

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

ALJ Case No: 2010-LCA-00036

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ADMINISTRATOR, WAGE & HOUR DIVISION,  
UNITED STATES DEPARTMENT OF LABOR  
*Prosecuting Party*

v.

BSST SOFTWARE, INC.  
*Respondent*

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Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Christine A. Collins, Esquire, (U.S. Department of Labor, Office of the Solicitor)  
Boston, Massachusetts, for Prosecuting Party

Sally L. Adams, Esquire, (The Law Office of Sally L. Adams)  
Milton, Massachusetts, for Respondent

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**DECISION AND ORDER APPROVING SETTLEMENT**  
**AGREEMENT AND CONSENT FINDINGS**

This case arises from a request for hearing filed by the Respondent in the above captioned matter, which involves the enforcement of an H-1B Labor Condition Application by the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator” or “Prosecuting Party”) under section 212(n) of the Immigration and Nationality Act (“the Act”),

8 U.S.C. §1101(a)(15)(H)(I)(b) and § 1182(n), and the regulations promulgated there under at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. §655.700 *et seq.* On August 24, 2010, the Administrator, issued a determination that the Respondent violated the Act by willfully failing to pay wages as required by the Act, failing to make the required displacement inquiry, failing to post notice of the filing of the Labor Condition Application, and failing to otherwise comply with the regulations.

The Administrator determined that the Respondent owed back wages totaling \$44,710.41 and assessed civil money penalties in the amount of \$24,875.00. On September 7, 2010, the Respondent, pursuant to 20 C.F.R. § 655.820, timely filed a request for review of the Administrator's determination. A formal hearing was originally scheduled for October 19, 2010, in Boston, Massachusetts and was subsequently continued to October 26, 2010. Prior to the hearing, the parties informed me that they reached a resolution of all disputed issues and I cancelled the scheduled hearing. On October 22, 2010, the parties filed a document entitled: Settlement Agreement and Consent Findings ("Agreement"). Upon review of the Agreement, I find that the terms are fair and reasonable and in substantial compliance with 29 C.F.R. § 18.9(b) and it is approved.

Pursuant to the Agreement the following order shall enter:

- (1) The Agreement is APPROVED and its terms are adopted and incorporated herein by reference;
- (2) The parties shall comply with each and every term contained in the Agreement;
- (3) Respondent agrees that it is liable for a total payment of \$69,585.41, paid as follows:
  - a. Respondent agrees to pay \$24,875.00 as an alleged civil money penalty, on or before November 15, 2010. Respondent shall transmit the total amount in the form of a certified or bank check or money order for the full amount, made

payable to the Wage & Hour Division-Labor, noting Reference Number 1545344 and remit the same to:

Northeast Regional Office  
Wage & Hour Division, ESA  
The Curtis Center, Suite 850 West  
170 South Independence Mall West  
Philadelphia, PA 19106-3317

- b. Respondent agrees to pay the total amount of \$44,710.41, less deductions for the employees' share of social security and withholding taxes, to the current or former employees listed on the Summary of Unpaid Wage, attached as Exhibit A to the Agreement, on or before November 15, 2010.
- (4) Respondent agrees that by January 31, 2011, Respondent shall provide the Administrator with a copy of the payroll and a copy of the cancelled checks (front and back) used to disburse each payment, or a copy of the electronic transfer as evidence of payment from the bank of the affected current or former employees, and a statement attesting to the fact that all payments have been made and that all legal deductions have been paid by the employer to the appropriate Federal and State revenue authorities. Such proof of payment shall be transmitted to:

Wage & Hour Divisions  
United States Department of Labor,  
John F. Kennedy Federal Building, Room 525,  
Boston, MA 02203

- (5) Any amounts which cannot be distributed to current or former employees listed on the Summary of Unpaid Wages, attached as Exhibit A to the Agreement, because of the inability of the Respondent to locate a current or former employee or because of the current or former employee's refusal to accept such sum or because of the failure of a current or former employee's check to clear through Respondent's U.S. bank on or before January 24, 2011, shall be redrafted and a single check for the total net undistributed amount shall be made payable to the "Wage and Hour Division – Labor." Such check shall note Reference Number 1545344 and be forwarded to the Administrator at the address listed in paragraph (4) above, on or before January 31, 2011 and shall be deemed to satisfy any obligation of Respondent with respect to such persons. Any sum not distributed to the employee or to his personal representative after three years because of inability to locate the employee or because of his refusal to accept such sum, shall be deposited with the Treasurer of the United States as miscellaneous receipts.
- (6) Respondent shall not, under any circumstances, accept and keep any amount returned to it by a person owed compensation under this Agreement. Any such amount shall be immediately paid to the Administrator as set forth above, and

Respondent shall have no further obligations with respect to such returned monies.

- (7) Respondent agrees to comply in all respects with the Act and applicable regulations in the future;
- (8) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Agreement is retained by the U.S. Department of Labor, Office of Administrative Law Judges (“OALJ”);
- (9) Enforcement Proceedings for violation of the Agreement may be initiated any time by filing a motion requesting an order of enforcement and sanctions with the OALJ;
- (10) The entire record upon which this Order was issued consists of the Administrator’s determination, Respondent’s request for a hearing, Respondent’s Motion to Dismiss and/or for Summary Judgment for Lack of Jurisdiction, and the Agreement;
- (11) The parties waive any further procedural steps before an administrative law judge and any right to challenge or contest the validity of the Agreement, this Order, and any other order issued in accordance with the Agreement.
- (12) This Order shall fully and finally resolve all outstanding issues between the parties that were raised or reasonably could have been raised in connection with the Administrator’s determination letter of August 24, 2010;
- (13) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (14) Each party shall bear its own costs, attorney’s fees and expenses;
- (15) Nothing contained in the Agreement or this Order, or any records related thereto, shall be deemed an admission by Respondent of the allegations contained in the Administrator’s Determination. Respondent seeks to avoid the significant expense, inconvenience and uncertainty of protracted litigation, and the removal of any potential for disqualification from approval of petitions is a material part of the consideration for Respondent to enter into the Agreement; and

- (16) The Agreement and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding.

**SO ORDERED.**

**A**

**JONATHAN C. CALIANOS**  
Administrative Law Judge

Boston, Massachusetts

EXHIBIT A

Summary of Unpaid Wages

**U.S. Department of Labor**  
Wage and Hour Division



( Office Address) Boston MA District Office Room 525 John F. Kennedy Federal Building Boston, MA 02203 617-624-6700	Investigator: <b>Patricia Colarossi</b>	Date: <b>10/22/2010</b>
	Employer Fed Tax ID Number <b>04-3070727</b>	

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
D'Gee, Abad	1000 E. Joppa Rd. Suite #606 Towson, MD 21286	05/05/2007 to 06/30/2007		\$12,605.23
Gupta, Nikhil K	82 Brittany Farms, Apt. J-130 New Britain, CT 06053	12/06/2008 to 01/31/2009		\$333.00
Kashireddy, Sushma	9 Lakeview Ave., Unit 5 Reading, MA 01867	12/06/2008 to 02/28/2009		\$54.00
Krishnakutty, Anita	3 Kimball Court, Apt. 303 Woburn, MA 01801	06/30/2007 to 09/05/2009		\$4,870.44
Lau, Tsz Fung	6 Granite Rail Court Quincy, MA 02169	03/03/2007 to 09/05/2009		\$778.00
Legaspi, Ada	1668 Gilliam Ct. Riverside, CA 92501	06/02/2007 to 04/05/2008		\$8,442.00
Mulljogi, Sandhya	383 Massachusetts Ave.#3204 Arlington, MA 02474	07/05/2008 to 10/04/2008		\$13,893.17
Narayana, Priya	6850 Peachtree Dunwoody Rd. Atlanta, GA 30328	12/01/2007 to 01/05/2008		\$840.00
Nunna, Naveen	171 West Square, Apt.4 Rochester, NY 14623	03/31/2007 to 03/01/2008		\$269.00
Rajendran, Meera	271 Ridge Lane #214 Waltham, MA 02452	06/02/2007 to 12/01/2007		\$2,253.57
Swaminathan, Anjani	167 Kennedy Drive #502 Malden, MA 02148	10/04/2008 to 11/01/2008		\$372.00

I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above by <b>09/03/2010</b>  Signed: _____	Employer Name and Address <b>The Boston Group BSST Software Group, Inc. 21 Southwest Cutoff  Northborough, MA 01532</b>	TOTAL	<b>\$44,710.41</b>
			* Column 4-Code FLSA 1 PCA 2 SCA 3 OBRA 4 CWHSSA 5 CCPA 6 FMLA 7

Date: 10/22/2010 12:59:00 PM

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Form WH-56  
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