

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

ROXANA RUEDA; CARLOS TORRICO;)
FERNANDO LESCANO;)
JOSE TORRICO; CHRISTIAN)
ORELLANA,)
)
individually and on behalf of all others)
similarly-situated)
Plaintiffs,)

v.)

Case No. 23-cv-328

)
GILBANE BUILDING COMPANY;)
P & D CONTRACTORS, LLC;)
MAXIMUM BUILDERS, INC.;)
EBAR CONSTRUCTION)
COMPANY, LLC; and JUAN MIGUEL)
a/k/a JUAN MILO,)
)
Defendants.)

COLLECTIVE & CLASS ACTION COMPLAINT

Plaintiffs Roxana Rueda, Carlos Torrico, Fernando Lescano, Jose Torrico, and Christian Orellana (“Plaintiffs”), on behalf of themselves and other similarly situated persons, bring this collective and class action complaint against Defendants Gilbane Building Company; P & D Contractors, LLC; Maximum Builders, Inc.; Ebar Construction Company; and Juan Miguel a/k/a Juan Milo (“Defendants”) seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”); the Maryland Wage and Hour Law (the “MWHL”); the Maryland Prevailing Wage Statute (the “MPWS”); the Maryland Wage Payment and Collection Law (the “MWPCCL”); and the Maryland Workplace Fraud Act (the “MWFA”).

INTRODUCTION

- 1. Wage theft and worker misclassification are rampant in the construction

industry in the greater Baltimore and District of Columbia’s metropolitan area.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 Another form of wage theft occurs when unscrupulous employers fail to comply with paying legally-mandated prevailing wages on Government construction projects.

2. One way in which misclassification and wage theft are perpetrated is through the use of subcontractors who fail to follow Maryland and federal wage and misclassification laws.⁴ Defendants have engaged in such conduct, the effect of which is to deny employees on their construction sites, like Plaintiffs, their lawfully owed wages and benefits, in violation of federal and state wage and misclassification laws.

3. Plaintiffs seek to hold Defendants accountable for their illegal behavior. Federal and Maryland law entitles Plaintiffs, and other similarly situated workers, to recover their wage underpayments and damages.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Plaintiffs’ FLSA claims

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>; *see also* “The Underground Economy and Wage Theft in Washington DC’s Commercial Construction Sector” (April 2021) *available at* <http://catholiclabor.org/wp-content/uploads/2021/04/Underground-Economy-and-Wage-Theft-Report-4.14.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.* At 6.

pursuant to 28 U.S.C. § 1331, which confers jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1337, which confers federal jurisdiction over “any civil action or proceeding arising under any Act of Congress regulating commerce.”

5. This Court has supplemental jurisdiction over Plaintiffs’ state-law claims pursuant to 28 U.S.C. § 1367(a), which confers federal subject matter jurisdiction over “all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” As discussed below, Plaintiffs’ state-law claims arise from a common set of operative facts -- *i.e.*, their employment by Defendants as construction workers at the Hyattsville Middle School project—and are so related to the claims within the original jurisdiction of the Court that they form part of the same case or controversy.

6. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

7. Plaintiff Roxana Rueda lives in Virginia and performed work on behalf of Defendants at the Hyattsville Middle School Project during the last year.

8. Plaintiff Carlos Torrico lives in Virginia and performed work on behalf of Defendants at the Hyattsville Middle School Project during the last year.

9. Plaintiff Fernando Lescano lives in Virginia and performed work on behalf of Defendants at the Hyattsville Middle School Project during the last year.

10. Plaintiff Jose Torrico lives in Virginia and performed work on behalf of Defendants at the Hyattsville Middle School Project during the last year.

11. Plaintiff Christian Orellana lives in Virginia and performed work on behalf of Defendants at the Hyattsville Middle School Project during the last year.

12. Defendant Gilbane Building Company (“Gilbane”) describes itself as a “global integrated construction and facility management firm.” Gilbane’s principal office is located in Baltimore, Maryland. Gilbane served as the general contractor on the Hyattsville Middle School Project.

13. Defendant P & D Contractors, LLC (“P&D”) is a general contracting firm focused on commercial drywall installation. P&D is based in Washington, D.C and served as a drywall contractor on the Hyattsville Middle School Project. P & D was a subcontractor of Gilbane on the Hyattsville Middle School Project.

14. Defendant Maximum Builders, Inc. (“Maximum”) is a subcontractor based in Silver Spring, Maryland. Maximum was a subcontractor of and provided labor to P&D on the Hyattsville Middle School Project.

15. Defendant Ebar Construction Company, LLC, (“Ebar”) is a subcontractor based in Oxon Hill, Maryland. Ebar was a subcontractor of and provided labor to P&D on the Hyattsville Middle School Project.

16. Defendant Juan Miguel a/k/a Juan Milo (“Milo”) is the owner of Ebar. Defendant Milo, along with other agents of Defendants, was directly, personally, and substantially involved in determining the hours worked any pay received by Plaintiffs and similarly situated individuals. Defendant Milo had the power to hire and fire Plaintiffs and similarly situated individuals.

17. Defendants employ individuals, including Plaintiffs, and are engaged in commerce or the production of goods for commerce and/or handling, selling, or otherwise

working on goods or materials that have been moved or produced in commerce by any person.

18. Defendants are employers covered by the minimum wage and overtime mandates of the FLSA, MWHL, and the MWPCCL and the prevailing wage mandates of the MPWS.

FACTS

Wage Theft Allegations

19. Defendant Gilbane was the general contractor responsible for a construction project at Hyattsville Middle School (the “Project”).

20. Defendant Gilbane subcontracted some of its construction work to Defendant P & D.

21. Defendant P & D subcontracted work to Defendant Maximum. Defendant Maximum ceased working on the Project on or about August 2022.

22. Defendant P & D subcontracted work to Defendant Ebar, which is operated by Defendant Milo. Defendants Ebar and Milo began working on the Project after Defendant Maximum ceased working on the Project.

23. Defendant Ebar and Defendant Milo began their involvement in the Project in approximately August 2022 and, on information and belief, remain involved in the Project.

24. During a period from approximately April 2022 continuing through the present, Plaintiffs and other similarly situated individuals performed construction work for Defendants at the Project.

25. The Project was constructed pursuant to a public works contract with the State of Maryland.

26. Accordingly, throughout the existence of the Project, Defendants were obligated to pay not less than specific hourly rates (and associated fringe benefits and payments in lieu of fringe benefits) to construction workers on the Project, including Plaintiffs and others similarly situated, pursuant to legally binding Maryland State prevailing wage rates, which governed all work at the Project.

27. Plaintiffs and others similarly situated were injured by Defendants' violations of Maryland and Federal wage and hour law while working on the Project.

28. Throughout their tenure on the Project, Plaintiffs and others similarly situated were paid less than the hourly rates guaranteed to them under the Maryland state prevailing wage rates applicable to this project.

29. For example, Plaintiff Roxana Rueda worked as a finisher on the Project from approximately April 2022 through approximately September 2022. She was paid \$30 per hour, which is less than the \$35.62 hourly rate that was guaranteed to her by the applicable Maryland State prevailing wage rate.

30. For example, Plaintiff Jose Torrico worked as a carpenter on the Project from approximately April 2022 through approximately September 2022. He was paid \$35 per hour, which is less than the \$41.87 hourly rate that was guaranteed to him by the applicable Maryland State prevailing wage.

31. For example, Plaintiff Fernando Lescano worked as a carpenter on the Project from approximately April 2022 through approximately September 2022. He was paid \$35 per hour, which is less than the \$41.87 hourly rate that was guaranteed to him by the applicable Maryland State prevailing wage.

32. For example, Plaintiff Carlos Torrico worked as a carpenter on the Project

from approximately April 2022 through approximately September 2022. He was paid \$35 per hour, which is less than the \$41.87 hourly rate that was guaranteed to him by the applicable Maryland State prevailing wage.

33. For example, Plaintiff Orellana worked as a carpenter on the Project for approximately eight days in November 2022, but was never paid at all for his time working on the Project.

34. During certain weeks, Plaintiffs and similarly situated individuals worked in excess of forty hours per week on the Project, but were not paid at the time and a half overtime rate for such overtime work.

35. For example, Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico, and other similarly situated individuals, had a regular schedule of eight hours per day, Monday through Friday. However, on a few occasions between approximately April 2022 and approximately September 2022, Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico, and other similarly situated individuals, worked eight hours on some Saturdays in addition to their regular Monday through Friday work. Accordingly, on those weeks, Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico, and others similarly situated, worked forty-eight hours in one workweek. However, Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico, as well as other similarly situated individuals, were compensated at the same hourly rate for all their work, including work over forty hours in one workweek.

36. During certain weeks, Plaintiffs and others similarly situated were not compensated at all for their work on the Project. For example, Plaintiff Orellana worked on

the Project from approximately November 14, 2022 though approximately November 23, 2022. However, Plaintiff Orellana was not paid at all for his work.

37. As an employer of the Plaintiffs and/or the general contractor of the subcontractor that employed the Plaintiffs, Defendants are jointly and severally liable for the Plaintiffs' unpaid wages.

38. While they worked at the Project, Plaintiffs were paid as if they were independent contractors instead of employees. For example, Plaintiffs did not have taxes taken out of their wages and they were not compensated at an overtime rate. However, Plaintiffs were in fact employees.

39. At all relevant times, Plaintiffs were not engaged in an independent business.

40. At all relevant times, Plaintiffs' work activities were within Defendants' usual course of business, as defined by Md. Code, Lab. & Empl. Art. § 3-903(c)(2).

41. No qualifying written contract ever existed between the Defendants and the Plaintiffs pursuant to Md. Code, Lab. & Empl. Art. § 3-903.1(1)(i).

42. Defendants P & D, Maximum, Ebar, and Milo had the power to fire Plaintiffs.

43. Defendants P & D, Maximum, Ebar, and Milo set Plaintiffs' Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico's schedules, assigned their tasks, and had the power to hire and fire them.

44. Defendants P & D, Ebar, and Milo set Plaintiff Orellana's schedule, assigned his tasks, and had the power to hire and fire him.

45. Defendants P & D, Maximum, Ebar, and Milo were employers of Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico and similarly situated individuals and are liable for both the federal and Maryland law claims.

46. Defendants P & D, Ebar, and Milo were employers of Plaintiff Orellana and similarly situated individuals and are liable for both his federal and Maryland law claims.

47. The employer-employee relationship existed because Defendants P & D, Maximum, Ebar, and Milo controlled the work of Plaintiffs Roxana Rueda, Jose Torrico, Fernando Lescano, and Carlos Torrico, including by assigning their work, setting their schedules, and having the power to hire and fire them.

48. The employer-employee relationship existed because Defendants P & D, Ebar, and Milo controlled the work of Plaintiff Orellana, including by assigning his work, setting his schedule, and having the power to hire and fire him.

49. Defendant Gilbane is strictly liable for the Maryland WPCL and MPWS claims because one of their subcontractors was an employer of Plaintiffs and others similarly situated.

COLLECTIVE ACTION ALLEGATIONS

50. This action is maintainable, as to the FLSA and MPWS claims, as an opt-in collective action pursuant to the procedures set out in 29 U.S.C. § 216(b); Md. State Finance and Procurement Code § 17-224(f).

51. Defendants failed to pay Plaintiffs and others similarly situated at the hourly rates guaranteed to them under the Maryland State prevailing wage rates.

52. Defendants failed to pay Plaintiffs and others similarly situated for all hours worked.

53. Defendants failed to pay Plaintiffs and others similarly situated one-and-a-half times their regular rate of pay for those hours worked in excess of forty in any one workweek.

54. This action can, and should, be maintained as a collective action for all claims to unpaid wages, unpaid overtime compensation, and prevailing wages that can be redressed under

the FLSA and MPWS.

55. For those claims that can be certified as a collective action, Plaintiffs seek certification of these claims as a collective action on behalf of all employees of Defendants on the Project who (1) were not compensated for all hours worked on the project; (2) were not compensated at the proper overtime rate for hours worked on the Project in excess of forty in any one workweek; or (3) have earned an hourly wage less than the prevailing wage to which they were entitled under the MPWS. The workers will be referred to jointly as the “Collective Action Members.”

56. Collective Action Members are similarly situated. Collective Action Members have been subjected to the same or substantially the same pay policies and practices. The identities of the members of the proposed collective action are known to Defendants and can be located through Defendants’ records.

57. Plaintiffs hereby consent to be party plaintiffs in this action under 29 U.S.C. § 216(b) and the MPWS. If this case does not proceed as a collective and/or class action, Plaintiffs intend to seek relief individually.

CLASS ACTION ALLEGATIONS

58. Plaintiffs also bring this action as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf of themselves and those similarly situated for violations of the MWHL, the MWPCCL, the MPWS, and the MWFA to enjoin Defendants’ unlawful conduct and to recover damages, interest, attorneys’ fees, costs, and all other relief as appropriate for Defendants’ willful statutory violations. Plaintiffs seek certification of a class action on behalf all persons who are or have been employed by Defendants at the Project and (1) were not compensated for all hours worked on the Project; (2) were not compensated at the proper

overtime rate for hours worked on the Project in excess of forty in any one workweek; (3) have earned an hourly wage less than the prevailing wage to which they were entitled under the MPWS; or (4) have been misclassified as independent contractors rather than employees. These workers will be referred to jointly as the “Class Members.”

59. The number of similarly situated employees employed by Defendants during the duration of the Project are so numerous that joinder of all members is impracticable. Plaintiffs estimate that there are more than 40 similarly situated employees.

60. The duties and responsibilities of the jobs held by the Class Members were the same or substantially similar to the duties and responsibilities of the Plaintiffs. These duties include carpentry, finishing and framing.

61. Plaintiffs’ claims are typical of the claims of Class Members because they are or were subject to the same unlawful payment practices as described in this Complaint.

62. Plaintiffs are adequate representatives of the Class Members because Plaintiffs and Class Members are or were subject to, and damaged by, the same unlawful wage theft and misclassification practices as described in this Complaint.

63. Application of Defendants’ policies and compensation practices does not depend on the personal circumstances of Plaintiffs or those joining the lawsuit. Rather, the same policy or practice which resulted in the alleged wage theft applies to all class members.

64. Plaintiffs and Class members each challenge the legality of the policies and practices as described in this Complaint. By advancing their own claims, Plaintiffs will necessarily advance the claims of the Class Members.

65. Plaintiffs have no conflict with any Class Members and are willing to serve in this representative role.

66. Plaintiffs have retained counsel that is competent and experienced in class action litigation and who will adequately represent the Class Members.

67. Questions of fact and law common to all Class Members will predominate over any questions solely affecting individual Class Members. Among the common questions are:

- a. Whether Defendants' wage theft policies and practices set forth in this Complaint took place as alleged;
- b. Whether Defendants' policies and practices constitute violations of the MWHL, the MPWS, the MWFL, and the MWPCL; and
- c. Whether Class Members are entitled to relief as requested in this Complaint.

68. Defendants have acted and/or refused to act on grounds generally applicable to all Class Members and relief concerning the class as a whole is therefore appropriate.

69. Because Plaintiffs and Class Members suffered the same harms and challenge the same practices described in this Complaint, a class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently, without the duplication of effort and expense and the risk of inconsistent or varying adjudications presented by numerous individuals.

70. No difficulties are likely to be encountered in the management of this class action, and the identity of the Class Members should be readily available from Defendants' records.

71. Additionally, Class Members may be informed of the pendency of this class action by mailing, the internet, or other means.

COUNT I
VIOLATION OF THE FLSA MINIMUM WAGE AND OVERTIME PROVISIONS
(Against Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo)

72. All previous paragraphs are incorporated as though fully set forth herein.

73. Plaintiffs and the Collective Action Members are entitled to the FLSA's protections.

74. Defendants P & D Contractors, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo are employers covered by the FLSA and are and were employers of all Plaintiffs and Collective Action Members.

75. Defendants Maximum Builders Inc. is an employer covered by the FLSA and was an employer of Plaintiffs Roxana Rueda, Carlos Torrico, Fernando Lescano, Jose Torrico and all Collective Action Members working on the Project prior to approximately September 2022.

76. The FLSA entitles employees to minimum hourly compensation of \$7.25 per hour for hours worked up to 40 in any one week. *See* 29 U.S.C. § 206(b).

77. The FLSA further requires employers to pay non-exempt employees an overtime premium of one-and-one-half times their regular hourly rate for hours worked in excess of 40 hours in any one work week.

78. Defendants failed to pay Plaintiffs and others similarly situated minimum wage for all hours worked and one-and-one-half times their regular hourly rate for hours worked in excess of 40 in any one work week.

79. In violating the FLSA, Defendants P & D, Maximum, Ebar, and Milo acted willfully and with reckless disregard of clearly applicable FLSA provisions.

80. Defendants P & D, Maximum, Ebar, and Milo are liable to Plaintiffs and the

Collective Action Members under the FLSA § 216(b) for all unpaid overtime wages, plus an equal amount in liquidated damages, plus interest, attorney's fees, costs, and any other and further relief this Court deems appropriate.

COUNT II
VIOLATION OF MWHL OVERTIME PROVISIONS
(Against Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo)

81. All previous paragraphs are incorporated as though fully set forth herein.

82. Plaintiffs and the Class Action Members are employees and entitled to the MWHL's protections.

83. Defendants P & D Contractors LLC, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo are employers covered by the MWHL and are and were employers of all Plaintiffs and Class Action Members.

84. Defendants Maximum Builders Inc. is an employer covered by the MWHL and was an employer of Plaintiffs Roxana Rueda, Carlos Torrico, Fernando Lescano, Jose Torrico and Class Action Members working on the Project prior to approximately September 2022.

85. The MWHL entitles employees to minimum hourly compensation of \$10.10 per hour for hours worked under 40 in a week.

86. The MWHL requires employers to pay employees an overtime wage of at least 1.5 the usual hourly wage for hours worked over 40 in a week.

87. Defendants failed to pay Plaintiffs and Class Members one-and-one-half times their regular hourly rate for hours worked in excess of forty in any one work week.

88. In violating the MWHL, Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo acted willfully and with reckless

disregard of clearly applicable MWHL provisions.

89. Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Milo are liable to Plaintiffs for all unpaid overtime wages, plus liquidated damages, plus interest, attorney's fees, costs, and any other and further relief this Court deems appropriate.

COUNT III
VIOLATION OF MARYLAND WAGE PAYMENT AND COLLECTION LAW
(Against All Defendants)

90. All previous paragraphs are incorporated as though fully set forth herein.

91. Plaintiffs and the Class Action Members are employees and entitled to the MWPCCL's protections.

92. Defendants P & D Contractors LLC, Ebar Construction Co., and Juan Miguel a/k/s Juan Milo are employers covered by the MWHL and are and were employers of all Plaintiffs and Class Action Members.

93. Defendant Maximum Builders Inc. is an employer covered by the MWHL and was an employer of Plaintiffs Roxana Rueda, Carlos Torrico, Fernando Lescano, Jose Torrico and Class Action Members working on the Project prior to approximately September 2022.

94. Under the MWPCCL, § 3-502, Defendants were required to pay Plaintiffs all wages due for work performed.

95. For each hour worked Defendants were required to pay Plaintiffs the greater of: (1) the wages they were promised, (2) the "prevailing wage rate" required by state law, (3) or, for qualifying hours, the overtime rate they were entitled to pursuant to state and federal law.

96. Defendants failed to timely pay Plaintiffs and Class Members their required wage rate for all hours they worked, in violation of the MWPCCL § 3-502.

97. Under the MWPCL, “a general contractor on a project for construction services is jointly and severally liable for a violation of this subtitle that is committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the general contractor.” MWPCL § 3-507.2.

98. Defendant Gilbane was the general contractor on the Project, and is therefore jointly and severally liable for the violations of the MWPCL committed by subcontractors on the Project.

99. Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo’s violations of the MWPCL were repeated, willful, intentional, and in bad faith.

100. Defendants are liable to Plaintiffs and the Class Action Members under the MWPCL § 3-507.1 for three times their unpaid wages, interest, attorneys’ fees, costs, and any other further relief this Court deems appropriate.

**COUNT IV – VIOLATION OF MARYLAND PREVAILING WAGE STATUTE
(Against All Defendants)**

101. The MPWS provides that: a) “each contractor and subcontractor under a public work contract shall pay not less than the prevailing wage rate of straight time to an employee for each hour that the employee works;” and b) “A contractor and subcontractor shall pay an employee the prevailing wage rate of overtime for each hour that the employee works: (1) in excess of 10 hours in any single calendar day; (2) in excess of 40 hours per each workweek; or (3) on Sunday or a legal holiday.” Md. Code. Ann. § 17-214.

102. The Project was constructed pursuant to a public work contract and Defendants were contractors and/or subcontractors under a public work contract.

103. Defendants P & D Contractors LLC, Ebar Construction Co., and Juan Miguel a/k/a Juan Milo are employers of all Plaintiffs and Class Action Members.

104. Defendant Maximum Builders Inc. was an employer of Plaintiffs Roxana Rueda, Carlos Torrico, Fernando Lescano, Jose Torrico and Class Action Members working on the Project prior to approximately September 2022.

105. Defendant Gilbane was the general contractor on the Project and each of the other Defendants were subcontractors on the Project.

106. Throughout the Project, Defendants failed to pay the prevailing wage rate of straight time to Plaintiffs and failed to pay the prevailing wage rate of overtime for each overtime hour worked on the Project.

107. The MPWS provides that “If an employee under a public work contract is paid less than the prevailing wage rate for that employee’s classification for the work performed, the employee is entitled to sue to recover the difference between the prevailing wage rate and the amount received by the employee.”

108. The MPWS further provides that “[t]he court may order the payment of double damages or treble damages under this section if the court finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard of the employer’s obligations under this subtitle” and “the court shall award a prevailing plaintiff reasonable counsel fees and costs.” Md. Code Ann. § 17-224.

109. The MPWS further provides that “[t]he contractor and subcontractor shall be jointly and severally liable for any violation of the subcontractor’s obligations under this section.” Md. Code Ann. State. Fin. & Proc. § 17-224.

110. Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction

Co., and Juan Miguel a/k/a Juan Milo's violations of the MWPCCL were repeated, willful, intentional, and in bad faith.

111. Defendants are liable to Plaintiffs and similarly situated employees under the MPWS for three times their unpaid wages, interest, attorneys' fees, costs, and any other further relief this Court deems appropriate.

**COUNT V – VIOLATIONS OF MARYLAND WORKPLACE FRAUD LAW
(Against Defendants P & D Contractors LLC, Maximum Builders Inc, Ebar Construction Co., and Juan Milo)**

112. Plaintiffs were employed by Defendants P & D, Maximum, Ebar, and Milo for "construction services" within the meaning of the MWFA, Md. Code, Lab. & Empl. Art. § 3-901.

113. Defendants P & D, Maximum, Ebar, and Milo were "employers" of Plaintiffs within the meaning of the MWFA, Md. Code, Lab. & Empl. Art. § 3-901.

114. The MWFA forbids employers from misclassifying employees as independent contractors. Md. Code, Lab. & Empl. Art. § 3-903.

115. Defendants P & D, Maximum, Ebar, and Milo violated the MWFA by knowingly misclassifying Plaintiffs and others similarly situated as independent contractors.

116. Defendants P & D, Maximum, Ebar, and Milo's violations of the MWFA were willful.

117. As a result of Defendants' misclassification, Plaintiffs were not paid an overtime premium for hours worked in excess of 40 in any one workweek and did not receive other benefits and protections of employees.

118. For their violations of the MWFA, Defendants P & D, Maximum, Ebar, and Milo

are liable to Plaintiffs and similarly situated employees for their unpaid overtime wages, plus an amount equal to three times the unpaid overtime wages as damages, plus interest, court costs, reasonable attorneys' fees and expenses, and any other relief deemed appropriate by the Court.

PRAYER FOR RELIEF

119. WHEREFORE, Plaintiffs, on behalf of themselves and others similarly situated, respectfully request that the Court:

- a. Declare this action to be maintainable as a collective action pursuant to the FLSA and MPWS, and direct Defendants to provide to Plaintiffs a list of all Collective Action Members, including the last known address and telephone number of each such person, so that Plaintiffs can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;
- b. Determine the damages sustained by Plaintiffs as a result of Defendants willful and intentional violations of the FLSA and the MPWS and award such damages against Defendants in favor of Plaintiffs and all similarly situated individuals, plus an equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b), plus such pre-judgment interest as may be allow by law;
- c. Declare this Action to be maintainable as a Class Action as to the claims brought under the Maryland laws pursuant to Fed. R. Civ. P. 23;
- d. Determine the damages sustained by Plaintiff and Class Members during the Class Period as a result of Defendants' willful and intentional violations of the MHWL, the MWPCCL, the MPWS, and the MWFL and

award all appropriate damages resulting therefrom to Plaintiffs and Class Members;

- e. Determine that injunctive relief is appropriate as to Plaintiffs and Class Members and enjoin Defendants from continuing to violate the FLSA, the MWHL, the MWPCCL, the MPWS, and the MWFL;
- f. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action, and;
- g. order such other relief as this Court deems just and equitable.

Dated: February 6, 2023

Respectfully submitted,

/s/ Matthew K Handley
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