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KING COUNTY
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

ZACHARY OWENS, CONRADO MORA,
and LUIS GARCIA, individually and on behalf
of others similarly situated,

Plaintiffs,

v.

BETHLEHEM CONSTRUCTION
INCORPORATED; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND;
ZURICH AMERICAN INSURANCE
COMPANY; FEDERAL INSURANCE
COMPANY; and ST. PAUL FIRE AND
MARINE INSURANCE COMPANY,

Defendants.

No. 08-2-31509-6 KNT

FIRST AMENDED CLASS
ACTION COMPLAINT FOR NON-
PAYMENT OF WAGES
AND FOR CLAIM ON PUBLIC
WORKS BONDS

Plaintiffs plead as follows:

Parties

1. Plaintiff Zachary Owens is a former employee of defendant Bethlehem Construction Incorporated, and resides in King County.

2. Plaintiff Conrado Mora is a former employee of defendant Bethlehem Construction Incorporated, and resides in King County.

FIRST AMENDED CLASS ACTION
COMPLAINT FOR NON-PAYMENT
OF WAGES AND FOR CLAIM ON
PUBLIC WORKS BONDS -

1 3. Luis Garcia is a former employee of Bethlehem Construction
2 Incorporated, and resides in King County.

3 4. Defendant Bethlehem Construction Incorporated ("Bethlehem") is
4 incorporated in the state of Washington.

5 5. Defendant Fidelity and Deposit Company of Maryland is a foreign
6 insurance company registered to do business in the state of Washington.

7 6. Defendant Zurich American Insurance Company is a foreign insurance
8 company registered to do business in the state of Washington.

9 7. Defendant St. Paul Fire and Marine Insurance Company is a foreign
10 insurance company registered to do business in the state of Washington.

11 8. Defendant Federal Insurance Company is a foreign insurance company
12 registered to do business in the state of Washington. Collectively, the four insurance
13 companies are referred to herein as "Sureties."
14

15 **Jurisdiction and Venue**

16 9. Bethlehem transacts business in King County and transacted business in
17 King County when the claims at issue in this action arose.

18 10. The Sureties transact business in King County.

19 11. The Superior Court of Washington has jurisdiction over Plaintiffs' claims
20 pursuant to RCW 2.08.010, RCW 39.08.030, and CR 23.
21

22 12. Venue in King County is appropriate pursuant to RCW 4.12.025 and
23 48.05.220.
24

1. **Factual Allegations**

2. 13. Plaintiffs and members of the proposed class have worked for Bethlehem
3. as construction employees engaged in various activities supporting the building of
4. guideway segments, piers, and related structures for ultimate installation in the Central
5. Link Light Rail project of the Central Puget Sound Regional Transit Authority (Sound
6. Transit) in King County.

7. 14. The work of Plaintiffs and members of the proposed class is "public work"
8. within the definition of RCW 39.04.010 and is covered by the Washington Prevailing
9. Wage Act, RCW 39.12.

10. 15. Bethlehem filed with the Washington State Department of Labor and
11. Industries a "Statement of Intent to Pay Prevailing Wages" for the work of Plaintiffs and
12. members of the proposed class. Bethlehem identified the trade and proposed rate of pay
13. as that of "Fabricated Precast Concrete Products, All Classifications," ("Precast Concrete
14. Classification") at a minimum rate of \$8.75 per hour.

15. 16. The Washington State Department of Labor and Industries has declared
16. that the proper classifications for determining the appropriate prevailing rate of wage for
17. the work are construction classifications such as carpenters, iron workers, and laborers.
18. The minimum rate of wage is substantially above that for classifications within the
19. purported trade of Precast Concrete Classification.

20. 17. No Plaintiff was paid at or above the correct prevailing rate of wage.
21. Based on information and belief, Plaintiffs assert that no member of the proposed class
22. was paid at or above the correct prevailing rate of wage.
23.
24.
25.

1 18. Bethlehem knew or should have known that that correct prevailing rates of
2 wage for construction work on the project were rates assigned to construction
3 classifications, and not that of Precast Concrete Classification.

4 19. On or about January 5, 2007, Bethlehem was advised by the Industrial
5 Statistician of the Department of Labor and Industries that it was required to pay its
6 employees employed on the project at the applicable construction trades classifications
7 instead of at the lower-paid Precast Concrete Classification. Bethlehem did not correct
8 its pay practices after that date and continued to pay Plaintiffs and members of the
9 proposed class at wage rates substantially below those applicable to the construction
10 trades classifications.
11

12 20. In failing to compensate Plaintiffs and members of the proposed class at
13 the proper prevailing rates for public works projects, including overtime, Bethlehem has
14 acted wilfully and with the intent of depriving Plaintiffs and members of the proposed
15 class of the required compensation.
16

17 21. Pursuant to RCW 39.08, each Surety on March 21, 2005 issued a labor
18 and material payment bond in the amount of \$231,675,340 guaranteeing payment of
19 wages and benefits to all laborers on the project.

20 22. On or about September 5, 2008, Plaintiffs, on their own behalf and as
21 representatives of the class specified below, submitted a Notice of Claim on a public
22 works bond to Sound Transit and to PCL Construction Services, Inc., in accordance with
23 RCW 39.08.030, for non-payment of wages in the work described in paragraph 23 below.
24
25
26

1 The project had not been accepted by affirmative action of the board of Sound Transit as
2 of the date of the filing of the Notice of Claim.

3 **Class Action Allegations**

4 23. Plaintiffs seek to represent all employees, including supervisors, of
5 Bethlehem who performed construction-related work in the preparation of land, materials
6 and structures for and in the making of guideway segments, piers, and other structures for
7 ultimate installation in the Link Light Rail project for Sound Transit, including but not
8 limited to iron work, carpentry, and laborer duties, during the period beginning three
9 years prior to the filing of the original complaint through the completion of the project.
10

11 24. This action is properly maintainable under CR 23(a) and (b)(3).

12 25. The class described in paragraph 23 is sufficiently numerous so that
13 joinder of all such employees is impractical, as required by CR 23(a)(1).

14 26. Pursuant to CR 23(a)(2), there are common questions of law and fact
15 including, but not limited to, whether defendant Bethlehem failed to pay class members
16 the proper prevailing rate of wages on the project, the determination of the correct job
17 classifications for prevailing wage purposes, and whether the Sureties are liable to
18 Plaintiffs and the proposed class.
19

20 27. Pursuant to CR 23(a)(3), the class representatives' wage and bond claims
21 are typical of the claims of all class members and of defendant's anticipated affirmative
22 defenses.
23

24 28. The class representatives will fairly and adequately protect the interests of
25 the class as required by CR 23(a)(4).
26

1 29. Pursuant to CR 23(b)(3), class certification is appropriate here because
2 questions of law or fact common to members of the class predominate over any questions
3 affecting only individual members, and because a class action is superior to other
4 available methods for the fair and efficient adjudication of the controversy.

5 **First Classwide Cause Of Action**

6 30. Plaintiffs restate and reallege the allegations set forth in paragraphs 1
7 through 29.

8 31. Bethlehem's failure to pay Plaintiffs and class members at the applicable
9 construction prevailing rates of wage, and at the correct overtime rates, constitutes a
10 violation of Washington law including RCW 39.12.020, RCW 49.46.130, and 49.28.010.

11 32. As a result of Bethlehem's actions, Plaintiffs and class members have been
12 damaged in amounts to be proven at trial.

13 **Second Classwide Cause of Action**

14 33. Plaintiffs restate and reallege the allegations set forth in paragraphs 1
15 through 32.

16 34. The Sureties are liable to Plaintiffs and the class for payment of the
17 applicable construction prevailing rates of wage, including overtime, under the provisions
18 of RCW 39.08.030.

19 **Prayer for Relief**

20 WHEREFORE, Plaintiffs request that this Court enter an order and judgment
21 granting them and class members the following relief:

- 22 a. damages for lost wages in amounts to be proven at trial;

- 1 b. attorneys fees and costs pursuant to RCW 39.08.030, 49.46.090 and
2 49.48.030.
3 c. prejudgment interest; and
4 d. such other and further relief in favor of Plaintiffs and the proposed class as
5 the Court deems just and proper.

6 DATED this 27th day of October, 2008.

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