

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

IVAN CASTILLO, on behalf of himself and all
others similarly situated,
c/o Handley Farah & Anderson PLLC
777 6th Street NW
Eleventh Floor
Washington, DC 20001

JUAN MARTINEZ, on behalf of himself and all
others similarly situated.
c/o Handley Farah & Anderson PLLC
777 6th Street NW
Eleventh Floor
Washington, DC 20001

Plaintiffs,

v.

CBG BUILDING COMPANY LLC
4401 Wilson Blvd.
Ste. 600
Arlington, VA 22203

Service at:
Corporation Service Company
1090 Vermont Ave., NW
Washington, DC 20005

Defendant.

Civil Action No.: 2020 CA 003502 B

CLASS AND COLLECTIVE ACTION COMPLAINT

1. This is an action for unpaid wages, unpaid overtime, and workplace fraud under District of Columbia law. Plaintiffs, on behalf of themselves and all other similarly situated individuals, by and through their undersigned attorneys, bring this action against Defendant CBG Building Company LLC (“CBG” or “Defendant”) for failing to pay construction workers

performing work for CBG their legally mandated wages in violation of the District of Columbia's Minimum Wage Act ("MWA"), D.C. Code § 32-1001, *et. seq.*, the District of Columbia's Wage Payment and Collection Law ("WPCL"), D.C. Code § 32-1301 *et. seq.*, and for improper classification of employees as independent contractors in violation of the District of Columbia's Workplace Fraud Act ("WFA"), D.C. Code § 32.1331.01 *et. seq.*

INTRODUCTION

2. As noted in a recent report by the District of Columbia's Office of the Attorney General, worker misclassification and wage theft is rampant in the District of Columbia's construction industry.¹ Worker misclassification is a form of payroll abuse where workers that should be classified as employees are illegally classified as independent contractors.² By misclassifying workers, employers deny employees their lawful wages and benefits while simultaneously underfunding social insurance programs like Social Security, Medicaid, unemployment insurance, and workers' compensation.³ One way in which misclassification and wage theft are perpetrated is through the use of subcontractors who fail to follow the District's wage and misclassification laws.⁴ Defendant and its subcontractors have engaged in such conduct, the effect of which is to deny employees on their construction sites their lawfully owed wages and benefits in violation of District of Columbia wage and misclassification laws.

¹ See "Illegal Worker Misclassification: Payroll Fraud in the District's Construction Industry," Issue Brief and Economic Report, D.C. Office of the Attorney General, at 1, (Sept 2019) *available at* <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.* At 6.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this claim and venue is proper because Defendant regularly conducts 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

4. Plaintiffs Ivan Castillo and Juan Martinez were employed as construction workers in the District of Columbia metropolitan area. In 2020, they were employed by Defendant and its subcontractors Charly Drywall & Painting Inc. ("Charly Drywall"), Advantage Air Conditioning of Virginia ("Advantage") and R&L General Contractor, LLC ("R&L") to work on a construction project at 1611 Eckington Place, NE in Washington, DC known as Eckington Yard Apartments ("Eckington Yard").

5. Plaintiff Ivan Castillo is a resident of Virginia and was employed as a construction worker in the District of Columbia metropolitan area. From February 2020 to June 2020, he was employed by one or more of Defendant's subcontractors, including Advantage and R&L General Contractor, LLC, to work at Eckington Yard.

6. Plaintiff Juan Martinez is a resident of Virginia and was employed as a construction worker in the District of Columbia metropolitan area. During the first half of 2020, he was employed by one or more of Defendant's subcontractors, including Charly Drywall, to work at Eckington Yard.

7. Defendant CBG is a Virginia corporation that provides specialty construction services in multiple markets across the United States. It is headquartered in Arlington, Virginia.

FACTUAL ALLEGATIONS

8. Defendant CBG was and is the general contractor responsible for multiple construction projects across DC (the “DC CBG Projects”), including Eckington Yard, River Point (a mixed-use community at 2100 2nd Street SW), Bryant Street (a mixed-use community at 600 Rhode Island Avenue NE), and The Marriott AC (a high rise hotel at 601 K Street NW).

9. Defendant CBG subcontracted some of its construction work on the DC CBG Projects to Charly Drywall, R&L, and Advantage, as well as to other subcontractors, including Power Design, Inc., WG Welch, Belfast Valley, L4 Property Services, A&H Plumbing, Colonial Electric, Breeden Mechanical, and Anderson Mechanical Services Inc.

10. During 2020, Plaintiffs and other similarly situated individuals performed construction work for Defendant at the Eckington Yard Project, and other similarly situated individuals performed construction work for Defendant at other DC CBG Projects around the District of Columbia, including River Point, Bryant Street and The Marriott AC. Plaintiffs and other similarly situated individuals performed their work at the direction of Defendants’ subcontractors.

11. While employed by Defendant and its subcontractors at the DC CBG Projects, Defendant and its subcontractors treated Plaintiffs and other similarly situated individuals as independent contractors, when in fact they were employees.

12. For example, when Defendant and its subcontractors compensated Plaintiffs and other similarly situated individuals for work performed at the Eckington Yards Project, River Point, Bryant Street and The Marriott AC, the checks did not contain payroll deductions.

13. For example, Plaintiffs and other similarly situated individuals who performed work for Defendant and its subcontractors at the Eckington Yards Project, River Point, Bryant

Street and The Marriott AC were not paid all wages earned on their regular paydays, including a failure to pay overtime premiums for hours worked over 40 in a week, failure to pay minimum wages and/or by providing checks to employees that were unable to be cashed or deposited.

14. Plaintiff Martinez regularly worked in excess of 40 hours in a week at the Eckington Yards Project yet was not paid an overtime premium for those hours worked.

15. Plaintiff Costillo was paid only \$12 per hour for most of his time working on the Eckington Yards Project, which is less than the District of Columbia minimum wage.

16. Plaintiff Costillo was also provided two payroll checks that could not be cashed on his regular payday.

17. Individuals similarly situated to Plaintiffs experienced similar wage/hour violations at other DC CBG Projects, including at River Point, Bryant Street and The Marriott AC.

18. As the general contractor for the subcontractor that employed Plaintiffs and similarly situated individuals, Defendant is jointly and severally liable for the unpaid wages and misclassification of Plaintiffs and other similarly situated individuals under the laws of the District of Columbia.

19. Defendant CBG is liable to Plaintiffs because an employer-employee relationship existed between Plaintiffs and Defendant. An employer-employee relationship existed because either (1) Defendant directly controlled the work of each Plaintiff, including by assigning work tasks to each Plaintiff and setting each Plaintiff's hours or (2) each Plaintiff's work was controlled by a subcontractor of Defendant, which in turn controlled the work of each Plaintiff, including by assigning work tasks to each Plaintiff and setting each Plaintiff's hours. To the extent that Defendant is not liable as a direct and conventional common-law employer of each Plaintiff and

other similarly situated individuals, Defendant is liable because a subcontractor of Defendant was an employer of each Plaintiff and other similarly situated individuals.

20. Defendant and its subcontractors controlled and directed Plaintiffs' services while Plaintiffs and other similarly situated individuals were employed by Defendant and its subcontractors. The work Plaintiffs and other similarly situated individuals performed was within the usual course of Defendant's and its subcontractors' construction and contracting businesses. Plaintiffs and other similarly situated individuals were not engaged in work that is customarily an independently established trade, and Plaintiffs and other similarly situated individuals were not exempt employees.

COLLECTIVE ACTION ALLEGATIONS

21. This action is maintainable as an opt-in collective action pursuant to DC Code § 32-1308.

22. Defendant and its subcontractors failed to pay the Plaintiffs and all others similarly situated individuals one-and-a-half times their regular rate of pay for those hours worked in excess of forty in any one workweek, minimum wage, and or all wages earned on their regular payday, as required by the MWA and WPCL.

23. Defendant and its subcontractors improperly classified Plaintiffs and other similarly situated individuals as independent contractors instead of employees, in violation of the WFA.

24. This action can, and should, be maintained as a collective action for all claims to unpaid compensation, unpaid minimum wage, liquidated damages, and misclassification of employees as independent contractors that can be redressed under the MWA, WPCL, and WFA.

25. Plaintiffs seek certification of these claims as a collective action on behalf of all individuals who performed construction work for CBG and its subcontractors at the DC CBG Projects.

26. Members of the proposed collective action are similarly situated.

27. Members of the proposed collective action have been subjected to the same or substantially the same pay policies and practices.

28. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice that required or permitted them to perform work in excess of 40 hours per workweek for the benefit of Defendant and its subcontractors, without compensating such time at the premium rate of one-and-a-half times the base rate of pay.

29. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice that required or permitted them to perform work for Defendant's and its subcontractors' benefit without compensation at their required hourly rate.

30. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice with respect to having been misclassified as independent contractors.

31. The identities of the members of the proposed collective action are known to Defendant and its subcontractors and can be located through Defendant's and its subcontractors' records.

32. These individuals would benefit from the issuance of Court-supervised Notice and the opportunity to join this lawsuit.

33. Plaintiffs and the members of the proposed collective action should therefore be

permitted to pursue their claims collectively on their own behalf and on behalf of all past and present non-exempt employees of Defendant and its subcontractors working on the DC CBG Projects who, while working for Defendant and its subcontractors, were not paid one-and-a-half times their regular rate of pay for those hours worked in excess of forty in any one workweek, were not timely paid their lawfully owed wages or who were misclassified as independent contractors instead of employees, at any time from the earliest date permitted by law until the date of judgment.

34. Plaintiffs hereby consent to be party plaintiffs in this action.

CLASS ACTION ALLEGATIONS

35. Pursuant to D.C. Rule of Civil Procedure 23 and DC Code § 32–1308, Plaintiffs bring class-action claims for unpaid wages (including overtime compensation) under the MWA the WPCL, and the WFA.

36. Plaintiffs bring these class-action claims on behalf of themselves and all other individuals who: 1) were paid less than one and one half times their regular hourly rate of pay for hours worked over 40 in a week or otherwise paid less than their lawfully owed wages, or were misclassified as independent contractors; 2) were employed by Defendant CBG or one of its subcontractors and 3) performed construction work for Defendant CBG in the District of Columbia during such employment; at any time from the earliest date actionable under the limitations period applicable to given claim until the date of judgment. (“Proposed Rule 23 Class”).

37. Members of the Proposed Rule 23 Class are readily ascertainable. The identity of class members may be determined from Defendants’ and its subcontractors’ records.

38. The Proposed Rule 23 Class meets all the requirements of Rule 23(a) and (b)(3):

a. Numerosity: Upon information and belief, there are hundreds of persons who worked for Defendant in the District of Columbia and have been subjected to the challenged practices. Therefore, joinder of all class members would be impracticable.

b. Commonality: Plaintiffs and all members of the Proposed Rule 23 Class have been compensated pursuant to the unlawful practices alleged herein and, therefore, one or more questions of law or fact are common to the Proposed Rule 23 Class. These common questions include, but are not limited to, the following:

- i. Whether Defendant and its subcontractors are employers and/or joint employers of Plaintiffs and members of the Proposed Rule 23 Class;
- ii. Whether Defendant and its subcontractors failed or refused to pay Plaintiffs and members of the Proposed Rule 23 Class wages at overtime premium rates for all time worked in excess of 40 hours per week;
- iii. Whether Defendant and its subcontractors failed to pay Plaintiffs and members of the Proposed Rule 23 Class all lawfully owed wages;
- iv. Whether Defendant's and its subcontractors' failure or refusal to pay such compensation violated the MWA and WPCL;
- v. Whether Defendant and its subcontractors misclassified Plaintiffs and members of the proposed Rule 23 Class as independent contractors;
- vi. Whether Defendant's and its subcontractors' misclassification of Plaintiffs and members of the proposed Rule 23 Class violated the WFA.

c. Typicality: Plaintiffs and members of the Proposed Rule 23 Class were subjected to the same unlawful policies, practices, and procedures and sustained similar losses, injuries, and damages. All class members were subjected to the same compensation

practices by Defendant and its subcontractors, as alleged herein, and were denied lawfully owed payments and misclassified as independent contractors. Plaintiffs' claims are therefore typical of the claims that could be brought by any member of the Proposed Rule 23 Class, and the relief sought is typical of the relief that could be sought by each member of the Proposed Rule 23 Class in separate actions.

d. Adequacy of Representation: Plaintiffs are able to fairly and adequately protect the interests of all members of the Proposed Rule 23 Class, as they are challenging the same practices as the Proposed Rule 23 Class as a whole, and there are no known conflicts of interest between Plaintiffs and the members of the Proposed Rule 23 Class. Plaintiffs have retained counsel who have extensive experience with the prosecution of wage-and-hour claims and complex class-action litigation.

e. Predominance and Superiority: The common questions identified above predominate over any individual issues. A class action is superior to individual adjudications of this controversy. Pursuit of this action as a class would provide an efficient mechanism for adjudicating the claims of Plaintiffs and the members of the Proposed Rule 23 Class.

CAUSES OF ACTION

COUNT I VIOLATION OF D.C. MINIMUM WAGE LAW

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

40. The MWA requires that employers pay non-exempt employees one and one-half times their regularly hourly rate for all hours over forty worked in one week.

41. The MWA requires that employers pay a minimum hourly wage as set out in D.C. Code § 32-1003.

42. Plaintiffs were employees of Defendant's subcontractors.

43. Plaintiffs and other similarly situated individuals were "employees," and Defendant's subcontractors were "employers" as defined by D.C. Code § 32-1002.

44. D.C. Code § 32-1012(c) 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 . . .".

45. Defendant CBG was the general contractor on the DC CBG Projects.

46. The employers of the Plaintiffs and others similarly situated at the DC CBG Projects were subcontractors of CBG.

47. Defendant and its subcontractors violated the District of Columbia's minimum wage law by failing to compensate Plaintiffs and all similarly situated individuals 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 and/or failing to compensate Plaintiffs and all similarly situated individuals at or above the applicable minimum wage for all hours worked.

48. WHEREFORE, Defendant is liable to Plaintiffs and all similarly-situated individuals for all unpaid overtime wages and unpaid minimum wages, plus treble that amount in liquidated damages (or such greater amount as may be authorized by law), interest, attorneys' fees, litigation costs and any other and further relief this Court deems appropriate.

COUNT II
FAILURE TO TIMELY PAY WAGES

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

50. D.C. Code § 32–1302 provides that “[a]n employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month.”

51. D.C. Code § 32-1303 further 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.”

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

53. Plaintiffs were employees of Defendant’s subcontractors.

54. Plaintiffs and all similarly-situated individuals were “employees,” and Defendant’s subcontractors were “employers” as defined by D.C. Code § 32–1301.

55. 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”

56. Defendant CBG was the general contractor on the DC CBG Projects.

57. The employers of the Plaintiffs and others similarly situated at the DC CBG Projects were subcontractors of CBG.

58. Defendant and its subcontractors unlawfully failed or refused to timely pay Plaintiffs and all similarly situated individuals all wages due, including their premium rate for overtime.

59. Because of their failure to pay overtime and failure to pay all wages due, Defendant and its subcontractors failed to timely pay Plaintiffs and all similarly situated individuals their wages owed.

60. WHEREFORE, Defendant is liable to Plaintiffs and all similarly situated individuals for all unpaid wages, plus treble that amount in liquidated damages (or such greater amount as may be authorized by law), interest, attorneys' fees, litigation costs and any other and further relief this Court deems appropriate.

COUNT III

MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS UNDER THE D.C. WORKPLACE FRAUD ACT

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

62. The D.C. Workplace Fraud Act, D.C. Code §§ 32-1331.01-15 prohibits employers in the construction industry from improperly classifying employees as independent contractors.

63. D.C. Code § 32-1303(5) 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”.

64. Defendant’s subcontractors classified Plaintiffs as independent contractors, when they were in fact employees. For example, the paychecks received by Plaintiffs failed to include payroll deductions or overtime premiums.

65. As the general contractor on the Project, Defendant CBG and its subcontractors are jointly and severally liable to Plaintiffs for violations of the workplace fraud act perpetuated by their subcontractors.

66. Defendant and its subcontractors violated the D.C. Workplace Fraud Act by improperly classifying Plaintiffs and all similarly situated individuals as independent contractors, rather than as employees.

67. Each time Defendant and its subcontractors paid Plaintiffs and all similarly situated individuals as independent contractors rather than employees constitutes a separate violation of the WFA.

68. WHEREFORE, Defendant is liable to Plaintiffs and all similarly situated individuals for the wages, salary, employment benefits, and other compensation denied or lost to them by reason of the violations, compensatory damages, treble damages for lost wages or benefits, and an additional \$500 for each violation, reasonable attorneys' fees, litigation costs, equitable relief authorized in § 32-1331.09 to the extent that such relief may be appropriate and any other and further relief this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court certify a collective and a class action under DC law, and enter judgment against Defendant on all counts and grant Plaintiffs and all similarly situated individuals the following:

- i. Unpaid wages, plus an amount equal to three times the amount of unpaid wages earned as liquidated damages, pursuant to the MWA, D.C. Code § 32-1012, which amount is greater than \$10,000;
- ii. Unpaid wages plus an amount equal to three times the amount of unpaid wages earned as liquidated damages, pursuant to the WPCL, D.C. Code §§ 32-1303(4) and 32-1308, which amount is greater than \$10,000;
- iii. \$500 per violation in which Plaintiffs were misclassified as independent

contractors, pursuant to the WFA, D.C. Code § 32-1331.01.15.

- iv. Wages, salary, employment benefits, and other compensation denied or lost to them by reason of the violations of the WFA, as well as compensatory damages and treble damages for those lost wages or benefits,
- v. Such equitable relief as may be appropriate including enjoining Defendant from further violations of the MWA, WPCL and WFA, and the equitable relief authorized by D.C. Code § 32-1331.04 for violation of the WFA;
- vi. Reasonable attorneys' fees and expenses incurred in the prosecution of this action;
- vii. Costs that they incur in the prosecution of this action;
- viii. Prejudgment and post-judgment interest as permitted by law; and
- ix. Award any additional relief the Court deems just.

Dated: August 10, 2020

Respectfully submitted,

/s/ Matthew K. Handley

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