

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NELSON OMAR BARAHONA
c/o Handley Farah & Anderson PLLC
200 Massachusetts Avenue, NW
7th Floor
Washington, DC 20001

FLOR DE MARIA ASCENCIO-MARTINEZ
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JUNIOR NOEL CALLEJAS-LOPEZ
c/o Handley Farah & Anderson PLLC
200 Massachusetts Avenue, NW
7th Floor
Washington, DC 20001

Plaintiffs,

v.

C.R. MILLWORK LLC
5408 Port Royal Rd.
Suite N
Springfield, VA 22151

WHITING TURNER CONTRACTING
COMPANY
300 E Joppa Rd.
Baltimore, MD 21286

CBG BUILDING COMPANY
4401 Wilson Boulevard
Suite 600
Arlington, VA 22203

EDUARDO CONTRERAS
6417 Meriwether Lane
Springfield, VA 22150

Defendants.

Civil Action No.:

CLASS AND COLLECTIVE ACTION COMPLAINT

INTRODUCTION AND OVERVIEW

1. This is a suit for unpaid wages, unpaid overtime, workplace fraud and worker misclassification under District of Columbia law. It is brought as a class and collective action, and as an individual action on behalf of each Plaintiff. This suit asserts that C.R. Millwork and its owner, Eduardo Contreras, both of whom were jointly the direct employer of each Plaintiff and all of those similarly situated, are liable for the alleged violations of law. It further alleges that the general contractors for specific construction projects at which Plaintiffs and other similarly situated persons performed construction work for C.R. Millwork are liable for the violations alleged in this suit which occurred at those worksites. Under District of Columbia law, general construction contractors are strictly liable for such violations if committed by their direct and indirect subcontractors.

2. Plaintiffs Nelson Omar Barahona, Flor de Maria Ascencio-Martinez and Junior Noel Callejas-Lopez (“Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned attorneys, bring this action against Defendants C.R. Millwork, CBG Building Company, Whiting Turner Contracting Company and Eduardo Contreras (collectively “Defendants”) seeking all available relief to remedy Defendants’ underpayment and misclassification of Plaintiffs and others similarly situated. Specifically, Plaintiffs allege that Defendants and their subcontractors failed to pay Plaintiffs and others similarly situated their legally mandated wages in violation of the District of Columbia’s Minimum Wage Act (“MWA”), D.C. Code § 32-1001, *et. seq.*, and the District of Columbia’s Wage Payment and Collection Law (“WPCL”), D.C. Code § 32-1301 *et. seq.*, and improperly classified Plaintiffs as

independent contractors in violation of the District of Columbia’s Workplace Fraud Act (“WFA”), D.C. Code § 32-1331.01 *et. seq.*

BACKGROUND

3. As noted in a 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 Defendants have engaged in such conduct, the effect of which is to deny employees on their construction sites 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

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

PARTIES

5. Plaintiff Nelson Omar Barahona was employed as a construction worker in the District of Columbia. Between approximately 2016 and 2022, he was employed by C.R. Millwork on building projects across the District, including projects at 3939 Wisconsin Avenue NW (the City Ridge Project), 680 Rhode Island Avenue NW (the Bryant Avenue Project), 1100 Maine Avenue SW (Wharf Parcels 6-7 Project), 1300 4th Street NE (1300 Street Project), and 900 F Street NW (Riggs Project) in Washington, DC, where he performed work for C.R. Millwork and Defendants CBG Building Company and Whiting Turner Contracting Company.

6. Plaintiff Flor de Maria Ascencio-Martinez was employed as a construction worker in the District of Columbia. From February 2020 to June 2022, she was employed by C.R. Millwork on building projects across the District, including projects at 3939 Wisconsin Avenue NW (the City Ridge Project), 680 Rhode Island Avenue NW (the Bryant Avenue Project), 1100 Maine Avenue SW (Wharf Parcels 6-7 Project) and 1300 4th Street NE (1300 Street Project) in Washington, DC, where she performed work for C.R. Millwork and Defendants CBG Building Company and Whiting Turner Contracting Company.

7. Plaintiff Junior Noel Callejas-Lopez was employed as a construction worker in the District of Columbia. From February 2021 to June 2022, he was employed by C.R. Millwork on building projects across the District, including projects at 3939 Wisconsin Avenue NW (the City Ridge Project), 680 Rhode Island Avenue NW (the Bryant Avenue Project), and 1100 Maine

Avenue SW (Wharf Parcels 6-7 Project) in Washington, DC, where he performed work for C.R. Millwork and Defendants CBG Building Company and Whiting Turner Contracting Company.

8. Defendant C.R. Millwork is a construction and contracting company based in Springfield, Virginia and which regularly performs work in the District of Columbia.

9. Defendant CBG Building Company (“CBG”) is a construction and contracting company based in Arlington, Virginia and which regularly performs work, including general contracting work, in the District of Columbia.

10. Defendant Whiting Turner Contracting Company (“Whiting Turner”) is a construction and contracting company based in Baltimore, Maryland and which regularly performs work, including general contracting work, in the District of Columbia.

11. Defendant Eduardo Contreras is the owner and director of Defendant C.R. Millwork. Defendant Contreras, along with agents of other Defendants, directly and personally supervised the work of Plaintiffs and similarly situated individuals on the C.R. Millwork Projects, and was directly, personally and substantially involved in determining the hours worked and pay received by Plaintiffs and similarly situated individuals. Defendant Contreras had the power to hire and fire Plaintiffs and similarly situated individuals and maintained employment records of Plaintiffs and similarly situated individuals.

FACTUAL ALLEGATIONS

12. Defendant C.R. Millwork performed construction work at multiple construction projects in the District of Columbia. Among these projects are the City Ridge Project (3939 Wisconsin Avenue NW), the Bryant Avenue Project (680 Rhode Island Avenue NE), Wharf Parcels 6-7 Project (1100 Maine Avenue SW), 1300 Street Project (1300 4th Street NE) and Riggs Project (900 F Street NW). These projects, and all other projects at which C.R. Millwork

performed construction work in the District of Columbia, are referred to as the “C.R. Millwork Projects” or the “Projects”).

13. Defendant Whiting Turner was the general contractor responsible for the construction of the City Ridge Project.

14. Defendant Whiting Turner directly or indirectly subcontracted some of its work on the City Ridge Project to Defendant C.R. Millwork.

15. Defendant CBG was the general contractor responsible for the construction of the Bryant Avenue Project.

16. Defendant CBG directly or indirectly subcontracted some of its work on the Bryant Avenue Project to Defendant C.R. Millwork.

17. Defendant CBG was the general contractor responsible for the construction of the Wharf Parcels 6-7 Project.

18. Defendant CBG directly or indirectly subcontracted some of its work on the Wharf Parcels 6-7 Project to Defendant C.R. Millwork.

19. Defendant CBG was the general contractor responsible for the construction of the 1300 Street Project.

20. Defendant CBG directly or indirectly subcontracted some of its work on the 1300 Street Project to Defendant C.R. Millwork.

21. Defendant Whiting Turner was the general contractor responsible for the construction of the Riggs Project.

22. Defendant Whiting Turner directly or indirectly subcontracted some of its work on the Riggs Project to Defendant C.R. Millwork.

23. Between 2016 and 2022, Plaintiffs and other similarly situated individuals performed construction work: 1) for Defendants C.R. Millwork and Whiting Turner at the City Ridge and Riggs Projects; 2) for Defendants C.R. Millwork and CBG at the Bryant Avenue, Wharf Parcels 6-7 and 1300 Street Projects; and 3) for Defendants at other C.R. Millwork Projects around the District of Columbia. Plaintiffs and other similarly situated individuals performed their work at the direction of Defendants and their subcontractors.

24. While employed at the C.R. Millwork Projects, Defendants and their subcontractors jointly controlled and directed the services of Plaintiffs.

25. While employed at the C.R. Millwork Projects, Defendants and their subcontractors controlled and directed the services of individuals similarly situated to Plaintiffs.

26. Plaintiffs' work was within the usual course of Defendants' construction businesses.

27. Plaintiffs were not engaged in work that is customarily an independently established trade and were not exempt employees.

28. While employed at the C.R. Millwork Projects, Plaintiffs and other similarly situated individuals were treated as independent contractors, when in fact they were employees.

29. For example, proper payroll deductions were not taken from Plaintiffs' compensation.

30. While employed at the C.R. Millwork Projects, Plaintiffs and similarly situated individuals were not paid all wages earned on their regular paydays. Specifically, Defendants failed to pay overtime premiums for hours worked in excess of 40 hours in a week, failed to pay minimum wages, and made illegal deductions from paychecks.

31. For example, Plaintiffs and similarly situated individuals regularly worked in excess of forty hours in a week and were not paid an overtime premium for the time worked.

32. When Plaintiffs and similarly situated individuals worked in excess of forty hours in a week, in order to avoid paying overtime premiums, Defendants would issue Plaintiffs paychecks from an entity called “R.C. Millwork LLC” for the hours that exceeded forty. The registered agent of R.C. Millwork LLC is Alberto Contreras, who, upon information and belief, is the brother of Defendant Eduardo Contreras.

33. Plaintiff Ascencio-Martinez was paid less than District of Columbia minimum wage for most of her time working on the C.R. Millwork Projects.

34. Plaintiff Callejas-Lopez was paid less than District of Columbia minimum wage for most of his time working on the C.R. Millwork Projects.

35. Plaintiff Barahona’s paychecks included deductions for the cost of tools and other expenses required of him for the performance of the business of Defendants, such as safety equipment and a cell phone, in violation of D.C. Municipal Regulations.

36. Individuals similarly situated to Plaintiffs experienced similar wage and hour violations at C.R. Millwork Projects.

37. Defendants are liable to Plaintiffs and other similarly situated individuals. Defendants are liable because either (1) they directly controlled the work of Plaintiffs, including by assigning their work tasks and setting their hours, or (2) Plaintiffs’ work was controlled by a subcontractor of Defendants, which in turn controlled their work, including by assigning their work tasks and setting their hours. To the extent that Defendants CBG or Whiting Turner are not liable as direct and conventional common-law employers of Plaintiffs, they are liable because one of their subcontractors was an employer of Plaintiffs.

38. As an employer of the Plaintiffs or as the general contractor or subcontractor of the employer of the Plaintiffs, Defendants are jointly and severally liable for Plaintiffs' unpaid wages and misclassification.

COLLECTIVE ACTION ALLEGATIONS

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

40. Defendant C.R. Millwork failed to pay Plaintiffs and all others similarly situated their correct hourly rate, one-and-a-half times their regular rate of pay for those hours worked in excess of forty in any one workweek, and failed to pay Plaintiffs all wages due, as required by the MWA and the WPCL.

41. Defendant C.R. Millwork improperly classified Plaintiffs and other similarly situated individuals as independent contractors instead of employees, in violation of the WFA.

42. This action can, and should, be maintained as a collective action for all claims to include unpaid wages, unpaid overtime compensation, liquidated damages, and misclassification of employees that can be redressed under the MWA, WPCL, and the WFA.

43. Plaintiffs seek certification of these claims as a collective action on behalf of all individuals who performed construction work and were employed by Defendant C.R. Millwork or Eduardo Contreras.

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

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

46. 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 Defendants, without compensating such time at the premium rate of one-and-a-half times the base rate of pay.

47. 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 Defendants' benefit without compensation at the required minimum hourly wage.

48. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice that deducted from their wages the cost of tools required for performance of their job duties.

49. Members of the proposed collective action have been subjected to the same or substantially the same policy or practice that treated them as independent contractors when they were, in fact, employees.

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

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

52. 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 individuals who performed construction work and were employed by or performed work for Defendant C.R. Millwork or Eduardo Contreras and were not paid their lawfully owed wages, including overtime premiums, or who were misclassified as independent contractors instead of employees.

53. Plaintiffs hereby consent to be plaintiffs in this action. If this case does not proceed as a collective action or a class action, Plaintiffs intend to seek relief individually.

CLASS ACTION ALLEGATIONS

54. 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.

55. Plaintiffs bring these class-action claims on behalf of themselves and all other individuals who performed construction work and were employed by Defendant C.R. Millwork or Eduardo Contreras. (“Proposed Rule 23 Class”).

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

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

a. Numerosity: Upon information and belief, there are at least 40 persons who worked for Defendants 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 Defendants and their subcontractors are employers and/or joint employers of Plaintiffs and members of the Proposed Rule 23 Class;
- ii. Whether Defendants and their subcontractors failed to pay Plaintiffs and members of the Proposed Rule 23 Class all lawfully owed wages;
- iii. Whether Defendants’ and their subcontractors’ failure or refusal to pay such compensation at overtime-premium rates violated the MWA and WPCL;

iv. Whether Defendants and their subcontractors made improper deductions from the paychecks of Plaintiffs and members of the Proposed Rule 23 Class;

v. Whether Defendants' and their subcontractors' improper deductions violated the WPCL;

vi. Whether Defendants and their subcontractors misclassified Plaintiffs and members of the proposed Rule 23 Class as independent contractors;

vii. Whether Defendants' and their 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 Defendants and their subcontractors, as alleged herein, were denied payment at rates they were owed and were 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 (Against All Defendants)

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

59. The D.C. Minimum Wage Act, D.C. Code § 32-1001, *et. seq*, requires that employers pay non-exempt employees at least the D.C. Minimum Wage for all hours worked and one and one-half times their regular hourly rate for all hours worked over forty.

60. Plaintiffs and members of the putative collective action and Proposed Rule 23 Class were employees of Defendants C.R. Millwork and Contreras.

61. Defendants C.R. Millwork and Contreras were Plaintiffs' employers and the employers of members of the putative collective action and Proposed Rule 23 Class because C.R. Millwork and Contreras assigned their work tasks and set their hours.

62. 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".

63. Defendants violated the MWA by failing to compensate Plaintiffs at the minimum wage and for 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.

64. For their violations of the Minimum Wage Act, Defendants are jointly and severally liable to Plaintiffs for all unpaid wages, including overtime 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.

65. This claim is asserted against C.R. Millwork and Eduardo Contreras. It is also asserted against each Defendant who was a general contractor but only with respect to construction work performed for the benefit of C.R. Millwork at construction projects for which the general contractor defendant was the general contractor.

COUNT II
FAILURE TO TIMELY PAY WAGES
(Against All Defendants)

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

67. 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.”

68. 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.”

69. D.C. Code § 32-1301(3) defines wages to include, inter alia, an “[o]vertime premium.”

70. D.C. Code § 32-1301(3) further defines wages to include all funds owed as wages “[p]ursuant to District or federal law.”

71. Under District law, “the employer shall pay the cost of purchasing and maintaining any tools required of the employee in the performance of the business of the employer.” D.C. Code Mun. Regs. tit. 7 § 910.1.

72. Plaintiffs were employees of Defendants C.R. Millwork and Contreras.

73. Defendants C.R. Millwork and Contreras were Plaintiffs’ employers and the employers of members of the putative collective action because C.R. Millwork and Contreras assigned their work tasks and set their hours.

74. 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”

75. Defendants violated the District of Columbia’s Wage Payment and Collection Law by failing to timely compensate Plaintiffs for all wages due—including pay at or above the minimum wage, pay for all hours worked, and pay 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—on their regular payday.

76. Defendants also violated the District of Columbia’s Wage Payment and Collection Law by improperly deducting the price of tools from Plaintiffs’ wages.

77. Because of their failure to pay Plaintiffs all wages, including overtime wages and prevailing wage rates, when due, and improper paycheck deductions for tools, Defendants failed to timely pay Plaintiffs wages owed.

78. For their violations of the Wage Payment and Collection Law, Defendants are liable to Plaintiffs for all unpaid wages, including overtime 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.

79. This claim is asserted against C.R. Millwork and Eduardo Contreras. It is also asserted against each Defendant who was a general contractor but only with respect to construction work performed for the benefit of C.R. Millwork at construction projects for which the general contractor defendant was the general contractor.

COUNT III

MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS UNDER THE D.C. WORKPLACE FRAUD ACT (Against All Defendants)

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

81. Defendants C.R. Millwork and Contreras 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.

82. 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.

83. 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”.

84. Each time each Plaintiff was paid as an independent contractor rather than as an employee constitutes a separate and independent violation of the Workplace Fraud Act.

85. As the general contractors on C.R. Millwork Projects, Defendants CBG and Whiting Turner are jointly and severally liable to Plaintiffs for violations of the workplace fraud act perpetuated by their subcontractor.

86. For their violations of the Workplace Fraud Act, Defendants are liable to Plaintiffs 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, additionally, up to \$500 for each violation. D.C. Code § 32-1331.09.

87. This claim is asserted against C.R. Millwork and Eduardo Contreras. It is also asserted against each Defendant who was a general contractor but only with respect to construction work performed for the benefit of C.R. Millwork at construction projects for which the general contractor defendant was the general contractor.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court certify a collective and a class action under D.C. law and enter judgment against all Defendants on all counts, jointly and severally, and award 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 and similarly situated individuals were misclassified as independent contractors, pursuant to the WFA, D.C. Code § 32-1331.01-15.
- iv. The 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. Reasonable attorneys' fees and expenses incurred in the prosecution of this action;
- vi. The costs that they incur in the prosecution of this action;
- vii. Interest as permitted by law; and
- viii. Any additional relief the Court deems just.

Dated: August 26, 2022

Respectfully submitted,

/s/ Matthew K. Handley

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