

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

MACEO RODGERS and LEE	§	
MCCLUNG and LAUREN SHORT,	§	
on behalf of themselves and on behalf of	§	
all others similarly situated,	§	
<i>Plaintiffs,</i>	§	CASE NO.: 3:14-CV-00055
	§	
v.	§	
	§	
SPAR BUSINESS SERVICES, INC.,	§	
ROBERT G. BROWN, and WILLIAM H.	§	
BARTELS,	§	
	§	
<i>Defendants.</i>		

**PLAINTIFFS’ PETITION FOR ENTRY OF JUDGMENT AGAINST
ROBERT G. BROWN AND WILLIAM H. BARTELS PURSUANT TO
CONFESSION OF JUDGMENT**

Plaintiffs hereby move for the immediate entry of judgment against Robert G. Brown and William H. Bartels (“Defendants”) for unpaid settlement payments pursuant to the Confession of Judgment, attached herein as Exhibit A, executed by both Defendants in connection with the court-approved settlement of the above-captioned matter. In the Confession of Judgment Defendants authorized this Court to enter judgment against them and expressly consented to the immediate execution of any judgment and waived any stay of execution thereon.

On February 29, 2022, the parties fully executed a Settlement Agreement and Release of Claims (“Agreement”), attached hereto as Exhibit B, to resolve the litigation. Pursuant to the Agreement, Defendants agreed to pay a total of \$208,846.21 in seven monthly installments. (ECF

No. 181, p. 7.) On April 13, 2022, this Court approved the parties' settlement agreement, entered final judgment, and ordered the Defendants to pay "the settlement in the amount, manner, and pursuant to the timeline set forth in the Agreement." (Dkt. No. 183, ¶ 7.) Defendants violated, and continue to violate, the Court's order by failing to make the requisite settlement payments. Specifically, while Defendants made the first five payments in accordance with the court-ordered deadlines, they failed to make the sixth and seventh payments totaling \$58,846.21. Despite Plaintiffs issuing written notice of the default and granting an extension from November 7 to December 7, 2022, Defendants have not made these payments and continue to violate the Court's Order and the parties' Settlement Agreement. Plaintiffs request this Court immediately enter judgment against Defendants in the amount of \$58,846.21 pursuant to the Confession of Judgment.

PROCEDURAL HISTORY

Plaintiffs incorporate the extensively detailed procedural history provided in the Unopposed Motion for Settlement and only provide a brief summary below. (*See* Dkt. No. 181, pp. 1-4.)

On February 21, 2014, Maceo Rodgers filed a Complaint on behalf of himself and other similarly situated merchandisers, against SPAR Business Services, Inc. ("SBS"), Robert G. Brown, and William H. Bartels in the District Court for the Southern District of Texas, Galveston Division, civil action No. 3:14-CV-00055 (Dkt. No. 1) (hereinafter "Civil Action"). The Civil Action alleged that merchandisers who were classified and paid as independent contractors should have been classified as "employees" and should have been paid overtime compensation under the Fair Labor Standards Act ("FLSA"). The parties heavily litigated the Civil Action, including

through bankruptcy proceedings¹ and dispositive motions. (Dkt No. 181.) On March 11, 2021, the Court issued an order compelling arbitration for the sixteen (16) merchandisers who had signed arbitration agreements and stayed the Civil Action. (Dkt. No. 168.) Following the March 11, 2021 Order, a total of eleven (11) FLSA Collective Class Members remained in the Civil Action and a total of thirteen (13) former opt-in Plaintiffs subsequently filed related arbitrations against Defendants before the American Arbitration Association (hereinafter “Related Arbitrations”). (Dkt. 181-1, Coleman Decl. ¶ 4.)

In June 2021 the parties engaged in settlement negotiations and were able to reach a global agreement to settle both the Civil Action and the Related Arbitrations. On February 29, 2022, after extensive arms-lengths negotiations, the Parties fully executed a Settlement Agreement and Release of Claims (“Agreement”) to resolve the Litigation. Pursuant to the Agreement, Defendants agreed to pay a maximum gross settlement amount of \$210,000.00, which would be adjusted downward to offset the amount of money allocated to any individuals who failed to accept their allocations. (Ex. B, Agreement at ¶ 2.27.) A total of 24 individuals, consisting of the 11 Collective Action opt-in Plaintiffs and the 13 Arbitration Claimants, were eligible to participate in the settlement. In total 21 of the 24 eligible accepted the settlement offer. (Dkt No. 181-1, Coleman Decl. ¶ 10.) Pursuant to Section 3.4 of the Agreement the sum of the allocations of the three plaintiffs who did not participate, which totaled \$1,153.79, was retained by Defendants. Thus, Defendants in total owed \$208,846.21. (ECF No. 181, p. 7.) The Agreement required Defendants to pay the Gross Settlement Amount totaling \$208,846.21 in seven (7) consecutive monthly

¹ On December 8, 2018, Spar Business Services filed for Chapter 11 bankruptcy. (Dkt. No. 132.) The bankruptcy proceedings, with accompanying motions, lasted well into the following year, with the Bankruptcy Court approving the Amended Chapter 11 Plan of Reorganization on August 8, 2019. On October 22, 2019, this Court dismissed SBS with prejudice, leaving Brown and Bartels as the only remaining defendants. (Dkt. No. 152.)

installments, with the first six (6) installments being \$30,000 each and the seventh monthly payment being \$28,846.21. (Agreement at ¶¶ 2.11, 4.2.) Class Counsel retained ILYSM Group, Inc. to act as Settlement Administrator for purposes of establishing a Qualified Settlement Fund, distributing settlement checks, reallocating unclaimed funds, and preparing tax forms. (Dkt. No. 181-1, Coleman Decl. ¶ 11.)

On April 11, 2022, Plaintiffs filed an Unopposed Motion for Approval of FLSA Settlement Agreement and Release of Claims. (Dkt. No. 181.) On April 13, 2022, this Court approved the parties' settlement agreement, entered final judgment in the Action, and ordered Defendants to pay "the settlement in the amount, manner, and pursuant to the timeline set forth in the Agreement." (Dkt. No. 183, ¶ 7.) The Court further stated that it "retain[ed] exclusive jurisdiction over the implementation, administration, and enforcement of this Order and Judgment, and all matters ancillary thereto for one year after entry of this Order and Judgment." (*Id.* ¶ 9.)

THE SETTLEMENT PAYMENTS

The Agreement required Defendants to pay the Gross Settlement Amount, totaling \$208,846.21 in six (6) consecutive monthly installments of \$30,000 and a seventh payment of \$28,846.21. (Agreement at ¶¶ 2.11, 4.2.) Pursuant to the Settlement Agreement all of Defendants' payments were to be made by wire transfer or check to the Qualified Settlement Fund and were to be held in the Settlement Fund trust account until the final payment was made and checks were ready to be distributed to Participating Plaintiffs. (Agreement at ¶ 4.2.) In accordance with the timeline dictated in the Settlement Agreement, the settlement payment deadlines and amounts were as follows:

Action	Amount	Date
Payment 1	\$30,000.00	June 8, 2022

Payment 2	\$30,000.00	July 8, 2022
Payment 3	\$30,000.00	August 8, 2022
Payment 4	\$30,000.00	September 7, 2022
Payment 5	\$30,000.00	October 7, 2022
Payment 6	\$30,000.00	November 7, 2022
Payment 7	\$28,846.21	December 7, 2022
Disbursement		December 21, 2022

(See Ex. C, Administrator Funding/Distribution Timeline). Defendants made the first five payments in accordance with the deadlines but failed to make the sixth payment of \$30,000 and seventh payment of \$28,846.21. Thus, Defendants are in default for total payments of \$58,846.21.

(Coleman ¶ Decl. 4.)

THE CONFESSION OF JUDGMENT

As part of the Settlement Agreement Defendants executed a Confession of Judgment. Specifically, the provision of the Settlement Agreement addressing the Confession of Judgment states:

If Defendants fail to make payment of the Settlement Amount consistent with this Agreement, Class Counsel will provide written notice to Defense Counsel. Defendants shall have fourteen (14) business days from the receipt of the written notice to cure any deficiency. To the extent the deficiency is not timely cured, Defendants, jointly and severally, agree to and will confess judgment to the \$210,000.00 settlement amount, as reduced by any amounts already paid as of the date of the written notice and as further reduced by any offsets provided for by Sections 3.4 and 4.2 of this Agreement, which shall become immediately due and payable. The Confession of Judgment shall be enforceable in a court of law and shall be executed in connection with this Agreement, but shall not be filed with any Court unless a Plaintiffs provide verified proof that Defendants failed to cure any deficiency within fourteen (14) business days from the receipt of written notice detailing such deficiency.

(Ex. B, Agreement at ¶ 9.1). In accordance with this provision of the settlement agreement, William H. Bartels executed the confession before a notary public on April 8, 2022 and Robert G. Brown executed the confession before a notary public on April 13, 2022. (Exhibit A, Confession of Judgment.) In the Confession of Judgment Defendants Bartels and Brown confessed they are “jointly and severally liable for the total settlement amount of \$208,846.21 to Plaintiffs, subject to any offsets permitted pursuant to Section 9.1 of the Settlement Agreement for any amounts already paid as of the date of any written notice.” (*Id.* ¶ 5.) The Confession required Class Counsel to provide written notice to Defense Counsel of any failure to make a payment consistent with the Settlement Agreement and provide Defendants “fourteen (14) business days from the receipt of the written notice to cure any deficiency.” (*Id.* ¶ 6.) If Defendants failed to timely cure the default “then Defendants jointly and severally, agree[d] to and will confess judgment to the \$208,846.21 settlement amount, as reduced by any amounts already paid as of the date of the written notice, which shall become immediately due and payable.” (*Id.*) Defendants expressly authorized “any court of competent jurisdiction to enter judgment against them so long as Plaintiffs provided verified proof of the amount of payments received through the date of written notice and that Defendants failed to cure any deficiency within fourteen (14) business days from receipt of the notice.” (*Id.* ¶ 8.) Defendants further “irrevocably agree[d] to the immediate execution of any judgment entered pursuant to this Confession and waive any stay of execution thereon.” (*Id.* ¶ 9.)

As detailed above, while Defendants made the first five payments, they failed to timely make the sixth payment of \$30,000 and seventh payment of \$28,846.21. (Coleman Decl. ¶ 3.) Thus Defendants are in default for total payments of \$58,846.21. (*Id.*) As required by the Confession of Judgment, on November 21, 2022, Plaintiffs’ Counsel served written notice of default on Defense Counsel. (*See* Ex. D, Written Notice of Default.) Pursuant to the Confession of Judgment

Defendants had fourteen (14) days to cure the default. (Exhibit A, ¶ 6.) After conferring with Defense Counsel, Plaintiffs' counsel subsequently agreed to a 30-day extension for the payments, moving the deadline for the sixth payment to December 7, 2022, and the seventh payment to January 6, 2023. (Coleman Decl. ¶ 4.) Despite this extension, Defendants failed to make either the sixth or seventh payment by the granted extension dates. (*Id.*) To date Defendants have not paid any amount of the outstanding \$58,846.21. (*Id.*) Pursuant to the Confession of Judgment, Defendants Brown and Bartels are jointly and severally liable for the amount of \$58,846.21, which is immediately due and payable.

CONCLUSION

In accordance with the parties Settlement Agreement and the Confession of Judgment, Plaintiffs respectfully request this Court immediately enter judgment against Defendants William H. Bartels and Robert G. Brown in the amount of \$58,846.21 and for such other legal and equitable relief as the Court deems proper.

Dated: February 2, 2023

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/s/ H. Clara Coleman

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CERTIFICATE OF SERVICE

By my signature hereunder affixed, I certify that a true and correct copy of the foregoing document has been delivered to counsel for Defendant and electronically filed using the CM/ECF system which will send notification on the 2nd day of February, 2023 to the following:

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/s/H. Clara Coleman
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