



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity, safety, and respect • www.ag.state.mn.us

December 19, 2023

VIA E-FILING

Honorable Barbara Case
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 64620
St. Paul, MN 55164-0620

Re: *In the Matter of the Compliance Order issued to Property Maintenance & Construction LLC and Property Maintenance and Construction Inc., and Advantage Construction Inc.*
OAH Docket No. 82-1905-39682

Dear Judge Case:

Enclosed for filing in the above-referenced matter are the following documents:

- 1) Notice and Order for Hearing and Prehearing Conference, with Exhibits A-D;
- 2) Complainant's Notice of Appearance;
- 3) Complainant's Amended Notice of Appearance;
- 4) blank Notice of Appearance; and
- 5) Certificate of Service.

By copy of this letter, service of the aforementioned documents is being made upon counsel for Respondents.

Honorable Barbara Case

December 19, 2023

Page 2

Sincerely,

/s/ Rachel Bell-Munger

RACHEL BELL-MUNGER
Assistant Attorney General
(651) 757-1272 (Voice)
(651) 297-4139 (Fax)
rachel.bell-munger@ag.state.mn.us

KAITRIN C. VOHS
Assistant Attorney General
(651) 757-1256 (Voice)
(651) 297-4139 (Fax)
kaitrin.vohs@ag.state.mn.us

*Attorneys for Nicole Blissenbach, Commissioner,
Minnesota Department of Labor and Industry*

Encs.

cc: Daniel A. Ellerbrock, attorney for PMC (w/encs. via U.S. mail & email)
Andrew D. Moran & Timothy D. Johnson, attorneys for Advantage Construction (w/encs.
via U.S. mail and email)

#5660260-v1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Compliance Order issued to
Property Maintenance & Construction LLC and
Property Maintenance and Construction Inc.
and Advantage Construction Inc.

CERTIFICATE OF SERVICE

I, Aaron Olson, declare under penalty of perjury that on December 19, 2023, I served a copy of the following documents:

- 1) Notice and Order for Hearing and Prehearing Conference, with Exhibits A-D;
- 2) Complainant's Notice of Appearance;
- 3) Complainant's Amended Notice of Appearance; and
- 3) blank Notice of Appearance,

upon the following by depositing true and correct copies in the United States mail in the State of Minnesota, City of St. Paul, properly enveloped with prepaid postage thereon, and addressed as follows:

Daniel A. Ellerbrock
Gregerson, Rosow, Johnson & Nilan, Ltd.
100 Washington Avenue South, Suite 1550
Minneapolis, MN 55401

Andrew D. Moran
Larkin Hoffman
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060
(952) 896-1541
amoran@larkinhoffman.com

Timothy D. Johnson
Smith Jadin Johnson PLLC
7900 Xerxes Avenue South, Suite 2020
Bloomington, MN 55431

Executed on: December 19, 2023

Signed: /s/ Aaron Olson
AARON OLSON
Office of the Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Compliance Order issued to
Property Maintenance & Construction LLC and
Property Maintenance and Construction Inc.
and Advantage Construction Inc.

CERTIFICATE OF SERVICE

I, Clara Atkinson, declare under penalty of perjury that on December 19, 2023, I served a copy of the following documents:

- 1) Notice and Order for Hearing and Prehearing Conference, with Exhibits A-D;
- 2) Complainant's Notice of Appearance;
- 3) Complainant's Amended Notice of Appearance; and
- 3) blank Notice of Appearance,

upon counsel for Respondents at the following email addresses:

Daniel A. Ellerbrock:
dellerbrock@grjn.com

Andrew D. Moran:
amoran@larkinhoffman.com

Timothy D. Johnson:
tjohnson@sjjlawfirm.com

Executed on: December 19, 2023

Signed: /s/ Clara Atkinson
CLARA ATKINSON
Office of the Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Compliance Order issued
to Property Maintenance & Construction LLC
and Property Maintenance and Construction
Inc., and Advantage Construction Inc.

**NOTICE AND ORDER FOR HEARING
AND PREHEARING CONFERENCE**

TO: The above-named Respondents Property Maintenance & Construction LLC and Property Maintenance and Construction Inc., and their attorney, Daniel A. Ellerbrock, Gregerson, Rosow, Johnson & Nilan, Ltd., 100 Washington Avenue South, Suite 1550, Minneapolis, MN 55401; and the above-named Respondent Advantage Construction Inc., and its attorneys, Timothy D. Johnson, Smith Jadin Johnson PLLC, 7900 Xerxes Avenue South, Suite 2020, Bloomington, MN 55431, and Andrew D. Moran, Larkin Hoffman, 8300 Norman Center Drive, Suite 1000, Minneapolis, MN 55437-1060:

RESPONDENTS PROPERTY MAINTENANCE & CONSTRUCTION LLC AND PROPERTY MAINTENANCE AND CONSTRUCTION INC., AND RESPONDENT ADVANTAGE CONSTRUCTION INC. ARE HEREBY NOTIFIED that Nicole Blissenbach, the Commissioner of the Minnesota Department of Labor and Industry, has initiated this action pursuant to Minn. Stat. § 177.27, subd. 4, to determine whether Respondents violated the Minnesota Fair Labor Standards Act and other laws governing the payment of wages and keeping of employment records, as set forth in the Department's Compliance Order dated October 4, 2023, and as amended in this Notice and Order for Hearing and Prehearing Conference; and whether Respondents must comply with the Department's Compliance Order, including paying the assessed back wages, liquidated damages, and civil penalty, as set forth in the Department's Compliance Order dated October 4, 2023, and as amended in this Notice and Order for Hearing and Prehearing Conference.

IT IS HEREBY ORDERED that a prehearing conference will be held Monday, February 5, 2024, at 11:00 a.m., by teleconference. To join the teleconference, the parties should dial +1 651-395-7448 and enter conference code number 182 706 240#. The purposes of the prehearing conference include setting a date for the contested case hearing; establishing reasonable deadlines for discovery, motions, and exchanging witness and exhibit lists; and considering such other matters that may be necessary or advisable, including entry of a protective order to facilitate discovery. The Administrative Law Judge will set the time, date, and place for hearing following the prehearing conference.

The Chief Administrative Law Judge, Office of Administrative Hearings, has assigned this matter to the Honorable Barbara Case, Administrative Law Judge, Office of Administrative

Hearings, P.O. Box 64620, St. Paul, Minnesota 55164-0620. Parties may contact the Administrative Law Judge by mail or by calling or emailing the Judge's legal assistant, Michelle Severson, at 651-361-7874; *Michelle.Severson@state.mn.us*. **All mail sent to the Administrative Law Judge should be directed to P.O. Box 64620, St. Paul, Minnesota 55164-0620.**

The contested case hearing will be conducted pursuant to the contested case procedures set forth in Minnesota Statutes chapter 14; the Rules of the Office of Administrative Hearings, Minn. R. 1400.5010-1400.8500; and Minn. Stat. § 177.27. Copies of these materials are available at *www.revisor.mn.gov* or may be purchased from the Minnesota Book Store, telephone 651-297-3000.

The attorneys for the Department, Rachel Bell-Munger and Kaitrin Vohs, Assistant Attorneys General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131; Tel.: (651) 757-1272 and (651) 757-1356; *rachel.bell-munger@ag.state.mn.us* and *kaitrin.vohs@ag.state.mn.us*; may be contacted to discuss this matter, including discovery or informal disposition of this matter.

ALLEGATIONS

Background and controlling authority

1. Minnesota has robust laws to protect employees from wage theft and to make them whole when employers commit wage theft. For instance, the Minnesota Fair Labor Standards Act, Minn. Stat. §§ 177.21-.35, requires employers to pay employees a minimum wage and overtime. Employers must also pay all wages earned at least once every 31 days on a regular payday designated in advance. Minn. Stat. § 181.101(a). If an employer fails to make such payments, the employee's wages may be recovered, at the higher of either their regular rate of pay or the rate required by any applicable legal authority. *See id.* Failure to pay wages due can result in not only an assessment of back wages, but also liquidated damages and a civil penalty. *Id.* § 177.27, subd. 7.

2. Minnesota also has laws to ensure employees know how and when they will be paid, and by whom, which helps ensure that employees are properly paid for the hours they have worked for their employer. For instance, employers must provide earning statements to employees with information on their hours worked and rate of pay. Minn. Stat. § 181.032(a)-(b). Employers must also provide a written notice at the start of employment providing information on what the employee will be paid and the legal name of the employer. *Id.* § 181.032(d).

3. The Minnesota Department of Labor and Industry, under the direction of the Commissioner, has authority to investigate potential violations of the Minnesota Fair Labor Standards Act; other laws governing the payment of wages to employees, such as section 181.101; and laws governing employer records and notifications to employees. *See* Minn. Stat. §§ 177.27, 175.20, 177.30 (2022).

4. The Commissioner may issue an order requiring an employer to comply with such labor standards, payment of wages, and record-keeping laws. *See* Minn. Stat. § 177.27, subd. 4

(2022). When the Commissioner finds an employer violated such laws and issues an order to comply, the Commissioner shall order the employer to cease and desist from engaging in the violative practices, to take affirmative steps to effectuate the purposes of the violated laws, and to pay aggrieved parties back pay and an additional equal amount as liquidated damages. *Id.*, subd. 7. If the Commissioner finds that a violation is willful, the Commissioner shall impose a civil penalty. *Id.* If an employer's records do not provide sufficient information to determine back wages, then the Commissioner may determine the back wages due based on available evidence. *Id.* §§ 177.27, subd. 3; 177.30(d).

The Department's investigation of Respondents

5. The Department commenced a comprehensive investigation to investigate possible wage theft and worker misclassification on construction projects that involved Respondent Advantage Construction Inc. ("Respondent Advantage") and Respondents Property Maintenance & Construction LLC and Property Maintenance and Construction Inc. ("Respondent PMC").

6. The Department's investigation focused on a time period covering March 4, 2019 to June 5, 2022 ("audit period"), and on 19 construction projects. These projects were located in Richfield, Woodbury, Eagan, Saint Paul, Maple Grove, Hugo, Roseville, Eden Prairie, Bloomington, Rochester, Blaine, West Saint Paul, Annandale, Medina, Minneapolis, Big Lake, and Sherburn, Minnesota.

7. Respondent PMC is a construction subcontractor. Respondent Advantage is also a construction subcontractor that has frequently subcontracted work—typically exterior roofing and siding work—to Respondent PMC. Respondent Advantage subcontracted work to Respondent PMC for at least the 19 construction projects that the Department focused on during the audit period.

8. As explained below, the Department determined that Respondents Advantage and PMC were joint employers of employees throughout the audit period. The respondents had a close working relationship during the audit period. Respondent Advantage utilized a master subcontract to regularly subcontract work to Respondent PMC. In addition, one of the incorporators of Respondent Property Maintenance and Construction Inc. worked in a supervisory position with Respondent Advantage during the audit period. Respondent PMC also functioned as a labor broker for Respondent Advantage on these projects. For instance, on paper, Respondent Advantage did not employ laborers to perform work at the construction projects, but in practice Respondent Advantage trained workers and furnished uniforms, tools, supplies, and safety equipment to workers hired by Respondent PMC's owner. Respondent Advantage supervised their work. Some employees were also told, and reasonably understood, that they worked for Respondent Advantage.

9. The Department's investigation uncovered widespread wage theft and related unlawful labor practices on these construction projects during the audit period. The Department identified at least 25 employees—jointly employed by Respondent PMC and Respondent Advantage—who had not been paid the wages they were due, including not being paid for overtime. Many of these employees were paid off the books and in cash for a substantial portion

of the audit period. These employees were not provided with earning statements or the written notice required by section 181.032 at the start of their employment. In addition, the Department found that Respondents took unauthorized deductions from employees' pay, and failed to pay employees for training time.

10. The Department also uncovered evidence that the owner of Respondent PMC warned employees not to participate in the Department's investigation, questioned employees to determine who had been cooperating, and otherwise endeavored to intimidate and discourage workers from cooperating.

11. In October 2022, the Minnesota Attorney General filed a lawsuit against Respondent PMC and its owner, alleging PMC and its owner hindered and delayed the Department's investigation, in violation of Minn. Stat. § 177.32, subd. 1(1); failed to make, keep, and preserve records, in violation of Minn. Stat. § 177.32, subd. 1(3); and refused to make records available to the Commissioner, in violation of Minn. Stat. § 177.32, subd. 1(5). *See State by Ellison v. Property Maint. & Constr., LLC, et al.*, Hennepin County District Court File No. 27-CV-22-15772. The Attorney General, Respondent PMC, and PMC's owner settled that lawsuit in the form of a consent judgment, filed in September 2023.

12. The Department undertook a comprehensive investigation to identify employees who had experienced wage theft and to determine what those employees were due. This investigation was complicated by several factors. As explained above, and as the Attorney General alleged in the lawsuit in district court, the Department discovered evidence that workers had been discouraged from speaking to the Department and from cooperating in the investigation. In addition, as noted above, many employees were kept off the books and were paid in cash. Even in cases where Respondent PMC kept at least partial records for employees, Respondent PMC tracked time and payments in an irregular and inconsistent fashion, occasionally utilizing an electronic timekeeping system, informal written records, and employee text messages. During its investigation, the Department interviewed workers and subpoenaed bank records and records from the electronic timekeeping system company. The Department utilized available evidence to determine back wages due.

13. Upon completing its investigation, the Department issued a Compliance Order to both Respondent PMC and Respondent Advantage on October 4, 2023. A redacted copy of the Compliance Order sent to Respondent PMC, with proof of service, is attached as Exhibit A, and is incorporated herein by reference. A redacted copy of the Compliance Order sent to Respondent Advantage, with proof of service, is attached as Exhibit B, and is incorporated herein by reference. Employee names were not redacted in the version sent to Respondents on October 4, but have been redacted from the Statement of Back Wages included in the exhibits for purposes of this filing.

14. As set forth in the Compliance Order, the Department determined that Respondent Advantage and Respondent PMC jointly employed the 25 affected employees identified in the Statement of Back Wages attached to the Compliance Order. Accordingly, as joint employers, Respondent Advantage and Respondent PMC are jointly and severally liable for the violations and the assessed back wages, liquidated damages, and civil penalty.

15. As detailed in the Compliance Order, the Department concluded that Respondents violated Minn. Stat. § 181.101 and other laws, as follows:

- a. Respondents violated Minn. Stat. § 181.101(a) by failing to pay employees for all hours worked at their regular rate of pay;¹
- b. Respondents violated 29 U.S.C. § 207(a)(1) by failing to pay employees at the rate of 1.5 times their regular rate of pay for all hours worked in excess of 40 hours in a workweek;
- c. Respondents violated Minn. Stat. § 177.25, subd. 1, and Minn. R. 5200.0150, by failing to pay employees at the rate of 1.5 times their regular rate of pay for all hours worked in excess of 48 hours in a workweek; and
- d. Respondents violated Minn. R. 5200.0120 by failing to pay employees for training time.

16. The Department also determined that Respondents violated Minn. Stat. § 181.79 by improperly making unauthorized deductions from wages due or earned by affected employees.

17. The Department determined that the total back wages due to the affected employees listed in the Statement of Back Wages for these violations, was \$1,218,459.51. This total was based on the Department's determination that Respondents failed to pay 22 affected employees for all hours worked at their regular rate of pay, resulting in a total of \$744,647.69 due to those employees; and that Respondents failed to pay 25 affected employees for overtime, resulting in a total of \$473,811.82 due to those employees. Consistent with Minn. Stat. § 177.27, subd. 7, the Department assessed an equal amount of \$1,218,459.51 in liquidated damages.

18. The Department hereby AMENDS the total back wages due, and the equal amount in liquidated damages due, to account for minor typographical or mathematical errors, as follows:

- a. The total back wages due to Employee No. 5 is amended from: \$20,804.53, to: \$20,804.52.
- b. The total back wages due to Employee No. 13 is amended from: \$83,667.62, to: \$83,667.50.
- c. The total back wages due to Employee No. 23 is amended from: \$34,495.09, to: \$34,495.93.
- d. Based upon these amendments, the total back wages due to the 25 affected employees is amended from: \$1,218,459.51, to: \$1,218,460.20.

¹ Section 181.101(a) requires employers to pay the greater of the regular rate of pay or the rate required by law. So, alternatively, Respondents needed to pay, at the very least, the minimum wage under Minn. Stat. § 177.24, for all hours worked.

- e. Based upon these amendments, the total liquidated damages due to the 25 affected employees is amended from: \$1,218,459.51, to: \$1,218,460.20.

19. As set forth in the Compliance Order, the Department further determined that Respondents violated several laws related to making and keeping records, as follows:

- a. Respondents violated Minn. Stat. § 181.032(a) and (b) by failing to provide earnings statements to affected employees.
- b. Respondents violated Minn. Stat. § 181.032(d) by failing to provide written notice to affected employees at the start of their employment of the terms of their employment.
- c. Respondents violated Minn. Stat. § 181.032(f) by failing to provide written notice of changes to the terms of their employment.

20. The Department also determined that Respondents' violations were willful. For instance, Respondent PMC's owner displayed a knowledge of overtime laws while flouting them and refusing to pay workers overtime and discouraged workers from reporting violations of the law and participating in the Department's investigation. Accordingly, for the willful violations that affected 25 employees, the Department imposed a total civil penalty of \$25,000 on Respondents, consistent with Minn. Stat. § 177.27, subd. 7 (2022).

21. In addition to ordering Respondents to pay back wages, liquidated damages, and a civil penalty, the Department ordered Respondents to cease and desist from violating the cited laws, and to take affirmative steps to come into compliance with those laws.

22. The Department, Respondent Advantage, and Respondent PMC participated in an informal conference on October 12, 2023. The parties did not reach a resolution at the informal conference.

23. Respondent Advantage submitted a written objection to the Compliance Order and request for a contested case hearing, on October 18, 2023. A copy of Respondent Advantage's objection is attached as Exhibit C.

24. Respondent PMC submitted a written objection to the Compliance Order on October 19, 2023. A copy of Respondent PMC's objection is attached as Exhibit D.

25. The Department consolidates the matters involving Respondent PMC and Respondent Advantage, pursuant to Minn. R. 1400.6350, subp. 2. The Department issued the same Compliance Order to Respondent PMC and Respondent Advantage, in which the Department determined the respondents were joint employers and therefore jointly and severally liable for the violations and assessed back wages, liquidated damages, and civil penalty. In addition, the matters present substantially the same issues of fact and law, and the holding in one case could affect the rights of the parties in the other case; consolidating the matters saves time and costs; and

consolidation does not prejudice any party. Accordingly, the Department has consolidated these matters in advance of referring them to the Office of Administrative Hearings for hearing.

26. To date, despite receiving the order demanding the payment of wages, Respondents have not paid the back wages and liquidated damages owed to the employees, and also have not paid the civil penalty to the State.

27. In the Compliance Order, the Department explained that if Respondents file a timely notice of objection, a contested case hearing would be held and that the Commissioner may order Respondents to reimburse litigation and hearing costs, consistent with Minn. Stat. § 177.27, subd. 7. In initiating this case, pursuant to Minn. Stat. § 177.27, subd. 7, the Commissioner hereby reserves her right to order that Respondents reimburse the Department and Attorney General for all appropriate litigation and hearing costs.

ISSUES

1. Were Respondent PMC and Respondent Advantage joint employers of the affected employees during the audit period, and therefore jointly and severally liable for the violations identified by the Department?

2. Did Respondents violate Minn. Stat. § 181.101 by failing to pay all wages due to affected employees?

3. Did Respondents violate Minn. Stat. § 181.101(a) by failing to pay employees for all hours worked at their regular rate of pay?

4. Did Respondents violate Minn. Stat. § 181.101(a) by failing to pay employees overtime wages for all hours worked after 40 hours in a workweek as required by 27 U.S.C. § 207(a)(1)?

5. Did Respondents violate Minn. Stat. § 177.25, subd. 1, and Minn. R. 5200.0150 by failing to pay employees overtime wages for all hours worked after 48 hours in a workweek?

6. Did Respondents violate Minn. R. 5200.0120 by failing to pay employees for training time?

7. Did Respondents violate Minn. Stat. § 181.79 by making improper and unauthorized deductions from wages due or earned by employees?

8. Did the Department accurately calculate the back wages owed to Respondent's employees during the audit period, as set forth in the Compliance Order and as amended by this Notice and Order for Hearing and Prehearing Conference?

9. Did the Department appropriately assess the liquidated damages in an amount equal to the back wages it calculated that Respondents owed to their employees, as set forth in the

Compliance Order and as amended by this Notice and Order for Hearing and Prehearing Conference?

10. Did Respondents violate Minn. Stat. § 181.032(a) and (b) by failing to provide earnings statements to employees?

11. Did Respondents violate Minn. Stat. § 181.032(d) by failing to provide written notice to employees of the terms of their employment at the start of their employment?

12. Did Respondents violate Minn. Stat. § 181.032(f) by failing to provide written notice of changes to the terms of their employment?

13. Were Respondents' violations of the law willful, pursuant to Minn. Stat. § 177.27, subd. 7?

14. Did the Department appropriately assess a \$25,000 civil penalty?

15. Must Respondents comply with the relief ordered in the Compliance Order, and as amended by this Notice and Order for Hearing and Prehearing Conference?

16. If applicable, must Respondents reimburse the Department and Attorney General for appropriate litigation and hearing costs pursuant to Minn. Stat. § 177.27, subd. 7?

ADDITIONAL NOTICE

1. The Respondents' failure to appear at the hearing or any prehearing conference, or any failure to comply with an order of the Administrative Law Judge, may result in a finding that the Respondents are in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and the Department's proposed action may be upheld.

2. If any party has good cause for requesting a delay of the hearing or any prehearing conference, the request must be made in writing to the Administrative Law Judge at least five days prior to the scheduled date. A copy of the request must be served on the other party.

3. Any party intending to participate as a party in this proceeding must file a Notice of Appearance form and return it to the Administrative Law Judge within 30 days of the date of service of this Notice and Order. A copy must be served on the Department's attorneys. A Notice of Appearance form is enclosed.

4. All parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. The parties are entitled to the issuance of subpoenas to compel witnesses to attend the hearing. The parties will have the opportunity to be heard orally, to present evidence, cross-examine witnesses, and submit evidence and argument. Ordinarily the hearing is tape-recorded. The parties may request that a court reporter record the testimony at their expense.

5. Persons attending the hearing should bring all evidence bearing on the case, including any records or other documents. Be advised that if data that is not public is admitted into the record, it may become public data unless an objection is made and relief is requested under Minn. Stat. § 14.60, subd. 2.

6. Requests for subpoenas for the attendance of witnesses or the production of documents at the hearing shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <http://mn.gov/oah/> or by calling 651-361-7900.

7. This case may be appropriate for mediation. The parties are encouraged to consider requesting the Chief Administrative Law Judge to assign a mediator so that mediation can be scheduled promptly.

8. The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

9. A Guide to Participating in Contested Case Proceedings at the Office of Administrative Hearings is available at <http://mn.gov/oah/> or by calling 651-361-7900.

10. Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, including a foreign language interpreter, the Administrative Law Judge must be promptly notified. To arrange for an accommodation or an interpreter, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call 651-361-7900.

Signed this 18th day of December, 2023



NICOLE BLISSENBACH, Commissioner,
Minnesota Department of Labor and
Industry

AFFIDAVIT OF SERVICE BY U.S. MAIL AND CERTIFIED MAIL

Re: In the Matter of the Investigation of: Property Maintenance & Construction LLC, and Property Maintenance and Construction Inc.

File No.: ICR-202100028.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

My name is ELIZABETH DOLD. On the 4th day of October, 2023 in the City of St. Paul, County of Ramsey, and State of Minnesota, I mailed the attached **COMPLIANCE ORDER** by both regular first-class mail and first-class certified mail, by depositing in the United States mail, true and correct copies thereof, properly enveloped, with postage prepaid, and addressed to:

REGULAR FIRST-CLASS MAIL
Property Maintenance & Construction LLC
1174 7th St. E #1
St. Paul, MN 55106

FIRST-CLASS CERTIFIED MAIL
7018 0680 0000 0552 3977

Property Maintenance & Construction LLC
1174 7th St. E #1
St. Paul, MN 55106

REGULAR FIRST-CLASS MAIL
Property Maintenance & Construction LLC
Attn: Leopoldo Pimentel Jr.
3433 77th Avenue North
Brooklyn Park, MN 55443

FIRST-CLASS CERTIFIED MAIL
7018 0680 0000 0552 3960

Property Maintenance & Construction LLC
Attn: Leopoldo Pimentel Jr.
3433 77th Avenue North
Brooklyn Park, MN 55443

REGULAR FIRST-CLASS MAIL
Property Maintenance and Construction Inc.
Attn: Leo Pimentel, Jr., Pablo Fernando
Huinansaca Morocho, and Don Patnode III
4100 83rd Avenue North
Brooklyn Park, MN 55443

FIRST-CLASS CERTIFIED MAIL
7018 0680 0000 0552 3953

Property Maintenance and Construction Inc.
Attn: Leo Pimentel, Jr., Pablo Fernando
Huinansaca Morocho, and Don Patnode III
4100 83rd Avenue North
Brooklyn Park, MN 55443

REGULAR FIRST-CLASS MAIL
 Dan Ellerbrock
 Gregerson, Rosow, Johnson & Nilan, Ltd.
 100 Washington Avenue South, Suite 1550
 Minneapolis, MN 55401

I am signing this affidavit in Ramsey County, Minnesota on the 4th day of October, 2023. Pursuant to Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.


 Elizabeth Dold

7018 0680 0000 0552 3977

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
 \$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

Postmark Here

Property Maintenance & Construction LLC
 1174 7th St E #1
 Saint Paul, MN 55106

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 0680 0000 0552 3953

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
 \$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

Postmark Here

Property Maintenance and Construction Inc.
 ATTN: Leo Pimentel, Jr.,
 Pablo Fernando Huinansaca Morocho,
 and Don Patnode, III
 4100 83rd Avenue North
 Brooklyn Park, MN 55443

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 0680 0000 0552 3960

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee
 \$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

Postmark Here

Property Maintenance & Construction LLC
 ATTN: Leopoldo Pimentel Jr.
 3433 77TH AVENUE NORTH
 Brooklyn Park, MN 55443

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

m DEPARTMENT OF
LABOR AND INDUSTRY

10/04/2023

Property Maintenance & Construction LLC
1174 7th St E #1
Saint Paul, MN 55106

Property Maintenance & Construction LLC
ATTN: Leopoldo Pimentel Jr.
3433 77TH AVENUE NORTH
Brooklyn Park, MN 55443

Property Maintenance and Construction Inc.
ATTN: Leo Pimentel, Jr., Pablo Fernando Huinansaca Morocho, and Don Patnode, III
4100 83rd Avenue North
Brooklyn Park, MN 55443

Via First-Class and Certified Mail

**Re: *In the Matter of the Investigation of: Property Maintenance & Construction LLC, and
Property Maintenance and Construction Inc.
File No.: ICR-202100028***

Dear Mr. Pimentel Jr., Mr. Huinansaca Morocho, and Mr. Patnode, III:

The Minnesota Department of Labor and Industry ("Department") has investigated a complaint of labor standards violations involving Property Maintenance & Construction LLC, and Property Maintenance and Construction Inc. Enclosed and served on you are the following documents: (1) a Compliance Order and (2) a Statement of Back Wages.

These are important legal documents. Please read each of these two documents carefully. You should refer to each specific document for further instructions about how to pay or appeal.

I can be reached at 651-402-1657 or by e-mail if you have any questions or would like to discuss the Compliance Order.

Sincerely,

Victor Carmona
Senior Labor Investigator, Labor Standards Unit
victor.carmona@state.mn.us
651-402-1657

STATE OF MINNESOTA
Department of Labor and Industry
Division of Labor Standards

In the Matter of the Investigation of:
Property Maintenance & Construction LLC, and
Property Maintenance and Construction Inc.

COMPLIANCE ORDER

To: Property Maintenance & Construction LLC
1174 7th St. E #1
St. Paul, MN 55106

Property Maintenance & Construction LLC File No.: ICR-202100028
Attn: Leopoldo Pimentel Jr.
3433 77th Avenue North
Brooklyn Park, MN 55443

Property Maintenance and Construction Inc.
Attn: Leo Pimentel, Jr., Pablo Fernando
Huinansaca Morocho, and Don Patnode III
4100 83rd Avenue North
Brooklyn Park, MN 55443

In the Matter of the Investigation of:
Advantage Construction Inc.

File No.: ICR-202100027

To: Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

**NOTICE: THE ATTACHED EXHIBIT ("Exhibit 1") CONTAINS DATA CLASSIFIED
AS PRIVATE OR CONFIDENTIAL**

In accordance with Minn. Stat. § 177.27, subs. 4 and 7, the Commissioner ("Commissioner") of the Minnesota Department of Labor and Industry ("Department") issues the following Compliance Order ("Order") against Property Maintenance and Construction Inc. and Property Maintenance & Construction LLC (collectively "Respondent PMC") and Advantage Construction Inc. ("Respondent Advantage") (collectively "Respondents").

I. FINDINGS OF FACT

A. AUDIT PERIOD AND BUSINESS ENTITIES

1. The Audit Period for the Department's investigation ran from March 4, 2019 to June 5, 2022 ("Audit Period").
2. Respondent Advantage is an employer with at least one employee working in

Minnesota during the Audit Period.

3. Respondent Advantage is a licensed residential building contractor.
4. Respondent Advantage's registered office address with the Secretary of State is 18750 Buchanan St., East Bethel, MN 55011-5501. The registered agent for service is listed as Christopher Amiot.
5. During the Audit Period, Respondent Advantage was a large employer with annual gross revenue of at least \$500,000.
6. Respondent PMC is an employer with at least one employee working in Minnesota during the Audit Period.
7. Respondent PMC is a licensed residential building contractor.
8. Respondent PMC is comprised of two entities that operated concurrently and successively during the Audit Period.

- a. Property Maintenance & Construction LLC was incorporated on February 7, 2012. The company's registered office address is 1174 7th Street East, #1, St. Paul, MN 55106. The company was administratively terminated by the Minnesota Secretary of State on January 31, 2023, although it continues to hold an active residential building contractor license.

- b. Property Maintenance and Construction Inc. was incorporated on April 26, 2022. The company's registered office address is 4100 83rd Avenue North, Brooklyn Park, MN 55443. The individuals who incorporated the company were Leo Pimentel, Jr and Don Patnode III. The individuals listed as the registered agents on Articles of Incorporation were Leopoldo Pimentel, Jr. and Don Patnode. On April 22, 2023, the company submitted paperwork to the Minnesota Secretary of State to remove Don Patnode as a registered agent and add Pablo Fernando Huinansa Morocho as a registered agent. Property Maintenance and Construction Inc. is a licensed residential building contractor as of June 29, 2022.

9. During the Audit Period, Respondent PMC was a large employer with annual gross revenue of at least \$500,000.

B. DEMANDS FOR INFORMATION AND RECORDS

10. On March 1, 2022, the Department mailed a Demand for the Submission of Records ("First Advantage Demand") to Respondent Advantage at its registered office address.

11. The records and information responsive to the First Advantage Demand were due to the Department on March 14, 2022. Respondent Advantage contacted the Department on March 15, 2022 and requested a due date extension. The Department granted an extension until March

17, 2022.

12. Respondent Advantage submitted records on March 17, 2022, June 3, 2022, and August 19, 2022.

13. On June 7, 2022, the Department mailed a Demand for the Submission of Records ("First PMC Demand") to Respondent PMC at its registered office address and operating business address.

14. The records and information responsive to the First PMC Demand were due to the Department on June 21, 2022. The Department granted an extension until June 28, 2022.

15. Respondent PMC submitted partial productions of records on June 28, 2022, August 12, 2022, September 16, 2022, November 14, 2022, June 05, 2023, but never provided a complete response to all items within the First PMC Demand. As of this Order, Respondent PMC has still not fully complied with the First PMC Demand.

- a. Respondent PMC did not provide complete earnings statements and time keeping records to the Department. Respondent provided some time records for 11 employees, including time cards and text messages from employees, for the time period of January 1, 2019 to June 30, 2022, but those time records were not complete. Respondent provided time cards and text messages for some employees, and provided time cards only for other employees.
- b. Respondent PMC did not provide a complete list of employees that worked on a list of 25 projects included in the First PMC Demand.
- c. Respondent PMC did not provide complete records of text messages documenting the hours employees worked during the time period Respondent PMC states it did not utilize an electronic time keeping system.

16. On September 29, 2022 and November 4, 2022, the Department mailed separate Administrative Subpoenas to ExakTime Innovations, Inc. Corporation ("ExakTime"). Collectively, the subpoenas requested photocopies of all timecards or timesheets for each of Respondent PMC's employees working at any time from March 4, 2019 to March 4, 2022. Records were received showing 20 employees worked during the Audit Period on projects for which the Department had requested records from Respondent PMC. Only 7 of these employees were listed in the timekeeping records provided by Respondent PMC. Two other employees for which Respondent PMC provided time records were not included in the records received from ExakTime.

17. On December 2, 2022, the Department mailed a Demand for Submission of Records to MV Ventures, MV Ventures Construction, MV Ventures Management, LLC, and MV Ventures Properties, LLC ("MV Ventures Demand"). MV Ventures is the owner of the Viking Lakes project located at 710 Vikings Parkway, Eagan, Minnesota 55121.

18. The records and information responsive to the MV Ventures Demand were due to

the Department on December 15, 2022. MV Ventures responded in full to the MV Ventures Demand on December 15, 2022.

19. On February 16, 2023, the Department mailed an Administrative Subpoena to Village Bank requesting financial records and documents for Respondent Advantage from March 4, 2019 to March 4, 2022. The Department received all requested records on February 28, 2023.

20. On March 22, 2023 and May 25, 2023, the Department mailed separate Administrative Subpoenas to Wells Fargo Bank, N.A. collectively requesting financial records and documents for Respondent PMC from March 4, 2019 to June 5, 2022. The Department received all requested records on April 19, 2023, and July 1, 2023.

21. On November 15, 2022, the Department mailed a second Demand for Submission of Records to Respondent PMC ("Second PMC Demand") at its registered office address.

22. The records and information responsive to the Second PMC Demand were due to the Department on November 30, 2022. Respondent PMC provided partial responses on December 5, 2022 and December 20, 2022. As of this Order, Respondent PMC has still not fully complied with the Second PMC Demand.

- a. Respondent PMC did not provide invoices or checks associated with any of the subcontractors for four of the eighteen projects included in the Audit Period.

23. On November 15, 2022, the Department mailed a second Demand for Submission of Records to Respondent Advantage ("Second Advantage Demand") at its registered office address.

24. The records and information responsive to the Second Advantage Demand were due to the Department on November 30, 2022. Respondent Advantage replied by letter on December 9, 2022, claiming they had already produced similar documents and asked the Department to obtain those records from the Department of Revenue in lieu of Respondent Advantage producing documents.

25. The Department followed up with Respondent Advantage in March 2023 and allowed a narrowed response pursuant to specific construction projects. Respondent Advantage provided responsive documents pursuant to the Second Advantage Demand on March 28, 2023. As of the date of this Order, Respondent Advantage has substantially complied with the Second Advantage Demand.

26. On June 6, 2023, the Department mailed an Administrative Subpoena to Village Bank, requesting financial records and documents for Respondent PMC from March 4, 2019 to June 5, 2022. The Department received all requested records on June 13, 2023.

C. RESPONDENTS ARE JOINT EMPLOYERS

27. Respondent Advantage subcontracted work to Respondent PMC for at least the

following 19 projects during the Audit Period:

- a. Lunds/Byerlys Penn Ave Apartments; 6228 Penn Ave S, Richfield, MN 55423.
- b. Beyond Apartments; 236 Settlers Ridge Parkway, Woodbury, MN 55129.
- c. Viking Lakes Apartment Buildings; 700 Vikings Parkway, Eagan, MN 55121.
- d. Ballantrae Apartments; 3890 Ballantrae Rd, Eagan, MN 55122.
- e. Liffey on Snelling; 308 Snelling Ave N, St Paul, MN 55104.
- f. Havenwood of Maple Grove; 18695 73rd Ave N, Maple Grove, MN 55311.
- g. Rosemary Apartments; 4628 Rosemary Way, Hugo, MN 55038.
- h. Roseville Terrace Garages; 1760 N Fernwood St, Roseville, MN 55113.
- i. The Reserves of Arbor Lakes, Maple Grove, MN 55369.
- j. Hampton Inn; 11825 Technology Dr., Eden Prairie, MN 55344.
- k. 108 Place; 4050 W 108th St, Bloomington, MN 55437.
- l. Harvestview Place; 5320 56th St NW, Rochester, MN 55901.
- m. The Legends of Blaine; 10826 Austin St NE, Blaine, MN 55449.
- n. The Winslow West St. Paul; 1631 Marthaler Ln, West St Paul, MN 55118.
- o. Annandale Care Center; 500 Park St E, Annandale, MN 55302.
- p. Okalee of Medina; 4350 Chippewa Court, Medina, MN 55357.
- q. Marshall Street Apartments; 1301 Marshall St NE, Minneapolis, MN 55413.
- r. The Crossing at Big Lake Station; 115 Henry Rd, Big Lake, MN 55309.
- s. Temperance Ridge Senior Living; 410 Fox Lake Ave, Sherburn, MN 56171.

28. For the projects noted in paragraph 27, Respondent PMC subcontracted with Respondent Advantage to perform various services, including but not limited to the following: roofing and installation of soffit and fascia, siding, metal panels, Tyvek, windows and patio doors, and gutters and downspouts.

29. Respondent PMC operated as an extension of Respondent Advantage's business by serving as, among other things, a labor broker supplying workers for Respondent Advantage's construction projects. During the Audit Period, the bank records reviewed by the Department indicate Respondent PMC received \$6.9 million in checks and of that amount \$5.8 million dollars were paid to Respondent PMC by Respondent Advantage. Therefore, during the Audit Period, Respondent Advantage accounted for approximately 84% of Respondent PMC's business, making Respondent PMC and the affected employees¹ economically dependent upon Respondent Advantage.

30. Leopoldo Pimentel, Jr. ("Pimentel") is the owner of Respondent PMC, and Don Patnode is listed as an incorporator in the articles of incorporation for Respondent PMC's Property Maintenance and Construction Inc. entity. Until April 22, 2023, Patnode was also listed as a registered agent for Property Maintenance and Construction Inc.

31. Although Respondent Advantage did not list Patnode as an employee in its responses to the First or Second Advantage Demands, Patnode is an employee of Respondent Advantage based on the following facts:

¹ The affected employees are those listed on Exhibit 1, Statement of Back Wages.

- a. As of April 11, 2023, Patnode was listed on his LinkedIn profile as serving as a "Project Manager" for Respondent Advantage from April 2018 to present and concurrently serving as the company's "General Manager" from January 2023 to present.
- b. A Facebook post dated April 9, 2020 on Respondent Advantage's Facebook page states, "Meet our Employee of the Month: Don Patnode[.] At Advantage Construction, Don is the leader of our New Construction division responsible for total project management including negotiating subcontracts, controlling budgets, and providing day-to-day communications to ensure the project remains on schedule and within budget."
- c. Many employees perceived Patnode as working for Respondent Advantage because he drove an Advantage truck and wore an Advantage uniform at project sites.
- d. Patnode's name and signature appears on some invoices received by Respondent Advantage during the Audit Period giving approval for Respondent Advantage to pay the invoices.

32. Patnode and Pimentel served as the links between Respondent PMC and Respondent Advantage, working in tandem to hire, supervise, provide tools, materials and equipment, and pay employees.

33. On September 13, 2022, a Department investigator sent an email to remodeling@pmccompany.com, requesting employee timecards pursuant to the Department's First PMC Demand. No reference in the investigator's email was made to Respondent Advantage. The same day, the recipient, listed as "Pablo Huinansa," which is presumed to refer to Pablo Fernando Huinansaca Morocho, forwarded the investigator's email to Patnode and Pimentel.

34. Affected employees were not sure if they worked for Respondent PMC, Respondent Advantage, or both companies.

35. Typically, affected employees were informed of basic employment terms related to pay and work schedules by Pimentel, and he told affected employees they worked for Respondent Advantage and provided them with PMC and Advantage uniforms. Affected employees wore Advantage and PMC uniforms for the duration of their employment. Affected employees consistently wore Advantage uniforms on the Viking Lakes project in Eagan, Minnesota.

36. On October 5, 2021, during an on-site visit to the Viking Lakes project located at 710 Vikings Parkway, Eagan, Minnesota 55121, a Department investigator tried to interview an individual who identified themselves as an employee for Respondent Advantage and was wearing an Advantage vest. The individual stated they were hired by Leopoldo Pimentel.

37. During an OSHA inspection on January 31, 2020, Pimentel reported to an OSHA investigator that he was the foreman for Respondent Advantage and that all his employees on-site

that day worked for Respondent Advantage. This is reflected in the associated OSHA inspection report.

38. During an OSHA inspection conducted on March 4, 2021, the OSHA inspector was told that Respondent PMC employees were trained under Respondent Advantage's safety programs.

39. Pimentel instructed several employees to tell OSHA inspectors they worked for Respondent Advantage.

40. In a document created for the Viking Lakes project titled "Off Hours/Weekend Work Activity Permit" on MN Development Company, LLC letterhead, dated June 19, 2021, affected employee #13 on the attached Statement of Back Wages is noted as a foreman for Respondent Advantage.

41. Some affected employees recall attending trainings sessions held at Respondent Advantage's office in East Bethel, Minnesota, and Patnode and Pimentel were present, as well as another Advantage employee, Daniel Boehnen. Employees were told the training was mandatory.

42. Patnode typically supervised affected employees on project sites, including instructing employees on which tasks to prioritize and asking employees to unload materials from trucks.

43. Patnode provided tools and safety equipment to some of the affected employees on some job sites, including hoses, harnesses, saws, and compressors.

44. Respondent Advantage typically provided the building materials affected employees needed to perform their scopes of work, including metal panels, aluminum walls, laminated boards, galvanized metal rolls and wood boards. Some affected employees knew Respondent Advantage provided the materials because the materials had a ticket order attached stating Advantage's name.

45. In July 2020, after some affected employees complained about the change in their pay rate from an hourly rate to a per square foot rate, those employees contacted Patnode and met with him directly at Respondent Advantage's office in East Bethel. The day after this meeting, these employees were paid some of their unpaid wages by Pimentel.

46. Taking the above facts together, the affected employees were economically dependent upon and under the control of Respondents. Therefore, Respondents are joint employers of the affected employees listed on the attached Statement of Back Wages.

D. THE INDIVIDUALS LISTED ON THE STATEMENT OF BACK WAGES ARE RESPONDENTS' EMPLOYEES

47. Respondents employed all 25 affected employees listed on the attached Statement of Back Wages.

48. In a letter dated November 14, 2022, Respondent PMC denied employing the following 18 affected employees identified by their corresponding number as listed on the attached Statement of Back Wages: Nos. 2-7, 10, 12-14, 17-22, and 24-25.

49. The 25 affected employees worked on various construction projects in which both Respondent PMC and Respondent Advantage were contractors. On all projects, Respondent PMC claimed to be a subcontractor under Respondent Advantage.

50. Affected employees were typically hired by Respondent PMC's owner, Pimentel, between September 2018 and November 2020. The length of employment varied by employee, but all were employed during the Audit Period.

51. During the Audit Period, 21 of the 25 affected employees did not have active construction contractor registrations. Of the four affected employees who held active licenses during the Audit Period, only one employee held an active license during their employment with Respondents. Employee number 6 on the attached Statement of Back Wages (Exhibit 1) was registered under the name Morkins Construction LLC. The company was registered on August 27, 2020, and the registration expired on December 31, 2021. Employee number 6 was paid on an hourly basis or per square foot rate during Audit Period rather than a per job basis and was Respondents' employee during the Audit Period.

52. All affected employees were paid based on an hourly, daily, or piece rate rather than a per job basis.

E. CLAIM FOR BACK WAGES

53. At the start of employment, affected employees did not receive the written notice containing the terms of employment, including their rates of pay, the days in the pay period, the regularly scheduled pay dates and the legal name of their employer with contact information, as required by Minn. Stat. § 181.032(d). In a letter dated November 14, 2022, Respondent PMC stated its practice "was to verbally advise new employees about their rate of pay and pay period at the conclusion of their interview at the main office. The basis of pay, rate of pay, pay period, name, address and telephone number of the employer would then also be reflected in the employees' first paycheck and all subsequent checks."

54. Some affected employees were paid by the hour, while others were paid by the day. At the time of hiring, Pimentel told some affected employees what their hourly rate or a daily rate of pay would be. Other affected employees were not informed of their rate of pay until after they were hired and began working. Some affected employees did not learn of their rate of pay until they were paid for the first time.

55. Affected employees were paid wages in cash via an envelope from Pimentel and occasionally from Pimentel's wife, Yahaira Aguirre, on a bi-weekly basis, every other Friday or Saturday. The envelope typically included a note indicating the number of hours or days worked each week or the total hours or days worked for the two-week pay period and stated the amount of cash enclosed.

56. Respondent PMC utilized various timekeeping methods for employees during the Audit Period, including the ExakTime electronic timekeeping system, informal written records, and text message from employees.

- a. The electronic timekeeping records are not always consistent with the hours actually worked by affected employees, including incorrect start and end times for some employees and employees who do not appear in the time records but worked for Respondents during the Audit Period.
- b. Occasionally the ExakTime timekeeping system did not work properly, and employees sent text messages to Respondents as substitute timekeeping records.
- c. Exaktime timekeeping records sometimes conflict with the hours worked listed on the earning statements. In some instances, ExakTime records show affected employees worked over 80 hours in a pay period and the associated earning statements only reflect 80 hours worked.
- d. Other than text messages, Respondent PMC did not produce any informal written timekeeping records to the Department pursuant to the First or Second PMC Demand.
- e. In a letter dated November 14, 2022, Respondent PMC stated they began using an electronic timekeeping system called ExakTime for employees to record hours worked in "mid 2021." However, Respondent PMC provided ExakTime records dating back April 2020, and the Department received records from ExakTime dating back to March 4, 2019.

57. Pimentel changed the payment structure between hourly rates and daily rates for some affected employees during the Audit Period without providing written notice of the changes to employees prior to changing their pay rates, as required by Minn. Stat. § 181.032(f).

58. Affected employees typically worked 10 to 12 hours per day, Monday through Saturday, and some Sundays each month. Some affected employees worked up to 14 hours per day during the Audit Period. Sunday work varied by employee. Employees took one-hour unpaid lunch breaks each workday, usually from 12:00 PM to 1:00 PM.

59. Affected employees consistently worked more than 40 hours per week, but consistently were not paid overtime.

60. Some affected employees paid at a daily rate were paid for 10 days of work every two weeks, even though they typically worked six or seven days per week. Other affected employees paid at a daily rate were paid for 12 days of work every two weeks, even if they worked more than 12 days in a two-week timespan.

61. At some time during the Audit Period, employees listed as Nos. 8, 23, and 24 on the attached Exhibit 1 began to receive some of their wages in a check, and for the same pay period received an additional lump sum payment in cash for hours over 80 per week at their regular rate of pay.

62. From at least March 4, 2019, until April 2021, most affected employees did not receive earnings statements, as required by Minn. Stat. § 181.032(a).

63. At different times during the Audit Period, Respondent PMC took an unauthorized seven percent (7%) deduction from affected employees receiving wages in cash or from the portion paid in cash in addition to a pay check. Employees were told the deductions were for taxes. The deduction was sometimes noted on a post-it note in the envelope containing their wages in cash. Other times, the deduction was not noted on the post-it note, but employees still received seven percent less than their hourly rate for 80 hours every two weeks. The amount of the deduction does not correlate with the amount of taxes each employee would owe in a pay period. Therefore, the Department finds that the deducted earnings were not intended to be paid by Respondents to the applicable state or federal tax authorities and constitute an unauthorized deduction from employee earnings. Employees were not provided with written authorizations as a record of their agreement to these deductions, and employees never formally agreed to the deductions via signature as required by Minn. Stat. § 181.79.

64. Approximately 30 employees attended full-day training sessions at Respondent Advantage's office for which they were not paid. The trainings included instructions for operating a forklift and installing Tyvek and windows.

65. Most affected employees who quit working for Respondents cited not being paid for all hours worked, including overtime, as one of the reasons they ended their employment. Three affected employees listed as Nos. 16, 18, and 25 on the attached Statement of Back Wages (Exhibit 1) stated they were paid for all hours worked but not paid at the overtime rate for overtime hours worked.

66. Based on its review of the available evidence, the Department finds that 25 employees experienced wage violation as follows:

- a. 22 affected employees did not receive pay for all hours worked at their regular rate of pay, resulting in **\$744,647.69** in back wages due to those employees.
- b. 25 affected employees did not receive one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek, resulting in **\$473,811.82** due to those employees.

67. Due to the Respondents failure to maintain the required records, the Department determined back wages due based on available evidence pursuant to its authority under Minn. Stat. § 177.30(d). Available evidence included electronic timesheet records provided by Respondent PMC for the time period of January 1, 2019 to June 30, 2022, employee earnings statements, employee statements, time cards provided by employees, text messages in which employees reported hours worked to Respondents, bank records, Exakttime timesheets for the period of March

4, 2019 to March 4, 2022, workers compensation claim data, and signed employee declarations.

F. RESPONDENTS' VIOLATIVE CONDUCT DURING THE AUDIT PERIOD WAS WILLFUL

68. When some affected employees complained to Pimentel about not being paid for overtime hours, Pimentel told them they needed to create their own LLC to receive overtime.

69. Pimentel told employees, including some affected employees, that if they were ever questioned by the Department or the carpenter's union (i.e., North Central Regional Council of Carpenters) the employees should say they were paid by check and for all hours worked, including overtime, even though the employees were typically paid in cash and not paid for overtime or all hours worked.

70. At other times, Pimentel told employees, including affected employees, that he did not want them to talk to the Department or carpenter's union and to refer them directly to him if they asked any questions to the employees.

71. After participating in the Department's investigation into Respondents, some affected employees feared for their safety because Pimentel had communicated to employees that they were not supposed to cooperate with the Department's investigation.

72. On April 29, 2022, Pimentel held a meeting with employees and warned them not cooperate with the Department's investigation.

73. Pimentel and others working for Respondents repeatedly questioned employees to try and determine who had complained to the Department about unpaid wages.

74. On May 5, 2022, a press conference was held in which some employees spoke out about the wage violations. On May 6, 2022, Pimentel held a meeting with employees and played a recording of the press conference for them. After showing the press conference, Pimentel again instructed employees not to cooperate with the Department's investigation.

75. The Minnesota Attorney General filed a lawsuit against Respondent PMC and Pimentel on October 25, 2022 because of the willful conduct noted herein, alleging, among other things, that Respondent PMC and Pimentel endeavored to intimidate and discourage workers from cooperating with the Department's investigation in an effort to hinder, delay, and obstruct the investigation.

76. Given the facts in paragraphs 68 to 75, Respondents knew their conduct was in violation of Minnesota law and that the affected employees were not being fully compensated for the hours they worked for Respondents.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

II. CONCLUSIONS OF LAW

1. Respondents violated Minn. Stat. § 181.101(a) by failing to pay all wages earned to affected employees at least once every 31 days on a regular payday designated in advance by the employer. Under Minn. Stat. § 181.101(a), the Commissioner may charge and collect wages earned at the affected employee's rate or rates of pay as required by any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever is greater.

- a. Respondents violated Minn. Stat. § 181.101(a) failed to pay employees for all hours worked at their regular rate of pay;
- b. Respondents violated 29 U.S.C. § 207(a)(1) by failing to compensate employees at the rate of one and one-half times the regular rate of pay for all hours worked in excess of 40 hours in a workweek;
- c. Respondent violated Minn. Stat. §§ 177.25, subd. 1 and Minn. R. 5200.0150 by failing to compensate employees at the rate of one and one-half times the regular rate of pay for all hours worked in excess of 48 hours in a workweek; and
- d. Respondents violated Minn. R. 5200.0120 by failing to pay approximately 30 employees for training time.

2. Respondents violated Minn. Stat. § 181.032(a) and (b) by failing to provide earnings statements to affected employees.

3. Respondents violated Minn. Stat. § 181.032(d) by failing to provide written notice to affected employees at the start of employment containing terms of employment.

4. Respondent violated Minn. Stat. § 181.032(f) by failing to provide written notice to affected employees of changes to any of the terms of their employment set forth in Minn. Stat. § 181.032(d).

5. Respondents violated Minn. Stat. § 181.79 by making deductions, from wages due or earned by affected employees, for a claimed indebtedness without have a pre-deduction written authorization from the employees.

6. Respondents' violations of the laws cited in this section were carried out willfully pursuant to Minn. Stat. § 177.27, subd. 7. Respondents knew or should have known that they were violating the Minnesota Fair Labor Standards Act, Minn. Stat. §§ 177.21 to 177.35 ("MFLSA"), the Minnesota Payment of Wages Act, Minn. Stat. §§ 181.01 to 181.1721 and 181.79 ("MPWA"), because the violations represented a blatant disregard for Minnesota wage and hour law, Respondent's actions indicated they knew they were violating Minnesota and federal wage and hour law, and Respondents received complaints from several affected employees regarding these violations.

III. ORDER

1. Respondents are ordered to CEASE AND DESIST from violating the laws cited in the Conclusions of Law section of this Order. Specifically, Respondents are ordered to CEASE AND DESIST from:

- a. Failing to pay all wages earned by an employee at least once every 31 days on a regular payday designated in advance, in violation of Minn. Stat. § 181.101(a), including the following:
 - i. Failing to pay employees for all hours worked at their regular rate of pay as required by Minn. Stat. § 181.101(a);
 - ii. Failing to pay employees one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek as required for a large employer by 29 U.S.C. § 207(a)(1); and
 - iii. Failing to pay employees for training time as required by Minn. R. 5200.0120, subp. 1.
- b. Failing to provide employees with written earnings statements containing all legally required information in violation of Minn. Stat. § 181.032(a) and (b);
- c. Failing to provide written notice to employees at the start of employment containing terms of employment, in violation of Minn. Stat. § 181.032(d);
- d. Failing to provide written changes to the employees' terms of employment set forth in Minn. Stat. § 181.032(d) prior to the effective date of the change, in violation of Minn. Stat. § 181.032(f);
- e. Failing to obtain voluntary written authorization from employees for deductions to recover a claimed indebtedness owed to the Respondent, in violation of Minn. Stat. § 181.79.

2. Respondents are ordered to TAKE AFFIRMATIVE STEPS that will bring them into compliance with the laws cited in the "Conclusions of Law" section of this Order. Specifically, Respondents are ordered to:

- a. consistently pay employees for all hours worked at their regular rate of pay as required by Minn. Stat. § 181.101(a);
- b. pay employees one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek as required for a large employer by 29 U.S.C. § 207(a)(1);
- c. pay employees for training time as required by Minn. R. 5200.0120, subp. 1;
- d. provide written notice containing terms of employment as required by Minn. Stat. § 181.032(d) to all current employees and to future employees at the start of employment;
- e. provide employees with written earnings statements containing all legally required information in violation of Minn. Stat. § 181.032(a) and (b);
- f. provide written changes to the employees' terms of employment set forth in Minn. Stat. § 181.032(d) prior to the effective date of the change as required by Minn. Stat. § 181.032(f);
- g. Obtain voluntary written authorizations from employees prior to taking deductions from wages for any claimed indebtedness owed to Respondent as required by Minn. Stat. § 181.79; and
- h. Maintain all necessary employment records as required by Minn. Stat. § 177.30 (a), and ensure those records are readily available for inspection by the Commissioner upon demand as required by Minn. Stat. § 177.30 (b).

4. Respondents are ordered to PAY employee BACK WAGES to each individual listed

in Exhibit 1. Back wages consist of back pay, gratuities, and commissions, including the gross amount of back wages listed on the Statement of Back Wages (Exhibit 1). The total amount of gross back wages due is **\$1,218,459.51**. Respondents shall submit to the Department:

- a. An individual check payable to each employee listed in Exhibit 1 for the gross amount due that employee less applicable FICA, Federal, and State withholdings;
- b. A wage and earning statement for each affected employee set forth in Exhibit 1; and
- c. A full alphabetical list of all employees entitled to back wages with their current addresses and phone numbers.

The checks and documents shall be mailed or delivered to the Commissioner at:

Minnesota Department of Labor and Industry
Labor Standards Unit
ATTN: Prairie Bly
443 Lafayette Road N.
St. Paul, MN 55155

They must be received by the Department **on or before 4:30 PM on October 23, 2023**.

5. Respondents are ordered to **PAY LIQUIDATED DAMAGES** in the amount of **\$1,218,459.51**. The gross liquidated damages payable to each employee are equal to the gross back wages payable to each employee as indicated on the Statement of Back Wages (Exhibit 1). Respondents shall submit to the Department a second check payable to each employee listed in Exhibit 1 for the gross amount of liquidated damages due to that employee along with a Form 1099 to each employee for the liquidated damage amount. These checks and 1099 forms shall be delivered at the same time and in the same manner as the checks and documents in Paragraph 4 above.

6. Respondents have been found to have **REPEATEDLY AND WILLFULLY** violated the MFLSA and the MPWA as described in Sections I and II of this Order. Therefore, Respondents are ordered to **PAY TO THE DEPARTMENT A CIVIL PENALTY of \$25,000**. The payment shall be made payable to the "**Minnesota Department of Labor and Industry**." Respondents shall mail or deliver a check for \$25,000 to the Department at the same time and in the same manner as the checks and documents in Paragraph 4 above. Respondents are jointly and severally liable for this civil penalty.

7. Respondents are ordered to **PAY** employee **BACK WAGES** of \$1,218,459.51, as listed on the Statement of Back Wages (Exhibit 1), and **LIQUIDATED DAMAGES** of \$1,218,459.51 and **CIVIL PENALTIES** of \$25,000 for a **TOTAL AMOUNT** due of **\$2,461,919.02**, as described in paragraphs 4, and 5, and 6. Respondents are jointly and severally liable for all back wages and liquidated damages and civil penalties due.

IV. DETERMINATION OF CIVIL PENALTY AMOUNT

In determining the amount of the \$25,000 civil penalty payable to the Department, the Commissioner considered the appropriateness of the penalty in relation to the size of Respondents' business and the gravity of Respondents' violations. Pursuant to Minn. Stat. § 177.27, subd. 7, if Respondents are found by the Commissioner to have repeatedly or willfully violated any section identified in Minn. Stat. § 177.27, subd. 4, the Commissioner may fine Respondents up to \$1,000 for each violation for each employee. As stated in Section I of this Order, Respondents willfully violated the rights of the 25 affected employees listed on Exhibit 1 throughout the Audit Period and are therefore fined \$1,000 per affected employee.

In addition, the Commissioner may order Respondents to reimburse the Department or the Attorney General's Office for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceedings or any combination as authorized by law. Minn. Stat. § 177.27, subd. 7.

V. CONTESTING THIS ORDER

Pursuant to Minn. Stat. § 177.27, subd. 4, each Respondent shall have 15 calendar days from the date this Order was served to contest this Order by filing a written notice of objection specifically stating the reasons for the objection. A notice of objection must be in writing and must be received by the Commissioner at the following address or email by the deadline.

Minnesota Department of Labor and Industry
Labor Standards Unit
ATTN: Prairie Bly
443 Lafayette Road North
St. Paul, MN 55155
Email: prairie.bly@state.mn.us

If the notice of objection is delivered to the above address or faxed to the above fax number, it must be received no later than 4:30 p.m. on the last day permitted for filing the notice of objection.

If Respondents file a timely notice of objection, a contested case hearing shall be held in accordance with Minn. Stat. §§ 14.57 to 14.69, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400, and Minn. Stat. § 177.27, subd. 4. The Commissioner may order Respondents to reimburse the litigation and hearing costs expended by the Department in preparation for and in conducting the contested case proceeding, or a percentage thereof, pursuant to Minn. Stat. § 177.27, subd. 7.

VI. SETTLEMENT DISCUSSIONS

The Department has scheduled a meeting on **October 12, 2023 at 2:00 p.m.** if Respondents would like to discuss possible resolution of this Compliance Order. The meeting may be held online or in-person at the Department's office at 433 Lafayette Rd., St. Paul, MN 55155. This meeting with Department is voluntary and does not toll the timeframe to contest this Order.

VII. EFFECT OF FINAL ORDER

If Respondents do not each file a timely notice of objection, this Order shall become a final order of the Commissioner as to either Respondent who has not filed a notice of objection. *See* Minn. Stat. § 177.27, subd. 4. The civil penalties imposed upon Respondents by this Order are due and payable to the Minnesota Department of Labor and Industry on the date this Order becomes final.

When this Order becomes final, the Commissioner may take any further action permitted by law including, but not limited to, bringing an action in an appropriate district court to enforce or require compliance with this Order. *See* Minn. Stat. § 177.27, subd. 5. The Commissioner may file and enforce any unpaid portion of the penalty due to the Department as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. § 16D.17. Additionally, interest shall accrue on and be added to the unpaid balance from the date this Order is signed until it is paid at an annual rate computed in accordance with Minn. Stat. § 549.09. *See* Minn. Stat. § 177.27, subd. 7.

NICOLE BLISSENBACH
Commissioner



Dated: October 4, 2023

Nicole Blissenbach, Commissioner
Division of Labor Standards
Minnesota Department of Labor and Industry

EXHIBIT # 1

STATEMENT OF BACK WAGES

NOTICE: THIS DOCUMENT CONTAINS DATA CLASSIFIED AS PRIVATE OR CONFIDENTIAL

EE #	Last Name	First name	Address	City	State Zip	SSN	Gross	FICA	Federal	State	Net
1							\$60,532.67				
2							\$80,880.00				
3							\$23,142.00				
4							\$37,920.00				
5							\$20,804.53				
6							\$34,366.27				
7							\$34,080.00				
8							\$57,878.90				
9							\$50,598.27				
10							\$67,579.20				
11							\$21,414.40				
12							\$169,095.00				
13							\$83,667.62				
14							\$86,688.00				
15							\$35,556.00				
16							\$9,295.36				
17							\$106,312.50				
18							\$18,288.00				
19							\$13,920.00				
20							\$15,360.00				
21							\$15,360.00				
22							\$50,208.00				
23							\$34,495.09				

REDACTED

24 [REDACTED]
25 [REDACTED]

\$77,667.28

\$13,350.40

TOTALS:	\$1,218,459.5	\$0.00	\$0.00	\$0.00	\$0.00
----------------	---------------	--------	--------	--------	--------

Instructions for the Payment of Back Wages

When processing payment of back wages, all back wages listed on the Statement of Back Wages shall be paid as current payroll. Fill in the missing addresses, the social security numbers, FICA, state, federal, and net amounts on the Statement of Back Wages. Return the Statement of Back Wages to this office along with the checks made payable to the employee listed for the net amounts due.

Calculate taxes deductible and enter them on the Statement of Back Wages in the columns provided including the net pay.

Make out individual checks payable to the employee for the net amount due.

Send these checks and the completed Statement of Back Wages to the Minnesota Department of Labor & Industry, Labor Standards Unit, c/o Prairie Bly, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306. The Department of Labor and Industry will record these checks and forward them to the employee.

AFFIDAVIT OF SERVICE BY U.S. MAIL AND CERTIFIED MAIL

Re: In the Matter of the Investigation of: Advantage Construction Inc.
File No.: ICR-202100027

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

My name is ELIZABETH DOLD. On the 4th day of October 2023, in the City of St. Paul, County of Ramsey, and State of Minnesota, I mailed the attached **COMPLIANCE ORDER** by both regular first-class mail and first-class certified mail, by depositing in the United States mail, true and correct copies thereof, properly enveloped, with postage prepaid, and addressed to:

REGULAR FIRST-CLASS MAIL
Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

FIRST-CLASS CERTIFIED MAIL
7018 0680 0000 0552 3991

Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

REGULAR FIRST-CLASS MAIL
Timothy Johnson
Smith Jadin Johnson
7900 Xerxes Avenue South, Suite 2020,
Bloomington, MN 55431

I am signing this affidavit in Ramsey County, Minnesota on the 4th day of October, 2023. Pursuant to Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

Elizabeth Dold

7018 0680 0000 0552 3991

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.
OFFICIAL USE

Certified Mail Fee
\$ _____
Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$ _____
 Return Receipt (electronic) \$ _____
 Certified Mail Restricted Delivery \$ _____
 Adult Signature Required \$ _____
 Adult Signature Restricted Delivery \$ _____

Postmark
Here

Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

Exhibit B

m DEPARTMENT OF
LABOR AND INDUSTRY

10/04/2023

Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

Via First-Class and Certified Mail

Re: In the Matter of the Investigation of: Advantage Construction Inc.

File No.: ICR-202100027

Dear Christopher Amiot:

The Minnesota Department of Labor and Industry ("Department") has investigated a complaint of labor standards violations involving Advantage Construction Inc. Enclosed and served on you are the following documents: (1) a Compliance Order and (2) a Statement of Back Wages.

These are important legal documents. Please read each of these two documents carefully. You should refer to each specific document for further instructions about how to pay or appeal.

I can be reached at 651-402-1657 or by e-mail if you have any questions or would like to discuss the Compliance Order.

Sincerely,

Victor Carmona
Senior Labor Investigator, Labor Standards Unit
victor.carmona@state.mn.us
651-402-1657

STATE OF MINNESOTA
Department of Labor and Industry
Division of Labor Standards

In the Matter of the Investigation of:
Property Maintenance & Construction LLC, and
Property Maintenance and Construction Inc.

COMPLIANCE ORDER

To: Property Maintenance & Construction LLC
1174 7th St. E #1
St. Paul, MN 55106.

Property Maintenance & Construction LLC File No.: ICR-202100028
Attn: Leopoldo Pimentel Jr.
3433 77th Avenue North
Brooklyn Park, MN 55443

Property Maintenance and Construction Inc.
Attn: Leo Pimentel, Jr., Pablo Fernando
Huinansaca Morocho, and Don Patnode III
4100 83rd Avenue North
Brooklyn Park, MN 55443

In the Matter of the Investigation of:
Advantage Construction Inc.

File No.: ICR-202100027

To: Advantage Construction Inc.
Christopher Amiot
18750 Buchanan St.
East Bethel, MN 55011-5501

**NOTICE: THE ATTACHED EXHIBIT ("Exhibit 1") CONTAINS DATA CLASSIFIED
AS PRIVATE OR CONFIDENTIAL**

In accordance with Minn. Stat. § 177.27, subs. 4 and 7, the Commissioner ("Commissioner") of the Minnesota Department of Labor and Industry ("Department") issues the following Compliance Order ("Order") against Property Maintenance and Construction Inc. and Property Maintenance & Construction LLC (collectively "Respondent PMC") and Advantage Construction Inc. ("Respondent Advantage") (collectively "Respondents").

I. FINDINGS OF FACT

A. AUDIT PERIOD AND BUSINESS ENTITIES

1. The Audit Period for the Department's investigation ran from March 4, 2019 to June 5, 2022 ("Audit Period").
2. Respondent Advantage is an employer with at least one employee working in

Minnesota during the Audit Period.

3. Respondent Advantage is a licensed residential building contractor.
4. Respondent Advantage's registered office address with the Secretary of State is 18750 Buchanan St., East Bethel, MN 55011-5501. The registered agent for service is listed as Christopher Amiot.
5. During the Audit Period, Respondent Advantage was a large employer with annual gross revenue of at least \$500,000.
6. Respondent PMC is an employer with at least one employee working in Minnesota during the Audit Period.
7. Respondent PMC is a licensed residential building contractor.
8. Respondent PMC is comprised of two entities that operated concurrently and successively during the Audit Period.
 - a. Property Maintenance & Construction LLC was incorporated on February 7, 2012. The company's registered office address is 1174 7th Street East, #1, St. Paul, MN 55106. The company was administratively terminated by the Minnesota Secretary of State on January 31, 2023, although it continues to hold an active residential building contractor license.
 - b. Property Maintenance and Construction Inc. was incorporated on April 26, 2022. The company's registered office address is 4100 83rd Avenue North, Brooklyn Park, MN 55443. The individuals who incorporated the company were Leo Pimentel, Jr and Don Patnode III. The individuals listed as the registered agents on Articles of Incorporation were Leopoldo Pimentel, Jr. and Don Patnode. On April 22, 2023, the company submitted paperwork to the Minnesota Secretary of State to remove Don Patnode as a registered agent and add Pablo Fernando Huinansaca Morocho as a registered agent. Property Maintenance and Construction Inc. is a licensed residential building contractor as of June 29, 2022.
9. During the Audit Period, Respondent PMC was a large employer with annual gross revenue of at least \$500,000.

B. DEMANDS FOR INFORMATION AND RECORDS

10. On March 1, 2022, the Department mailed a Demand for the Submission of Records ("First Advantage Demand") to Respondent Advantage at its registered office address.
11. The records and information responsive to the First Advantage Demand were due to the Department on March 14, 2022. Respondent Advantage contacted the Department on March 15, 2022 and requested a due date extension. The Department granted an extension until March

17, 2022.

12. Respondent Advantage submitted records on March 17, 2022, June 3, 2022, and August 19, 2022.

13. On June 7, 2022, the Department mailed a Demand for the Submission of Records ("First PMC Demand") to Respondent PMC at its registered office address and operating business address.

14. The records and information responsive to the First PMC Demand were due to the Department on June 21, 2022. The Department granted an extension until June 28, 2022.

15. Respondent PMC submitted partial productions of records on June 28, 2022, August 12, 2022, September 16, 2022, November 14, 2022, June 05, 2023, but never provided a complete response to all items within the First PMC Demand. As of this Order, Respondent PMC has still not fully complied with the First PMC Demand.

- a. Respondent PMC did not provide complete earnings statements and time keeping records to the Department. Respondent provided some time records for 11 employees, including time cards and text messages from employees, for the time period of January 1, 2019 to June 30, 2022, but those time records were not complete. Respondent provided time cards and text messages for some employees, and provided time cards only for other employees.
- b. Respondent PMC did not provide a complete list of employees that worked on a list of 25 projects included in the First PMC Demand.
- c. Respondent PMC did not provide complete records of text messages documenting the hours employees worked during the time period Respondent PMC states it did not utilize an electronic time keeping system.

16. On September 29, 2022 and November 4, 2022, the Department mailed separate Administrative Subpoenas to ExakTime Innovations, Inc. Corporation ("ExakTime"). Collectively, the subpoenas requested photocopies of all timecards or timesheets for each of Respondent PMC's employees working at any time from March 4, 2019 to March 4, 2022. Records were received showing 20 employees worked during the Audit Period on projects for which the Department had requested records from Respondent PMC. Only 7 of these employees were listed in the timekeeping records provided by Respondent PMC. Two other employees for which Respondent PMC provided time records were not included in the records received from ExakTime.

17. On December 2, 2022, the Department mailed a Demand for Submission of Records to MV Ventures, MV Ventures Construction, MV Ventures Management, LLC, and MV Ventures Properties, LLC ("MV Ventures Demand"). MV Ventures is the owner of the Viking Lakes project located at 710 Vikings Parkway, Eagan, Minnesota 55121.

18. The records and information responsive to the MV Ventures Demand were due to

the Department on December 15, 2022. MV Ventures responded in full to the MV Ventures Demand on December 15, 2022.

19. On February 16, 2023, the Department mailed an Administrative Subpoena to Village Bank requesting financial records and documents for Respondent Advantage from March 4, 2019 to March 4, 2022. The Department received all requested records on February 28, 2023.

20. On March 22, 2023 and May 25, 2023, the Department mailed separate Administrative Subpoenas to Wells Fargo Bank, N.A. collectively requesting financial records and documents for Respondent PMC from March 4, 2019 to June 5, 2022. The Department received all requested records on April 19, 2023, and July 1, 2023.

21. On November 15, 2022, the Department mailed a second Demand for Submission of Records to Respondent PMC ("Second PMC Demand") at its registered office address.

22. The records and information responsive to the Second PMC Demand were due to the Department on November 30, 2022. Respondent PMC provided partial responses on December 5, 2022 and December 20, 2022. As of this Order, Respondent PMC has still not fully complied with the Second PMC Demand.

- a. Respondent PMC did not provide invoices or checks associated with any of the subcontractors for four of the eighteen projects included in the Audit Period.

23. On November 15, 2022, the Department mailed a second Demand for Submission of Records to Respondent Advantage ("Second Advantage Demand") at its registered office address.

24. The records and information responsive to the Second Advantage Demand were due to the Department on November 30, 2022. Respondent Advantage replied by letter on December 9, 2022, claiming they had already produced similar documents and asked the Department to obtain those records from the Department of Revenue in lieu of Respondent Advantage producing documents.

25. The Department followed up with Respondent Advantage in March 2023 and allowed a narrowed response pursuant to specific construction projects. Respondent Advantage provided responsive documents pursuant to the Second Advantage Demand on March 28, 2023. As of the date of this Order, Respondent Advantage has substantially complied with the Second Advantage Demand.

26. On June 6, 2023, the Department mailed an Administrative Subpoena to Village Bank, requesting financial records and documents for Respondent PMC from March 4, 2019 to June 5, 2022. The Department received all requested records on June 13, 2023.

C. RESPONDENTS ARE JOINT EMPLOYERS

27. Respondent Advantage subcontracted work to Respondent PMC for at least the

following 19 projects during the Audit Period:

- a. Lunds/Byerlys Penn Ave Apartments; 6228 Penn Ave S, Richfield, MN 55423.
- b. Beyond Apartments; 236 Settlers Ridge Parkway, Woodbury, MN 55129.
- c. Viking Lakes Apartment Buildings; 700 Vikings Parkway, Eagan, MN 55121.
- d. Ballantrae Apartments; 3890 Ballantrae Rd, Eagan, MN 55122.
- e. Liffey on Snelling; 308 Snelling Ave N, St Paul, MN 55104.
- f. Havenwood of Maple Grove; 18695 73rd Ave N, Maple Grove, MN 55311.
- g. Rosemary Apartments; 4628 Rosemary Way, Hugo, MN 55038.
- h. Roseville Terrace Garages; 1760 N Fernwood St, Roseville, MN 55113.
- i. The Reserves of Arbor Lakes, Maple Grove, MN 55369.
- j. Hampton Inn; 11825 Technology Dr., Eden Prairie, MN 55344.
- k. 108 Place; 4050 W 108th St, Bloomington, MN 55437.
- l. Harvestview Place; 5320 56th St NW, Rochester, MN 55901.
- m. The Legends of Blaine; 10826 Austin St NE, Blaine, MN 55449.
- n. The Winslow West St. Paul; 1631 Marthaler Ln, West St Paul, MN 55118.
- o. Annandale Care Center; 500 Park St E, Annandale, MN 55302.
- p. Okalee of Medina; 4350 Chippewa Court, Medina, MN 55357.
- q. Marshall Street Apartments; 1301 Marshall St NE, Minneapolis, MN 55413.
- r. The Crossing at Big Lake Station; 115 Henry Rd, Big Lake, MN 55309.
- s. Temperance Ridge Senior Living; 410 Fox Lake Ave, Sherburn, MN 56171.

28. For the projects noted in paragraph 27, Respondent PMC subcontracted with Respondent Advantage to perform various services, including but not limited to the following: roofing and installation of soffit and fascia, siding, metal panels, Tyvek, windows and patio doors, and gutters and downspouts.

29. Respondent PMC operated as an extension of Respondent Advantage's business by serving as, among other things, a labor broker supplying workers for Respondent Advantage's construction projects. During the Audit Period, the bank records reviewed by the Department indicate Respondent PMC received \$6.9 million in checks and of that amount \$5.8 million dollars were paid to Respondent PMC by Respondent Advantage. Therefore, during the Audit Period, Respondent Advantage accounted for approximately 84% of Respondent PMC's business, making Respondent PMC and the affected employees¹ economically dependent upon Respondent Advantage.

30. Leopoldo Pimentel, Jr. ("Pimentel") is the owner of Respondent PMC, and Don Patnode is listed as an incorporator in the articles of incorporation for Respondent PMC's Property Maintenance and Construction Inc. entity. Until April 22, 2023, Patnode was also listed as a registered agent for Property Maintenance and Construction Inc.

31. Although Respondent Advantage did not list Patnode as an employee in its responses to the First or Second Advantage Demands, Patnode is an employee of Respondent Advantage based on the following facts:

¹ The affected employees are those listed on Exhibit 1, Statement of Back Wages.

- a. As of April 11, 2023, Patnode was listed on his LinkedIn profile as serving as a "Project Manager" for Respondent Advantage from April 2018 to present and concurrently serving as the company's "General Manager" from January 2023 to present.
- b. A Facebook post dated April 9, 2020 on Respondent Advantage's Facebook page states, "Meet our Employee of the Month: Don Patnode[.] At Advantage Construction, Don is the leader of our New Construction division responsible for total project management including negotiating subcontracts, controlling budgets, and providing day-to-day communications to ensure the project remains on schedule and within budget."
- c. Many employees perceived Patnode as working for Respondent Advantage because he drove an Advantage truck and wore an Advantage uniform at project sites.
- d. Patnode's name and signature appears on some invoices received by Respondent Advantage during the Audit Period giving approval for Respondent Advantage to pay the invoices.

32. Patnode and Pimentel served as the links between Respondent PMC and Respondent Advantage, working in tandem to hire, supervise, provide tools, materials and equipment, and pay employees.

33. On September 13, 2022, a Department investigator sent an email to remodeling@pmccompany.com, requesting employee timecards pursuant to the Department's First PMC Demand. No reference in the investigator's email was made to Respondent Advantage. The same day, the recipient, listed as "Pablo Huinansa," which is presumed to refer to Pablo Fernando Huinansaca Morochó, forwarded the investigator's email to Patnode and Pimentel.

34. Affected employees were not sure if they worked for Respondent PMC, Respondent Advantage, or both companies.

35. Typically, affected employees were informed of basic employment terms related to pay and work schedules by Pimentel, and he told affected employees they worked for Respondent Advantage and provided them with PMC and Advantage uniforms. Affected employees wore Advantage and PMC uniforms for the duration of their employment. Affected employees consistently wore Advantage uniforms on the Viking Lakes project in Eagan, Minnesota.

36. On October 5, 2021, during an on-site visit to the Viking Lakes project located at 710 Vikings Parkway, Eagan, Minnesota 55121, a Department investigator tried to interview an individual who identified themselves as an employee for Respondent Advantage and was wearing an Advantage vest. The individual stated they were hired by Leopoldo Pimentel.

37. During an OSHA inspection on January 31, 2020, Pimentel reported to an OSHA investigator that he was the foreman for Respondent Advantage and that all his employees on-site

that day worked for Respondent Advantage. This is reflected in the associated OSHA inspection report.

38. During an OSHA inspection conducted on March 4, 2021, the OSHA inspector was told that Respondent PMC employees were trained under Respondent Advantage's safety programs.

39. Pimentel instructed several employees to tell OSHA inspectors they worked for Respondent Advantage.

40. In a document created for the Viking Lakes project titled "Off Hours/Weekend Work Activity Permit" on MN Development Company, LLC letterhead, dated June 19, 2021, affected employee #13 on the attached Statement of Back Wages is noted as a foreman for Respondent Advantage.

41. Some affected employees recall attending trainings sessions held at Respondent Advantage's office in East Bethel, Minnesota, and Patnode and Pimentel were present, as well as another Advantage employee, Daniel Boehnen. Employees were told the training was mandatory.

42. Patnode typically supervised affected employees on project sites, including instructing employees on which tasks to prioritize and asking employees to unload materials from trucks.

43. Patnode provided tools and safety equipment to some of the affected employees on some job sites, including hoses, harnesses, saws, and compressors.

44. Respondent Advantage typically provided the building materials affected employees needed to perform their scopes of work, including metal panels, aluminum walls, laminated boards, galvanized metal rolls and wood boards. Some affected employees knew Respondent Advantage provided the materials because the materials had a ticket order attached stating Advantage's name.

45. In July 2020, after some affected employees complained about the change in their pay rate from an hourly rate to a per square foot rate, those employees contacted Patnode and met with him directly at Respondent Advantage's office in East Bethel. The day after this meeting, these employees were paid some of their unpaid wages by Pimentel.

46. Taking the above facts together, the affected employees were economically dependent upon and under the control of Respondents. Therefore, Respondents are joint employers of the affected employees listed on the attached Statement of Back Wages.

D. THE INDIVIDUALS LISTED ON THE STATEMENT OF BACK WAGES ARE RESPONDENTS' EMPLOYEES

47. Respondents employed all 25 affected employees listed on the attached Statement of Back Wages.

48. In a letter dated November 14, 2022, Respondent PMC denied employing the following 18 affected employees identified by their corresponding number as listed on the attached Statement of Back Wages: Nos. 2-7, 10, 12-14, 17-22, and 24-25.

49. The 25 affected employees worked on various construction projects in which both Respondent PMC and Respondent Advantage were contractors. On all projects, Respondent PMC claimed to be a subcontractor under Respondent Advantage.

50. Affected employees were typically hired by Respondent PMC's owner, Pimentel, between September 2018 and November 2020. The length of employment varied by employee, but all were employed during the Audit Period.

51. During the Audit Period, 21 of the 25 affected employees did not have active construction contractor registrations. Of the four affected employees who held active licenses during the Audit Period, only one employee held an active license during their employment with Respondents. Employee number 6 on the attached Statement of Back Wages (Exhibit 1) was registered under the name Morkins Construction LLC. The company was registered on August 27, 2020, and the registration expired on December 31, 2021. Employee number 6 was paid on an hourly basis or per square foot rate during Audit Period rather than a per job basis and was Respondents' employee during the Audit Period.

52. All affected employees were paid based on an hourly, daily, or piece rate rather than a per job basis.

E. CLAIM FOR BACK WAGES

53. At the start of employment, affected employees did not receive the written notice containing the terms of employment, including their rates of pay, the days in the pay period, the regularly scheduled pay dates and the legal name of their employer with contact information, as required by Minn. Stat. § 181.032(d). In a letter dated November 14, 2022, Respondent PMC stated its practice "was to verbally advise new employees about their rate of pay and pay period at the conclusion of their interview at the main office. The basis of pay, rate of pay, pay period, name, address and telephone number of the employer would then also be reflected in the employees' first paycheck and all subsequent checks."

54. Some affected employees were paid by the hour, while others were paid by the day. At the time of hiring, Pimentel told some affected employees what their hourly rate or a daily rate of pay would be. Other affected employees were not informed of their rate of pay until after they were hired and began working. Some affected employees did not learn of their rate of pay until they were paid for the first time.

55. Affected employees were paid wages in cash via an envelope from Pimentel and occasionally from Pimentel's wife, Yahaira Aguirre, on a bi-weekly basis, every other Friday or Saturday. The envelope typically included a note indicating the number of hours or days worked each week or the total hours or days worked for the two-week pay period and stated the amount of cash enclosed.

56. Respondent PMC utilized various timekeeping methods for employees during the Audit Period, including the ExakTime electronic timekeeping system, informal written records, and text message from employees.

- a. The electronic timekeeping records are not always consistent with the hours actually worked by affected employees, including incorrect start and end times for some employees and employees who do not appear in the time records but worked for Respondents during the Audit Period.
- b. Occasionally the ExakTime timekeeping system did not work properly, and employees sent text messages to Respondents as substitute timekeeping records.
- c. Exaktime timekeeping records sometimes conflict with the hours worked listed on the earning statements. In some instances, ExakTime records show affected employees worked over 80 hours in a pay period and the associated earning statements only reflect 80 hours worked.
- d. Other than text messages, Respondent PMC did not produce any informal written timekeeping records to the Department pursuant to the First or Second PMC Demand.
- e. In a letter dated November 14, 2022, Respondent PMC stated they began using an electronic timekeeping system called ExakTime for employees to record hours worked in "mid 2021." However, Respondent PMC provided ExakTime records dating back April 2020, and the Department received records from ExakTime dating back to March 4, 2019.

57. Pimentel changed the payment structure between hourly rates and daily rates for some affected employees during the Audit Period without providing written notice of the changes to employees prior to changing their pay rates, as required by Minn. Stat. § 181.032(f).

58. Affected employees typically worked 10 to 12 hours per day, Monday through Saturday, and some Sundays each month. Some affected employees worked up to 14 hours per day during the Audit Period. Sunday work varied by employee. Employees took one-hour unpaid lunch breaks each workday, usually from 12:00 PM to 1:00 PM.

59. Affected employees consistently worked more than 40 hours per week, but consistently were not paid overtime.

60. Some affected employees paid at a daily rate were paid for 10 days of work every two weeks, even though they typically worked six or seven days per week. Other affected employees paid at a daily rate were paid for 12 days of work every two weeks, even if they worked more than 12 days in a two-week timespan.

61. At some time during the Audit Period, employees listed as Nos. 8, 23, and 24 on the attached Exhibit 1 began to receive some of their wages in a check, and for the same pay period received an additional lump sum payment in cash for hours over 80 per week at their regular rate of pay.

62. From at least March 4, 2019, until April 2021, most affected employees did not receive earnings statements, as required by Minn. Stat. § 181.032(a).

63. At different times during the Audit Period, Respondent PMC took an unauthorized seven percent (7%) deduction from affected employees receiving wages in cash or from the portion paid in cash in addition to a pay check. Employees were told the deductions were for taxes. The deduction was sometimes noted on a post-it note in the envelope containing their wages in cash. Other times, the deduction was not noted on the post-it note, but employees still received seven percent less than their hourly rate for 80 hours every two weeks. The amount of the deduction does not correlate with the amount of taxes each employee would owe in a pay period. Therefore, the Department finds that the deducted earnings were not intended to be paid by Respondents to the applicable state or federal tax authorities and constitute an unauthorized deduction from employee earnings. Employees were not provided with written authorizations as a record of their agreement to these deductions, and employees never formally agreed to the deductions via signature as required by Minn. Stat. § 181.79.

64. Approximately 30 employees attended full-day training sessions at Respondent Advantage's office for which they were not paid. The trainings included instructions for operating a forklift and installing Tyvek and windows.

65. Most affected employees who quit working for Respondents cited not being paid for all hours worked, including overtime, as one of the reasons they ended their employment. Three affected employees listed as Nos. 16, 18, and 25 on the attached Statement of Back Wages (Exhibit 1) stated they were paid for all hours worked but not paid at the overtime rate for overtime hours worked.

66. Based on its review of the available evidence, the Department finds that 25 employees experienced wage violation as follows:

- a. 22 affected employees did not receive pay for all hours worked at their regular rate of pay, resulting in **\$744,647.69** in back wages due to those employees.
- b. 25 affected employees did not receive one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek, resulting in **\$473,811.82** due to those employees.

67. Due to the Respondents failure to maintain the required records, the Department determined back wages due based on available evidence pursuant to its authority under Minn. Stat. § 177.30(d). Available evidence included electronic timesheet records provided by Respondent PMC for the time period of January 1, 2019 to June 30, 2022, employee earnings statements, employee statements, time cards provided by employees, text messages in which employees reported hours worked to Respondents, bank records, Exakttime timesheets for the period of March

4, 2019 to March 4, 2022, workers compensation claim data, and signed employee declarations.

F. RESPONDENTS' VIOLATIVE CONDUCT DURING THE AUDIT PERIOD WAS WILLFUL

68. When some affected employees complained to Pimentel about not being paid for overtime hours, Pimentel told them they needed to create their own LLC to receive overtime.

69. Pimentel told employees, including some affected employees, that if they were ever questioned by the Department or the carpenter's union (i.e., North Central Regional Council of Carpenters) the employees should say they were paid by check and for all hours worked, including overtime, even though the employees were typically paid in cash and not paid for overtime or all hours worked.

70. At other times, Pimentel told employees, including affected employees, that he did not want them to talk to the Department or carpenter's union and to refer them directly to him if they asked any questions to the employees.

71. After participating in the Department's investigation into Respondents, some affected employees feared for their safety because Pimentel had communicated to employees that they were not supposed to cooperate with the Department's investigation.

72. On April 29, 2022, Pimentel held a meeting with employees and warned them not cooperate with the Department's investigation.

73. Pimentel and others working for Respondents repeatedly questioned employees to try and determine who had complained to the Department about unpaid wages.

74. On May 5, 2022, a press conference was held in which some employees spoke out about the wage violations. On May 6, 2022, Pimentel held a meeting with employees and played a recording of the press conference for them. After showing the press conference, Pimentel again instructed employees not to cooperate with the Department's investigation.

75. The Minnesota Attorney General filed a lawsuit against Respondent PMC and Pimentel on October 25, 2022 because of the willful conduct noted herein, alleging, among other things, that Respondent PMC and Pimentel endeavored to intimidate and discourage workers from cooperating with the Department's investigation in an effort to hinder, delay, and obstruct the investigation.

76. Given the facts in paragraphs 68 to 75, Respondents knew their conduct was in violation of Minnesota law and that the affected employees were not being fully compensated for the hours they worked for Respondents.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

II. CONCLUSIONS OF LAW

1. Respondents violated Minn. Stat. § 181.101(a) by failing to pay all wages earned to affected employees at least once every 31 days on a regular payday designated in advance by the employer. Under Minn. Stat. § 181.101(a), the Commissioner may charge and collect wages earned at the affected employee's rate or rates of pay as required by any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever is greater.

- a. Respondents violated Minn. Stat. § 181.101(a) failed to pay employees for all hours worked at their regular rate of pay;
- b. Respondents violated 29 U.S.C. § 207(a)(1) by failing to compensate employees at the rate of one and one-half times the regular rate of pay for all hours worked in excess of 40 hours in a workweek;
- c. Respondent violated Minn. Stat. §§ 177.25, subd. 1 and Minn. R. 5200.0150 by failing to compensate employees at the rate of one and one-half times the regular rate of pay for all hours worked in excess of 48 hours in a workweek; and
- d. Respondents violated Minn. R. 5200.0120 by failing to pay approximately 30 employees for training time.

2. Respondents violated Minn. Stat. § 181.032(a) and (b) by failing to provide earnings statements to affected employees.

3. Respondents violated Minn. Stat. § 181.032(d) by failing to provide written notice to affected employees at the start of employment containing terms of employment.

4. Respondent violated Minn. Stat. § 181.032(f) by failing to provide written notice to affected employees of changes to any of the terms of their employment set forth in Minn. Stat. § 181.032(d).

5. Respondents violated Minn. Stat. § 181.79 by making deductions, from wages due or earned by affected employees, for a claimed indebtedness without have a pre-deduction written authorization from the employees.

6. Respondents' violations of the laws cited in this section were carried out willfully pursuant to Minn. Stat. § 177.27, subd. 7. Respondents knew or should have known that they were violating the Minnesota Fair Labor Standards Act, Minn. Stat. §§ 177.21 to 177.35 ("MFLSA"), the Minnesota Payment of Wages Act, Minn. Stat. §§ 181.01 to 181.1721 and 181.79 ("MPWA"), because the violations represented a blatant disregard for Minnesota wage and hour law, Respondent's actions indicated they knew they were violating Minnesota and federal wage and hour law, and Respondents received complaints from several affected employees regarding these violations.

III. ORDER

1. Respondents are ordered to CEASE AND DESIST from violating the laws cited in the Conclusions of Law section of this Order. Specifically, Respondents are ordered to CEASE AND DESIST from:

- a. Failing to pay all wages earned by an employee at least once every 31 days on a regular payday designated in advance, in violation of Minn. Stat. § 181.101(a), including the following:
 - i. Failing to pay employees for all hours worked at their regular rate of pay as required by Minn. Stat. § 181.101(a);
 - ii. Failing to pay employees one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek as required for a large employer by 29 U.S.C. § 207(a)(1); and
 - iii. Failing to pay employees for training time as required by Minn. R. 5200.0120, subp. 1.
- b. Failing to provide employees with written earnings statements containing all legally required information in violation of Minn. Stat. § 181.032(a) and (b);
- c. Failing to provide written notice to employees at the start of employment containing terms of employment, in violation of Minn. Stat. § 181.032(d);
- d. Failing to provide written changes to the employees' terms of employment set forth in Minn. Stat. § 181.032(d) prior to the effective date of the change, in violation of Minn. Stat. § 181.032(f);
- e. Failing to obtain voluntary written authorization from employees for deductions to recover a claimed indebtedness owed to the Respondent, in violation of Minn. Stat. § 181.79.

2. Respondents are ordered to TAKE AFFIRMATIVE STEPS that will bring them into compliance with the laws cited in the "Conclusions of Law" section of this Order. Specifically, Respondents are ordered to:

- a. consistently pay employees for all hours worked at their regular rate of pay as required by Minn. Stat. § 181.101(a);
- b. pay employees one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in a workweek as required for a large employer by 29 U.S.C. § 207(a)(1);
- c. pay employees for training time as required by Minn. R. 5200.0120, subp. 1;
- d. provide written notice containing terms of employment as required by Minn. Stat. § 181.032(d) to all current employees and to future employees at the start of employment;
- e. provide employees with written earnings statements containing all legally required information in violation of Minn. Stat. § 181.032(a) and (b);
- f. provide written changes to the employees' terms of employment set forth in Minn. Stat. § 181.032(d) prior to the effective date of the change as required by Minn. Stat. § 181.032(f);
- g. Obtain voluntary written authorizations from employees prior to taking deductions from wages for any claimed indebtedness owed to Respondent as required by Minn. Stat. § 181.79; and
- h. Maintain all necessary employment records as required by Minn. Stat. § 177.30 (a), and ensure those records are readily available for inspection by the Commissioner upon demand as required by Minn. Stat. § 177.30 (b).

4. Respondents are ordered to PAY employee BACK WAGES to each individual listed

in Exhibit 1. Back wages consist of back pay, gratuities, and commissions, including the gross amount of back wages listed on the Statement of Back Wages (Exhibit 1). The total amount of gross back wages due is **\$1,218,459.51**. Respondents shall submit to the Department:

- a. An individual check payable to each employee listed in Exhibit 1 for the gross amount due that employee less applicable FICA, Federal, and State withholdings;
- b. A wage and earning statement for each affected employee set forth in Exhibit 1; and
- c. A full alphabetical list of all employees entitled to back wages with their current addresses and phone numbers.

The checks and documents shall be mailed or delivered to the Commissioner at:

Minnesota Department of Labor and Industry
Labor Standards Unit
ATTN: Prairie Bly
443 Lafayette Road N.
St. Paul, MN 55155

They must be received by the Department **on or before 4:30 PM on October 23, 2023**.

5. Respondents are ordered to **PAY LIQUIDATED DAMAGES** in the amount of **\$1,218,459.51**. The gross liquidated damages payable to each employee are equal to the gross back wages payable to each employee as indicated on the Statement of Back Wages (Exhibit 1). Respondents shall submit to the Department a second check payable to each employee listed in Exhibit 1 for the gross amount of liquidated damages due to that employee along with a Form 1099 to each employee for the liquidated damage amount. These checks and 1099 forms shall be delivered at the same time and in the same manner as the checks and documents in Paragraph 4 above.

6. Respondents have been found to have **REPEATEDLY AND WILLFULLY** violated the MFLSA and the MPWA as described in Sections I and II of this Order. Therefore, Respondents are ordered to **PAY TO THE DEPARTMENT A CIVIL PENALTY of \$25,000**. The payment shall be made payable to the **"Minnesota Department of Labor and Industry."** Respondents shall mail or deliver a check for \$25,000 to the Department at the same time and in the same manner as the checks and documents in Paragraph 4 above. Respondents are jointly and severally liable for this civil penalty.

7. Respondents are ordered to **PAY** employee **BACK WAGES** of \$1,218,459.51, as listed on the Statement of Back Wages (Exhibit 1), and **LIQUIDATED DAMAGES** of \$1,218,459.51 and **CIVIL PENALTIES** of \$25,000 for a **TOTAL AMOUNT** due of **\$2,461,919.02**, as described in paragraphs 4, and 5, and 6. Respondents are jointly and severally liable for all back wages and liquidated damages and civil penalties due.

IV. DETERMINATION OF CIVIL PENALTY AMOUNT

In determining the amount of the \$25,000 civil penalty payable to the Department, the Commissioner considered the appropriateness of the penalty in relation to the size of Respondents' business and the gravity of Respondents' violations. Pursuant to Minn. Stat. § 177.27, subd. 7, if Respondents are found by the Commissioner to have repeatedly or willfully violated any section identified in Minn. Stat. § 177.27, subd. 4, the Commissioner may fine Respondents up to \$1,000 for each violation for each employee. As stated in Section I of this Order, Respondents willfully violated the rights of the 25 affected employees listed on Exhibit 1 throughout the Audit Period and are therefore fined \$1,000 per affected employee.

In addition, the Commissioner may order Respondents to reimburse the Department or the Attorney General's Office for all appropriate litigation and hearing costs expended in preparation for and in conducting the contested case proceedings or any combination as authorized by law. Minn. Stat. § 177.27, subd. 7.

V. CONTESTING THIS ORDER

Pursuant to Minn. Stat. § 177.27, subd. 4, each Respondent shall have 15 calendar days from the date this Order was served to contest this Order by filing a written notice of objection specifically stating the reasons for the objection. A notice of objection must be in writing and must be received by the Commissioner at the following address or email by the deadline.

Minnesota Department of Labor and Industry
Labor Standards Unit
ATTN: Prairie Bly
443 Lafayette Road North
St. Paul, MN 55155
Email: prairie.bly@state.mn.us

If the notice of objection is delivered to the above address or faxed to the above fax number, it must be received no later than 4:30 p.m. on the last day permitted for filing the notice of objection.

If Respondents file a timely notice of objection, a contested case hearing shall be held in accordance with Minn. Stat. §§ 14.57 to 14.69, the Rules of the Office of Administrative Hearings, Minn. Rules 1400.5010 to 1400.8400, and Minn. Stat. § 177.27, subd. 4. The Commissioner may order Respondents to reimburse the litigation and hearing costs expended by the Department in preparation for and in conducting the contested case proceeding, or a percentage thereof, pursuant to Minn. Stat. § 177.27, subd. 7.

VI. SETTLEMENT DISCUSSIONS

The Department has scheduled a meeting on **October 12, 2023 at 2:00 p.m.** if Respondents would like to discuss possible resolution of this Compliance Order. The meeting may be held online or in-person at the Department's office at 433 Lafayette Rd., St. Paul, MN 55155. This meeting with Department is voluntary and does not toll the timeframe to contest this Order.

VII. EFFECT OF FINAL ORDER

If Respondents do not each file a timely notice of objection, this Order shall become a final order of the Commissioner as to either Respondent who has not filed a notice of objection. *See* Minn. Stat. § 177.27, subd. 4. The civil penalties imposed upon Respondents by this Order are due and payable to the Minnesota Department of Labor and Industry on the date this Order becomes final.

When this Order becomes final, the Commissioner may take any further action permitted by law including, but not limited to, bringing an action in an appropriate district court to enforce or require compliance with this Order. *See* Minn. Stat. § 177.27, subd. 5. The Commissioner may file and enforce any unpaid portion of the penalty due to the Department as a judgment in district court without further notice or additional proceedings. *See* Minn. Stat. § 16D.17. Additionally, interest shall accrue on and be added to the unpaid balance from the date this Order is signed until it is paid at an annual rate computed in accordance with Minn. Stat. § 549.09. *See* Minn. Stat. § 177.27, subd. 7.

NICOLE BLISSENBACH
Commissioner



Dated: October 4, 2023

Nicole Blissenbach, Commissioner
Division of Labor Standards
Minnesota Department of Labor and Industry

EXHIBIT # 1

STATEMENT OF BACK WAGES

NOTICE: THIS DOCUMENT CONTAINS DATA CLASSIFIED AS PRIVATE OR CONFIDENTIAL

EE #	Last Name	First name	Address	City	State	Zip	SSN	Gross	FICA	Federal	State	Net
1	[REDACTED]											
2	[REDACTED]											
3	[REDACTED]											
4	[REDACTED]											
5	[REDACTED]											
6	[REDACTED]											
7	[REDACTED]											
8	[REDACTED]											
9	[REDACTED]											
10	[REDACTED]											
11	[REDACTED]											
12	[REDACTED]											
13	[REDACTED]											
14	[REDACTED]											
15	[REDACTED]											
16	[REDACTED]											
17	[REDACTED]											
18	[REDACTED]											
19	[REDACTED]											
20	[REDACTED]											
21	[REDACTED]											
22	[REDACTED]											
23	[REDACTED]											

24
25
REDACTED

\$77,667.28

\$13,350.40

TOTALS:	\$1,218,459.5	\$0.00	\$0.00	\$0.00	\$0.00
----------------	---------------	--------	--------	--------	--------

Instructions for the Payment of Back Wages

When processing payment of back wages, all back wages listed on the Statement of Back Wages shall be paid as current payroll. Fill in the missing addresses, the social security numbers, FICA, state, federal, and net amounts on the Statement of Back Wages. Return the Statement of Back Wages to this office along with the checks made payable to the employee listed for the net amounts due.

Calculate taxes deductible and enter them on the Statement of Back Wages in the columns provided including the net pay.

Make out individual checks payable to the employee for the net amount due.

Send these checks and the completed Statement of Back Wages to the Minnesota Department of Labor & Industry, Labor Standards Unit, c/o Prairie Bly, 443 Lafayette Road North, St. Paul, Minnesota 55155-4306. The Department of Labor and Industry will record these checks and forward them to the employee.

WRITER'S DIRECT DIAL: (952) 314-1169
E-MAIL: TJOHNSON@SJLAWFIRM.COM
REPLY TO: **Minnesota Office**
WWW.SJLAWFIRM.COM

October 18, 2023

SENT VIA CERTIFIED MAIL & U.S. MAIL & EMAIL

Minnesota Department of Labor and Industry
Labor Standards Unit
Attn: Prairie Bly
443 Lafayette Rd. N.
St. Paul, MN 55155
prairie.bly@state.mn.us

Re: Written notice of objection to Compliance Order in File No. ICR-202100027

Dear Ms. Bly:

Please consider this letter as Advantage Construction Inc.'s ("Advantage") written objection to the above referenced order and request for a contested case hearing.

The Department's factual findings that any employees of any of the PMC entities or subcontractors utilized by PMC are also employees of Advantage is wrong both factually and a matter of law. The Department's Order explicitly recognizes that Advantage subcontracted PMC and that PMC operated an independent entity for which Advantage has no stake in, part of, or anything to do with at all. The Department's Order is riddled with factual inaccuracies, including but not limited to the allegations contained in Paragraphs 32-46. Advantage did not employ any of the parties listed on the statement of back wages. The Department's legal conclusions contained in Section II of the Order are also incorrect because Advantage was not an employer of any of the affected individuals.

In addition, even if Advantage were the employer of the individuals identified in the statement of back wages (and Advantage surely was not) the Department's findings of back wages are not supported by actual records and therefore the penalty is arbitrary and capricious.

Finally, the Department's order is a thinly veiled attempt at ex post facto enforcement of Minn. Stat. § 181.165, which violates both the Federal and State Constitutions.

COLORADO: 1775 SHERMAN STREET, SUITE 2750, DENVER, CO 80203
IOWA: 1120 DEPOT LANE SE, SUITE 100, CEDAR RAPIDS, IA 52401
MINNESOTA: 7900 XERXES AVENUE SOUTH, SUITE 2020, BLOOMINGTON, MN 55431
OHIO: 470 BROAD STREET, SUITE 725, COLUMBUS, OH 43215

October 18, 2023

Page - 2 -

While this letter is intended to be a summary of the many flaws in the Department's order, it is by no means exhaustive. Accordingly, Advantage reserves its right to contest any and all portions of the Order.

Very truly yours,

SMITH JADIN JOHNSON, PLLC

A handwritten signature in black ink that reads "Timothy D. Johnson". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Timothy D. Johnson
Attorney At Law

TDJ/ach

GREGERSON, ROSOW, JOHNSON & NILAN, LTD.
ATTORNEYS AT LAW

DAVID H. GREGERSON*
JOSEPH A. NILAN*†
DANIEL R. GREGERSON*
JOSHUA A. DOROTHY†
DANIEL A. ELLERBROCK#
MARGARET L. NEUVILLE*
JACOB T. MERKEL
NICHOLAS J. SIDERAS*
TORY R. SAILER
JUSTINE K. WAGNER
BENJAMIN M. SCHEEL†

100 WASHINGTON AVENUE SOUTH
SUITE 1550
MINNEAPOLIS, MINNESOTA 55401
TELEPHONE: (612) 338-0755
FAX: (612) 349-6718
WWW.GRJN.COM

ROBERT I. LANG (1922-2012)
ROGER A. PAULY (RETIRED)
RICHARD F. ROSOW (RETIRED)
MARK J. JOHNSON (RETIRED)

#Also admitted in Illinois
†Also admitted in North Dakota
*Also admitted in Wisconsin

Writer's Direct Dial: 612-436-7476
Writer's E-mail: dellerbrock@grjn.com

October 19, 2023

Minnesota Department of Labor & Industry
Labor Standards Unit
ATTN: Prairie Bly
443 Lafayette Rd.
St. Paul, MN 55155
prairie.bly@state.mn.us

VIA EMAIL

RE: DLI Compliance Order, dated October 4, 2023
DLI File No. ICR-202100028

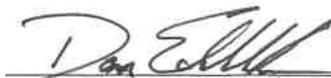
Dear Ms. Bly:

Our office represents Property Maintenance and Construction, LLC ("PMC LLC") and Property Maintenance and Construction Inc. ("PMC Inc.") with respect to the above-referenced Compliance Order and investigation.

Written notice is hereby given that PMC LLC and PMC Inc. object to and contest the Department's Compliance Order. It is our position that the Department's Compliance Order is not supported by the applicable law or the facts and that the evidence does not or will not support the Department's determinations. PMC LLC's and PMC Inc.'s objections include but are not limited to the Department's determinations with respect to violations, willfulness, employee status, back wages due, and the amount of such wages, damages, or penalties. Investigation and discovery into the facts underlying DLI's investigation and determination is ongoing. All other bases for objecting to or contesting the Department's order are expressly reserved.

Very truly yours,

GREGERSON, ROSOW, JOHNSON & NILAN, LTD.



Daniel A. Ellerbrock

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Compliance Order issued
to Property Maintenance & Construction LLC
and Property Maintenance and Construction
Inc., and Advantage Construction Inc.

NOTICE OF APPEARANCE

TO: Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul,
MN 55164-0620.

PLEASE TAKE NOTICE that:

1. The agency named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing their email addresses below, the agency's attorneys named below hereby acknowledge that they have read and agree to the terms of the Office of Administrative Hearings' e-Filing policy and choose to opt into electronic notice from the Office of Administrative Hearings with respect to this matter. **Note: Provision of an email address DOES NOT constitute the agency's or attorney's consent to electronic service from Respondents in this proceeding.**

3. The agency named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any known or reported change in any party's email address(es).

Name, address, and telephone number of agency:

Department of Labor and Industry, Division of Labor Standards
443 Lafayette Road N.
Saint Paul, MN 55155
(651) 284-5065

Name, office address, and telephone number of agency's attorneys:

Rachel Bell-Munger, Assistant Attorney General
Atty. Reg. No. 0395962
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
(651) 757-1272
rachel.bell-munger@ag.state.mn.us

Kaitrin C. Vohs, Assistant Attorney General
Atty. Reg. No. 0397725
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
(651) 757-1356
kaitrin.vohs@ag.state.mn.us

Name, office address, and telephone number of Respondents:

Respondent Property Maintenance & Construction LLC and Respondent Property Maintenance and Construction Inc. (collectively "PMC"):

Property Maintenance & Construction LLC
1174 7th St. E. #1
St. Paul, MN 55106

Property Maintenance and Construction Inc.
4100 83rd Avenue North
Brooklyn Park MN 55443

Respondent Advantage Construction Inc.:

Advantage Construction Inc.
18750 Buchanan St.
East Bethel, MN 55011-5501

Name, office address, and telephone number of Respondents' attorneys:

Attorney for PMC:

Daniel A. Ellerbrock
Gregerson, Rosow, Johnson & Nilan, Ltd.
100 Washington Avenue South, Suite 1550
Minneapolis, MN 55401
(612) 436-7476
dellerbrock@grjn.com

Attorney for Advantage Construction Inc.:

Timothy D. Johnson
Smith Jadin Johnson PLLC
7900 Xerxes Avenue South, Suite 2020
Bloomington, MN 55431
(952) 314-1169
tjohnson@sjjlawfirm.com

Dated: December 7, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
Assistant Attorney General
Atty. Reg. No. 0395962
(651) 757-1272 (Voice)
rachel.bell-munger@ag.state.mn.us

KAITRIN C. VOHS
Assistant Attorney General
Atty. Reg. No. 0397725
(651) 757-1356 (Voice)
kaitrin.vohs@ag.state.mn.us

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 297-4139 (Fax)

ATTORNEYS FOR THE COMMISSIONER OF
THE MINNESOTA DEPARTMENT OF LABOR
AND INDUSTRY

|#5654852-V1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Compliance Order issued to Property Maintenance & Construction LLC and Property Maintenance and Construction Inc., and Advantage Construction Inc. **AMENDED NOTICE OF APPEARANCE**

TO: The Honorable Barbara Case, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620.

PLEASE TAKE NOTICE that:

1. The agency named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing their email addresses below, the agency's attorneys named below hereby acknowledge that they have read and agree to the terms of the Office of Administrative Hearings' e-Filing policy and choose to opt into electronic notice from the Office of Administrative Hearings with respect to this matter. **Note: Provision of an email address DOES NOT constitute the agency's or attorney's consent to electronic service from Respondents in this proceeding.**

3. The agency named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any known or reported change in any party's email address(es).

Name, address, and telephone number of agency:

Department of Labor and Industry, Division of Labor Standards
443 Lafayette Road N.
Saint Paul, MN 55155
(651) 284-5065

Name, office address, and telephone number of agency's attorneys:

Rachel Bell-Munger, Assistant Attorney General
Atty. Reg. No. 0395962
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
(651) 757-1272
rachel.bell-munger@ag.state.mn.us

Kaitrin C. Vohs, Assistant Attorney General
Atty. Reg. No. 0397725
445 Minnesota Street, Suite 1400
St. Paul, MN 55101-2131
(651) 757-1356
kaitrin.vohs@ag.state.mn.us

Name, office address, and telephone number of Respondents:

Respondent Property Maintenance & Construction LLC and Respondent Property Maintenance and Construction Inc. (collectively "PMC"):

Property Maintenance & Construction LLC
1174 7th St. E. #1
St. Paul, MN 55106

Property Maintenance and Construction Inc.
4100 83rd Avenue North
Brooklyn Park MN 55443

Respondent Advantage Construction Inc.:

Advantage Construction Inc.
18750 Buchanan St.
East Bethel, MN 55011-5501

Name, office address, and telephone number of Respondents' attorneys:

Attorney for PMC:

Daniel A. Ellerbrock
Gregerson, Rosow, Johnson & Nilan, Ltd.
100 Washington Avenue South, Suite 1550
Minneapolis, MN 55401
(612) 436-7476
dellerbrock@grjn.com

Attorneys for Advantage Construction Inc.:

Andrew D. Moran
Larkin Hoffman
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060
(952) 896-1541
amoran@larkinhoffman.com

Timothy D. Johnson
Smith Jadin Johnson PLLC
7900 Xerxes Avenue South, Suite 2020
Bloomington, MN 55431
(952) 314-1169
tjohnson@sjjlawfirm.com

Dated: December 18, 2023

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Rachel Bell-Munger
RACHEL BELL-MUNGER
Assistant Attorney General
Atty. Reg. No. 0395962
(651) 757-1272 (Voice)
rachel.bell-munger@ag.state.mn.us

KAITRIN C. VOHS
Assistant Attorney General
Atty. Reg. No. 0397725
(651) 757-1356 (Voice)
kaitrin.vohs@ag.state.mn.us

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 297-4139 (Fax)

ATTORNEYS FOR THE COMMISSIONER OF
THE MINNESOTA DEPARTMENT OF LABOR
AND INDUSTRY

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Compliance Order
issued to Property Maintenance &
Construction LLC and Property Maintenance
and Construction Inc., and Advantage
Construction Inc.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**¹

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Party's/Agency's Attorney: _____

Firm Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Respondent's/Opposing Party's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Dated: _____

Signature of Party/Agency or Attorney

¹ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2023). Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.