

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION

)
GIOVANNI (“HENRY”) MONTOYA)
c/o Washington Lawyers' Committee for)
Civil Rights and Urban Affairs)
11 Dupont Circle, NW Suite 400)
Washington, DC 20036)
[Plaintiff resident in Montgomery Cty., MD])

)
ALEXANDER FIGUEROA)
c/o Washington Lawyers' Committee for)
Civil Rights and Urban Affairs)
11 Dupont Circle, NW Suite 400)
Washington, DC 20036)
[Plaintiff resident in Montgomery Cty., MD])

)
MANUEL CARRERA)
c/o Washington Lawyers' Committee for)
Civil Rights and Urban Affairs)
11 Dupont Circle, NW Suite 400)
Washington, DC 20036)

)
IVAN APLICANO)
c/o Washington Lawyers' Committee for)
Civil Rights and Urban Affairs)
11 Dupont Circle, NW Suite 400)
Washington, DC 20036)
[Plaintiff resident in Montgomery Cty., MD])

)
On behalf of themselves and all)
others similarly situated,)

)
Plaintiffs,)

)
v.)

)
S.C.C.P. Painting Contractors, Inc.,)
11024 Old Frederick Road)
Thurmont, MD 21702)
[Frederick County, MD])

)
Giovanni (a.k.a. “John”) Sulmonte)

Case No.
Collective Action and
Class Action Complaint

Individually and doing business as)
 S.C.C.P. Painting Contractors, Inc.,)
 11024 Old Frederick Road)
 Thurmont, MD 21702)
 [Frederick County, MD])
)
 Defendants.)
 _____)

Plaintiffs and Class members, through their undersigned attorneys, for their Collective Action and Class Action Complaint against Defendants S.C.C.P. Painting Contractors, Inc. (“S.C.C.P”) and Giovanni Sulmonte, individually and doing business as S.C.C.P. Painting Contractors, Inc., (collectively, “Defendants”), hereby allege as follows:

NATURE OF THE ACTION

1. Plaintiffs, together with members of the Collective Action Class, the Maryland Subclass, and D.C. Subclass (collectively, “Class members”) were employed by Defendants as non-exempt employees and bring this action against Defendants for engaging in a uniform and systematic scheme of wage payment abuse against individuals who performed primarily painting-related work on behalf of Defendants in Maryland and in Washington, D.C. This scheme involved, *inter alia*, failing to pay all wages owed for work performed, failing to pay for work that Plaintiffs and Class members were required to perform “off-the-clock,” failing to pay Plaintiffs and other workers overtime compensation owed to them for hours over forty worked in any given workweek, and/or deducting amounts from employees’ pay, purportedly for tax purposes, but on information and belief not for that purpose at all.

2. As a result of Defendants’ systematic scheme and practice of failing to properly pay employees for work performed throughout Washington D.C. and Maryland, Defendants have violated the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”); the Maryland Wage

and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401, *et seq.* (“MWHL”); the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501, *et seq.* (“MWPCL”); the D.C. Minimum Wage Law, D.C. Code Ann. §§ 32-1001, *et seq.* (“DCMWL”); the D.C. Payment and Collection of Wages Law, D.C. Code Ann. §32-1301, *et seq.*(“DCPCWL”); and Maryland and District of Columbia common law.

THE PARTIES

3. Plaintiff Giovanni (“Henry”) Montoya (“Mr. Montoya”) resides in the State of Maryland. He performed work for the benefit of Defendants beginning on or about December 16, 2005, when he was directed by Defendants to perform painting work at a job site in Maryland. Mr. Montoya subsequently was assigned by Defendants to perform work on behalf of the Defendants in the District of Columbia. He ceased to perform work for the benefit of the Defendants in April 2006.

4. For the entirety of his tenure as an employee of Defendants, Mr. Montoya worked an average of six days a week, ten hours per day. Defendants, *inter alia*, failed to pay Mr. Montoya certain paychecks owed him (in their entirety) and never paid Mr. Montoya overtime for the hours over 40 he worked in any given workweek.

5. Plaintiff Alexander Figueroa (“Mr. Figueroa”) resides in the State of Maryland. He performed work for the benefit of Defendants beginning on or about December 16, 2005, when he was assigned by Defendants to perform painting work at a job site in Maryland. Mr. Montoya subsequently was assigned by Defendants to perform work on their behalf in the District of Columbia. He ceased to perform work for the benefit of the Defendants in April 2006.

6. For the entirety of his tenure as an employee of Defendants, Mr. Figueroa worked an average of six days a week, ten hours per day. The Defendants, *inter alia*, failed to pay Mr. Figueroa certain paychecks owed him (in their entirety); never paid Mr. Figueroa overtime for the hours over forty he worked in any given workweek; and refused to allow him to record on his time sheets hours he in fact worked, thereby forcing him to perform work “off-the-clock.”

7. Plaintiff Manuel Carrera (“Mr. Carrera”) resides in the State of Virginia. He was assigned by Defendants to perform work, including painting work, for the benefit of Defendants in the District of Columbia beginning in February 2006 and ceasing in April 2006.

8. For the entirety of his tenure as an employee of Defendants, Mr. Carrera worked an average of six days a week, ten hours per day. The Defendants, *inter alia*, failed to pay Mr. Carrera certain paychecks owed him (in their entirety); never paid Mr. Carrera overtime for the hours over 40 he worked in any given workweek; and deducted amounts from certain paychecks for the stated purpose of tax withholding (but on information and belief not for that purpose at all).

9. Plaintiff Ivan Aplicano (“Mr. Aplicano”) resides in the State of Maryland. He was assigned by Defendants to perform work for their benefit beginning on or about December 16, 2005, when he was directed to perform painting work at a job site in Maryland. Defendants subsequently assigned Mr. Aplicano to performed work on their behalf in the District of Columbia. He ceased to perform work for the benefit of the Defendants in April 2006.

10. For the entirety of his tenure as an employee of Defendants, Mr. Aplicano worked an average of six days a week, ten hours per day. The Defendants, *inter alia*, failed to pay Mr.

Aplicano certain paychecks owed him (in their entirety) and never paid Mr. Aplicano overtime for the hours over 40 he worked in any given workweek.

11. Plaintiffs and Class members did not perform work that would qualify for an exemption under the applicable federal or state wage payment schemes. Plaintiffs and Class members were paid hourly, and were never salaried employees of Defendants.

12. Defendant S.C.C.P. Painting Contractors, Inc. is a forfeited Maryland corporation with its principal place of business in Frederick, Maryland. Upon information and belief, S.C.C.P.'s business is focused on the provision of commercial interior painting services in the D.C. metropolitan area. Notwithstanding its failure to comply with the State of Maryland's statutory requirements for corporations, S.C.C.P. continues to do business in at least Maryland and Washington, D.C., as it has for the entirety of the time period relevant to this Complaint. Ascenzo Sulmonte is listed in documents on file with Maryland's State Department of Assessments and Taxation as the Resident Agent for S.C.C.P.

13. Defendant Giovanni ("John") Sulmonte (hereinafter "John Sulmonte" or "Mr. Sulmonte") resides in Frederick, Maryland. He is, upon information and belief, an officer of S.C.C.P. Mr. Sulmonte is highly involved in and/or responsible for overseeing the running of S.C.C.P.

14. The unlawful acts charged in this Complaint were done by Defendants themselves or were authorized, carried out, ordered, or done by Defendants' officers, agents, employees, or representatives, while actively engaged in the management of the Defendants' businesses or affairs.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over Count I pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337 because this action arises under the laws of the United States and the Acts of Congress regulating commerce.

16. Pursuant to 28 U.S.C. § 1367(a), this Court has supplemental jurisdiction over all state law claims alleged herein because those claims arise from a common set of operative facts and are so related to the claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy.

17. This Court has personal jurisdiction over all Defendants hereto because Defendant S.C.C.P. is a Maryland corporation, and Defendant John Sulmonte resides in this State.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants reside and/or have their principal place of business in Maryland.

COLLECTIVE ACTION CLASS, MARYLAND SUBCLASS AND DC SUBCLASS

19. This action is brought as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of Plaintiffs Henry Montoya, Alexander Figueroa, Manuel Carrera, Ivan Aplicano, and all other persons who are or have been employed by Defendants as hourly-paid workers between February 21, 2004 and the date of the final disposition of this action (the “Class Period”). These individuals will be referred to as “the Collective Action Class” or “the members of the Collective Action Class.”

20. This action is also brought as a class action pursuant to Fed. R. Civ. P. 23 by Plaintiffs Henry Montoya and Alexander Figueroa on behalf of themselves and all similarly situated non-exempt, hourly paid employees who worked for the benefit of Defendants at worksites in the State of Maryland between February 21, 2004 and the date of the final disposition of this action.

This group of workers shall heretofore be referred to as the “Maryland Subclass.” Plaintiffs Henry Montoya and Alexander Figueroa allege claims pursuant to the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401, *et seq.* (“MWHL”), the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501, *et seq.* (“MWPCCL”), and Maryland common law.

21. In addition, this action is brought as a class action pursuant to Fed. R. Civ. P. 23 by Plaintiffs Manuel Carrera and Ivan Aplicano on behalf of themselves and all similarly situated non-exempt, hourly paid employees who worked on behalf of Defendants at worksites in the District of Columbia during the Class Period (the “D.C. Subclass”). Plaintiffs Manuel Carrera and Ivan Aplicano allege claims pursuant to the D.C. Minimum Wage Law, D.C. Code Ann. §§ 32-1001, *et seq.* (“DCMWL”), the D.C. Payment and Collection of Wages Law, D.C. Code Ann. § 32-1301, *et seq.* (“DCPCWL”), and D.C. common law.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

22. Defendant S.C.C.P. is in the business of providing commercial interior painting services. The business also involves, at times, the setting and finishing of concrete floors.

23. Defendant John Sulmonte, on behalf of Defendant S.C.C.P., authorized, assented to, or was aware of the work performed by Plaintiffs and Class members for the benefit of Defendants.

24. Plaintiffs’ and Class members’ entrée to the work at issue in this Complaint was through agents or representatives of S.C.C.P. Agents or representatives of S.C.C.P. set the Plaintiffs’ or Class members’ hourly salaries and told Plaintiffs and Class members to report for work at particular job sites. When compensation was paid to Plaintiffs and Class members, it was by means of checks reflecting “SCCP Painting Contractors Inc.” as the drawer of the check.

25. Upon information and belief, Defendants directly benefited from the work of in excess of 500 individuals whom they assigned to work on their behalf in the District of Columbia and Maryland during the Class Period. Defendants received payment from their own customers for the work performed for their benefit.

26. Defendants had a legal obligation to pay their employees for work performed and to pay overtime compensation for hours worked in excess of forty (40) each week.

27. Despite Defendants' obligations under relevant wage and hour laws, Defendants intentionally created and implemented a system through which they denied Plaintiffs and Class members all wages owed for each hour worked and one-and-one-half times their regular hourly rate of pay for hours worked in excess of forty hours during each workweek.

28. Upon information and belief, Defendants' scheme to deny payment of wages took at least four forms:

- a. Failure to pay any wages at all for any work performed during certain periods, including withholding entire paychecks from Plaintiffs and Class members;
- b. Failure to pay wages for work that Plaintiffs and Class members were directed to perform, yet were not allowed to account for on time sheets;
- c. Failure to pay one-and-a-half times Plaintiffs' and Class members' regular hourly rate of pay for hours they worked in excess of forty (40) hours weekly;

d. The deduction of wages from paychecks, purportedly for tax withholding purposes, that on information and belief was not in fact withheld for that purpose.

25. To this day, Plaintiffs and Class members have not been paid all compensation owed them for hours worked during the Class Period.

26. Throughout the Class members' employment with Defendants, Defendant S.C.C.P. issued company checks each pay period, but neglected to include, *inter alia*, a statement of the gross earnings of the employee or deductions from those gross earnings.

27. Defendant John Sulmonte had decision-making authority over S.C.C.P.'s payroll employment policies and practices, including but not limited to the hourly-paid employees' rate of pay, overtime hours, and pay dates, method of payment, the maintenance of employee records, the power to hire and fire, and the assignment of employees to S.C.C.P. worksites.

28. Upon information and belief, Defendants failed to keep payroll records containing all information required by law.

29. The compensation policies and practices set forth above constitute willful, knowing, and intentional violations of the FLSA, the MWHL, the MWPCCL, the DCMWL, the DCPCWL, and also constitute violations of Maryland and District of Columbia common law.

COLLECTIVE ACTION ALLEGATIONS

30. The collective action that Plaintiffs propose to maintain under the Fair Labor Standards Act, 29 U.S.C. § 216(b), includes all individuals who are or have been employed by Defendants as non-exempt, hourly employees and who were not paid at all for hours they worked, and/or

were not paid overtime for the hours over 40 they worked in any given workweek between February 21, 2004 and the date of the final disposition of this action.

31. During the Class Period, the harms suffered by members of the Collective Action Class were the same as or substantially similar to those suffered by Plaintiffs, in that Plaintiffs and the members of the Collective Action Class are and were subject to the unlawful compensation policies and practices as described in this Complaint.

32. Accordingly, Plaintiffs and all members of the proposed collective action are “similarly situated” within the meaning of 29 U.S.C. § 216(b), and are therefore entitled to proceed on a collective basis.

33. While the exact number of members of the Collective Action Class is unknown to the Plaintiffs at the present time, Plaintiffs believe that there may be more than five hundred similarly situated persons who are or have been employed as non-exempt, hourly employees of Defendants and who were not paid at all for hours they worked, and/or were not paid overtime for the hours over 40 they worked between February 21, 2004 and the date of the final disposition of this action. Thus, a collective action is the most efficient mechanism for resolution of the claims of the members of this Collective Action Class.

34. In addition, an action under 29 U.S.C. § 216(b) is superior to other available methods for the fair and efficient adjudication of this controversy since the damages suffered by certain individual members of the Collective Action Class may be relatively small, and the expense and burden of individual litigation would make it impossible for such Collective Action Class members individually to redress the wrongs done to them. In addition, because of the similarity

of the Collective Action Class members' claims, individual actions would present the risk of inconsistent adjudications, subjecting the Defendants to incompatible standards of conduct.

35. Annexed hereto as Exhibit 1 is written consent to the filing of this Complaint, duly executed by Plaintiffs pursuant to 29 U.S.C. § 216(b).

**CLASS ACTION ALLEGATIONS
(ON BEHALF OF THE MARYLAND SUBCLASS)**

36. This action is also brought on behalf of members of a subclass of Defendants' employees to whom both the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401, *et seq.* ("MWHL"), and the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501, *et seq.* ("MWPCL") apply.

37. The claims of the Maryland Subclass are properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

38. The Maryland Subclass is defined as follows: "All of Defendants' non-exempt, hourly employees who worked on behalf of Defendants at worksites in the State of Maryland since February 21, 2004 and who were not paid all wages owed to them and/or who worked more than forty (40) hours during any given workweek of their employment without receiving time-and-a-half for the hours over 40 worked in any given workweek."

39. The "Maryland Subclass Period" is the time period between February 21, 2004 and the time of the final disposition of this action.

40. Upon information and belief, there are at least 200 present and former hourly-paid employees in the Maryland Subclass.

41. The members of the Maryland Subclass are so numerous that joinder of all members is impracticable.

42. Plaintiff Henry Montoya's and Plaintiff Alexander Figueroa's claims are typical of the claims of the members of the Maryland Subclass because they, and all Maryland Subclass members, are or were subject to the unlawful compensation practices as described in this Complaint.

43. Plaintiffs Montoya and Figueroa are adequate representatives of the Maryland Subclass because they and the members of the Maryland Subclass are or were subject to and damaged by the same unlawful compensation practices as described in this Complaint.

44. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass each challenge the legality of the policies and practices as described in this Complaint. By advancing their own claims, Plaintiffs Montoya and Figueroa will necessarily advance the claims of the members of the Maryland Subclass.

45. Plaintiffs Montoya and Figueroa will have no conflict with any members of the Maryland Subclass and are willing to serve in this representative role.

46. Plaintiffs Montoya and Figueroa have retained counsel that are competent and experienced in class action litigation and who will adequately represent the Maryland Subclass.

47. Questions of fact and law common to all members of the Maryland Subclass will predominate over any questions solely affecting individual members of the Subclass. Among the common questions are:

- a. Whether the unlawful policies and practices set forth in this Complaint took place as alleged; and
- b. Whether Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass are entitled to relief as requested in this Complaint.

48. Because Plaintiffs Montoya, Figueroa, and all members of the Maryland Subclass suffered the same harms and challenge the same unlawful compensation policies and 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.

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

**CLASS ACTION ALLEGATIONS
(ON BEHALF OF THE D.C. SUBCLASS)**

50. This action is also brought on behalf of members of a subclass of Defendants' employees to whom both the D.C. Minimum Wage Law, D.C. Code Ann. §§ 32-1001, *et seq.* ("DCMWL") and the D.C. Payment and Collection of Wages Law, §§ 32-1301, *et seq.* ("DCPCWL") apply.

51. The claims of the D.C. Subclass are properly maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3).

52. The D.C. Subclass is defined as follows: "All of Defendants' non-exempt, hourly employees who worked on behalf of Defendants at worksites in the District of Columbia since February 21, 2004 and who were not paid all wages owed to them and/or who worked more than forty hours during any given workweek of their employment without receiving time-and-a-half for the hours over forty worked in any given workweek."

53. The "D.C. Subclass Period" is the time period between February 21, 2004 and the time of the final disposition of this action.

54. Upon information and belief, there are at least 200 present and former hourly-paid employees in the D.C. Subclass.

55. The members of the D.C. Subclass are so numerous that joinder of all members is impracticable.

56. Plaintiff Manuel Carrera's and Plaintiff Ivan Aplicano's claims are typical of the claims of the members of the D.C. Subclass because they and all Subclass members are or were subject to the same unlawful compensation practices set forth in this Complaint.

57. Plaintiffs Manuel Carrera and Ivan Aplicano are adequate representatives of the D.C. Subclass because they and the members of the D.C. Subclass are or were subject to and damaged by the same unlawful compensation practices set forth in this Complaint.

58. Plaintiffs Manuel Carrera, Ivan Aplicano, and members of the D.C. Subclass each challenge the legality of the policies and practices set forth in this Complaint. By advancing their own claims, Plaintiffs Carrera and Aplicano will necessarily advance the claims of the members of the D.C. Subclass.

59. Plaintiffs Manuel Carrera and Ivan Aplicano will have no conflict with any members of the D.C. Subclass and are willing to serve in this representative role.

60. Plaintiffs Manuel Carrera and Ivan Aplicano have retained counsel that are competent and experienced in class action litigation and who will adequately represent the D.C. Subclass.

61. Questions of fact and law common to all members of the D.C. Subclass will predominate over any questions solely affecting individual members of the Subclass. Among the common questions are:

- a. Whether the policies and practices set forth in this Complaint took place as alleged; and
- b. Whether Plaintiffs Carrera, Aplicano and members of the D.C. Subclass are entitled to relief as requested in this Complaint.

62. Because Plaintiffs Carrera, Aplicano, and all members of the D.C. Subclass suffered the same harms and challenge the same unlawful compensation policies and practices set forth 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.

63. No difficulties are likely to be encountered in the management of this class action, and the identity of the D.C. Subclass should be readily available from Defendants' records.

COUNT I

(Violation of the FLSA – Plaintiffs and Collective Action Class)

64. Plaintiffs and Collective Action Class members re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

65. Plaintiffs and Collective Action Class members are or were employed by Defendants on an hourly basis to perform manual labor and/or other duties that do not satisfy the tests for exempt positions under the FLSA.

66. Defendants failed to pay or caused Plaintiffs and Collective Action Class members not to be paid at least the minimum wage for all hours worked on behalf of Defendants in violation of 29 U.S.C. § 206(a).

67. Plaintiffs and Collective Action Class members each worked more than forty (40) hours in one or more workweeks within the Class Period.

68. In violation of 29 U.S.C. § 207(a), Defendants failed to pay Plaintiffs and Collective Action Class members or caused Plaintiffs and Collective Action Class members not to be paid for overtime at a rate of at least one-and-a-half times the employees' regular rate of pay for hours over forty (40) worked in any given workweek.

69. Defendants' violations of the FLSA were repeated, willful, and intentional. Accordingly, a three-year statute of limitations governs this claim pursuant to 29 U.S.C. § 255(a).

70. Plaintiffs and Class members have been damaged by said violations of the FLSA.

71. For their violation of the FLSA, Defendants are liable to the Plaintiffs and members of the Collective Action Class for back pay, all unpaid overtime compensation, plus an additional amount as liquidated damages, and costs and reasonable attorneys' fees incurred in the maintenance of this action.

COUNT II

(Violation of the Maryland Wage and Hour Law – Plaintiffs Montoya, Figueroa and Maryland Subclass Members)

72. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

73. Plaintiffs and the members of the Maryland Subclass are or were employed by Defendants on an hourly basis within the Class Period.

74. Defendants failed to pay or caused Plaintiffs and numerous Maryland Subclass members not to be paid at least the minimum wage for all hours worked on behalf of the Defendants in violation of Section 3-413 of the MWHL.

75. Defendants failed to pay the Plaintiffs one and one-half their regular rate of pay for every hour worked in excess of 40 hours per week for the entire period of employment, in violation of Section 3-415 of the MWHL.

76. Defendants' violations were repeated, willful, and intentional.

77. As a result of the unlawful acts of Defendants, Plaintiffs Montoya and Figueroa and members of the Maryland Subclass have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, pre- and post-judgment interest thereon, and attorneys' fees and costs.

COUNT III

(Violation of the Maryland Wage Payment and Collection Law – Plaintiffs Montoya, Figueroa, and Maryland Subclass Members)

78. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

79. Plaintiffs and the members of the Maryland Subclass are or were employed by Defendants on an hourly basis within the Class Period.

80. The Defendants failed and refused to timely pay the Plaintiffs' earned wages, in violation of the MWPCCL.

81. At all times alleged herein, S.C.C.P. was an employer and Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass were employees of Defendants as defined by Section 3-501 of the MWPCCL.

82. Pursuant to the MWPCL, Defendants were and are obligated to pay their employees for all wages earned on a regular basis. Their failure to do so as described herein constitutes a violation of the MWPCL.

83. In addition, Section 3-505 of the MWPCL requires employers to pay employees for all wages earned prior to the termination of employment. As described herein, Defendants also failed to do so.

84. The Defendants' failure to pay the Plaintiffs' wages is not the result of a bona fide dispute.

85. Defendants' violations were repeated, willful, and intentional.

86. As a result of the unlawful acts of Defendants, Plaintiffs Montoya and Figueroa and members of the Maryland Subclass have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, pre- and post-judgment interest thereon, and attorneys' fees and costs.

COUNT IV

(Breach of Oral Employment Contract – Plaintiffs Montoya, Figueroa, and Maryland Subclass Members)

87. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

88. Defendants entered into binding oral contracts with Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass for employment, imposing duties on these parties including, but not limited to, the payment of hourly wages in exchange for work performed by Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass for the benefit of the Defendants.

89. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass performed under the oral contracts by faithfully and efficiently executing their work duties for as long as they were permitted to do so.

90. Defendants' failure to perform their duties with respect to the payment of wages constitutes a breach of contract by the Defendants.

91. By reason of Defendants' breach, Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass suffered economic harm and are entitled to the payment of wages due, prejudgment interest, and other compensation that Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass would have received but for Defendants' breach of contract.

COUNT V

(Unjust Enrichment/Quantum Meruit – Plaintiffs Montoya, Figueroa, and Maryland Subclass Members)

92. Plaintiffs Montoya, Figueroa, and members of the Maryland Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

93. By performing painting work at the direction of the Defendants without receiving all compensation to which they were entitled under law, Plaintiffs Montoya, Figueroa, and Maryland Subclass members allege that they conferred substantial benefits upon the Defendants.

94. The Defendants appreciated and were aware of these benefits. Upon information and belief, Defendants received valuable compensation for the work performed by Plaintiffs Montoya, Figueroa, and Maryland Subclass members.

95. Defendants accepted and retained the benefits of the work performed by Plaintiffs Montoya, Figueroa, and Maryland Subclass members.

96. The hours that Plaintiffs Montoya, Figueroa, and Maryland Subclass members worked and for which they were not properly compensated were performed at the direction and behest of Defendants or those authorized to act on behalf of Defendants. Plaintiffs Montoya, Figueroa, and Maryland Subclass members did not perform this work voluntarily, but rather with the expectation of being lawfully compensated.

97. Under these circumstances, it is inequitable for the Defendants to accept or retain the benefits of the work performed by Plaintiffs Montoya, Figueroa, and Maryland Subclass members without making full payment for its value.

COUNT VI

(Violation of the D.C. Minimum Wage Law – Plaintiffs Carrera, Aplicano, and D.C. Subclass Members)

98. Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

99. Defendants failed and refused to pay Plaintiffs and Class members the required D.C. minimum wage for each hour worked, in violation of Section 32-1003(a)(2) of the DCMWL.

100. Defendants failed and refused to pay Plaintiffs and Class members one-and-a-half times their regular rate of pay for all hours worked in excess of forty (40) each week, in violation of Section 32-1003(c) of the DCMWL.

101. Defendants' violations of the DCMWL were repeated, willful and intentional.

102. As a result of the unlawful acts of Defendants, Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, pre- and post-judgment interest thereon, and attorneys' fees and costs.

COUNT VII

(Violation of the D.C. Payment and Collection of Wages Law – Plaintiffs Carrera, Aplicano, and D.C. Subclass Members)

103. Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

104. Defendants failed and refused to pay Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass their earned straight and overtime wages in violation of the DCPCWL, Section 32-1301, *et seq.*

105. Defendants violations of the DCPCWL were repeated, willful, and intentional.

106. As a result of the unlawful acts of Defendants, Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, pre- and post-judgment interest thereon, and attorneys' fees and costs.

COUNT VIII

(Breach of Oral Employment Contract – Plaintiffs Carrera, Aplicano, and D.C. Subclass Members)

107. Plaintiffs Carrera, Aplicano, and members of the Maryland Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

108. Defendants entered into binding oral contracts with Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass for employment, imposing duties on these parties including, but not limited to, the payment of hourly wages in exchange for work performed by Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass for the benefit of the Defendants.

109. Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass performed under the oral contracts by faithfully and efficiently executing their work duties for as long as they were permitted to do so.

110. Defendants' failure to perform their duties with respect to the payment of wages constitutes a breach of contract by the Defendants.

111. By reason of Defendants' breach, Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass suffered economic harm and are entitled to the payment of wages due, prejudgment interest, and other compensation that Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass would have received but for Defendants' breach of contract.

COUNT IX

(Unjust Enrichment/Quantum Meruit – Plaintiffs Carrera, Aplicano and D.C. Subclass Members)

112. Plaintiffs Carrera, Aplicano, and members of the D.C. Subclass re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

113. By performing painting work at the direction of the Defendants without receiving all compensation to which they were entitled under law, Plaintiffs Carrera, Aplicano, and D.C. Subclass members allege that they conferred substantial benefits upon the Defendants.

114. The Defendants appreciated and were aware of these benefits. Defendants received valuable compensation for the work performed by Plaintiffs Carrera, Aplicano, and D.C. Subclass members.

115. Defendants accepted and retained the benefits of the work performed by Plaintiffs Carrera, Aplicano, and D.C. Subclass members.

116. The hours that Plaintiffs Carrera, Aplicano, and D.C. Subclass members worked and for which they were not properly compensated were performed at the direction and behest of Defendants or those authorized to act on behalf of Defendants. Plaintiffs Carrera, Aplicano, and D.C. Subclass members did not perform this work voluntarily, but rather with the expectation of being lawfully compensated.

117. Under these circumstances, it is inequitable for the Defendants to accept or retain the benefits of the work performed by Plaintiffs Carrera, Aplicano, and D.C. Subclass members without making full payment for its value.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Collective Action Class, the Maryland Subclass and the D.C. Subclass, respectfully request that the Court:

- A. Declare this Action to be maintainable as a collective action pursuant to 29 U.S.C. § 216(b);
- B. Determine the damages sustained by Plaintiffs and Collective Action Class members during the Class Period as a result of Defendants' willful and intentional violations of 29 U.S.C. § 207(a), and award such back pay and unpaid overtime against Defendants in favor of Plaintiffs and all members of the Collective Action Class, plus an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b), plus such pre-judgment interest as may be allowed by law; and
- C. Declare this Action to be maintainable as a Class Action as to the Maryland and D.C. Subclasses, respectively, pursuant to Fed. R. Civ. P. 23.

D. Determine the damages sustained by Plaintiffs Montoya, Figueroa, and Maryland Subclass members during the Maryland Subclass Period as a result of Defendants' willful and intentional violations of both the Maryland Wage and Hour Law, Md. Code Ann., Lab. & Empl. §§ 3-401, *et seq.* and the Maryland Wage Payment and Collection Law, Md. Code Ann., Lab. & Empl. §§ 3-501, *et seq.*, as well as Maryland common law, and award all appropriate damages resulting therefrom to Plaintiffs and the members of the Maryland Subclass, including treble damages under the MWPCCL; and

E. Determine the damages sustained by Plaintiffs Carrera, Aplicano, and D.C. Subclass members during the D.C. Subclass Period as a result of Defendants' willful and intentional violations of both the D.C. Minimum Wage Law, D.C. Code Ann. §§ 32-1001, *et seq.*, the D.C. Payment and Collection of Wages Law, § 32-1301, *et seq.*, as well as District of Columbia common law, and award all appropriate damages resulting therefrom to Plaintiffs and the members of the Maryland Subclass; and

F. Award Plaintiffs and the members of the Collective Action Class, the Maryland Subclass and the D.C. Subclass, their costs and disbursements of this suit, including, without limitation, reasonable attorneys' fees, accountants' fees, investigators' fees, experts' fees, and other associated costs; and

G. Grant Plaintiffs and the members of the Collective Action Class, the Maryland Subclass, and the D.C. Subclass such other and further relief as this Court may deem just and proper.

PLAINTIFFS AND CLASS MEMBERS DEMAND A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,



Laura E. Varela (Bar No. 28260)
Susan E. Huhta (Bar No. 14547)
Washington Lawyers' Committee for Civil Rights
and Urban Affairs
11 Dupont Circle, NW Suite 400
Washington, DC 20036
Phone: 202-319-1000
Fax: 202-319-1010
E-mail: laura_varela@washlaw.org
sue_huhta@washlaw.org



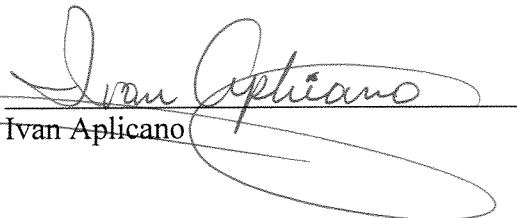
David J. Cynamon (Bar No. 05620)
Anne E. Langford (Bar No. 16439)
Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037
Phone: 202-663-8000
Fax: 202-663-8007
E-mail: david.cynamon@pillsburylaw.com
anne.langford@pillsburylaw.com

Counsel for Plaintiffs

EXHIBIT 1

CONSENT TO ACT AS PLAINTIFF

Pursuant to 29 U.S.C. §216(b), I consent to act as a plaintiff in this case, both on my own behalf and on behalf of all persons similarly situated.

Dated: 2/13/07 
Ivan Aplicano

CONSENT TO ACT AS PLAINTIFF

Pursuant to 29 U.S.C. §216(b), I consent to act as a plaintiff in this case, both on my own behalf and on behalf of all persons similarly situated.


Dated: 2/13/07

Henry Montoya
Henry Montoya

CONSENT TO ACT AS PLAINTIFF

Pursuant to 29 U.S.C. §216(b), I consent to act as a plaintiff in this case, both on my own behalf and on behalf of all persons similarly situated.

Dated: 2/13/07




Manuel Carrera

CONSENT TO ACT AS PLAINTIFF

Pursuant to 29 U.S.C. §216(b), I consent to act as a plaintiff in this case, both on my own behalf and on behalf of all persons similarly situated.

Dated: 02/13/07



Alexander Figueroa