

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

VERONICA GARCIA, on behalf of herself and
others similarly situated,

SARAI GARCIA, on behalf of herself and others
similarly situated,

and

VERONICA SANCHEZ, on behalf of herself and
others similarly situated,

Plaintiffs,

v.

BARTON MALOW COMPANY,

MBA CONSTRUCTION, INC.,

MARCOS ALBAY,

and

BLANCA VALLEJO,

Defendants.

Civil Action No.:

INDIVIDUAL AND COLLECTIVE ACTION COMPLAINT

1. This is an action for unpaid overtime under federal and Virginia law. Plaintiffs bring this case on behalf of themselves and also as a collective action, on behalf of others similarly situated.

INTRODUCTION

2. Violations of wage and hour laws, including failure to pay required overtime, are widespread in the construction industry in Virginia and neighboring jurisdictions. In many

instances contractors use labor brokers—entities with little or no resources whose purpose is to provide construction workers to contractors—in an effort to escape liability for such violations. This is such a case. One of the Defendants, MBA Construction Inc., is a labor broker that is run out of its owner’s or principal manager’s home in rural Virginia. Another defendant, Barton Malow Company, is a major international construction contractor, with annual revenue of over \$3 billion. Barton Malow used MBA to obtain long-term workers instead of hiring those workers itself. Under state and federal law, however, contractors are liable for wage and hour violations where they exert such control over the labor broker-provided workers that they are, as a matter of law, joint employers of those workers. This is such a case. Consequently, all Defendants in this case are liable for the failure to pay overtime to the named plaintiffs and to many others similarly situated.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this claim and venue is proper because Defendants regularly conduct business in the Richmond Division of the Eastern District of Virginia and because a substantial part of the events giving rise to Plaintiffs’ claims occurred in the Richmond Division of the Eastern District of Virginia.

PARTIES

4. Defendant Barton Malow Company (“Barton Malow”) is a Michigan Corporation with its principal place of business in Southfield, Michigan. On information and belief Barton Malow sometimes operates through subsidiaries or affiliates. It is registered to do business in Virginia and its Virginia corporate agent is located in Henrico County, Virginia. This lawsuit seeks relief from any entity affiliated with or controlled by Barton Malow to the extent that such

entity may be liable to Plaintiffs. Barton Malow is a construction contractor which provides construction services in various locations, including substantial services within the Richmond Division of the Eastern District of Virginia. Barton Malow's website contains the following language: "Engineering News-Record (ENR) has released its 'Top 400' contractors of 2022 list, and Barton Malow checks in at No. 30 with \$3.3 billion in domestic revenue and \$70.2 million in international revenue." Barton Malow has numerous offices in the United States and Canada, including in Richmond, Virginia and Charlottesville, Virginia.

5. Defendant MBA Construction, Inc. ("MBA") is a Virginia corporation with its principal place of business located at 2942 Slate Hill Road, New Canton, VA 23123. MBA provides construction workers for Barton Malow to use on construction projects. It does business in various locations, including substantial business within the Richmond Division of the Eastern District of Virginia.

6. Defendant Marcos Albay was at all relevant times the principal person in charge of MBA. His principal place of residence is 2942 Slate Hill Road, New Canton, Virginia 23123.

7. Blanca Vallejo is the registered agent of MBA and was principally responsible for MBA's finances. She communicated with plaintiffs about payment issues and signed all or nearly all of the checks that were used to pay Plaintiffs and others similarly situated.

8. Plaintiff Sarai Garcia worked for all Defendants from approximately 2020 until approximately June 2022. She was paid by MBA, at the direction of Defendant Albay, with such payments being authorized by Defendant Vallejo, but performed work on construction projects under the direct personal supervision of agents of Barton Malow.

9. Plaintiff Veronica Sanchez worked for all Defendants from February 2019 until approximately June 2022. She was paid by MBA, at the direction of Defendant Albay, with such payments being authorized by Defendant Vallejo, but performed work on construction projects under the direct personal supervision of agents of Barton Malow.

10. Plaintiff Veronica Garcia worked for all defendants from approximately February 2019 through approximately June 2022. She was paid by MBA, at the direction of Defendant Albay, with such payments being authorized by Defendant Vallejo, but performed work on construction projects under the direct personal supervision of agents of Barton Malow.

FACTUAL ALLEGATIONS

11. Plaintiffs performed construction work for the benefit of all Defendants at several construction projects located in Virginia.

12. Barton Malow was the general contractor on each such project.

13. At all relevant times MBA had a contractual relationship with Barton Malow, pursuant to which MBA provided construction workers to Barton Malow to perform construction work under Barton Malow's direct supervision.

14. All work Plaintiffs performed for MBA was for work on a project at which Barton Malow was the general contractor.

15. Plaintiffs were paid by Defendant MBA for this work.

16. MBA held itself out as being an employer of Plaintiffs.

17. Among the projects at which Plaintiffs worked were the following:

- a. The McCormick Dorm Renovation Project at The University of Virginia in Charlottesville, Virginia.

- b. The Well Being Center construction project at the University of Richmond in Richmond, Virginia.
- c. A construction project involving Emergency Department renovations and expansion at the Virginia Commonwealth University Health System in Richmond, Virginia.
- d. A construction project at the Dominion Energy Innsbrook Technology Center, a Dominion Energy facility, located at 5000 Dominion Boulevard, Glen Allen, Virginia 23060.

18. All Plaintiffs worked at each of the foregoing projects except that Plaintiff Sarai Garcia did not work at the McCormack Dorm Renovation Project.

19. While paid by MBA, Plaintiffs performed work for Barton Malow.

20. At all relevant times Barton Malow, through its foreman and supervisors, directly controlled and supervised the work performed by Plaintiffs and others similarly situated.

21. At all relevant times Barton Malow was principally responsible for setting the hours at which Plaintiffs and others similarly situated performed their work.

22. At all relevant times Barton Malow had the power and authority to remove Plaintiffs and others similarly situated from work sites, effectively ending their employment.

23. Plaintiffs and others similarly situated were given identification badges and items of clothing, such as T-shirts and safety vests with "Barton Malow" printed on them. This was done to indicate to others that these individuals worked directly for Barton Malow.

24. Early in the COVID epidemic, at a time when government authorities had restricted movement within Virginia, Plaintiff Veronica Sanchez and other persons similarly

situated were given letters from Barton Malow, meant to facilitate the movement of these persons, which indicated that the person was “an employee of Barton Malow.”

25. Barton Malow says the following on its website: “Barton Malow delivers exceptional value in large part due to our self-perform trades and ability to complete work with our own forces.... From preconstruction through punchlist, we have complete oversight with the quality of workmanship and safety on the worksite.”

26. The intent of this statement is to convey to customers that Barton Malow exercises a substantial amount of control over construction workers on its projects—control that is significantly greater than the norm in the industry—and that it is significantly less dependent on subcontractors for construction labor than is the case with other construction contractors because it uses employees it directly hires for work that other contractors would do through subcontractors.

27. During all relevant times Plaintiffs and others similarly situated frequently worked overtime hours, that is time in excess of forty hours in specific workweeks.

28. A typical workweek was ten hours of work per day Monday through Thursday and eight hours on Friday and, in many cases, an additional eight hours on Saturday.

29. During all relevant times Defendant Albay was the principal person in charge of MBA.

30. On information and belief, at all relevant times Defendant Albay was a principal owner of Defendant MBA.

31. On information and belief, at all relevant times Defendant Vallejo was a principal owner of Defendant MBA.

32. Until about the third quarter of 2021 Plaintiffs and others similarly situated were paid at their regular hourly rate for all overtime work and were not paid the legally required hourly premium for their overtime work.

33. At all relevant times it was widely known in the construction industry in Virginia that many labor brokers do not pay their employees at the overtime rate for their overtime work.

34. Defendant Barton Malow knew or should have known that Plaintiffs were not being paid overtime for their overtime work.

COLLECTIVE ACTION ALLEGATIONS

35. This action is maintainable as an opt-in collective action pursuant to the Fair Labor Standards Act and applicable Virginia law, including Virginia Code § 40.1-29(j).

36. Defendants failed to timely pay Plaintiffs overtime to which they were entitled.

37. Numerous other similarly situated construction workers performed work for Defendants.

38. These workers were also provided by MBA to Barton Malow to perform work on construction projects under Barton Malow's direct supervision and control.

39. These other construction workers were similarly aggrieved.

40. This action can, and should, be maintained as a collective action for all such persons.

41. Plaintiffs seek certification of these claims as a collective action on behalf of all individuals who, from the earliest period permitted by law to the conclusion of this lawsuit, were, at any location, provided to Defendant Barton Malow by any or all of the other Defendants to perform construction work and who were not paid overtime compensation that they were owed.

42. Members of the proposed collective action are similarly situated. Members of the proposed collective action have been subjected to materially similar unlawful pay policies and practices.

43. The identities of the members of the proposed collective action are known to Defendants or their subcontractors and can be located through the records of Defendants or Defendants' subcontractors.

44. These individuals would benefit from the issuance of court-authorized notice of this lawsuit.

45. Plaintiffs hereby consent to be party plaintiffs in a collective action. Plaintiff formal consents to joint are being filed as an attachment to this Complaint. If, however, this matter does not proceed as a collective action they desire and intend that it should proceed as a conventional action on their behalf so as to allow them to fully vindicate their rights.

CAUSES OF ACTION

COUNT I

FAILURE TO PAY OVERTIME IN VIOLATION OF THE FAIR LABOR STANDARDS ACT ("FLSA")

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

47. The federal Fair Labor Standards Act ("FLSA") requires that employers pay non-exempt employees one and one-half times their regular hourly rate for all hours over forty worked in one week.

48. Plaintiffs were employees of each Defendant and each Defendant was their employer.

49. During certain weeks Plaintiffs worked more than forty hours per week and were entitled to be compensated for that overtime work at the properly calculated overtime rate.

50. Defendants did not pay Plaintiffs at the overtime rate for their overtime work.

COUNT II
FAILURE TO PAY OVERTIME IN VIOLATION OF VIRGINIA LAW

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

52. Virginia Code § 40.1-29.3 requires that employers pay non-exempt employees one and one-half times their regular hourly rate for all hours over forty worked in one week.

53. Plaintiffs were employees of each Defendant and each Defendant was their employer.

54. During certain weeks Plaintiffs worked more than forty hours per week for Defendants and were entitled to be compensated for that overtime work at the properly calculated overtime rate.

55. Defendants did not pay Plaintiffs at the overtime rate for their overtime work.

56. This claim is asserted under current Virginia law and under any provision of Virginia law that required payment of overtime or provided for damages for failure to pay overtime that was in effect at the time overtime was not paid.

PRAYER FOR RELIEF

57. WHEREFORE, Plaintiffs respectfully request that the Court certify a collective action and enter judgment against Defendants on all counts and grant Plaintiffs and (to the extent that this matter proceeds as a collective action) all similarly situated individuals the following relief:

- i. Compensation that should have been paid but was not paid;
- ii. All liquidated damages authorized or permitted by law;
- iii. Reasonable attorneys' fees and expenses incurred in the prosecution of this action;
- iv. Costs that they incur in the prosecution of this action;
- v. Interest as permitted by law; and
- vi. Any additional relief the Court deems just.

Dated: August 31, 2022

Respectfully submitted,

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