Industries with the federal government and an immediate resolution of the

***Declaration of Joaquin Leon Guerrero in Support of
Defendants' Motion to Release Funds Held in Court Registry Account
Matao Yokeno v. Elmore Cotton, et al.
Superior Court of Guam Civil Case No. CV1163-09***

Page 3 of 3

U.S. Department of Labor's findings is a necessary precursor for Able Industries to continue on these contracts.

11. At the present time, Able Industries does not possess the necessary money to fully satisfy the wage payments calculated by the U.S. Department of Labor.

12. The Superior Court of Guam has in its possession \$800,000.00 belonging to Able Industries and it is my belief that by releasing that money to the U.S. Department of Labor, these wage awards can be satisfied immediately.

13. Unless this money can be released the wage awards in full, Able Industries will be found in violation of its contracts and will result in irreparable harm to the company's ability to maintain and/or pursue contracts with the federal government to provide employment for people with disabilities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on this 31 day of August, 2011.



JOAQUIN LEON GUERRERO

EXHIBIT “1”

U.S. Department of Labor

Employment Standards Administration
Wage & Hour Division
U.S. District Courthouse, 1st Floor
520 West Soledad Avenue
Agana, Guam 96932
Phone: (671) 473-9177
Fax: (671) 473-9189



August 24, 2011

Via Hand Delivery

Mr. Joaquin Leon Guerrero
Chief Executive Officer
Able Industries of the Pacific
341 South Marine Corps Drive
Suite 204
Tamuning, Guam 96913

Subject: Referral for determination as to whether the earlier withholding request should be affirmed

Contract Numbers: FA5240-08-C-0001; FA5240-09-C-0001; FA5240-09-C-0002; FA5240-06-C-0001

Case Numbers: 1585997; 1625617; 1628297; 1628298

Dear Mr. Leon Guerrero,

As you are aware, a final conference was recently held regarding the results of an investigation of your firm's performance on contract numbers FA5240-08-C-0001; FA5240-09-C-0001; FA5240-09-C-0002; and FA5240-06-C-0001

At that conference, the firm was advised that the investigation revealed that 172 employees were underpaid, in the amount of \$386,846.72, as a result of the SCA violations. These violations were as a result of your firm's failure to pay the required Health and Welfare fringe benefits in 2010. During the final conference, and as recently as August 23, 2011, the firm was provided with a Summary of Unpaid Wages listing individual employees and the amounts found due and an opportunity to discuss the violations. The record indicates that the firm has refused to promptly pay the back wage findings in this matter.

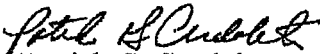
In accordance with established procedures, the investigation report is being forwarded to District Director Terence Trotter for review and a determination as to whether the earlier request to withhold contract funds to satisfy the back wage findings should be affirmed. A copy of our withholding request is enclosed. Accordingly, you may submit your views in writing on whether wage violations occurred to District Director Terence Trotter within fifteen (15) days of the date of this letter. Mr. Trotter's address is U.S. Dept. of Labor, Wage Hour Division, Ala Moana Blvd., Room 7-225, Honolulu HI 96850. You will be advised of the determination in this matter

after review of the investigation file and any submission that you provide in the time frame established.

Please be advised that any determination regarding the withholding of contract funds will not result in the distribution of these funds to the underpaid workers until such time as the administrative remedies available to your firm have been completed. Those procedures will be initiated by the Department and may be found in Department of Labor Regulations, 29 CFR Part 6, Subpart B, copy enclosed.

Of course, if your firm wishes to satisfy the back wage findings at this time, you may do so by forwarding a certified check to this office in the amount of \$386,846.72, made payable to the Wage and Hour Division - Labor. Please include the case numbers listed above on your check.

Sincerely,


Patrick G. Candoleta
Assistant District Director

Enclosures

Cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator



U.S. Department of Labor
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
300 Ala Moana Blvd., Room 7-225
Honolulu HI 96850

CERTIFIED MAIL No. 7008 3230 0002 1448 6202

August 24, 2011

Mr. Brett Clark
Commercial Acquisition Flight Chief
U.S. Department of the Air Force
36th Contracting Squadron
Andersen Air Force Base, Guam
Unit 14040
Building 17000
APO AP Guam, 96543

Re: Able Industries of the Pacific
Contract Numbers: FA5240-08-C-0001; FA5240-09-C-0001;
FA5240-09-C-0002; FA5240-06-C-0001

Our Case Numbers: 1585997; 1625617; 1628297; 1628298

Dear Mr. Clark:

This office is conducting an investigation of the subject firm's performance on the above cited contracts. These contracts are subject to the provisions of the McNamara-O'Hara Service Contract Act (SCA).

Our investigation revealed that the employer failed to pay the Health and Welfare Fringe Benefits as required under the SCA.

These violations resulted in SCA back wages owed under the following Contracts:

1. FA5240-08-C-0001 - \$238,883.89
2. FA5240-09-C-0001 - \$98,783.24
3. FA5240-09-C-0002 - \$28,500.81

4. FA5240-06-C-0001- \$20,678.78

The firm has not agreed to pay the back wages Immediately.

Therefore, in order to protect the interests of the Federal government and the affected employees, and in accordance with Department of Labor Regulations, 29 CFR Part 4.187, and as provided for in 48 CFR, Federal Acquisition Regulations (FAR) Part 22.1022, it is requested that \$386,846.72 be withheld from contract payments due the contractor. If there are insufficient funds to withhold on these contracts, cross withholding of funds from any current Federal contract with the same contractor which is subject to SCA requirements is authorized by 29 CFR Part 4.187.

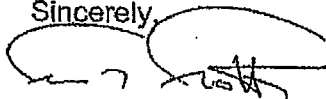
We request that you advise us immediately if you have any information that the subject contractor has filed bankruptcy proceedings or if any creditor has filed a petition of involuntary bankruptcy against the subject contractor.

Should we succeed in securing direct payments to the employees or should there be any change in the amounts noted, we will advise you immediately. Thank you for your continuing cooperation in this matter.

If you have any questions, please contact Assistant District Director Patrick Candoleta at 671-473-9177.

Please notify us in writing of your actions on this request no later than August 31, 2011. A withholding verification form is enclosed for your convenience.

Sincerely,



for Patty Davidson
Acting Regional Administrator

Enclosure

cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator



U.S. Department of Labor
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
300 Ala Moana Blvd., Room 7-225
Honolulu HI 96850

CERTIFIED MAIL No. 7008 3230 0002 1448 6196

August 24, 2011

Ms. Rosalinda B. Walton
Supervisory Contract Specialist
U.S. Department of the Navy
FISC Pearl Harbor
Marianas, Guam
PSC 455, Box 170
FPO AP Guam, 96540-1700

Re: Able Industries of the Pacific
Contract Numbers: N00604-09-C-0007; N00604-09-P-0449
Our Case Numbers: 1624730; 1624872

Dear Ms. Walton:

This office is conducting an investigation of the subject firm's performance on the above cited contracts. These contracts are subject to the provisions of the McNamara-O'Hara Service Contract Act (SCA).

Our investigation revealed that the employer failed to pay the Health and Welfare Fringe Benefits as required under the SCA.

These violations resulted in \$117,484.38 owed in SCA back wages under Contract Number N00604-09-C-0007 and \$83,670.14 owed in SCA back wages under Contract Number N00604-09-P-0449.

The firm has not agreed to pay the back wages immediately.

Therefore, in order to protect the interests of the Federal government and the affected employees, and in accordance with Department of Labor Regulations, 29 CFR Part 4.187, and as provided for in 48 CFR, Federal Acquisition

Regulations (FAR) Part 22.1022, it is requested that \$201,154.52 be withheld from contract payments due the contractor. If there are insufficient funds to withhold on these contracts, cross withholding of funds from any current Federal contract with the same contractor which is subject to SCA requirements is authorized by 29 CFR Part 4.187.

We request that you advise us immediately if you have any information that the subject contractor has filed bankruptcy proceedings or if any creditor has filed a petition of involuntary bankruptcy against the subject contractor.

Should we succeed in securing direct payments to the employees or should there be any change in the amounts noted, we will advise you immediately. Thank you for your continuing cooperation in this matter.

If you have any questions, please contact Assistant District Director Patrick Candoleta at 671-473-9177.

Please notify us in writing of your actions on this request no later than August 31, 2011. A withholding verification form is enclosed for your convenience.

Sincerely,



For

Patty Davidson
Acting Regional Administrator

Enclosure

cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator

U.S. Department of Labor

Employment Standards Administration
Wage & Hour Division
U.S. District Courthouse, 1st Floor
520 West Soledad Avenue
Agana, Guam 96932
Phone: (671) 473-9177
Fax: (671) 473-9189



August 24, 2011

Via Hand Delivery

Mr. Joaquin Leon Guerrero
Chief Executive Officer
Able Industries of the Pacific
341 South Marine Corps Drive
Suite 204
Tamuning, Guam 96913

Subject: Referral for determination as to whether the earlier withholding request should be affirmed

Contract Numbers: N00604-09-C-0007; N00604-09-P-0449
Case Numbers: 1624730; 1624872

Dear Mr. Leon Guerrero,

As you are aware, a final conference was recently held regarding the results of an investigation of your firm's performance on contract numbers N00604-09-C-0007 and N00604-09-P-0449.


At that conference, the firm was advised that the investigation revealed that 73 employees were underpaid, in the amount of **\$201,154.52** as a result of the SCA violations. These violations were as a result of your firm's failure to pay the required Health and Welfare fringe benefits in 2010. During the final conference, and as recently as August 23, 2011, the firm was provided with a Summary of Unpaid Wages listing individual employees and the amounts found due and an opportunity to discuss the violations. The record indicates that the firm has refused to promptly pay the back wage findings in this matter.

In accordance with established procedures, the investigation report is being forwarded to District Director Terence Trotter for review and a determination as to whether the earlier request to withhold contract funds to satisfy the back wage findings should be affirmed. A copy of our withholding request is enclosed. Accordingly, you may submit your views in writing on whether wage violations occurred to District Director Terence Trotter within fifteen (15) days of the date of this letter. Mr. Trotter's address is U.S. Dept. of Labor, Wage Hour Division, Ala Moana Blvd., Room 7-225, Honolulu HI 96850. You will be advised of the determination in this matter after review of the investigation file and any submission that you provide in the time frame established.

Please be advised that any determination regarding the withholding of contract funds will not result in the distribution of these funds to the underpaid workers until such time as the administrative remedies available to your firm have been completed. Those procedures will be initiated by the Department and may be found in Department of Labor Regulations, 29 CFR Part 6, Subpart B, copy enclosed.

Of course, if your firm wishes to satisfy the back wage findings at this time, you may do so by forwarding a certified check to this office in the amount of \$201,154.52, made payable to the Wage and Hour Division - Labor. Please include the case numbers listed above on your check.

Sincerely,


Patrick G. Candoleta
Assistant District Director

Enclosures

Cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator

U.S. Department of Labor

Employment Standards Administration
Wage & Hour Division
U.S. District Courthouse, 1st Floor
520 West Soledad Avenue
Agana, Guam 96932
Phone: (671) 473-9177
Fax: (671) 473-9189



August 24, 2011

Via Hand Delivery

Mr. Joaquin Leon Guerrero
Chief Executive Officer
Able Industries of the Pacific
341 South Marine Corps Drive
Suite 204
Tamuning, Guam 96913

Subject: Referral for determination as to whether the earlier withholding request should be affirmed

Contract Number: N40192-10-D-9002
Case Number: 1624873

Dear Mr. Leon Guerrero,

As you are aware, a final conference was recently held regarding the results of an investigation of your firm's performance on contract number N40192-10-D-9002 .


At that conference, the firm was advised that the investigation revealed that 6 employees were underpaid, in the amount of \$1,233.22 as a result of the SCA violations. These violations were as a result of your firm's failure to pay the required Health and Welfare fringe benefits in 2010. During the final conference, and as recently as August 23, 2011, the firm was provided with a Summary of Unpaid Wages listing individual employees and the amounts found due and an opportunity to discuss the violations. The record indicates that the firm has refused to promptly pay the back wage findings in this matter.

In accordance with established procedures, the investigation report is being forwarded to District Director Terence Trotter for review and a determination as to whether the earlier request to withhold contract funds to satisfy the back wage findings should be affirmed. A copy of our withholding request is enclosed. Accordingly, you may submit your views in writing on whether wage violations occurred to District Director Terence Trotter within fifteen (15) days of the date of this letter. Mr. Trotter's address is U.S. Dept. of Labor, Wage Hour Division, Ala Moana Blvd., Room 7-225, Honolulu HI 96850. You will be advised of the determination in this matter after review of the investigation file and any submission that you provide in the time frame established.

Please be advised that any determination regarding the withholding of contract funds will not result in the distribution of these funds to the underpaid workers until such time as the administrative remedies available to your firm have been completed. Those procedures will be initiated by the Department and may be found in Department of Labor Regulations, 29 CFR Part 6, Subpart B, copy enclosed.

Of course, if your firm wishes to satisfy the back wage findings at this time, you may do so by forwarding a certified check to this office in the amount of \$1,233.22, made payable to the Wage and Hour Division - Labor. Please include the case numbers listed above on your check.

Sincerely,


Patrick G. Candoleta
Assistant District Director

Enclosures

Cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator



U.S. Department of Labor
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
300 Ala Moana Blvd., Room 7-225
Honolulu HI 96850

CERTIFIED MAIL No. 7008 3230 0002 1448 6189

August 24, 2011

Ms. Claire C. Pangelinan
Contracting Officer
U.S. Department of the Navy
NAVFAC Marianas
PSC 455, Box 195
FPO AP Guam, 96540-2937

Re: Able Industries of the Pacific
Contract Number: N40192-10-D-9002
Our Case Number: 1624873

Dear Ms. Pangelinan:

This office is conducting an investigation of the subject firm's performance on the above cited contracts. These contracts are subject to the provisions of the McNamara-O'Hara Service Contract Act (SCA).

Our investigation revealed that the employer failed to pay the Health and Welfare Fringe Benefits as required under the SCA.

These violations resulted in \$1,233.22 owed in SCA back wages under this contract.

The firm has not agreed to pay the back wages immediately.

Therefore, in order to protect the interests of the Federal government and the affected employees, and in accordance with Department of Labor Regulations, 29 CFR Part 4.187, and as provided for in 48 CFR, Federal Acquisition Regulations (FAR) Part 22.1022, it is requested that \$1,233.22 be withheld from contract payments due the contractor. If there are insufficient funds to withhold

on this contract, cross withholding of funds from any current Federal contract with the same contractor which is subject to SCA requirements is authorized by 29 CFR Part 4.187.

We request that you advise us immediately if you have any information that the subject contractor has filed bankruptcy proceedings or if any creditor has filed a petition of involuntary bankruptcy against the subject contractor.

Should we succeed in securing direct payments to the employees or should there be any change in the amounts noted, we will advise you immediately. Thank you for your continuing cooperation in this matter.

If you have any questions, please contact Assistant District Director Patrick Candoleta at 671-473-9177.

Please notify us in writing of your actions on this request no later than August 31, 2011. A withholding verification form is enclosed for your convenience.

Sincerely,



For

Patty Davidson
Acting Regional Administrator

Enclosure

cc: Rebecca Clark, Regional Government Contracts Enforcement Coordinator

VERIFICATION OF WITHHOLDING

CONTRACTOR: Able Industries of the Pacific
341 South Marine Corps Drive, Suite 204
Tamuning, Guam 96913

CONTRACT NUMBER: N40192-10-D-9002

a.) Funds in the amount of \$ _____, are being withheld as requested for Contract Number N40192-10-D-9002

b.) Partial withholding in the amount of \$ _____ for Contract Number N40192-10-D-9002

c.) _____ Funds unavailable for withholding on Contract Number N40192-10-D-9002

NOTE: If funds are unavailable for withholding on contract number(s) listed above, please attach a list of any other contracts held by the same prime contractor.

Claire C. Pangelinan, Contracting Officer

Date:

Phone Number: 671-333-2272

Please return this form to: US Department of Labor
Wage and Hour Division
Attn: District Director, Terence J. Trotter
300 Ala Moana Blvd., Room 7-225
Honolulu HI 96850

Moe Cotton (Gmail)

Subject: FW: DOL violations

From: Dubinsky, David/West [<mailto:ddubinsky@nish.org>]
Sent: Friday, August 19, 2011 05:24 PM
To: Ken Leon Guerrero; Moe Cotton (Gmail)
Cc: Dennis, Victor/National <VDennis@nish.org>; Williams, Martin/National <mwilliams@nish.org>; Hynes, Dennis/West <dhynes@nish.org>; Goodman, Elizabeth/National <EGoodman@nish.org>; Wilson, Isleen Gimenez/West <IGimenezWilson@nish.org>
Subject: DOL violations

Dear Ken:

Vic Dennis of our Regulatory Assistance team has reported that the US Department of Labor is nearing or has completed a recent audit of Able Industries and has determined that Able Industries owes a significant sum of money to past and present employees in the form of back wages and benefits. Consequently, the DOL may be taking action to recover those monies. In addition, Ms. Brandy Untalan with GSA in Guam has provided us with copies of invoices indicating that Able Industries is over \$200K in arrears with GSA for inventory that has been delivered to you for sale at the base supply stores at the Navy Base and Anderson AFB. Additionally, Ms. Rosalinda Walton, Contracting Officer with the Navy, called me earlier today to request that NISH seriously consider issuing a purchase exception and/or to remove from the Procurement List the operation of the stores at the Naval Base and at Anderson AFB due to "low shelf inventory" at the base supply stores.

These are very serious matters and has prompted NISH to publish a sources sought notice to determine the level of interest among other nonprofit agencies to assume responsibility for the performance of the AbilityOne® projects currently on the Procurement List and being performed by Able Industries. We are taking this step as a proactive measure to ensure that we do whatever we can to protect the jobs for people with significant disabilities currently employed on AbilityOne® contracts being performed by Able Industries of the Pacific.

Please contact me and/or Martin Williams directly regarding the matters referenced above. Given the extent of the monies owed to outside organizations, NISH is very concerned about the financial viability of Able Industries moving forward. Any information you can provide to NISH regarding Able Industries' ability to meet its current obligations is appreciated.

Sincerely,

David

David Dubinsky
Executive Director, NISH Pacific West
2633 Camino Ramon, Suite 150
San Ramon, CA 94583
925-543-5100 (O)
925-250-0170 (Cellular)

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this message in error, please notify the sender immediately and delete all
copies of this message.