

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
(CIVIL ACTIONS BRANCH)**

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Civil Action No.:

2018 CA 005017 B

Plaintiffs,

v.

WHITING-TURNER CONTRACTING CO.
300 East Joppa Road
Towson, MD 21286

and

COMMERCIAL INTERIORS, INC.
7464 New Ridge Road, Suite 5
Hanover, MD 21076

Defendants.

COMPLAINT

1. This is an action for unpaid wages and unpaid overtime under District of Columbia law.

JURISDICTION

2. This Court has jurisdiction over this claim and venue is proper because Defendants regularly conduct business in the District of Columbia and because a substantial part of the events giving rise to Plaintiffs' claims occurred in the District of Columbia.

PARTIES

3. Plaintiffs Henry Zuniga, Andres Antunez, Angel Hernandez, Santos Reynaldo Solis, Hernan Zelaya and Orlen Zelaya are individuals who work and who have worked as construction workers. Each was formerly employed by Defendants and agents and subcontractors of Defendants as construction workers in the District of Columbia

4. Defendant Whiting-Turner Contracting Company (“Whiting-Turner”) is a Maryland corporation and a construction management and general contracting firm providing the full spectrum of construction services in the metropolitan Washington, D.C. area and nationally. Its principal place of business is located at 300 East Joppa Road, Towson, Maryland. Whiting-Turner regularly provides construction services in the District of Columbia.

5. Defendant Commercial Interiors, Inc. (“Commercial Interiors”) is a Maryland corporation and an acoustical drywall, plastering and lathing contractor providing services in the metropolitan Washington, D.C. area and its principal place of business is located at 7464 New Ridge Rd. Ste 5, Hanover, Maryland. Commercial Interiors regularly provides construction services in the District of Columbia.

FACTUAL ALLEGATIONS

6. During a period that included approximately December 2015 through approximately January 2016 Defendants performed construction work at a hotel construction project affiliated with the Hyatt hotel chain (the “Project”) at 2121 M. St. NW, Washington, D.C.

7. Defendant Whiting- Turner was the General Contractor for the project.

8. Defendant Commercial Interiors was a subcontractor of Whiting-Turner. It, in turn, hired certain subcontractors.

9. During the period from approximately December 2015 through approximately January 2016, Plaintiffs performed work for Defendants at the Project.

10. Each Defendant was an employer of each Plaintiff. The employer-employee relationship existed because each Defendant either directly controlled the work of each Plaintiff, including by assigning work tasks to each Plaintiff and by setting each Plaintiff’s hours or, alternatively, each Plaintiff’s work was controlled by a subcontractor of each Defendant which controlled the work of each Plaintiff, including by assigning work tasks to each Plaintiff and by setting each Plaintiff’s hours. To the extent that any Defendant is not liable as a direct and conventional common law employer of any Plaintiff such Defendant is liable because a subcontractor of such Defendant was an employer of such Plaintiff.

11. While employed by Defendants at the Project, Plaintiffs regularly worked in excess of forty hours per week but were not paid at the time and a half overtime rate for such overtime work.

12. Plaintiffs were not paid anything for approximately two weeks of their work for Defendants at the Project.

13. On July 13, 2018 Defendants indicated that they would make certain payments to Defendants, but such promised payments have not been received and, in any event, are substantially less than the amounts owed by Defendants to Plaintiffs.

CAUSES OF ACTION

COUNT I VIOLATION OF D.C. MINIMUM WAGE LAW

14. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs.

15. D.C. Code § 32-1003(c) provides that “[n]o employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed.”

16. Plaintiffs were “employees,” and each and all Defendants were their “employers” as defined by D.C. Code § 32-1002.

17. Defendants violated the District of Columbia's minimum wage law by knowingly failing to compensate Plaintiffs at the rate of time-and-one-half their regular hourly rate for every hour worked in excess of forty hours in any one workweek.

18. Defendants' violations of the District of Columbia's minimum wage law were repeated, knowing, willful, and intentional.

19. WHEREFORE, Defendants are liable to Plaintiff for all unpaid overtime wages, plus treble that amount in liquidated damages (or such greater amount as may be authorized by law), interest (both pre-and post-judgment), attorneys' fees, litigation costs, and any other and further relief this Court deems appropriate.

COUNT II
FAILURE TO TIMELY PAY WAGES

20. Plaintiffs re-allege and incorporate by reference the allegations set forth in the preceding paragraphs.

21. D.C. Code § 32-1303 provides that “[w]henver an employer discharges an employee, the employer shall pay the employee’s wages” within four days and that “[w]henver an employee ... quits or resigns, the employer shall pay the employee’s wages due upon the next regular payday or within 7 days from the date of quitting or resigning, whichever is earlier.”

22. D.C. Code § 32-1301(3) defines wages to include, inter alia, an “overtime premium.”

23. Plaintiffs were “employees,” and each and all Defendants were their “employers” as defined by D.C. Code § 32–1301.

24. D.C. Code § 32–1303(5) further provides that “[a] subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor’s employees for the subcontractor’s violations”

25. Because of their failure to pay overtime and failure to pay for certain weeks of work Defendants failed to timely pay Plaintiffs wages owed.

26. Defendants’ failure to make such payments was repeated, knowing, willful, and intentional.

27. WHEREFORE, Defendants are liable to Plaintiffs for all unpaid minimum wages, plus treble that amount in liquidated damages (or such greater amount as may be authorized by law), interest (both pre-and post-judgment), attorneys’ fees, litigation costs, and any other and further relief this Court deems appropriate.

DEMAND FOR JUDGMENT

Wherefore, Plaintiffs demand judgment and relief as follows:

- a. Injunctive relief to enjoin Defendants from further violations of labor laws.
- b. Monetary damages, including liquidated damages, in an amount in excess of \$10,000, to be proven;
- c. An award of attorneys' fees and litigation expenses, as authorized by D.C. Code § 32-1308 and any other applicable law; and
- d. Such other relief that the Court deems just and proper.

Date: July 13, 2018

Respectfully submitted,

/s/Matthew Kaplan

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