

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION

\_\_\_\_\_  
MOISES RODRIGUES, )  
SERGIO OLIVEIRA, )  
EDSON SILVA, )  
WANDERSON DE SOUSA, and )  
ALEXANDRE ROCHA, )  
 )  
on behalf of themselves and all ) Case No. 06-0491 "A" mag.3  
others similarly situated, ) District Judge Zainey  
 ) Magistrate Judge Knowles, III  
 )  
Plaintiffs, )  
 )  
BELFOR USA GROUP INC., )  
Defendant. )  
\_\_\_\_\_ )

**COLLECTIVE ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is entered into this 7 day of August, 2006, by, between and among Representative Plaintiffs Moises Rodrigues, Sergio Oliveira, Edson Silva, Alexandro Rocha and Wanderson De Sousa ("Representative Plaintiffs"), on behalf of themselves and the Covered Employees (as defined below) and Belfor USA Group, Inc., a Colorado corporation ("Belfor").

**I. RECITALS**

The parties agree and stipulate to the following facts:

A. On or about August 29, 2005, Hurricane Katrina made landfall in New Orleans. Belfor was subsequently engaged in various projects in and around the Gulf Coast area arising from or relating to storm damage caused by Hurricane Katrina (the "Belfor Projects").

B. In order to perform the Belfor Projects, Belfor engaged the services of subcontractors Expro Services, Inc., Ticos Construction, LLC, M-2, Inc., Carl E. Woodward

LLC, and Vent-Vac Systems, LLC (the "Belfor Subcontractors"). The Belfor Subcontractors hired directly or indirectly employees and/or other independent contractors to work on the Belfor Projects (collectively, the "Covered Employees").

C. On or about February 1, 2006, Representative Plaintiffs filed suit in the United States District Court for the Eastern District of Louisiana, Case No. 06-0491 (the "Litigation") contending, among other things, that the Covered Employees were not paid overtime in violation of federal law and that Belfor was a joint employer of the Covered Employees with the Belfor Subcontractors (the "Joint Employer Overtime Claim"). The Covered Employees also claimed they were entitled to both actual damages and liquidated damages (the "Damages Claim").

D. In addition, the Representative Plaintiffs contend in the Litigation that their attorneys, the Southern Poverty Law Center ("SPLC"), are entitled to be reimbursed for their costs and attorneys fees in prosecuting the Litigation on behalf of the Covered Employees (the "Attorneys Fee Claim").

E. Following the filing of the Litigation, various Covered Employees have filed consents to join the Litigation.

F. The parties deem it to be in their mutual interest and to their mutual advantage to settle, adjust, and compromise the Litigation, the Joint Employer Overtime Claim, the Damages Claim, the Attorneys Fee Claim, and all other controversies and disputes existing between them, on the terms and conditions contained herein, except as noted in paragraphs IV.E and X.

## **II. NOTICE TO COVERED EMPLOYEES**

A. Representative Plaintiffs' attorneys shall, at their sole cost and expense, provide reasonable notice of the pendency of the Litigation and procedures for opting in to the settlement to all Covered Employees it can reasonably locate.

B. As part of the settlement agreement, Defendant has provided and will continue to provide Representative Plaintiffs' attorneys with all names, addresses, and other contact information of Covered Employees in its possession and otherwise cooperate with the notice process.

C. The Parties agree that Representative Plaintiffs' attorneys shall send written notice in the form of attached Exhibit A (the "Notice") to all Covered Employees for which a reasonable address is available that describes the nature of the allegations in the Litigation, the proposed settlement, and the opt-in procedures.

D. Notice by publication in a form similar to Exhibit B shall also be allowed in media designed to reach the Covered Employees, i.e., in a periodical in the native language of the Covered Employees or as a public service announcement circulated in the Covered Employees' geographic location.

### **III. PROCEDURE FOR FUTURE OPT-INS**

A. Covered Employees shall have an opt-in period of three hundred sixty (360) days from the date of this Agreement.

B. To be considered a timely opt-in, Belfor must within the above 360 day deadline, receive a FLSA Consent Form in the form of attached Exhibit C (the "Consent Form") and a reasonably complete "Covered Employee Information Form", Exhibit D, from each Covered Employee.

### **IV. CALCULATION OF SETTLEMENT AWARDS**

A. In consideration of the execution of this Agreement and the dismissal of the Litigation, Belfor shall pay, in accordance with this Agreement, 100% of the unpaid overtime

wages to each Covered Employee who timely submits Exhibits C and D and who worked on a Belfor Project for a Belfor Subcontractor as a result of damage caused by Hurricane Katrina.

B. In accordance with Internal Revenue Code section 3505, Belfor shall report, deduct, and pay to the Internal Revenue Service amounts withheld from these payments to Representative Plaintiffs at the rate of 26%, plus each Covered Employee's share of Social Security and Medicare taxes, and report, deduce and pay applicable and appropriate state taxes. Belfor shall prepare and forward to the address on each Covered Employee's W-9, a Form W-2 that reports each Covered Employees' wages and withholdings even though Belfor is not required to furnish such form pursuant to Treasury Regulation Section 3605-16.

C. In consideration of the execution of this Agreement and the dismissal of the Litigation, Belfor shall also simultaneously pay as liquidated damages the sum of 45% of the overtime wages calculated above to each Covered Employee who timely submits Exhibits C and D and who worked on a Belfor Project for a Belfor Subcontractor as a result of damage caused by Hurricane Katrina.

D. Representative Plaintiffs shall also receive a payment, based on their service in as a representative in this matter, of \$500 of their outstanding liquidated damages. Such payment shall be made after the final Covered Employees opt-in to the matter and provide the documentation contemplated by paragraphs III and IV.

E. Belfor shall prepare and forward to the address on his W-9, a Form 1099-MISC that reports each Covered Employee's liquidated damages in Box 3, "Other income."

**V. PROCEDURE FOR CALCULATION OF COVERED EMPLOYEES' SETTLEMENT AWARDS**

A. Defendant has provided and will continue to update Representative Plaintiffs' attorneys with all weekly summaries and underlying detail for all nonsupervisory employees of

the Subcontractors, including but not limited to time sheets and labor invoices for the Belfor Subcontractors for the Belfor Projects as defined herein.

B. Belfor shall issue and mail a check to the SPLC representing the claims of the Covered Employees who have opted in at the time of this Agreement in the amounts set forth on Exhibit E, which check shall be received within thirty days of the final execution of this Agreement and Court approval of this settlement, whichever shall last occur.

C. For Covered Employees whose Exhibits C and D are received after the execution of this Agreement, Belfor shall mail a calculation based on Subcontractor invoices approved for payment by Belfor with reasonably available verifying documents to Representative Plaintiffs' attorneys within thirty days of receipt of the Covered Employees' forms by Belfor.

D. Plaintiffs' attorneys will verify the accuracy of the calculation and then confirm the calculation or register a dispute in writing with Belfor within thirty (30) days.

E. If the calculation is confirmed, Belfor shall issue payment in the confirmed amount to the SPLC as provided in paragraph V.F.

F. On a periodic basis, but no less than every two weeks, Belfor shall mail a check to the SPLC with amounts to cover the confirmed amounts described in paragraphs V.D., V.E., and V.G. along with a register identifying the Covered Employees whose claims are being included.

G. If the calculation is disputed for any Covered Employee, Belfor shall pay the amount of Settlement Consideration reflected by Belfor's records and calculation unless and until the parties resolve the dispute. Any dispute which cannot be resolved through good-faith negotiations may be brought before the Court for final resolution pursuant to the terms of this Agreement.

**VI. DISBURSEMENT OF CHECKS BY REPRESENTATIVE PLAINTIFFS' ATTORNEYS**

A. In order to receive settlement proceeds from the SPLC, each Covered Employee must complete both a W-9 form and an Individual Release of Claims Pursuant to the Settlement Agreement (the "Individual Release"), forms of which are attached as Exhibits F and G. The SPLC shall not release settlement proceeds to a Covered Employee unless and until it has received a fully executed W-9 form and a fully executed Individual Release.

B. Counsel for Representative Plaintiffs will forward to Defendants' attorney each W-9 form and signed Individual Release within one week of disbursement of the settlement proceeds to a Covered Employee.

**VII. DISMISSAL OF ACTION**

A. The parties agree that it is in their intention for the Court to retain jurisdiction of the principal demand so as to effectuate the purposes of this Settlement Agreement and that this Agreement should be construed with such intention in mind. The parties agree to draft such pleadings, with the advice and consent of the Court, for the following events to occur for each Covered Employee receiving settlement proceeds: (1) to opt-in to this matter, (2) permit the Court to confirm the settlement payment, and (3) dismiss each Covered Employee's claim with prejudice. The parties also agree that the pleadings described herein shall be filed under seal, if permitted by the Court.

B. Belfor will comply with any obligation imposed upon it under the FLSA not to discharge or in any manner discriminate against Representative Plaintiffs for asserting their FLSA rights.

### VIII. MANAGEMENT PRACTICES FOLLOWING EXECUTION OF SETTLEMENT AGREEMENT

As additional consideration, Belfor agrees to implement the following management practices within thirty days following execution of this Agreement:

A. For future Belfor projects arising from catastrophic natural disasters where Belfor utilizes a significant number of contract laborers either directly or through a Belfor subcontractor (a "Future Natural Disaster"), Belfor will display a sign providing a toll-free phone number answered at Belfor's headquarters which the workers can call in the event of questions and/or complaints about wages or overtime pay. This sign will be displayed with translation into language(s) spoken by a significant number of workers on the project. In addition:

- i. Belfor will provide interpreter services if necessary to communicate with callers.
- ii. Belfor will answer the telephone during at least twelve hours a week outside the hours workers are employed on Future Natural Disasters.
- iii. Belfor shall keep complainants' identities reasonably confidential to the extent feasible.
- iv. Belfor will promptly investigate any complaints.

B. In Future Natural Disasters, Belfor will include in its contracts with its subcontractors a provision that it reserves the right to inspect the subcontractors' records, including all payroll and time keeping records, for purposes of auditing compliance with Fair Labor Standards Act requirements. Belfor will also contractually require that its subcontractors obtain this inspection right for any subcontractors used by the Belfor subcontractors.

C. In Future Natural Disasters, Belfor will make reasonable efforts to audit all Belfor subcontractors for the purpose of assessing compliance with Fair Labor Standards Act requirements at least once during the term of their Belfor contract. Such audits will include an

audit of employment, payroll and time-keeping records, as well as including whether workers are properly designated as employees or independent contractors of Belfor subcontractors in order to assess whether workers onsite at Future Natural Disasters are being paid in accordance with the Fair Labor Standards Act.

D. If an audit demonstrates a substantial failure to comply with the FLSA, Belfor will provide the offending subcontractor a reasonable opportunity to bring itself into substantial compliance, including making restitution for any improperly unpaid overtime wages. If the subcontractor fails to bring itself into substantial compliance, the subcontractor will be suspended until it does so. Belfor will also hold any remaining payments on the contract until the matter is resolved.

E. In Future Natural Disasters, Belfor will include in its contracts with Belfor subcontractors that the subcontractors will be obligated to pay employees with a check including a remittance advice reflecting the calculation of wages paid. Belfor will also contractually require that its subcontractors obtain this commitment from all additional subcontractors used by the Belfor subcontractors.

#### **IX. PUBLICITY OF THE SETTLEMENT AGREEMENT**

A. The parties will coordinate the issuance of a joint press release which will applaud Belfor's efforts to address the overtime issues raised by the Litigation while simultaneously acknowledging that Belfor contends it is not responsible for the conduct of its Subcontractors.

B. The press release will also be published on the web site of Representative Plaintiffs' Attorneys.



**X. MUTUAL RELEASE**

A. In consideration of the execution of this Agreement and the dismissal of the  
Litigation,

- (1) all those Covered Employees submitting a Consent Form (Exhibit C) and an Individual Release (Exhibit G) and thereby consenting to join the Collective Action, on behalf of themselves, and any other parties, persons or entities claiming under or through them, hereby release, discharge and acquit, and
- (2) the Representative Plaintiffs, on behalf of themselves, and any other parties, persons or entities claims under or through them, upon the payment described in paragraph IV.E, hereby agree to release, discharge and acquit,

Belfor and the owners of the Belfor Projects, and their respective current and former agents, servants, officers, directors, shareholders, employees, owners, officials, subsidiaries, divisions, branches, units, affiliates, parents, attorneys, successors, predecessors, heirs, personal representatives, and assigns, from all manners of action, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses and claims of every kind, nature and character whatsoever, whether in law or in equity, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, which the Representative Plaintiffs or any Covered Employee ever had or claimed to have, or now have or claim to have as of the date of execution of this Agreement, against Belfor or the owners of the Belfor Projects, arising out of, or in any manner relating to, the Litigation, the Joint Employer Overtime Claim, the Damages Claim, the Attorneys' Fee Claim, or any other claim or matter arising from the Representative Plaintiffs' or the Covered Employees' work, labor or services provided to or for Belfor or the owners of the Belfor Projects, including, without limitation, any personal injury, negligence or workers' compensation claims.

B. In consideration of the execution of this Agreement and the dismissal of the  
Litigation,

- (1) all those Covered Employees submitting a Consent Form (Exhibit C) and an Individual Release (Exhibit G) and thereby consenting to join the Collective Action, on behalf of themselves, and any other parties, persons or entities claiming under or through them, hereby release, discharge and acquit, and
- (2) the Representative Plaintiffs, on behalf of themselves, and any other parties, persons or entities claims under or through them, upon the payment described in paragraph IV.E, hereby agree to release, discharge and acquit,

Belfor Subcontractors, and their respective current and former agents, servants, officers, directors, shareholders, employees, owners, officials, subsidiaries, divisions, branches, units, affiliates, parents, attorneys, successors, predecessors, heirs, personal Representative Plaintiffs and assigns, from all manners of action, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses and claims of every kind, nature and character whatsoever, whether in law or in equity, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, which the Representative Plaintiffs or any Covered Employee ever had or claimed to have, or now have or claim to have, against the Belfor Subcontractors, arising out of, or in any manner relating to, the Litigation, the Joint Employer Overtime Claim, the Damages Claim or the Attorneys' Fee Claim.

C. In consideration of the execution of this Agreement and the dismissal of the Litigation, Belfor, on behalf of itself and any other party, person or entity claiming under or through it, hereby releases, discharges and acquits the Representative Plaintiffs and the Covered Employees submitting a Consent Form (Exhibit C) and an Individual Release (Exhibit F) and thereby consenting to join the Collective Action, and their respective current and former attorneys, successors, predecessors, heirs, personal representatives, and assigns, from all manners

of action, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses and claims of every kind, nature and character whatsoever, whether in law or in equity, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, which Belfor ever had or claimed to have or claims to have at the date of the execution of this Agreement, against the Representative Plaintiffs or the Covered Employees arising out of, or in any manner relating to, the Litigation, the Joint Employer Overtime Claim, the Damages Claim, the Attorneys' Fee Claim, or any claim or other matter arising from the Representative Plaintiffs or the Covered Employees' work, labor or services provided to or for Belfor or the owners of the Belfor Projects, including, without limitation, any personal injury, negligence, or workers' compensation claims.

D. Notwithstanding the foregoing, nothing contained in this paragraph shall be deemed to release, modify or affect the parties' obligations under this Agreement. Nothing contained in this paragraph shall be deemed to release, modify or affect Belfor's claims against Belfor Subcontractors.

## **XI. REPRESENTATIONS AND WARRANTIES**

In making and executing this Agreement, the parties hereby represent, warrant and agree as follows:

A. ~~Each party has received or had the opportunity to receive independent legal~~ advice from its attorneys with respect to its rights and asserted rights arising out of the matters in controversy and with respect to the advisability of executing this Agreement.

B. Each party has made such investigation of all matters pertaining to this Agreement as it deems necessary and does not rely on any statement, promise or representation by the other party with respect to such matters.

C. Each party assumes the risk of any misrepresentation, concealment or mistake of fact or law.

**XII. NO ADMISSION**

Neither the negotiation nor the execution of this Agreement, nor any of its provisions, are to be construed as an admission by any of the parties hereto, or by their respective attorneys, officers, directors, employees or agents, regarding the truth of any matter alleged in connection with the Litigation.

**XIII. JOINT PARTICIPATION**

The parties hereto participated jointly in the preparation of this Agreement, and each party has had the opportunity to obtain the advice of legal counsel and to review, comment upon and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any party or in favor of any party. Instead, this Agreement shall be construed as if the parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.

**XIV. INTEGRATION/MODIFICATION**

This Agreement and the Exhibits constitute a single integrated written contract expressing the entire agreement between the parties. There are no other agreements, written or oral, express or implied, between the parties hereto except as set forth in this Agreement and Exhibits. This Agreement cannot be changed or terminated orally.

**XV. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed equally authentic.

**XVI. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, personal Representative Plaintiffs and assigns.

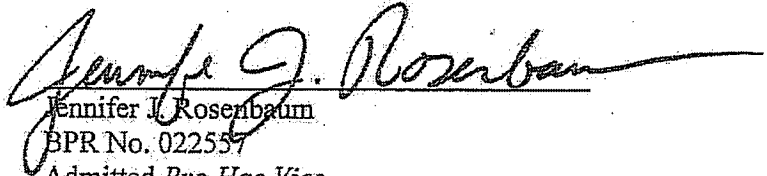
**XVII. GOVERNING LAW**

A. This Agreement shall be construed and interpreted according to the laws of the State of Louisiana.

B. Jurisdiction for resolving disputes about the settlement agreement, including calculations of any Covered Employee's damages award, remains with this Court.

AGREED and EXECUTED by the parties, acting by and through their respective undersigned counsel.

Date: August 7, 2006

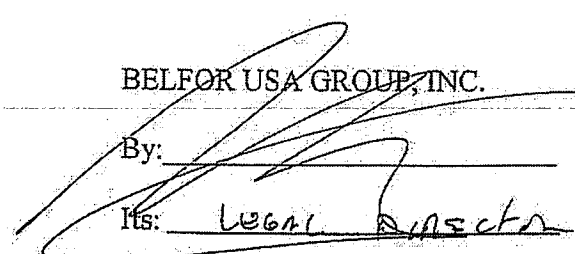
  
Jennifer J. Rosenbaum  
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Admitted *Pro Hac Vice*  
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**Southern Poverty Law Center**  
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Montgomery, Alabama 36104  
334-956-8200  
334-956-8481 (fax)

ATTORNEY FOR THE PLAINTIFFS

Date: August 7, 2006

BELFOR USA GROUP, INC.

By: 

Its: Legal Director