

Sunday

- Teach exciting, energetic and enthusiastic classes & ASK FOR REFERRALS
- Write out summary of day's events to review Monday morning
- Call in daily totals to Chief Instructor

Important Dates to Remember

- Big Fun Friday - First Friday of every month (ZUMAS items Return Day)
- Last Tuesday of the month - Z-Vally Territory Workout & Meeting
- 1st of Month - Review Quickbooks Resale Numbers for the next 2 months
- 1st of Month - *Back Up My Documents & Current Projects Folder to Alternating Thumbdrives*
- April, July, October, January - Quarterly Number Review of Studio Master Tracking File with Team

28th of Every Month - Inventory Cleaning, Office & Printing Supplies

- Cleaning: See Cleaning Hitlist
- Printing: ZUUMAP Brochures, Studio Info Guide, Guest Registries, Business Cards, IEP & Current Promo Flyers, Red Cards, Posters, Applications, CC Auth Forms, Daily Planning/Tracking Sheets, Lead Pads, Who Do You Knows, Child Perf. To-Do-Lists, Class Schedules, Inside Logo Stickers, Z-Ultimate Folders, IDTheft Flyers and Brochures, Sign-Up Boards, Welcome New Student Packs: Adults ages 14+ & Juniors ages 10-13 (C.O.C., Mission, Std Image, Logo Def.) - Child (same - STAR Program), TinyTigs (Same + Ninja Warrior and Parents C.O.C.) 25 for each group.
- Office: Receipt Books, Poster Tape, Pens-Blue-Black-Red-Highlighter, Staples, White Out, Tape, Dry Erase Pens and Cleaner, **Z-USDS Bags**



Z-ULTIMATE SELF DEFENSE STUDIOS

Z-BIG FUN FRIDAY MEETING OF Z-MINDS

February 6th, 2015

PEOPLE, PRODUCT, & PROCESS - THE PROCESS OF PRESENTATION

- Just like the Martial Arts, we have a **SYSTEM** to Signing Up = KSE + Discounted Tuition Plans.
 - Just like the Martial Arts, we have a **STYLE** of how we Teach-N-Train our students/ clients.
 - The 8-Step Sign Up is our **PROCESS** - Know & Understand the 'ins & outs' of each step.
- Just like a police officer, ability to shoot under all circumstances could prove to save your life.*
- Commit the next 30 days to memorizing your "**Presentation Script**" - Recite it in the mirror.

Factor #6: Nature of Control

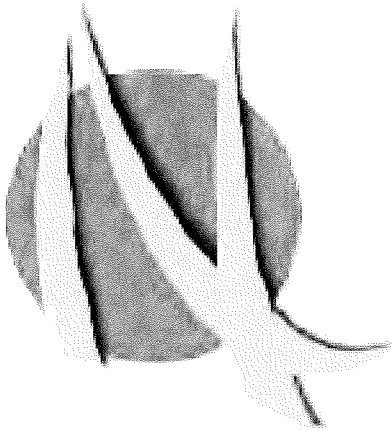
(2) Defendants closely monitored Plaintiffs' activities by tracking weekly financial, solicitation, and teaching.

- **“All studios generally track the number of individual lessons, group lessons, presentations, test drives, telephone calls, sign ups, and appointments set for each instructor... the information collected by the Chief Instructor and sent to Black Ink Accounting and the Master for the Territory”**

– Defendants Response to Interrogatory 47, Ex. G to Reply

Factor #6: Nature of Control

- (3) Students are Z-Ultimate's students and are not the Chief Instructors' students.
- Defendants control the requirements for students to advance rank.
 - Defendants' Opposition Motion at 7
 - Z-Ultimate sign up is a **lifetime membership in ALL Z-Ultimate studios**, and allows students to transfer to and attend any Z-Ultimate studio at no additional cost.
 - KSE Rate Sheet, Ex. HH



Z-ULTIMATE UNIVERSITY OF MARTIAL ARTS PROFESSIONALS

Enrollment Information Guide

Kick Start Enrollment Package - \$395.00

Includes

- Lifetime Membership to ALL Z-Ultimate Self Defense Studio locations which provides you with no cost transferability plus significant family and/or multiple lesson discounts. Your Lifetime Membership will also provide you with eligibility to attend all exclusive tournaments and special training events taught by the Masters. As an active member, you will also have unlimited use of our facilities along with the privilege to sponsor and grant your family and friends with significant enrollment discounts.

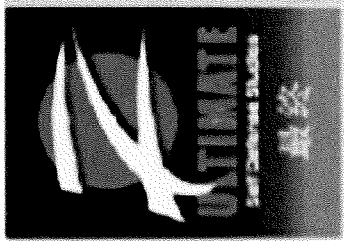
Valued at \$250.00

Factor #6: Nature of Control

(4) Defendants' Rate Guide provides Minimum

Pricing and Authorized discounts.

- Defendants offer no evidence that any Instructors offered pricing below the guide without authorization.



Z-ULTIMATE RATE SCHEDULE

Effective September 1, 2010

To ensure fairness to all students of Z-Ultimate Self Defense Studios and professional consistency amongst all Z-Ultimate studio locations, the following rate schedule reflects the minimal Enrollment, Tuition, and Testing Fees. All rates have been carefully and competitively calculated to assure maximum VALUE may be realized by our students and families.

Discount Tuition Agreements may be cancelled at any time by providing a 30-day written notification along with payment sufficient to cover the Enrollment and Tuition Discounts received to date. Cancellation will be authorized upon the receipt of both the written notification and full payment. Family, fire, military, police, and multiple lesson discounts begin at 10% off.

| TESTING FEES | BLACK BELT PROGRAM | | | | | | | | | | | | |
|---|--------------------|---------|--------|---------|------------------|---------|--------------------|----------|-------|----------|-------|----------|---|
| <p><i>Testing Fees are to include the Testing Procedure, Rank Certificate, New Belt, and Z-Ultimate Logo T-Shirt.</i></p> <table> <tr> <td>Yellow & Orange</td> <td>\$60.00</td> </tr> <tr> <td>Purple</td> <td>\$75.00</td> </tr> <tr> <td>Blue & Blue / GS</td> <td>\$95.00</td> </tr> <tr> <td>Green & Green / BS</td> <td>\$150.00</td> </tr> <tr> <td>Brown</td> <td>\$250.00</td> </tr> <tr> <td>Black</td> <td>\$500.00</td> </tr> </table> <p><i>All Brown and Black Belt Testing is conducted by Z-Ultimate Board of Masters - No Discounts Apply.</i></p> | Yellow & Orange | \$60.00 | Purple | \$75.00 | Blue & Blue / GS | \$95.00 | Green & Green / BS | \$150.00 | Brown | \$250.00 | Black | \$500.00 | <p style="text-align: center;">\$10,000.00 <i>Includes</i></p> <p style="text-align: center;">One (1) Private Lesson plus Unlimited Group Classes for a term of 48 Months <i>or</i> Two (2) Private Lessons plus Unlimited Group Classes for a term of 24 Months <i>plus</i></p> <p style="text-align: center;">Additional Incentives and Savings - Limited Availability ... Black Belt Programs are Non-Transferable</p> |
| Yellow & Orange | \$60.00 | | | | | | | | | | | | |
| Purple | \$75.00 | | | | | | | | | | | | |
| Blue & Blue / GS | \$95.00 | | | | | | | | | | | | |
| Green & Green / BS | \$150.00 | | | | | | | | | | | | |
| Brown | \$250.00 | | | | | | | | | | | | |
| Black | \$500.00 | | | | | | | | | | | | |

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All Rates have been Reviewed and Approved by the Z-Ultimate Board of Masters.

Factor #6: Nature of Control

(5) Instructors were required **wear a Z-Ultimate uniform.**

– “Defendants admit that this statement is generally correct that instructors were required to wear a uniform but most already owned one from being a student.”

- Defendants Answer to RFA # 8, Ex. N

(6) Plaintiffs were constrained under a **non-compete agreement.**

– Non-compete agreements show the employer had the **ability to control the workers livelihood**

- Swinney, 30 F.Supp.3d 629, 633 (E.D. Mich. 2014)

Economic Realities Factors

- ✓ 1) The Work Is an Integral Part of the Employer's Business.
 - ✓ **No Genuine Dispute**
- ✓ 2) The Worker's Managerial Skill Does Not Affect the Worker's Opportunity for Profit or Loss.
 - ✓ **No Genuine Dispute**
- ✓ 3) The Worker's Relative Investment Is Paltry Compared to the Employer's Investment?
 - ✓ **No Genuine Dispute**
- ✓ 4) The Work Performed Required a Special Skill and Initiative.
 - ✓ **No Genuine Dispute**
- ✓ 5) The Relationship between the Worker and the Employer Is Permanent or Indefinite.
 - ✓ **No Genuine Dispute**
- ✓ 6) The Nature and Degree of the Employer's Control Shows that the Instructors Are Economically Dependent.
 - ✓ **Undisputed Evidence Shows Significant Control**

Economic Dependence

- The Plaintiffs are economically dependent on Z-Ultimate for their continued employment.
 - See Bartels v. Birmingham, 322 U.S. at 130
- If workers are not in a position to offer their services to many different businesses or organization then they are employees.
 - DialAmerica Mktg, Inc., 757 F.2d 1376

Two Issues Before the Court

- **1) Chief Instructors ARE Employees under the FLSA's suffer or permit standard.**
- **2) Whether Defendants are an "Enterprise" and thus covered by the FLSA?**

Enterprise Coverage Elements

To establish Enterprise Coverage, there are two threshold issues that have been admitted:

- 1) \$500,000 in aggregate annual revenue

✓ Admitted

- Defendants Response to RFA 5, Ex. N

- 2) Any employee engaged in interstate commerce.

✓ Admitted

- Defendants Response to RFA 33, Ex. O

Enterprise Coverage

- 1) Related Activities
- 2) Common Control or Unified Operation
- 3) Common Business Purpose

Enterprise: Related Activities

- Activities are “related” when they are auxiliary and **service activities** such as central office and **bookkeeping**, auditing, purchasing, **advertising and other services**. Likewise, activities are “related” when they are part of a vertical structure such as **retailing of a particular product or products**.

– (Senate Report No. 145, 87th Cong., 1st Sess.,

Page 41.) 29 C.F.R. § 779.206.

Enterprise: Related Activities

- “Z-Ultimate Self Defense Studios, LLC - ZUSDS -is a part of a **family of companies** that formed with **one goal** in mind - to provide "Z-Ultimate" martial arts experience for students and their families by providing life changing and character building experiences through world-class personalized martial arts instruction.”
- “With Z-USDS, **each and every location** is under **one umbrella**, closely managed & supported by Corporate Headquarters and the Board of Masters, as well as serviced by **sister companies**, all monitored and operated by principles and staff of Z-USDS.”
 - Z-Ultimate Website, Ex. A

Enterprise: Related Activities

- Defendants' Agendas instruct Plaintiffs about using the Z-Ultimate "Systems Of Support" or "S.O.S. Teams."
 - "Why We of Z Do What We Do - CONSISTENT STANDARDIZATION"
- Agendas, June 6, 2014, Ex. J



Z-ULTIMATE SELF DEFENSE STUDIOS

Z-BIG FUN FRIDAY MEETING OF Z-MINDS

June 6th, 2014

WHY WE OF Z DO WHAT WE DO - CONSISTENT STANDARDIZATION

- As with every aspect of life, begin your mental journey of consideration w/Gratitude.
- Reminder: People have not genetically changed in thousands of years - You included.
- We of Z collectively have hundreds of years of professional studio experience.
- With experience comes WISDOM - what to do, & more importantly, what NOT to do...
- Weekly Workouts / 12-9PM / Image / Daily Promotions / Tracking #'s / SOS Teams...
- For every counter there is a counter... *For every exception, there is an exception.*
- Before you seek to change what has proven to work, work it. Just ask those that do.



Z-ULTIMATE SELF DEFENSE STUDIOS

Z-BIG FUN FRIDAY MEETING OF Z-MINDS

May 6th, 2011

Z-ULTIMATE MARTIAL ARTS SUPPLIES (ZUMAS)

- NEW PRODUCTS – Geisha Print Duffle Bags / Summer Apparel Coming Soon!!
- New Inventory of Z-Flex Hats & Polo T's / **TOURNAMENT GEAR IN STOCK!!!**
- ZUMAS now Official Distributor of Power Balance Bracelets- \$20Whls / \$30 Retail

MASTERS & Z-ULTIMATE SPECIALIZED ACCOUNTING (ZUSA)

- 45 min daily bites are working – Maintain your consistent daily chew sessions.
- Online **HOW TO** Videos Available – Incredibly **WELL DONE** – THX Jenn Herzog!!
- Group and Private Tutoring is also available – Simply **ASK FOR HELP!!**
- Daily, Weekly, and Monthly **MASTERS** Checklist – EZ & immediate information.
- Double Books – Still maintain **WRITTEN** receipts or ledgers for you to compare.
- Take the time and review your past reports to ensure **ALL** students have paid!!
- The Pain of Discipline versus the Pleasure of Results – More Wisdom & Dough!!

Z-SALES & MARKETING / Z-MARKETING & SALES

- Studio websites are done!! "How To" Video in Google Videos w/more Coming!!
- Presentation Binder Pages Complete / Referral Poster / Brochure-mercial
- 9 Months New – Culting teeth, still drooling, and lots of smelly stuff to change!!
- Please forward your ideas and feedback to ideas@zultimate.com – Village Effort
- Red Card Crusaders – It still is working for those that are still working it!!
- The **ONLY** difference between the Good, Better, and **BEST** studio is **ATTITUDE!!**
- Never lose sight of our **CORE BIZ** – **World Class Martial Arts Instructions!!**

Z-ULTIMATE SPECIAL ANNOUNCEMENTS & INSIGHTS

- May 7th Brown & Black Belt Test / May 12th CO Tournament & Monk Seminar
- Special Grappling / MMA Training by Erik Paulson – Google him – **IMPRESSIVE!!**
- ZUSDS / ZUMAS / ZUSA / MASTERS – One "Hot Topics" EMAIL on **MONDAY** for print and review with Tuesday's Meeting Agenda – **YOU ARE WELCOME!!**

Enterprise: Related Activities

- **Defendants own and control 100% of the Z-Ultimate “sister” support companies.**
 - Accounting (WLC Management /Black Ink Accounting and E-Kredible Solution/ Balck Ink Accounting)
 - Billing (Z-Ultimate Specialized Accounting)
 - Training (Z-Ultimate University)
 - Supplies (Z-Ultimate Martial Arts Supplies)
 - Defendants June 10 Discovery Response at 22-42, 66-67, Ex. H

Enterprise: Related Activities

- Defendants are retailers of martial arts lessons and supplies.
 - “You are running a “storefront” business whether you’re in a retail minimall or backstreet warehouse.”
 - Eszlinger Email, Ex. L
- **A: Yeah they teach martial arts.**
- Q: and they sell martial arts supplies?
- **A: Correct.**
 - Clark Deposition, 66: 10-16 and 67:20-22, Ex. G

Enterprise Coverage

- ✓ 1) Related Activities
 - ✓ No Genuine Dispute
- 2) Common Control or Unified Operation
- 3) Common Business Purpose

Enterprise: Common Control

- Common control is not necessarily ownership, but rather whether there is a **common control center with the ultimate power to make binding policy decisions** for all units of the enterprise.
 - Shultz v. Mack Farland, 413 F.2d 1296 (5th Cir. 1969).
- Common control may exist **despite separate management of individual entities**. Common control centers have consisted of a few individuals holding executive positions in one or more of the entities.
 - See Archie v. Grand Central Partnership, Inc., 997 F.Supp. 504 (S.D.N.Y. 1996)

Enterprise: Common Control

(1) Z-Ultimate Self Defense Studios, LLC is “not just an association or license...each and every location is **under one umbrella, closely managed & supported by Corporate Headquarters and the Board of Masters**, as well as serviced by **sister companies**, all monitored and operated by principles and staff of Z-USDS.”

- Z-Ultimate Website, Ex. A

Enterprise: Common Control

| Z-Ultimate Entity | Ownership | Purpose / Role | Cite |
|---|---------------------------------------|---|--------------------|
| MU 1 | Eszlinger | LLC Manger for Studios in LA, Ventura, OC | Ex. H 22-30, 66-67 |
| MU12 | Eszlinger | LLC Manger for Studios in Washington | Ex. H 22-30, 66-67 |
| E-Kredible d/b/a Black Ink Accounting | Eszlinger | Accounting Service for Studios in California, Washington and Arizoa | Ex. H at 22, 66-67 |
| MU VI | Clark | LLC Manger for Studios in Colorado | Ex. H 30-38, 66-67 |
| Z Masters | Clark | LLC Manger for Studios in Colorado and Utah | Ex. H 30-38, 66-67 |
| MU VI | Clark | Ultimate Events that only operates Z-Ultimate Tournaments | Ex. H at 37, 66-67 |
| WLC Management d/b/a Black Ink Accounting | Clark | Accounting Services Studios in Colorado, Utah, | Ex. H at 37, 66-67 |
| MU 3 | Prosch | LLC Manager for Studios in San Diego and AZ | Ex. H 38-42, 66-67 |
| Z-Ultimate Specialized Accounting | Eszlinger, Clark, Prosch, Ley, Taylor | Provides Billing Services to Z-Ultimate Branded Studios | Ex. H at 66 |
| Z-Ultimate Self Defense Studios LLC | Eszlinger, Clark, Prosch, Ley, Taylor | Provides Branding Licenses to Z-Ultimate Branded Studios | Ex. H at 66 |
| Z-Ultimate Martial Arts Supply | Eszlinger, Clark, Prosch, Ley, Taylor | Provides Martial Arts Equipment to Z-Ultimate Branded Studios | Ex. H at 66 |
| Zen Combat | Eszlinger, Clark, Prosch, Ley, Taylor | Provides Martial Arts Equipment to Z-Ultimate Branded Studios | Ex. H at 66 |

Enterprise: Common Control

(2) Through their 100% ownership of Masters United, LLC Managers, Defendants Clark, Eszlinger, and Prosch each own **between 50 - 100% of the United Partner entities** which operate each studio location.

- Defendants June 10 Discovery Response, Ex. H

Enterprise: Common Control

(3) Defendants operating agreements give them complete operational control:

Managers “shall have complete and exclusive authority, power and discretion to manage and control the LLC's business, property and affairs, make all decisions regarding those matters and perform all other acts or activities customary or incident to the management of the LLC.”

- Operating Agreements § 5, Ex. I

Enterprise: Common Control

- Defendants admit that Individual Defendants Clark, Eszlinger, or Prosch through their 100% ownership of the Masters United LLC management entities **negotiate compensation rates** for all Z-Ultimate workers in their respective territories.
 - Defendants Opposition Motion at 4
- The decision to classify Instructors as independent contractors was made by the wholly owned Masters United LLC management entity.
 - Defendants' August 10 Answer to RFA 13, Ex. N.

Enterprise Coverage

- 1) Related Activities
 - ✓ Not Disputed
- 2) Common Control or Unified Operation
 - ✓ Undisputed Evidence Shows Common Control
- 3) Common Business Purpose

Enterprise: Unified Operation

- In a Unified Operation “the various units may operate under a single trade name; construct their establishment to appear identical; use identical equipment; sell generally the same goods or provide the same type of services, and, in some cases, at uniform standardized prices; and in other respects appear to the persons utilizing their services or purchasing their goods as being the same business.”

• 29 C.F.R. § 779.220.

Enterprise: Unified Operation

- Defendants operate under a single trade name
 - **All public facing entities use the Z-Ultimate name**, including Z-Ultimate Self Defense Studios itself, all United Partner studio location entities (branded as Z-Ultimate), Z-Ultimate University of Martial Arts Professionals (training Chief Instructors), Z-Ultimate Specialized Accounting (billing students), and Z-Ultimate Martial Arts Supplies (selling martial arts gear.)
 - Defendants June 10 Discovery Response at 22-42, Ex. H; Defendants' August 10 Answer to RFA 20, Ex. N

Enterprise: Unified Operation

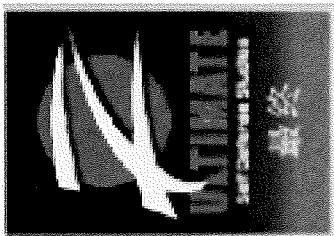
- Defendants construct their establishment to appear identical
 - **“There is commonality of design** of the studio lay as one would expect in all studios teaching Kenpo.”
 - Defendants’ Opposition Motion at 16
 - **“The Z-Ultimate studios all appeared the same with identical colors and designs.** The other Chief Instructors appeared to do the same job that I did and wore the same uniform with the Z-Ultimate patch. The other studios I saw **sold the same goods, taught the same martial arts method, were using the same company name and logo design,** and had the same operating hours.”
 - S. Cole Declaration, Ex. EE

Enterprise: Unified Operation

- Defendants sell generally the same goods or provide the same type of services
 - Q. Do those dojos still teach martial arts?
 - A. Which dojos?
 - Q. The Z-Ultimate dojos.
 - A. I'm sorry. Did you just ask me if Z-Ultimate dojos teach martial arts?
 - Q. Yes. They didn't change what they were doing is what I'm asking.
 - A. Yeah, they teach martial arts.
 - Q. And they sell martial arts supplies?
 - A. Correct
 - Clark Deposition, 66:7-16, Ex. G

Enterprise: Unified Operation

- Defendants sell goods or services at uniform standardized prices
 - Defendants admit that the pricing guide was provided to all studios that Defendants managed that were operating at the time the pricing guide was disseminated.
 - Defendants August 10 Discovery Response to RFA 11, Ex. N



Z-ULTIMATE RATE SCHEDULE

Effective September 1, 2010

To ensure fairness to all students of Z-Ultimate Self Defense Studios and professional consistency amongst all Z-Ultimate studio locations, the following rate schedule reflects the minimal Enrollment, Tuition, and Testing Fees. All rates have been carefully and competitively calculated to assure maximum VALUE may be realized by our students and families.

KICK START ENROLLMENT PACKAGE - \$395.00

Includes

- Lifetime Membership Valued at \$250.00
- Orientation Private Lesson Valued at \$75.00
- Karate Uniform & Belt Valued at \$35.00
- Z-Ultimate Logo & USA Flag Patch Valued at \$20.00
- Z-Ultimate Logo T-Shirt Valued at \$15.00

• Special Enrollment Discounts are Available •

One Private Lesson *plus* Unlimited Group Classes \$250.00 / 4 Weeks

DISCOUNTED TUITION PLANS

| |
|-----------------------------------|
| 6 MONTH |
| \$205.00 / Month Save \$395.00 |

| |
|-----------------------------------|
| 12 MONTH |
| \$195.00 / Month Save \$910.00 |

| |
|-------------------------------------|
| 24 MONTH |
| \$185.00 / Month Save \$2,060.00 |

DISCOUNTED PREPAYMENT PROGRAMS

| |
|-------------------------------------|
| 3 MONTH |
| \$650.00 / Prepaid Save \$162.50 |

| |
|---------------------------------------|
| 6 MONTH |
| \$1,200.00 / Prepaid Save \$425.00 |

| |
|---|
| 12 MONTH |
| \$2,200.00 / Prepaid Save \$1,050.00 |



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| TESTING FEES | BLACK BELT PROGRAM |
|--|--|
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©2012 Z-Ultimate Self Defense Studios V105.21.12

All Rates have been Reviewed and Approved by the Z-Ultimate Board of Masters.

Enterprise: Unified Operation

- Defendants appear as being the same business
 - Defendants admit that since September 2010 to present their martial arts studios have operated under the trade name: Z-Ultimate Self Defense Studios.
 - Defendants January 29 Discovery Response to RFA 34, Ex. O
 - Defendants admit that Z-Ultimate entites held themselves out to the public as a single group of related companies.
 - Defendants' August 10 Answer to RFA 20, Ex. N
 - Student memberships are transferable between any studio location.
 - Kick Start Enrollment, Ex. HH
 - Defendants determine rank requirements for all students
 - Defs Opposition Motion at 7

Enterprise: Unified Operation

- “You are running a “storefront” business whether you’re in a retail minimall or backstreet warehouse and if your doors are not open your business isn’t growing.”

– Eszlinger June 24, 2014 Email Ex. L

Enterprise Coverage

- 1) Related Activities
 - ✓ No Genuine Dispute
- 2) Common Control or Unified Operation
 - ✓ Undisputed Evidence Shows Common Control
 - ✓ Undisputed Evidence Shows Unified Operation
- 3) Common Business Purpose

Enterprise: Common Business Purpose

- Where the first and second element are found, common business purpose can be based on the evidence of the first 2 elements
 - Brennan v. Arnhelm & Neely Inc., 410 U.S. 1138, 1142 (1973)

Enterprise: Common Business Purpose

- When a corporation is formed to carry out a particular business objective, **all the activities in furtherance thereof** which it may perform through unified operation or common control will, in economic reality, be related and for a common business purpose even though, in isolation, they may be quite dissimilar in kind and would, if separately performed, constitute separate business enterprises.

– Brennan v. Plaza Shoe Stores Inc., 522 F.2d 843, 848 (8th Cir. 1975)

Enterprise: Common Business Purpose

- Activities whether performed by one person or by more than one person, or corporation, or other business organization, which are **directed to the same business objective** or to similar objectives in which the group has an interest. 29 C.F.R. § 779.213.