

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

IVAN CASTILLO, et al.

*

Plaintiffs

*

v.

Civil No.: 2020-CA-003502-B

*

Judge Heidi M. Pasichow

CBG BUILDING COMPANY, LLC.

*

Next Event: 2/26/21 Initial Scheduling
Conference

Defendant.

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**CBG BUILDING COMPANY, LLC'S ANSWER
TO CLASS AND COLLECTIVE ACTION COMPLAINT**

CBG Building Company, LLC ("CBG") hereby answers the Class and Collective Action Complaint (the "Complaint") as follows:

1. CBG admits Plaintiffs filed this action pursuant to the cited statutes. The remaining allegations in Paragraph 1 do not require a response and consequently, they are denied.

INTRODUCTION

2. CBG denies the last sentence of Paragraph 2 of the Complaint. The remaining allegations in Paragraph 2 do not require a response and consequently, they are denied.

JURISDICTION AND VENUE

3. Admitted.

PARTIES

4. CBG denies it employed the Plaintiffs. CBG further denies its subcontractors, Charly Drywall & Painting Inc. and Advantage Air Conditioning of Virginia employed the Plaintiffs. CBG denies that R&L General Contractor, LLC was its subcontractor. CBG is without sufficient

information to admit or deny the remaining allegations in Paragraph 4 of the Complaint, and therefore, such allegations are denied.

5. CBG denies that Plaintiff Ivan Castillo was employed by Advantage Air Conditioning of Virginia or R&L General Contractor, LLC to work at Eckington Yard. CBG is without sufficient information to admit or deny the remaining allegations in Paragraph 5 of the Complaint, and therefore, such allegations are denied.

6. CBG denies that Plaintiff Juan Martinez was employed by Charly Drywall & Painting Inc. to work at Eckington Yard, but admit that Plaintiff Juan Martinez did work at Eckington Yard. As to the remaining allegations in Paragraph 6, CBG is without sufficient information to admit or deny such allegations, and therefore, such allegations are denied.

7. CBG denies that it is a corporation. The remaining allegations in Paragraph 7 are admitted.

FACTUAL ALLEGATIONS

8. Admitted.

9. With respect to the allegations in paragraph 9, any written agreements between CBG and its subcontractors as it relates to a specific construction project speak for themselves and any mischaracterization thereof is denied.

10. The allegations contained in paragraph 10 of the Complaint include conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG denies that there are individuals similarly situated to Plaintiffs. The remaining allegations are denied.

11. The allegations contained in paragraph 11 of the Complaint include conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG denies that there are individuals similarly situated to Plaintiffs. The remaining allegations are denied.

12. The allegations contained in paragraph 12 of the Complaint include conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG denies that there are individuals similarly situated to Plaintiffs. The remaining allegations are denied.

13. The allegations contained in paragraph 13 of the Complaint include conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG denies that there are individuals similarly situated to Plaintiffs. The remaining allegations are denied.

14. Denied.

15. CBG is without sufficient knowledge or information to admit or deny the allegations in paragraph 15, and therefore, such allegations are denied.

16. CBG is without sufficient knowledge or information to admit or deny the allegations in paragraph 16, and therefore, such allegations are denied.

17. The allegations contained in paragraph 17 of the Complaint include conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG denies that there are individuals similarly situated to Plaintiffs. CBG is without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 17, and therefore, such allegations are denied.

18. The allegations contained in paragraph 18 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

19. The allegations contained in paragraph 19 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

20. The allegations contained in paragraph 20 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

COLLECTIVE ACTION ALLEGATIONS

21. The allegations contained in paragraph 21 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

22. The allegations contained in paragraph 22 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 22.

23. The allegations contained in paragraph 23 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 23.

24. The allegations contained in paragraph 24 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 24 and denies that this case is suitable for collective or class action treatment.

25. The allegations contained in paragraph 25 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 25 and denies that this case is suitable for collective or class action treatment.

26. The allegations contained in paragraph 26 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 26 and denies that this case is suitable for collective or class action treatment.

27. The allegations contained in paragraph 27 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the

allegations in paragraph 27 and denies that this case is suitable for collective or class action treatment.

28. The allegations contained in paragraph 28 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 28 and denies that this case is suitable for collective or class action treatment

29. The allegations contained in paragraph 29 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 29 and denies that this case is suitable for collective or class action treatment.

30. The allegations contained in paragraph 30 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 30 and denies that this case is suitable for collective or class action treatment.

31. The allegations contained in paragraph 31 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 31 and denies that this case is suitable for collective or class action treatment.

32. The allegations contained in paragraph 32 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 32 and denies that this case is suitable for collective or class action treatment.

33. The allegations contained in paragraph 33 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 33 and denies that this case is suitable for collective or class action treatment.

34. The allegations contained in paragraph 34 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

CLASS ACTION ALLEGATIONS

35. CBG admits Plaintiffs brings claims under the statutes in this paragraph.

36. The allegations contained in paragraph 36 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 36 and denies that this case is suitable for collective or class action treatment.

37. The allegations contained in paragraph 37 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 37 and denies that this case is suitable for collective or class action treatment

38. The allegations contained in paragraph 38 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied. CBG further denies the allegations in paragraph 38 and denies that this case is suitable for collective or class action treatment.

CAUSES OF ACTION

COUNT I **VIOLATION OF D.C. MINIMUM WAGE LAW**

39. CBG incorporates by reference all preceding paragraphs as if set forth fully at length herein.

40. The allegations contained in paragraph 40 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

41. The allegations contained in paragraph 41 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

42. The allegations contained in paragraph 42 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

43. The allegations contained in paragraph 43 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

44. The allegations contained in paragraph 44 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

45. The allegations contained in paragraph 45 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

46. The allegations contained in paragraph 46 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

47. The allegations contained in paragraph 47 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

48. The allegations contained in paragraph 48 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

COUNT II
FAILURE TO TIMELY PAY WAGES

49. CBG incorporates by reference all preceding paragraphs as if set forth fully at length herein.

50. The allegations contained in paragraph 50 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

51. The allegations contained in paragraph 51 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

52. The allegations contained in paragraph 52 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

53. The allegations contained in paragraph 53 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

54. The allegations contained in paragraph 54 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

55. The allegations contained in paragraph 55 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

56. The allegations contained in paragraph 56 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

57. The allegations contained in paragraph 57 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

58. The allegations contained in paragraph 58 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

59. The allegations contained in paragraph 59 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

60. The allegations contained in paragraph 60 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

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

61. CBG incorporates by reference all preceding paragraphs as if set forth fully at length herein.

62. The allegations contained in paragraph 62 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

63. The allegations contained in paragraph 63 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

64. The allegations contained in paragraph 64 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

65. The allegations contained in paragraph 65 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

66. The allegations contained in paragraph 66 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

67. The allegations contained in paragraph 67 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

68. The allegations contained in paragraph 68 of the Complaint are conclusions of law to which no answer is required, and therefore, such allegations are denied.

PRAYER FOR RELIEF

To the extent Plaintiffs' prayer for relief requires a response, CBG denies that Plaintiffs or any of the individuals they purport to represent or otherwise include in this matter are entitled to

any relief sought, denies this case is suitable for collective or class action treatment, and denies the entirety of Plaintiffs' claims.

AFFIRMATIVE DEFENSES

1. Plaintiffs' claims should be dismissed for failure to state a cause of action upon which relief can be granted.

2. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

3. Plaintiffs' claims should be dismissed because Plaintiffs have failed to mitigate damages.

4. Plaintiffs' claims are barred by waiver, estoppel and laches.

5. Plaintiffs' claims are barred as to all hours allegedly worked of which Plaintiffs' employer and/or CBG lacked actual or constructive knowledge.

6. CBG has not been the employer of Plaintiffs.

7. CBG reserves the right to rely on any defenses asserted by any other defendants added to this matter.

8. This case may not be maintained as a class action because Plaintiffs cannot establish the existence of each of the requirements under D.C. Rule of Procedure 23, D.C. Code § 3-1308, and other relevant legal authority.

9. The Complaint does not make allegations sufficient to establish eligibility for class or collective action status inasmuch as Plaintiffs' allegations demonstrate that they have been subjected to different conditions of employment.

10. Some or all Plaintiffs were exempt under applicable law by virtue of the nature of their employment and/or compensation structure.

11. Plaintiffs' claims are barred, in whole or in part, because the time periods for which they claim entitlement to overtime pay fall within the *de minimis* exception.

12. CBG states that its actions (or omissions) with respect to Plaintiffs and the purported class and collective action members they purport to include or represent in this lawsuit were taken in good faith in conformity with and in reliance on a written administrative regulation, order, ruling, approval, interpretation, and/or administrative practice or policy pursuant to permissible interpretations of the DCMWA and DCWPA.

13. Plaintiffs' damages, if any, were directly and proximately caused by the acts, errors and/or omissions of third parties for which CBG is not legally responsible and over which CBG did not have necessary control.

14. CBG reserves the right to assert any additional defenses depending on any evidence discovered in the course of this litigation.

WHEREFORE, having fully answered, Defendant CBG Building Company, LLC respectfully requests this Court dismiss the Complaint with prejudice and in its entirety, deny Plaintiffs' request for collective action and class action status, award CBG any costs, including reasonable attorney fees, and expenses, in the amount and manner permitted by applicable law and any other and further relief as the Court deems just and proper.

Date: November 25, 2020

Respectfully submitted,

/s/ Veronica K. Yu

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 25, 2020, a copy of the foregoing was filed and served on all counsel through the Court's electronic filing system.

/s/ Veronica K. Yu

Veronica K. Yu