

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

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DISTRICT OF COLUMBIA,

*Plaintiff,*

v.

POWER DESIGN, INC., *et al.*

*Defendants.*

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Civil Action No.: 2018 CA 005598 B

**CONSENT ORDER**

This matter comes before the Court on the joint motion of Plaintiff District of Columbia (“District”) and Defendants Power Design, Inc. (“PDI”) and JVA Services, LLC (“JVA”), pursuant to SCR-Civil 68-I, for entry of this Consent Order (“Consent Order”). The District and Defendants PDI and JVA (collectively, the “Parties”) agree to the relief set forth in this Consent Order, and the Court further finds that the entry of the Consent Order is in the public interest. This Consent Order resolves the District’s claims in this matter as to Defendants PDI and JVA.

**I. PARTIES**

1. Plaintiff District of Columbia, a municipal corporation that is authorized to sue and be sued, is the local government for the territory constituting the seat of the government for the United States of America. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, and attorneys’ fees for violations of the District of Columbia Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301, *et seq.*; Workplace Fraud Act (“WFA”), D.C. Code § 32-1301.01, *et seq.*; Minimum Wage Revision Act (“MWA”), D.C. Code § 32-1001,

*et seq.*; Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01, *et seq.*; and Unemployment Compensation Act (“UCA”), D.C. Code § 51-101, *et seq.*

2. Defendant PDI is an electrical contractor that performs electrical work in the construction industry. PDI is a Florida corporation that does business in multiple jurisdictions, including the District of Columbia.

3. Defendant JVA was a subcontractor of PDI that performed construction work in the construction industry. JVA was a Maryland corporation that did business in multiple states, including the District of Columbia. JVA was dissolved in January 2018.

## **II. RECITALS**

4. On August 6, 2018, the District filed a Complaint against Defendants PDI, JVA, and DDK Electric, Inc. (“DDK”).<sup>1</sup> The District alleged in its Complaint that PDI, JVA, and DDK engaged in the following violations of District of Columbia law from 2014-2017:

- a. Misclassified workers as independent contractors when they should have been classified as employees in violation of the Workplace Fraud Act, D.C. Code § 32-1301.01, *et seq.*;
- b. Failed to keep payroll records for workers in violation of the Wage Payment and Collection Law, D.C. Code § 32-1301, *et seq.*;
- c. Failed to pay minimum wage to workers in violation of the Minimum Wage Revision Act, D.C. Code § 32-1001, *et seq.*;
- d. Failed to pay overtime to workers in violation of the Minimum Wage Revision Act, D.C. Code § 32-1001, *et seq.*;
- e. Failed to provide paid sick leave in violation of the Sick and Safe Leave Act, D.C. Code § 32-531.01, *et seq.*; and
- f. Failed to pay employer contributions as required by the Unemployment Compensation Act, D.C. Code § 51-101, *et seq.*

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<sup>1</sup> DDK failed to respond to the District’s Complaint. This Court entered a default judgment against DDK on February 1, 2019.

5. The allegations and time period set out in the District's Complaint and summarized in Paragraph 4 are hereinafter referred to as the "Covered Conduct." PDI and JVA filed Answers to the Complaint and denied each and every substantive allegation of a violation of law regarding the Covered Conduct and asserted Defenses and Affirmative Defenses. PDI contends that the actions of JVA and DDK were responsible for the Covered Conduct. JVA denies this.

6. The Parties wish to resolve and settle this litigation and have agreed to the terms in this Consent Order to finally dispose of all claims asserted in this litigation arising out of the Covered Conduct.

7. The Parties agree that by approving the entry of this Consent Order and performing the terms set forth in it, the District is not conceding that its claims were not well founded or that the defendants' defenses were valid; and PDI and JVA are not conceding that their defenses were not well founded or that the District's claims were valid, and PDI and JVA expressly deny that they violated any of the aforementioned statutes.

### **III. PAYMENT TERMS**

8. **Payment Terms Resolving the District's Claims Arising Out of the Covered Conduct Against PDI and JVA.** PDI agrees to pay to the District, in the manner set forth below, a total of Two Million Seven Hundred and Fifty Thousand Dollars (\$2,750,000.00) (the "Total Settlement Amount"). The Total Settlement Amount is the sum of Eight Hundred Seventy Nine Thousand and Fifty Six Dollars (\$879,056.00) representing amounts allegedly owed as restitution to workers under the Covered Conduct (the "Alleged Restitution Amount"); One Million Eight Hundred Twenty Thousand Nine Hundred Forty Four Dollars (\$1,820,944.00) reflecting an additional settlement amount for the Covered Conduct (the "Alleged Covered

Conduct Settlement Amount”); and Fifty Thousand Dollars (\$50,000.00) which will be paid by PDI towards the establishment or maintenance of apprenticeship programs to be operated in conjunction with the District of Columbia Department of Employment Services (the “Apprenticeship Amount”). The Total Settlement Amount shall be paid out in the following manner:

**a. Alleged Restitution Amount**

- i. Within thirty (30) days after the entry of this Consent Order, PDI shall make one (1) payment to the District in the amount of Eight Hundred Seventy Nine Thousand and Fifty Six Dollars (\$879,056.00) payable to “D.C. Treasurer.” This Alleged Restitution Amount may be used by the District for any lawful purpose, including, but not limited to payment in restitution to current and former workers who performed work for PDI and JVA or payment applied to the District’s restitution fund or litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. PDI agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District’s payment under this paragraph.
- ii. Within seven (7) days after entry of this Consent Order, PDI shall provide proof to the District of the payments which PDI made to workers who had performed work on PDI jobsites for JVA or DDK but who had not been paid overtime, minimum wage, or other amounts which those workers should have been paid. Such proof will consist of documents sufficient to show the date, amount, and recipient of such payments (collectively, the “Credited Amount”). The Parties agree that the names and other personally identifiable information about workers shall be kept confidential and not made public unless it is necessary to a matter being litigated in this action or is required to be disclosed by statute or the Superior Court Rules of Civil Procedure. The Alleged Restitution Amount due pursuant to this Consent Order will be reduced before payment by the Credited Amount.

**b. Alleged Covered Conduct Settlement Amount**

- i. Within ninety (90) days after the entry of this Consent Order, PDI shall make one (1) payment to the District in the amount of One Million Eight Hundred Twenty Thousand Nine Hundred Forty Four Dollars (\$1,820,944.00) payable to “D.C. Treasurer.” This Alleged Covered Conduct Settlement Amount may be used for any lawful purpose, including, but not limited to: deposit to the District’s litigation support fund; defrayal of the

costs of the inquiry leading hereto; defrayal of the costs of administration or distribution, or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. PDI agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

- c. Apprenticeship Amount.** Within 120 days after the entry of this Consent Order, PDI will spend Fifty Thousand Dollars (\$50,000.00) in support of apprenticeship, job-training, and/or workforce development initiatives targeted to residents of the District of Columbia. PDI will coordinate satisfaction of this term with the District of Columbia Department of Employment Services ("DOES") and upon satisfaction, will provide the Attorney General with proof that this term has been satisfied. In the event PDI is unable to coordinate satisfaction of this term with DOES, as determined by the Attorney General for the District of Columbia, the Apprenticeship Amount will be paid to the District in accordance with the terms set out in Paragraph 8(b).
- d. Delivery.** Payments made by Respondent pursuant to Paragraph 8 shall be in the form of certified or cashier's check and mailed, sent by overnight courier with tracking information requested, or hand-delivered to Cullen Hamilton, Paralegal Specialist, Office of the Attorney General for the District of Columbia, Suite 630 South, 441 Fourth Street, N.W., Washington, D.C. 20001.

#### **IV. INJUNCTIVE TERMS**

9. **Compliance – PDI.** PDI shall institute or continue to implement policies and procedures sufficient to ensure compliance with the WPCL, WFA, MWA, SSLA, and UCA. These policies and procedures shall also include reasonably designed measures to ensure that PDI's subcontractors comply with the WPCL, WFA, MWA, SSLA, and UCA. Within sixty (60) days after entry of this Consent Order, PDI shall submit to the District documents sufficient to show that such written policies and procedures have been implemented which shall include, but not be limited to, PDI's policies and procedures with respect to employment and payroll; PDI's policies and procedures with respect to engagement of subcontractors; and sample documents relating to engagement of subcontractors, such as contracts or scopes of work.

10. **Reporting – PDI.** PDI shall submit an annual report to the District for calendar years 2020 and 2021 that identifies all subcontractors who performed work for PDI in the

District of Columbia during the calendar year and includes a signed certification from each identified subcontractor attesting to compliance with the WPCL, WFA, MWA, SSLA, and UCA. In the event PDI is unable to obtain such a signed certification from an identified subcontractor, PDI shall provide documents sufficient to demonstrate that PDI took reasonable steps to obtain the signed certification.

11. JVA represents and warrants that it presently does not and will not conduct business or otherwise operate in the District of Columbia.

12. PDI and JVA each agree that they will not encourage third parties, or permit third parties acting on their behalf, to engage in practices which PDI and JVA themselves agree not to engage in under this Consent Order.

13. PDI and JVA each represent and warrant that they do not intend to engage in any activity for the purpose of allowing or encouraging acts or practices that are prohibited by this Consent Order or for any other purpose that would circumvent any part of this Consent Order or the purposes of this Consent Order. Without limitation, PDI and JVA agree that they do not intend to form separate entities or corporations through which they would operate for the purpose of circumventing any part of this Consent Order or the purposes of this Consent Order.

14. If the District has a good-faith belief that PDI or JVA has violated the injunctive terms of this Consent Order, the District shall provide a ten (10) day notice letter by email and first-class mail to PDI or JVA, respectively. PDI or JVA, as the case may be, shall have ten days from the receipt of the notice to explain or correct any violation before the District may take any legal action to enforce the terms of this Consent Order.

## **V. MUTUAL RELEASES**

15. **Release by the District.** Upon entry of this Consent Order and conditioned upon receipt of the Total Settlement Amount, the District shall immediately, and without any further action required, release PDI and JVA (and these companies' affiliates, subsidiaries, officers, directors, employees, agents, attorneys, and other representatives) from any and all claims which it had, now has, or may have arising out of the Covered Conduct that could be civilly brought under the WPCL, WFA, MWA, SSLA, and UCA or any other wage, employment, labor, or compensation law of the District of Columbia or any federal law upon which the Attorney General could seek recovery.

16. **Release by PDI.** Upon entry of this Consent Order, PDI shall immediately, and without any further action required, release the District from any and all claims which it had, now has, or may have arising out of the Covered Conduct.

17. **Release by JVA.** Upon entry of this Consent Order, JVA shall immediately, and without any further action required, release the District from any and all claims which it had, now has, or may have arising out of the Covered Conduct.

18. **Dismissal of Counterclaim.** PDI agrees to dismiss without prejudice its counterclaim against JVA and DDK.

## **VI. ADDITIONAL TERMS**

19. This Consent Order represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Consent Order nor prior versions of any of its terms that were not entered by the Court in this Consent Order may be introduced for any purpose whatsoever.

20. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without need for a new court order.

21. The Parties may apply to the Court to modify this Consent Order by agreement at any time.

22. This Consent Order may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature.

23. All notices sent pursuant to this Consent Order shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Randolph T. Chen  
Assistant Attorney General, Social Justice Section  
Office of the Attorney General  
441 Fourth Street, N.W., Suite 630 South  
Washington, D.C. 20001  
[randolph.chen@dc.gov](mailto:randolph.chen@dc.gov)

*Counsel for Plaintiff District of Columbia*

David Redden, General Counsel  
Power Design, Inc.  
11600 Ninth Street North  
St. Petersburg, Florida 33716  
[dredden@powerdesigninc.us](mailto:dredden@powerdesigninc.us)

Copy to: Paul J. Kiernan  
Holland & Knight LLP  
800 17<sup>th</sup> Street, N.W., Suite 1100  
Washington, D.C. 20006  
[Paul.Kiernan@hklaw.com](mailto:Paul.Kiernan@hklaw.com)

*Counsel for Defendant Power Design, Inc.*



W. Hank Fisher III  
W.H. Fisher LLC  
714 Eastern Shore Drive  
Salisbury, MD 21804  
[hank@whfisher.com](mailto:hank@whfisher.com)

*Counsel for Defendant JVA Services, LLC*

24. If any clause, provision or section of this Consent Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Consent Order and this Consent Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

25. Nothing in this Consent Order shall be construed as relieving PDI or JVA of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Consent Order be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

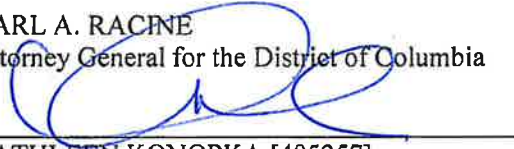
26. Nothing in this Consent Order may be deemed as creating rights in individual or entity third parties.

27. PDI and JVA shall deliver a copy of this Consent Order to each of its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Consent Order.


28. PDI and JVA shall post a copy of this Consent Order in a clear and conspicuous location on all worksites in the District of Columbia where PDI and JVA conduct business for a period of two (2) years following entry of the Consent Order.

**CONSENTED TO FOR PLAINTIFF DISTRICT OF COLUMBIA**

KARL A. RACINE  
Attorney General for the District of Columbia

  
KATHLEEN KONOPKA [495257]  
Deputy Attorney General, Public Advocacy Division

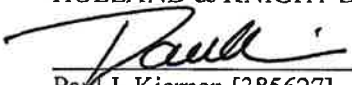
Date: 1/15/20

  
RANDOLPH T. CHEN [1032644]  
Assistant Attorney General  
Office of the Attorney General  
441 Fourth Street, N.W., Suite 630 South  
Washington, D.C. 20001  
Telephone: (202) 442-9854  
Email: [randolph.chen@dc.gov](mailto:randolph.chen@dc.gov)

Date: 1/15/20


**CONSENTED TO FOR DEFENDANT POWER DESIGN, INC.**

HOLLAND & KNIGHT LLP

  
Paul J. Kiernan [385627]  
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800 17<sup>th</sup> Street, N.W.  
Suite 1100  
Washington, D.C. 20006  
Telephone: (202) 663-7276

Date: January 15, 2020

**CONSENTED TO FOR DEFENDANT JVA SERVICES, LLC**

  
W. Hank Fisher III [1045104]  
W.H. Fisher LLC  
714 Eastern Shore Drive  
Salisbury, MD 21804  
Telephone: (443) 944-3107  
Email: [hank@whfisher.com](mailto:hank@whfisher.com)

Date: 1/14/20

**IT IS SO ORDERED, ADJUDGED, AND DECREED.**

Date: \_\_\_\_\_

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Associate Judge  
Superior Court for the District of Columbia

For service via CaseFileXpress:  
All counsel of record

For service via First-Class Mail  
DDK Electric, Inc.  
C/O Hermenegildo Reyes, Registered Agent  
3837 Braveheart Drive  
Frederick, MD 21704