ORDER APPROVING CONSENT FINDINGS

An Assistant District Director of DOL’s Wage and Hour Division (“WHD” or “Plaintiff”) issued an Administrator’s Determination (Reference #1764275) on July 6, 2018 to Gail Arnado, the owner of War Wagon Services/Buckaroo Bills, d/b/a Buckaroo Bills Ice Cream Parlor & BBQ (“Respondent”), finding several violations of certain H-2B provisions of the Immigration and Nationality Act (“INA”) regarding an Application for Temporary Employment Certification covering the period April 1, 2015 to October 28, 2015.1 As a consequence of the violations, Plaintiff ordered Respondent to pay $15,507.47 in back wages to six (6) workers, which Respondent paid in full. The Plaintiff also assessed a civil money penalty (“CMP”) in the amount of $40,181.88. See 29 C.F.R. § 503.23. By letter received on August 5, 2018, Respondent requested a hearing, which is currently scheduled for June 8, 2021 at or near Bozeman, Montana. See 29 C.F.R. § 503.43.

However, on April 29, 2021, counsel for the Plaintiff filed Consent Findings and a proposed Order indicating that the parties have reached a resolution on all issues, thereby obviating the need for a formal hearing. The parties indicate that Respondent agrees to withdraw its hearing request and will not apply for or receive foreign labor certifications from the United States Department of Labor for a period of five (5) years, beginning from the date of this Order. In return, the parties indicate that the Administrator agrees to vacate the CMP.

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1 The H-2B program permits employers to hire foreign workers to perform temporary, non-agricultural work within the United States. See 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. § 655.6(b). Employers who seek to hire foreign workers under this program must apply for and receive labor certification from the U.S. Department of Labor. 8 C.F.R. § 214.2(h)(6)(iii). Such applications are reviewed by a Certifying Officer (“CO”) in the Office of Foreign Labor Certification of the Employment and Training Administration (“ETA”).
The administrative procedures relevant to the approval of consent findings are set forth at 29 C.F.R. § 503.49. After reviewing the terms of the agreement, I am satisfied that they conform to the requirements of 29 C.F.R. § 503.49(b) and are a satisfactory resolution of the issues previously contested. Accordingly, the Consent Findings are adopted and incorporated in full into this Order. The hearing scheduled for June 8, 2021 at or near Bozeman, Montana is CANCELLED; this matter is DISMISSED WITH PREJUDICE.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge