

April 9, 2021

Emily Tulli  
Senior Counsel to the Solicitor of Labor  
Office Of the Solicitor  
US Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210  
[tulli.emily.l@dol.gov](mailto:tulli.emily.l@dol.gov)

CC: Jessica Looman  
Deputy Administrator  
Wage and Hour Division  
200 Constitution Ave. NW  
Washington, DC 20210  
[looman.jessica.k@dol.gov](mailto:looman.jessica.k@dol.gov)

**Re: Forbearance from Removal and Work Authorization for the Current and Former Employees of Unforgettable Coatings Inc.**

Dear Counselor Tulli,

We write on behalf of the current and former employees of Unforgettable Coatings Inc. to request forbearance from removal and a grant of work authorization to help to protect and preserve the right of workers to participate in the ongoing US Department of Labor investigation into the abusive and retaliatory practices of Unforgettable Coatings Inc. Nearly a year after a federal district court enjoined the company from retaliating against any current or former employee participating in the investigation, workers continue to fear the potential consequences of stepping forward to assist federal investigators. The chilling effect of their employer's retaliatory acts, as documented in the injunction order, have been significant. We are requesting that the USDOL take immediate action to protect this worker and the many other undocumented workers that have been victimized by Unforgettable Coatings Inc. by helping them obtain protection against retaliation and work authorization.

Workers' fears are not unfounded. Time and time again, predatory employers have employed the tactic of calling Immigration and Customs Enforcement (ICE) on their own workforce to deter worker organizing, to end worksite investigations, to evade liability and

responsibility, and to bully immigrant workers into silence. We have seen these tactics implemented in New Orleans<sup>1</sup>, in Mississippi<sup>2</sup>, and in California<sup>3</sup>, to name only a few recent examples. In the case of Unforgettable Coatings, workers were subjected to repeated threats that communicating with DOL will result in contact with immigration and potential deportation. As a result, workers who would otherwise report violations to DOL and other labor enforcement agencies are deterred from participating in investigations.

Worst of all, Unforgettable Coatings, Inc. has intimidated their employees into silence, threatening retaliation against any who would cooperate with Labor Department investigations of the company. This included explicit threats about immigration consequences if the company were to become entangled in a labor rights investigation as a result of workers' complaints. An injunction issued by the Federal District Court of Nevada found that Unforgettable Coatings Inc. took actions with the "obvious intent to intimidate their workers into silence."<sup>4</sup> At a company with a largely immigrant workforce, intimidation tactics are very consequential. Employees have been extremely hesitant to discuss their experiences without the promise of anonymity.

We are encouraged that we now have a federal labor department, Secretary of Labor, and presidential administration committed to expanding the rights of workers. However, there are still many ongoing investigations that are in process without any guarantee of protection for undocumented immigrant workers – even when the threat of retaliation is well-established. Unforgettable Coatings Inc. is one such case. Since at least 2013, the USDOL has been aware that Unforgettable Coatings has willfully violated the rights of its employees by refusing to pay for overtime hours worked, stealing its own employees' wages, and then reorganizing its policies to cover its tracks. On top of these wage and hour violations, health and safety violations are also rampant at the company. One employee suffered a fall from a two-story roof because the company has ignored safety harness standards, and even said that workers putting these on –

---

<sup>1</sup> See <https://www.nytimes.com/2019/11/29/us/hard-rock-hotel-worker-immigration.html> Delmer Ramirez Palma became a witness in a federal workplace safety investigation after he was injured during the collapse of a new Hard Rock Hotel in New Orleans, and was subsequently targeted by immigration authorities for arrest and deportation. See also <https://www.osha.gov/news/newsreleases/region6/04032020> The OSHA investigation Mr. Ramirez Palma assisted with led to the citation of 11 different companies, and one charge of willful violation. Nevertheless, he remains in exile.

<sup>2</sup> See <https://www.dol.gov/newsroom/releases/whd/whd20201120>. The Department of Labor found wage and child labor violations at the same factories raided by ICE in a high profile immigration action in 2019. See also <https://time.com/5649108/mississippi-ice-raids-no-employers-charged/>; <https://www.nytimes.com/2019/12/28/us/mississippi-ice-raids-poultry-plants.html> Koch Foods, one of the companies implicated in the ICE raid, had already reached a settlement for 3.75 million in a federal EEOC lawsuit. Afterward, workers were so afraid of government retaliation that they refused to go on the record with New York Times reporters.

<sup>3</sup> See *Ucelo-Gonzalez v. Tebb, et al.*, No. 3D-2012-00588416 (Ca. Supr. Ct., Orange County, Aug. 3, 2012); Jose Ucelo Gonzalez is a day laborer who was placed in removal proceedings after his employer filed a retaliatory false police report against him. See also Gabriel San Roman, *Lawsuit: Day Laborer Faces Deportation After Anaheim Employer Filed False Police Report*, OC Weekly, Sept. 15, 2012, available at [http://blogs.ocweekly.com/navelgazing/2012/09/jose\\_ucelo\\_gonzalez.php](http://blogs.ocweekly.com/navelgazing/2012/09/jose_ucelo_gonzalez.php).

<sup>4</sup> See *Scalia v. Unforgettable Coatings, Inc.*, 455 F. Supp. 3d 987 (D. Nev. 2020)

which takes about 30 seconds – is too much time. Similarly, workers have repeatedly reported serious health and safety concerns to staff at Arriba Las Vegas Worker Center, but fail to complete reporting to OSHA for the aforementioned concerns.

That Unforgettable Coatings Inc. could violate the rights of its employees so egregiously for so long underscores the devastating chilling effect the threat of ICE arrest has on workers. Even though there are legal policy mechanisms meant to remove that fear, we continue to see rampant retaliation in industries with vulnerable workforces. The 2011 Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites, part IV(F) allows ICE to grant a temporary law enforcement parole or deferred action to undocumented workers who are witnesses needed for a DOL investigation of a labor dispute. This intervention, while on the right track, comes too late in the process to adequately shield workers from retaliation. It is usually invoked only after retaliation has already occurred and undermined the enforcement of labor protections. By then, any investigation will already have fallen apart as potential witnesses are too afraid to come forward.

As you know, the U visa program is a useful tool that allows for affirmative application for relief even before retaliation has happened. And while it is appropriate in many instances and can-- and should-- be used in labor settings more often, it is frankly insufficient in scope. Qualifying crimes are too limited, and the massive backlog makes it an unrealistic pathway to protection. This is clear in the case of Unforgettable Coatings, where after multiple investigations leading to federal action against the same company, Jose Alfredo's U-Visa application still awaits certification. There are hundreds of workers from Unforgettable Coatings Inc. that experienced the same abuse and faced the same threats of retaliation as Jose Alfredo. Many have already bravely stepped forward to assist with the DOL investigation. They should all be given the opportunity to enforce their rights and given guaranteed protection from retaliation in the form of work authorization and removal forbearance.

Arriba Las Vegas Worker Center and the National Day Laborer Organizing Network (NDLON) formally ask the Department of Labor to take the following actions with respect to Unforgettable Coating Inc.'s workers, as well as workers at other worksites where labor violations are occurring every day:

- 1) Use the full authority granted to it under Part IV(F) of the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites to request forbearance from removal and work authorization for any undocumented worker who may have evidence of labor law violations, including wage and hour and health and safety violations;

- 2) Conduct thorough investigations into any reported wage and hour or health and safety violations, including violations which were reported to other federal and state law enforcement authorities; engage in unannounced OSHA investigations at various job sites to ensure compliance. Included in this should be any subsidiary or alternate companies registered by Cory Sumerhays including Blue Ape and Green Coat Inc.
- 3) Use the full extent of its U-visa certifying authority, certifying all qualifying crimes that are detected during the course of any DOL investigation in addition to other requests for appropriate exercise of discretion from the Department of Homeland Security.

Attached to this document are copies of the federal district court injunction of April 2020 and OSHA inspection reports, adding more detail to the violations already uncovered by your agency. Particularly during the pandemic, immigrant workers should be rewarded and not punished when they speak up to defend labor standards for everyone. Protection from retaliation is the only way to give workers in exploitative and dangerous workplaces access to the labor rights the DOL is charged with upholding. We ask that you take advantage of the tools at your disposal to protect undocumented immigrant workers at Unforgettable Coatings, Inc. and beyond.

Thank you for your attention to this matter. Please contact [bliss@arribalasvegas.org](mailto:bliss@arribalasvegas.org) and [nmmolina@ndlon.org](mailto:nmmolina@ndlon.org) with any questions.

Sincerely,

S/Bliss Requa-Trautz  
Bliss Requa-Trautz  
Executive Director  
Arriba Las Vegas Worker Center  
3020 E. Bonanza Rd. Suite 190  
Las Vegas, NV 89101  
[bliss@arribalasvegas.org](mailto:bliss@arribalasvegas.org)

S/Nadia Marin-Molina  
Nadia Marin-Molina  
Co-Executive Director  
National Day Laborer Organizing Network  
1030 S. Arroyo Parkway Suite #106  
Pasadena, CA 91105  
[nmmolina@ndlon.org](mailto:nmmolina@ndlon.org)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

EUGENE SCALIA, Secretary of Labor,  
United States Department of Labor,  
  
Plaintiff,  
  
v.  
  
UNFORGETTABLE COATINGS, INC., a  
Nevada Corporation, *et al.*,  
  
Defendants.

Case No. 2:20-cv-510-KJD-BNW

**ORDER on Motion for Preliminary  
Injunction and  
PRELIMINARY INJUNCTION**

This matter came before the Court on the Application (#5) of the United States Secretary of Labor for a preliminary injunction under Federal Rule of Civil Procedure 65 and Section 17 of the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 217, enjoining Defendants from violating the investigative and anti-retaliation provisions of the FLSA, 29 U.S.C. §§ 211(a), 215(a)(3). Defendants filed a response in opposition (#13) to which Plaintiff replied (#14). The Court then held an evidentiary hearing on the allegations on April 21, 2020. Plaintiffs have since supplemented their motion (#15/17). Defendants filed a Second Declaration of Cory Summerhays (#20).

I. Facts

Defendant Cory Summerhays runs Unforgettable Coatings, a multi-state network of residential painting companies, one of which was investigated by the U.S. Department of Labor (“DOL”) in 2013. The DOL’s 2013 investigation disclosed that Defendants failed to pay overtime when their employees worked in excess of 40 hours in a workweek.

Instead of coming into compliance, it appears that Defendants then devised a new set of procedures to obscure its continued failure to pay overtime and then commenced a campaign to deter their workers from speaking truthfully to government investigators. The current DOL

1 investigation began in September 2019 when investigators visited several of Defendants’  
2 worksites and interviewed employees confidentially. Within an hour, Defendant Summerhays  
3 went to those worksites and warned his employees they should be wary of immigration  
4 consequences if they talked about their work to strangers. Defendants have since repeated those  
5 references to “immigration” with the obvious intent to intimidate their workers into silence.<sup>1</sup>  
6 Despite Defendant’s argument that statements about immigration were made to be helpful,  
7 confidential worker informants reported that these veiled threats scared them and entirely  
8 deterred many of their colleagues from speaking with the Secretary’s investigators.

9 Defendants have tried not only to silence their workers, but also to actively manipulate  
10 them to provide false information to the government’s investigators. When workers are first  
11 hired, Defendants advise them that they will not be paid overtime premiums, but they will make  
12 a flat \$12 to \$25 per hour—not minimum wage. DOL investigators showed Defendants’ pay  
13 stubs demonstrating how an individual worker’s gross pay, when divided by the number of hours  
14 worked, always showed the worker being paid the workers’ straight time regular rate for all his  
15 hours worked—regardless of the number of overtime hours worked.

16 Defendants then held meetings in December 2019 and January 2020 with the employees.  
17 They were informed that Defendants knew of the investigation and that “big changes” were  
18 coming. Defendants also informed the workers that those employees who supported the company  
19 were going to be okay. At the January meeting, cell phones had to be handed in before  
20 employees entered the meeting. Again, they were told the company was being investigated and  
21 that they should not cooperate with investigators. Coincidentally, or not, employees’ passwords  
22 to their paycheck information were reset and they had to ask for new passwords. Some workers  
23 were scared to ask for the information.

24 At the meetings, employees were also reminded that they had signed a contract stating  
25 that they were being paid minimum wage and were told to report that to investigators. This was

---

26  
27 <sup>1</sup> The Court rejects the argument that the October 2019 letter is not germane to the present issues. Combined  
28 with the closed-door meetings, in which cell phones were collected so that no record could be made of what was said,  
the totality of the circumstances shows a concerted attempt to control the flow of information to and from the  
employees. While Defendants wish to have the Court look at each event separately, the Court must look at the totality  
of the circumstances to form a clear picture of what the employees were experiencing.

1 repeated at a meeting on March 6, 2020. The employees were told that their pay records were  
2 confidential and that they could be asked about their immigration status if they talked to  
3 investigators. On March 12, 2020, the Secretary filed the present complaint alleging  
4 underpayment of wages by a repeat violator of the FLSA.

5 On March 18, employees were informed that their wages would be reduced by thirty  
6 percent (30%). Employees were expected to work the same hours, but at a lower rate. Some  
7 workers complained to their foremen, who informed them of the pay cut, and then directly to  
8 Defendant Summerhays. They later received text messages telling them that there was no more  
9 work for them. In particular, Rafael Castillo Dubon was told that he was terminated, and he  
10 repeated these statements to investigators. At the hearing, Defendants asserted that Dubon was,  
11 in fact, still employed and currently working on a company site in Utah. The Secretary  
12 supplemented Dubon's affidavit with a statement that he was working in Utah for a  
13 subcontractor of Unforgettable Coatings (which he did not know until he was informed that day).  
14 This only emphasizes his belief that he had been terminated by Defendants.

## 15 II. Standard of Law

16 Under Federal Rule of Civil Procedure 65, a court may issue a Preliminary Injunction  
17 upon notice to the adverse party. Injunctive relief is an extraordinary remedy and it will not be  
18 granted absent a showing of probable success on the merits and the possibility of irreparable  
19 injury should it not be granted.” Shelton v. Nat'l Collegiate Athletic Ass'n, 539 F.2d 1197, 1199  
20 (9th Cir. 1976).

21 This Court must consider the following elements in determining whether to issue a  
22 preliminary injunction: (1) likelihood of success on the merits; (2) likelihood of irreparable  
23 injury if preliminary relief is not granted; (3) balance of hardships; (4) advancement of the public  
24 interest. Winter v. N.R.D.C., 555 U.S. 7, 20 (2008); Stanley v. Univ. of S. California, 13 F.3d  
25 1313, 1319 (9th Cir. 1994); Fed. R. Civ. P. 65 (governing both temporary restraining orders and  
26 preliminary injunctions).

27 The party seeking the injunction must satisfy each element; however, “the elements of the  
28 preliminary injunction test are balanced, so that a stronger showing of one element may offset a

1 weaker showing of another.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th  
2 Cir. 2011). “Serious questions going to the merits and a balance of hardships that tips sharply  
3 towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also  
4 shows that there is a likelihood of irreparable injury and that the injunction is in the public  
5 interest.” Id. at 1135 (internal quotations marks omitted).

6 Finally, to obtain injunctive relief, plaintiff must show it is “under threat of suffering  
7 ‘injury in fact’ that is concrete and particularized; the threat must be actual and imminent, not  
8 conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant;  
9 and it must be likely that a favorable judicial decision will prevent or redress the injury.” Ctr. for  
10 Food Safety v. Vilsack, 636 F.3d 1166, 1171 (9th Cir. 2011) (quoting Summers v. Earth Island  
11 Inst., 555 U.S. 488 (2009)).

### 12 III. Analysis

#### 13 A. Issuance of Preliminary Injunction

14 The Court, having considered Plaintiff’s Complaint, Plaintiff’s Motion along with the  
15 supporting declarations and exhibits, Defendants’ Opposition to the Motion (“Opposition”), and  
16 Plaintiff’s Reply as well as arguments of counsel at the hearing, and both parties supplemental  
17 affidavits finds that the issuance of a preliminary injunction is appropriate for the following  
18 reasons:

##### 19 1. Likelihood of success on the merits

20 First, Plaintiff is likely to succeed in showing that Defendants improperly  
21 retaliated against employees for cooperating with investigators in this action.<sup>2</sup> The FLSA  
22 expressly prohibits retaliation against any employee for cooperating with an investigation under  
23 the FLSA. 29 U.S.C §§ 207(a); 211(a), 215(a)(3). Injunctive relief for these violations is  
24 authorized under 29 U.S.C § 217. Plaintiff has presented evidence that Defendants failed to pay  
25 overtime wages and retaliated against employees that Defendants perceived as cooperating with

---

26  
27 <sup>2</sup> The Court does not, at this time, make any findings on whether Plaintiff is likely to prevail on its claim  
28 for failure to pay overtime wages. However, the Court does take into consideration, as reflecting on Defendants’  
credibility and motive, evidence of Defendants’ denials and failure to provide a reasonable explanation for their  
employee wage calculations.

1 investigators. Plaintiffs have also presented evidence that Defendants retaliated against  
 2 employees by cutting their wages and hours or by terminating their employment. Further,  
 3 evidence suggests that it is more likely than not that Defendants made statements intending to  
 4 quash cooperation with Plaintiff by employees who feared immigration investigations. Based on  
 5 this evidence, the Court finds that Plaintiff is likely to succeed on the merits of its claims.

### 6 2. Likelihood of irreparable injury

7 Second, allowing Defendants to continue to flout the requirements of the FLSA  
 8 will likely result in immediate and irreparable injury to Plaintiff, employees, and the public  
 9 interest. Defendants' threats appear to have chilled employees from speaking to Plaintiff.  
 10 Further, employees have had wages slashed, hours cut and employment terminated.<sup>3</sup> Should  
 11 Defendants' threats, intimidation tactics, and retaliatory conduct continue, Plaintiff will not be  
 12 able to adequately investigate the alleged misconduct and will likely suffer irreparable injury as a  
 13 result. Employees will likely be irreparably harmed by the chilling and deterrent effect that  
 14 results from retaliation against those who seek to enforce their rights. See Holt v. Continental  
 15 Group, Inc., 708 F.2d 87, 91 (2d Cir. 1983) (noting that retaliation may deter other employees  
 16 from protecting their rights under the FLSA and that this risk may constitute irreparable injury).  
 17 Further, there is a strong public interest in favor of enforcement of the FLSA, which seeks to  
 18 eliminate "labor conditions detrimental to the maintenance of the minimum standard of living"  
 19 of workers. 29 U.S.C. § 202(a). The Court therefore finds that Plaintiff has satisfied the  
 20 irreparable harm requirement.

### 21 3. Balance of hardships

22 Third, the balance of hardships weighs in Plaintiff's favor. Without a preliminary  
 23 injunction, Plaintiff and employees will likely suffer significant hardship due to the irreparable  
 24 harm that will likely result from Defendants' continued violation of the FLSA. Further,  
 25 Defendants have no legitimate interest in threatening, intimidating, or otherwise retaliating  
 26 against Plaintiffs in direct contravention of their rights under the FLSA. Finally, the limitations

---

27  
 28 <sup>3</sup> The Court has considered the economic impact of the Covid-19 restrictions on Defendant. However, the timing of the filing of the complaint, the reduction in wages and termination of employment, and the credibility of those offering affidavits weigh on the side of finding retaliation.

1 of the injunctive relief ordered by the Court will soften any long-term hardships. The Court finds  
2 that the balance of hardships weighs in favor of issuing a preliminary injunction order.

3 4. Public policy

4 Fourth, for the reasons discussed above and the reasons cited by the Court at the  
5 hearing in favor of protecting the employee who is saddled with grossly unequal bargaining  
6 power, there is a strong public interest in favor of enforcement of the FLSA. See 29 U.S.C. §  
7 202(a). Accordingly, the Court finds that this factor weighs in favor of issuing a preliminary  
8 injunction order.

9 IV. Summary

10 The Secretary presented evidence that Defendants engaged in retaliatory and intimidating  
11 conduct that they knew or should have known was likely to intimidate, improperly influence,  
12 and/or threaten employees in violation of Sections 11 and 15(a)(3) of the FLSA. Primarily, the  
13 Secretary has relied on the affidavits of his investigators and those employees, or former  
14 employees, willing to be named. The Court has weighed the credibility of the witnesses and has  
15 found the credibility of the investigators and named individuals to outweigh the credibility of  
16 Defendants.

17 The Declarations of Summerhays with attached exhibits, including the earnings  
18 statements, raise more questions than they answer. For example, the attached wage statement for  
19 Rafael Castillo Dubon in the initial opposition asserts that he was paid minimum wage of \$8.75  
20 per hour for 19.81 hours, with a bonus, and paid time off (“PTO”) at an indeterminate rate for an  
21 indeterminate number of hours. The pay stub does support Dubon’s statement that he had been  
22 told there was no more work for him on March 18, 2020. See Doc. No. 10-5, p.7. Summerhays’  
23 Second Declaration, Doc. No. 20-2 p.2, supports Summerhays’ contention that he has continued  
24 to pay employees, but shows a rate of 14.35 per hour for Dubon for PTO. The Court finds no  
25 reason to alter its determination that the credibility of the Plaintiff outweighs Defendants’  
26 credibility. Dubon’s confusion, if it exists, is understandable.

27 Further, Defendants have objected asserting that the employee’s conduct—speaking out  
28 against lowering their wages by thirty percent (30%)—is not protected activity under the FLSA,

1 citing Alvarado v. I.G.W.T. Delivery Sys., Inc., 410 F. Supp. 2d 1272 (S.D. Fla. 2006) and  
2 Morke v. Archer Daniels Midland Co., 2010 WL 2403776 (W.D. Wisc. June 10, 2010).  
3 However, these cases do not stand for the proposition suggested by Defendants. First, Alvarado  
4 concerned plaintiffs that failed to invoke FLSA or overtime complaints. Id. at 1279. The  
5 employees in this action clearly complained about their wages being cut by 30%. In Morke, the  
6 court found that plaintiff's oral complaints, rather than written complaints, were not protected  
7 under the FLSA citing Kasten v. Saint-Gobain Perf. Plastics Corp., 570 F.3d 834 (7th Cir. 2009).  
8 Unfortunately for Defendants, Kasten was reversed by the United States Supreme Court. Kasten  
9 v. Saint-Gobain Perf. Plastics Corp., 563 U.S. 1, 17 (2011) ("the Seventh Circuit erred in  
10 determining that oral complaints cannot fall within the scope of the . . . Act's anti-retaliation  
11 provision"). The concerned employees, in the present action, engaged in protected activity.

#### 12 **PRELIMINARY INJUNCTION**

13 Defendants have violated and are likely to continue violating Sections 11(a) and 15(a)(3)  
14 of the FLSA. Further, if Defendants' conduct is not immediately rectified, Defendants'  
15 vulnerable employees, the Secretary, and the public will be irreparably harmed. The Secretary  
16 has presented evidence in support of the preliminary injunction and has shown that good cause  
17 exists for issuing a preliminary injunction. Thus, the Court **GRANTS** the application for a  
18 Preliminary injunction as follows:

- 19 **1.** Defendants, their agents, and their attorneys are enjoined from retaliating,  
20 intimidating or discriminating in any way against any current or former employees  
21 of the Defendants at issue in this litigation, or any witness who might seek to  
22 participate in this litigation;
- 23 **2.** Defendants shall send to each employee by immediate electronic means, i.e., text  
24 message or slack, the written notice attached hereto as Exhibit A, explaining that  
25 Defendants have not terminated any employee since March 12, 2020 and that  
26 employees will be scheduled for all available work on a non-discriminatory basis,  
27 without bias or prejudice against any employee for engaging in activities protected  
28 by federal law, including providing testimony to this Court and the Secretary of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Labor or protesting announced pay cuts employees reasonably believed to be taken in violation of federal or state law;

3. Defendants shall post the written notice attached hereto as Exhibit A prominently in the workplace and distribute a copy of that written notice to each employee at the beginning of the next shift;

4. Defendants are enjoined from instructing employees not to speak to representatives of the DOL or to provide false information to the DOL regarding the terms and conditions of their employment;

5. Defendants are enjoined from implementing any and all adverse actions announced since March 12, 2020, including any denial of work opportunities, terminations, or the 30% wage cut previously announced by Defendants;

6. Defendants are enjoined from terminating or taking any adverse action against its employees, including any reduction of wage rates without providing the Secretary of Labor and the worker five days' written notice as to the non-retaliatory business justification for the termination and/or adverse action;

7. Defendants shall provide the Secretary with access to its time and payroll records each pay period as they are completed; and

8. Defendants shall comply with the FLSA.

**IT IS SO ORDERED.**

Dated this 23rd day of April, 2020.

  
\_\_\_\_\_  
Kent J. Dawson  
United States District Judge

## EXHIBIT A

### Aviso a Empleados

El Departamento de Trabajo [Department of Labor ("DOL" en sus siglas en inglés)] solicitó una orden judicial preliminar en el Distrito de Nevada contra Unforgettable Coatings bajo la Ley de Normas Razonables de Trabajo [Fair Labor Standards Act, ("FLSA" en sus siglas en inglés)], 29 USC § 201, y siguientes. La Corte emitió un mandato preliminar que establece que:

- Independientemente de cualquier comunicación enviada a un empleado por Unforgettable Coatings, Unforgettable Coatings no ha terminado el empleo de ningún empleado desde el 12 de marzo de 2020.
- Unforgettable Coatings no ha despedido y no puede despedir ni reducir las horas de trabajo de ningún empleado porque protestaron por el recorte salarial que el empleador anunció en marzo. Unforgettable Coatings canceló el recorte salarial anunciado de acuerdo en conformidad con la Orden de la Corte que prohíbe que Unforgettable Coatings participe en represalias en violación de la ley federal.
- Todos los empleados que deseen trabajar pueden regresar a trabajar. El empleador programará el trabajo disponible de manera no discriminatoria, asegurando que los empleados que participaron en actividades protegidas por ley federal, incluyendo la protesta por el recorte salarial anunciado por el empleador y hablando con oficiales de la ley, sean tratados por igual a los empleados que no participaron en tales actividades protegidas.
- Actividades protegidas incluyen quejándose de pago o de las condiciones de trabajo que cree que está en violación de la ley federal, hablar o cooperar con el Departamento de Trabajo, y proporcionando información al Secretario de Trabajo o la Corte ;

Si desea hablar con el DOL, puede comunicarse con ellos al (702) 928-1260 o (602) 733-7412 .

Fecha:

---

Cory Summerhays

## NOTICE TO EMPLOYEES

The Department of Labor (“DOL”) applied for a preliminary injunction in the District of Nevada against Unforgettable Coatings under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq. The Court issued a preliminary injunction which provides that:

- Regardless of any communication sent to any employee by Unforgettable Coatings, Unforgettable Coatings has not terminated the employment of any employee since March 12, 2020
- Unforgettable Coatings has not fired and cannot fire or reduce the work hours of any employee because they protested the pay cut the employer announced in March. Unforgettable Coatings cancelled the announced pay cut consistent with the Court’s Order prohibiting Unforgettable Coatings from engaging in retaliatory conduct in violation federal law
- All employees who wish to work may return to work. The employer will schedule available work on a nondiscriminatory basis, ensuring that employees who participated in activities protected by federal law, including protesting the employer’s announced pay cut and talking to law enforcement, are treated equally to employees who did not engage in such protected activities
- Protected activities include complaining about pay or working conditions believed to be in violation of federal law, speaking or cooperating with the DOL, and providing information to the Secretary of Labor or the Court;

If you wish to speak to the DOL, you may contact them at (702) 928-1260 or (602) 733-7412.

Dated:

\_\_\_\_\_  
Cory Summerhays

SEARCH OSHA

- OSHA ▾ STANDARDS ▾ ENFORCEMENT TOPICS ▾ HELP AND RESOURCES ▾
- Contact Us
- FAQ
- A to Z Index
- English
- Español

## Inspection Detail

### Quick Link Reference

1263340.015 | 1255299.015

**Case Status: CLOSED**

**Inspection: 1263340.015 - Unforgettable Coatings Inc.**

### Inspection Information - Office: Nevada Las Vegas

Nr: 1263340.015	Report ID: 0953220	Open Date: 08/31/2017
Unforgettable Coatings Inc. 8951 West Ford Avenue Las Vegas, NV 89149		Union Status: NonUnion
SIC: NAICS: 238320/Painting and Wall Covering Contractors Mailing: 186 Rolling Field Ct., Henderson, NV 89012		
Inspection Type:	Planned	
Scope:	Complete	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 10/18/2017
Emphasis:	P:Ctarget, N:Ctarget	Close Case: 10/18/2017

**Case Status: CLOSED**

**Case Status: CLOSED**

**Inspection: 1255299.015 - Unforgettable Coatings Inc.**

### Inspection Information - Office: Nevada Las Vegas

Nr: 1255299.015	Report ID: 0953220	Open Date: 08/10/2017
Unforgettable Coatings Inc. 2829 North Green Valley Parkway Henderson, NV 89014		Union Status: NonUnion
SIC: NAICS: 238320/Painting and Wall Covering Contractors Mailing: 186 Rolling Field Ct., Henderson, NV 89012		
Inspection Type:	Referral	
Scope:	Partial	Advanced Notice: N
Ownership:	Private	
Safety/Health:	Safety	Close Conference: 09/14/2017

Close Case: 04/19/2018

Related Activity:	Type	ID	Safety	Health
	Referral	1251338	Yes	

**Case Status: CLOSED**

**Violation Summary**

	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	\$2,800	\$0	\$0	\$0	\$0	\$2,800
Current Penalty	\$1,680	\$0	\$0	\$0	\$0	\$1,680
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

**Violation Items**

#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	<b>01001</b>	Serious	19260453 B02 V	09/18/2017	09/26/2017	\$1,680	\$2,800	\$0	10/06/2017	F - Formal Settlement

UNITED STATES  
DEPARTMENT OF LABOR

Occupational Safety and Health Administration  
 200 Constitution Ave NW  
 Washington, DC 20210  
 ☎ 800-321-6742 (OSHA)  
 TTY  
 www.OSHA.gov

**FEDERAL GOVERNMENT**

White House  
 Severe Storm and Flood Recovery Assistance  
 Disaster Recovery Assistance  
 DisasterAssistance.gov  
 USA.gov  
 No Fear Act Data  
 U.S. Office of Special Counsel

**OCCUPATIONAL SAFETY AND HEALTH**

Frequently Asked Questions  
 A - Z Index  
 Freedom of Information Act  
 Read the OSHA Newsletter  
 Subscribe to the OSHA Newsletter  
 OSHA Publications  
 Office of Inspector General

**ABOUT THE SITE**

Freedom of Information Act  
 Privacy & Security Statement  
 Disclaimers  
 Important Website Notices  
 Plug-Ins Used by DOL  
 Accessibility Statement

Q SEARCH OSHA

- OSHA
- STANDARDS
- ENFORCEMENT
- TOPICS
- HELP AND RESOURCES
- Contact Us
- FAQ
- A to Z Index
- English
- Español

## Inspection Detail

**Quick Link Reference**  
 1458961.015 | 1311830.015 | 1263340.015 | 1255299.015 | 1231623.015

**Case Status: CLOSED**

**Inspection: 1458961.015 - Unforgettable Coatings**

**Inspection Information - Office: Nevada Las Vegas**

---

Nr: 1458961.015    Report ID: 0953220    Open Date: 01/13/2020

---

Unforgettable Coatings  
 517 Painted Cloud Place  
 Las Vegas, NV 89144    Union Status: NonUnion

SIC:  
 NAICS: 238320/Painting and Wall Covering Contractors  
 Mailing: 4350 Arville Street Suite 410, Las Vegas, NV 89103

---

Inspection Type:	Referral	Advanced Notice:	N
Scope:	Partial	Close Conference:	03/13/2020
Ownership:	Private	Close Case:	05/07/2020
Safety/Health:	Safety		

---

Related Activity:	Type	ID	Safety	Health
	Referral	1533122	Yes	

**Case Status: CLOSED**

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	3			1		4
Current Violations				4		4
Initial Penalty	\$22,781	\$0	\$0	\$350	\$0	\$23,131
Current Penalty	\$0	\$0	\$0	\$7,493	\$0	\$7,493
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items											
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent	
1.	01001	Other	19260501 B13	03/20/2020	03/30/2020	\$5,848	\$8,354	\$0		I - Informal Settlement	

2.	<b>01002</b>	Other	19260503 A01	03/20/2020	03/30/2020	\$700	\$8,354	\$0		I - Informal Settlement
3.	<b>01003</b>	Other	19261053 B15	03/20/2020	03/30/2020	\$700	\$6,073	\$0		I - Informal Settlement
4.	<b>02001</b>	Other	NEVADA REVISED STATUTES 618.987(2	03/20/2020	03/26/2020	\$245	\$350	\$0		I - Informal Settlement

**Case Status: CLOSED**

**Inspection: 1311830.015 - Unforgettable Coatings**

**Inspection Information - Office: Utah**

Nr: 1311830.015 Report ID: 0854910 Open Date: 04/27/2018

Unforgettable Coatings  
375 North Main St  
Salt Lake City, UT 84101 Union Status: NonUnion

SIC:  
NAICS: 238320/Painting and Wall Covering Contractors  
Mailing: 770 E. Main St, Lehi, UT 84005

Inspection Type: Referral  
Scope: Partial Advanced Notice: N  
Ownership: Private  
Safety/Health: Safety Close Conference: 04/27/2018  
Close Case: 04/27/2018

Related Activity: Type ID Safety Health  
Referral 1332408 Yes

**Case Status: CLOSED**

**Case Status: CLOSED**

**Inspection: 1263340.015 - Unforgettable Coatings Inc.**

**Inspection Information - Office: Nevada Las Vegas**

Nr: 1263340.015 Report ID: 0953220 Open Date: 08/31/2017

Unforgettable Coatings Inc.  
8951 West Ford Avenue  
Las Vegas, NV 89149 Union Status: NonUnion

SIC:  
NAICS: 238320/Painting and Wall Covering Contractors  
Mailing: 186 Rolling Field Ct., Henderson, NV 89012

Inspection Type: Planned  
Scope: Complete Advanced Notice: N  
Ownership: Private  
Safety/Health: Safety Close Conference: 10/18/2017  
Emphasis: P:Ctarget, N:Ctarget Close Case: 10/18/2017

**Case Status: CLOSED**

**Case Status: CLOSED**

**Inspection: 1255299.015 - Unforgettable Coatings Inc.**

**Inspection Information - Office: Nevada Las Vegas**

Nr: 1255299.015 Report ID: 0953220 Open Date: 08/10/2017

Unforgettable Coatings Inc.  
2829 North Green Valley Parkway  
Henderson, NV 89014 Union Status: NonUnion

SIC:  
NAICS: 238320/Painting and Wall Covering Contractors  
Mailing: 186 Rolling Field Ct., Henderson, NV 89012

Inspection Type: Referral

Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	09/14/2017	
		Close Case:	04/19/2018	
Related Activity:	Type	ID	Safety	Health
	Referral	1251338	Yes	

**Case Status: CLOSED**

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	\$2,800	\$0	\$0	\$0	\$0	\$2,800
Current Penalty	\$1,680	\$0	\$0	\$0	\$0	\$1,680
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items										
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$	Fta\$	Contest	LastEvent
1.	<b>01001</b>	Serious	19260453 B02 V	09/18/2017	09/26/2017	\$1,680	\$2,800	\$0	10/06/2017	F - Formal Settlement

**Case Status: CLOSED**

**Inspection: 1231623.015 - Unforgettable Coatings**

Inspection Information - Office: Utah				
Nr: 1231623.015	Report ID: 0854910	Open Date: 05/08/2017		
Unforgettable Coatings				
3601 Hughes Canyon Circle		Union Status: NonUnion		
Holladay, UT 84117				
SIC:				
NAICS: 238320/Painting and Wall Covering Contractors				
Mailing: 770 E. Main St, Lehi, UT 84005				
Inspection Type:	Accident			
Scope:	Partial	Advanced Notice:	N	
Ownership:	Private			
Safety/Health:	Safety	Close Conference:	05/08/2017	
		Close Case:	07/20/2017	
Related Activity:	Type	ID	Safety	Health
	Referral	1212301	Yes	

**Case Status: CLOSED**

UNITED STATES  
DEPARTMENT OF LABOR

**FEDERAL GOVERNMENT**

[White House](#)  
[Severe Storm and Flood Recovery Assistance](#)  
[Disaster Recovery Assistance](#)  
[DisasterAssistance.gov](#)  
[USA.gov](#)  
[No Fear Act Data](#)  
[U.S. Office of Special Counsel](#)

**OCCUPATIONAL SAFETY AND HEALTH**

[Frequently Asked Questions](#)  
[A - Z Index](#)  
[Freedom of Information Act](#)  
[Read the OSHA Newsletter](#)  
[Subscribe to the OSHA Newsletter](#)  
[OSHA Publications](#)  
[Office of Inspector General](#)

**ABOUT THE SITE**

[Freedom of Information Act](#)  
[Privacy & Security Statement](#)  
[Disclaimers](#)  
[Important Website Notices](#)  
[Plug-Ins Used by DOL](#)  
[Accessibility Statement](#)