

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

KELVIN LARA, on behalf of himself and all others  
similarly situated,  
c/o Handley Farah & Anderson PLLC  
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Eleventh Floor  
Washington, DC 20001

CARLOS ECHEVERRIA, on behalf of himself and  
all others similarly situated.  
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MARIO REYES, on behalf of himself and all others  
similarly situated.  
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DAVID PEREZ, on behalf of himself and all others  
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others similarly situated.  
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Civil Action No.: 2020 CA 002648 B

DEVIS ABRAHAM GUDIEL, on behalf of himself  
and all others similarly situated.  
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DUVAN GUDIEL, on behalf of himself and all  
others similarly situated.  
c/o Handley Farah & Anderson PLLC  
777 6th Street NW  
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*Plaintiffs,*

v.

BOZZUTO CONTRACTORS, INC.  
6406 Ivy Lane  
Suite 700  
Greenbelt, MD 20770

Service at:  
Corporation Service Company  
1015 15th St NW  
Suite 1000  
Washington, DC 20005

*Defendant.*

### **AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

1. This is an action for unpaid wages, unpaid overtime, and workplace fraud under Federal and 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 Bozzuto Contractors, Inc. (“Bozzuto” or “Defendant”) for failing to pay their employees 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 improperly 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.<sup>1</sup> Worker misclassification is a form of payroll abuse where workers that should be classified as employees are illegally classified as independent contractors.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>1</sup> 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> .

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *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 Kelvin Lara, Carlos Echeverria, Mario Reyes, David Perez, William Otero and Carlos Otero were employed as construction workers in the District of Columbia metropolitan area. From approximately 2019 to 2020, they were employed by Defendant and its subcontractors Centennial Builders, Inc. and G.O. Construction LLC to work on a construction project at 808 Bladensburg Road, NE in Washington, DC known as Delta Towers (the "Project").

5. Plaintiff Devis Abraham Gudiel and Duvan Gudiel were employed as construction workers in the District of Columbia metropolitan area. From approximately 2019 to 2020, they were employed by one or more of Defendant's subcontractors Penguin Mechanical Contractors ("Penguin"), Hot and Cool Company LLC ("Hot and Cool") and D&A Heating and Cooling LLC ("D&A") to work on the Project.

6. Defendant Bozzuto is a Maryland corporation that provides specialty construction services in multiple markets across the United States. It is headquartered in Greenbelt, Maryland.

## **FACTUAL ALLEGATIONS**

7. Defendant Bozzuto was the general contractor responsible for a construction project at 808 Bladensburg Road, NE known as Delta Towers (the "Project").

8. Defendant Bozzuto subcontracted some of its construction work on the Project to Defendants Centennial and Penguin.

9. Defendant Penguin subcontracted some of its construction work on the Project to Hot and Cool and D&A.

10. During 2019 and 2020, Plaintiffs and other similarly situated individuals performed construction work for Defendant at the Project. Plaintiffs and other similarly situated individuals performed their work at the direction of Defendants' subcontractors.

11. The Project was funded by the District of Columbia and was constructed pursuant to a public works contract with the District of Columbia. As a result, throughout the existence of the Project, Defendant and its subcontractors were obliged to pay specific hourly wage rates to workers on the Project. The specific hourly wage rates required to be paid to employees on such public work construction projects are referred to as "prevailing wage rates." While employed at the Project, Plaintiffs and similarly situated individuals were paid less than required prevailing wage rates.

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

13. For example, when Defendant and its subcontractors compensated Plaintiffs and other similarly situated individuals, the checks did not contain proper payroll deductions.

14. For example, when Plaintiffs and other similarly situated individuals worked in excess of forty hours per week, they were not paid at a rate of time and a half their regular rate for such overtime work.

15. As the general contractor or the subcontractor that employed Plaintiffs, 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.

16. Defendant Bozzuto 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.

17. 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**

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

19. Defendant and its subcontractors failed to pay the Plaintiffs and all 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, as required by the MWA, and WPCL.

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

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

22. Plaintiffs seek certification of these claims as a collective action on behalf of all individuals who performed construction work for Bozzuto and its subcontractors at the Project.

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

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

25. 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.

26. 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. 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.

27. 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.

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

29. 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 Project 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 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.

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

#### **CLASS ACTION ALLEGATIONS**

31. 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.

32. 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, were otherwise underpaid wages lawfully owed or were misclassified as independent contractors; 2) were employed by Defendant Bozzuto or one of its subcontractors and 3) performed construction work for Defendant Bozzuto at the Project 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”).

33. Members of the Proposed Rule 23 Class are readily ascertainable. The identity of

class members may be determined from Defendants' records.

34. 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 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 at overtime-premium rates 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 payment at premium rates for all time worked over 40 hours per week 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

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

36. 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. Any payment made in lieu of fringe benefits must be included in the calculation of the regular rate.

37. Plaintiffs were employees of Defendant's subcontractors.

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

39. 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 . . .".

40. Defendant Bozzuto was the general contractor on the Project.

41. The employers of the Plaintiffs and others similarly situated at the Project were subcontractors of Bozzuto.

42. Defendant 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.

43. WHEREFORE, Defendant is liable to Plaintiffs and all similarly-situated individuals for all unpaid 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.

**COUNT II**  
**FAILURE TO TIMELY PAY WAGES**

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

45. 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.”

46. 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.”

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

48. Plaintiffs were employees of Defendant’s subcontractors.

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

50. 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 . . . .”

51. Defendant Bozzuto was the general contractor on the Project.

52. The employers of the Plaintiffs and others similarly situated at the Project were subcontractors of Bozzuto.

53. 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.

54. 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.

55. 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**

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

57. 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.

58. 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 . . . .”.

59. 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.

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

61. 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.

62. 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.

63. 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 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: July 10, 2020

Respectfully submitted,

/s/ Matthew K. Handley  
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