

Exhibit 2

**Copy of Plaintiff's Proposed First Amended Complaint,
with all proposed amendments highlighted**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

THOMAS E. PEREZ, SECRETARY OF LABOR,
United States Department of Labor,

Plaintiff,

v.

KEVIN CORRIVEAU PAINTING, INC.,
KEVIN CORRIVEAU, BRIAN CORRIVEAU,
SHARON MERCURI, & **JEFFREY LEVINSON**

Defendants.

CIVIL ACTION: 1:12-cv-00356-PB

FIRST AMENDED COMPLAINT

I.

Plaintiff brings this action to enjoin Defendants from violating the provisions of Sections 7, 11, 15(a)(2), **15(a)(3)**, and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U.S.C. 201), hereinafter called the “Act”, and to recover unpaid wages and liquidated damages pursuant to the provisions of Sections 15(a)(2) and 16(c) of the Act, **and to obtain legal and equitable relief to redress violations of Section 15(a)(3) of the Act.**

II.

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act and by 28 U.S.C. 1345.

III.

Defendant KEVIN CORRIVEAU PAINTING, INC. is, and at all times hereinafter mentioned was, a corporation having an office and place of business at 17 Marshall Street, Nashua, New Hampshire 03060, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, engaged at that place of business, and elsewhere, in the operation of a painting and construction company.

IV.

Defendant KEVIN CORRIVEAU resides at 6 Blackfoot Drive, Nashua, New Hampshire 03063, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, owner and President of Kevin Corriveau Painting, Inc. and as such actively manages, supervises and directs the day-to-day business affairs and operations of said business. Defendant Kevin Corriveau has acted at all times material herein directly and indirectly in the interest of said business in relation to its employees and was, and is, therefore, an employer of said employees within the meaning of the Act.

V.

Defendant BRIAN CORRIVEAU resides at 2 Whitney Court, Bedford, New Hampshire 03110, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, Vice President of Kevin Corriveau Painting, Inc. and as such actively manages, supervises and directs the day-to-day business affairs and operations of said business. Defendant Brian Corriveau has acted at all times material herein directly and indirectly in the interest of said business in relation to its employees and was, and is, therefore, an employer of said employees within the meaning of the Act.

VI.

Defendant SHARON MERCURI resides at 16 Webster Street, Nashua, New Hampshire 03064, within the jurisdiction of this Court, and is now, and at all times hereinafter mentioned was, Treasurer of Kevin Corriveau Painting, Inc. and as such actively manages, supervises and directs the day-to-day business affairs and operations of said business. Defendant Sharon Mercuri has acted at all times material herein directly and indirectly in the interest of said business in relation to its employees and was, and is, therefore, an employer of said employees within the meaning of the Act.

VII.

Defendant JEFFREY LEVINSON has an office and place of business located at 17 Marshall Street, Nashua, New Hampshire 03060, within the jurisdiction of this Court and is,

and at all times hereinafter mentioned was, engaged as an agent of Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri and, among other duties, interacted with employees and former employees and held himself out to employees and former employees, and to Plaintiff's representatives, as an attorney and as in-house counsel to Kevin Corriveau Painting, Inc.

VIII.

Defendants Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri are, and at all times hereinafter mentioned were, engaged in related activities performed through unified operation or common control for a common business purpose, and they are, and at all times hereinafter mentioned were, an enterprise within the meaning of Section 3(r) of the Act.

IX.

At all times hereinafter mentioned, Defendants **Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri** employed employees in the activities of said enterprise engaged in commerce or in the production of goods for commerce, including employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce. Said enterprise, at all times hereinafter mentioned, has had an annual gross volume of sales made or business done in an amount not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated). Accordingly, the said employees have been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the Act.

X.

Defendants Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri have willfully and repeatedly violated and are willfully violating the provisions of Sections 6 and 15(a)(2) of the Act by paying employees wages at rates less than the applicable minimum wage. During certain workweeks, employees were paid on a "piece work" basis at rates less than the applicable minimum wage. Other employees were not compensated for all

hours worked.

XI.

Defendants Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri have willfully and repeatedly violated and are willfully violating the provisions of Sections 7 and 15(a)(2) of the Act by employing employees for workweeks longer than forty (40) hours without compensating them for their employment in excess of forty (40) hours in said workweeks, at rates not less than one and one-half times the regular rate at which they were employed. **Said** Defendants failed to pay more than fifty (50) non-exempt employees the required rate for overtime hours worked. **Said** Defendants routinely paid employees the regular rate for overtime hours worked. In connection with these practices, **said** Defendants used the following payroll and payment procedures with respect to overtime hours worked, inter alia:

- For certain workweeks in which employees worked more than forty (40) hours, **said** Defendants paid employees a regular hourly rate for the first forty (40) hours worked in the workweek, and a lump sum amount (as part of the payroll) for some or all of the overtime hours worked in the workweek; the lump sum amounts were equal to the product of some or all of the overtime hours worked and the regular hourly rate;
- For certain workweeks in which employees worked more than forty (40) hours, **said** Defendants paid employees by payroll checks for the first forty (40) hours worked in the workweek, and made separate off-payroll cash or check payments to employees for some or all of the overtime hours worked in the workweek; the cash and other off-payroll payments were equal to the product of some or all of the overtime hours worked and the regular hourly rate; and
- For certain workweeks in which employees worked more than forty (40) hours, **said** Defendants paid employees by payroll checks for the first forty (40) hours worked in the workweek, and “banked” overtime hours worked in the workweek; some or all of the “banked” hours were paid in subsequent workweeks at the regular hourly rate.

XII.

Defendants Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Sharon Mercuri have willfully and repeatedly violated and are willfully violating the provisions of Sections 11(c) and 15(a)(5) of the Act in that they failed to make, keep and preserve adequate and accurate records of employees' wages, hours, and other conditions and practices of employment as prescribed by regulations duly issued pursuant to authority granted in the Act and found in 29 CFR 516, in that records fail to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek with respect to many employees and the regular rates at which they were employed. For certain workweeks in which employees worked more than forty (40) hours, said Defendants required employees to alter and/or rewrite time records to show only non-overtime hours worked. On at least one such occasion, Defendant Kevin Corriveau and Defendant Sharon Mercuri instructed employees to alter and/or rewrite numerous timecards that showed overtime hours worked, and to change the number of hours recorded on said timecards and/or rewrite said timecards to show only non-overtime hours worked.

XIII.

Defendants Kevin Corriveau Painting, Inc., Kevin Corriveau, Brian Corriveau, and Jeffrey Levinson have willfully and repeatedly violated and are violating the provisions of Section 15(a)(3) of the Act by, at material times including but not limited to February 2014 through May 2014, unlawfully discriminating against employees and former employees by seeking to alter their expected testimony in the instant proceeding and by actively obstructing their efforts to communicate with Plaintiff's representatives concerning the allegations in this matter. Said Defendants intimidated and harassed employees and former employees with threats in connection with their cooperation with Plaintiff and their expected testimony in this proceeding and their actual and/or expected communications with Plaintiff's representatives. Said Defendants coached employees and former employees to make oral statements which they knew to be false, coerced them to sign prepared written

statements which they knew to be false, coerced a former employee to call Plaintiff's investigator on or about March 20, 2014 to make statements which the individual knew to be false, and offered cash as an inducement to cooperate with Defendants and to sign written statements which they knew to be false. These actions were taken by said Defendants because they were aware that employees and former employees already had expressed, and/or because they expected such individuals to express, complaints to the Department relative to the allegations in this matter, and to testify in the instant proceeding.

XIV.

During the period on and after May 1, 2009, Defendants have willfully and repeatedly violated and are willfully violating the aforesaid provisions of the Act, as alleged, and a judgment enjoining such violations is expressly authorized by Section 17 of the Act.

WHEREFORE, cause having been shown, Plaintiff prays judgment permanently enjoining and restraining Defendants, their agents, servants, employees, and those persons in active concert or participation with them, or acting in their interest and behalf, from violating the provisions of Sections 7, 11, 15(a)(2), **15(a)(3)**, and 15(a)(5) of the Act, and for such other and further relief as may be necessary or appropriate, including the restraint of any withholding of payment of wage compensation found by the Court to be due employees under the Act, **and ordering payment of compensatory and punitive damages on account of violations of Section 15(a)(3) of the Act**, and the costs of this action.

XV.

During the period on and after May 1, 2009, Defendants have willfully and repeatedly violated and are willfully violating the aforesaid provisions of the Act, as alleged. An award of actual and liquidated damages is specifically authorized by Section 16(c) of the Act.

WHEREFORE, cause having been shown, Plaintiff demands judgment ordering payment of unpaid wages found by the Court to be due to the employees listed on the attached Exhibit A, plus an equal amount as liquidated damages, and costs.

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Respectfully submitted,

M. Patricia Smith
Solicitor of Labor

Michael D. Felsen
Regional Solicitor

Scott Miller
Trial Attorney

/s/ Dustin Saldarriaga
Dustin Saldarriaga: MA683023
Trial Attorney

James Glickman
Senior Trial Attorney

Avni Amin
Trial Attorney

U.S. Department of Labor
Attorneys for Plaintiff

DATE July 25, 2014

EXHIBIT A

Abarca, Eladio	Lavallee, Rodney
Allain, David	Lefevre, Matthew
Austin, Roshun	Linebaugh, Kenneth
Avalos, Erasmo	Loranger, Nathan
Bernazzani, John	Maguire, Matthew
Bolduc, Jim	Melo, Derek
Branchi, Jeremy	Messier, Travis
Brier, Jeremy	Navez, Ricardo T.
Brittain, Adam	Otero, Javier
Caira, Robert	Pacheo, Hizipuo
Callejas, Heliodoro	Peace, Paul
Camargo, Daniel	Pech, Leo
Cardoso, Rafael	Peddy, Quintin
Carrer, Geraldo	Pereira, Elias
Chard, Alexander	Reeves, Andre
Clark, William	Ricardo, Laerte
Contreras, Victor	Serrono, Dagoberto B.
DeSouza, Fabio	Shimer, Michael
Donnelly, James	Sibeiro, Sidney
Dow, Jason	Silva, Gildazio
Emmons, Jr., Eugene	Souza, Antonio
Farfan, Luis	Souza, Luciano
Gagnon, Erick	Souza, Naassom
Griffin, Charles	Stoddard, Michael
Hardy, Jacob	Terrio, Christopher
Hartigan, Sean	Tibbetts, Bryan
Imbimbo, Anthony	Vargas, Jose
Jarek, Frank	White, Marc
Lauriano, Cesar	