

State of Minnesota
County of RamseyDistrict Court
2nd Judicial DistrictProsecutor File No. 0620580270
Court File No. 62-CR-25-6324

State of Minnesota,

Plaintiff,

vs.

JOSE MANUEL HERRERA DOB: 10/24/19534222 Xerxes Ave. N.
Minneapolis, MN 55412

Defendant.

COMPLAINT

Summons

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I**Charge: Theft - Theft of wages**

Minnesota Statute: 609.52.2(a)(19), with reference to: 609.52.1(13), 609.52.3(1)

Maximum Sentence: 20 years or \$100,000 fine or both

Offense Level: Felony

Offense Date (on or about): 06/01/2024 to 10/31/2024

Control #(ICR#): 25130530

Charge Description: On or between approximately June 1, 2024 to October 31, 2024, in the County of Ramsey, Minnesota, Jose Manuel Herrera did, with intent to defraud, fail to pay an employee, or employees, all wages, salary, gratuities, earnings, or commissions at the employee's rate or rates of pay or at the rate or rates required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater, and the total loss to the victim or victims was more than \$35,000.00.

COUNT II**Charge: Theft - Theft of wages**

Minnesota Statute: 609.52.2(a)(19), with reference to: 609.52.1(13), 609.52.3(1)

Maximum Sentence: 20 years or \$100,000 fine, or both

Offense Level: Felony

Offense Date (on or about): 06/01/2024 to 10/31/2024

Control #(ICR#): 25130530

Charge Description: On or between approximately June 1, 2024 to October 31, 2024, in the County of Ramsey, Minnesota, Jose Manuel Herrera did, with intent to defraud, make or attempt to make it appear in any manner that the wages paid to any employee were greater than the amount actually paid to the employee, and the total loss to the victim or victims was more than \$35,000.00.

COUNT III**Charge: Insurance Fraud-Present False Representation/Conceals Facts-Policy Application**

Minnesota Statute: 609.611.1(a)(1), with reference to: 609.611.3, 609.52.3(1)

Maximum Sentence: 20 years or \$100,000 fine, or both

Offense Level: Felony

Offense Date (on or about): 01/18/2025 to 06/01/2025

Control #(ICR#): 25130530

Charge Description: On or between approximately January 18, 2025 and June 1, 2025, in the County of Ramsey, Minnesota, Jose Manuel Herrera did, with the intent to defraud for the purpose of depriving another of property or for pecuniary gain, present, cause to be presented, or prepare with knowledge or reason to believe that it would be presented, by or on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company in connection with an insurance transaction or premium finance transaction, information that contained a false representation as to any material fact, or that concealed a material fact concerning an application for, rating of, or renewal of, an insurance policy, and the total loss to the victim or victims was more than \$35,000.00.

COUNT IV**Charge: Insurance Fraud-Present False Representation/Conceals Facts-Payment**

Minnesota Statute: 609.611.1(a)(3), with reference to: 609.611.3, 609.52.3(1)

Maximum Sentence: 20 years or \$100,000 fine, or both

Offense Level: Felony

Offense Date (on or about): 01/18/2025 to 06/01/2025

Control #(ICR#): 25130530

Charge Description: On or between approximately January 18, 2025 and June 1, 2025, in the County of Ramsey, Minnesota, Jose Manuel Herrera did, with the intent to defraud for the purpose of depriving another of property or for pecuniary gain, present, cause to be presented, or prepare with knowledge or reason to believe that it would be presented, by or on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company in connection with an insurance transaction or premium finance transaction, information that contained a false representation as to any material fact, or that concealed a material fact concerning a payment made according to the terms of an insurance policy, and the total loss to the victim or victims was more than \$35,000.00.

COUNT V**Charge: Unemployment Benefits-False Representation-Concealment of fact-Penalty in 609.52**

Minnesota Statute: 268.182.1, with reference to: 609.52.3(3)

Maximum Sentence: 5 years or \$10,000, or both

Offense Level: Felony

Offense Date (on or about): 01/31/2025

Control #(ICR#): 25130530

Charge Description: On or about January 31, 2025, in the County of Ramsey, Minnesota, Jose Manuel Herrera did make a false statement or representation, knowing it to be false, in order to avoid or reduce any payment required from an employer under Minnesota Statutes Chapter 268 or section 116L.20, or to prevent or reduce the payment of unemployment benefits to an applicant, and the amount of underpayment exceeded \$500.00.

COUNT VI

Charge: Unemployment Benefits-False Representation-Concealment of fact-Penalty in 609.52

Minnesota Statute: 268.182.1, with reference to: 609.52.3(3)

Maximum Sentence: 5 years or \$10,000 or both

Offense Level: Felony

Offense Date (on or about): 01/31/2025

Control #(ICR#): 25130530

Charge Description: On or about January 31, 2025, in the County of Ramsey, Minnesota, Jose Manuel Herrera did knowingly fail to disclose a material fact in order to avoid or reduce any payment required from an employer under Minnesota Statutes Chapter 268 or section 116L.20, or to prevent or reduce the payment of unemployment benefits to an applicant, and the amount of underpayment exceeded \$500.00.

COUNT VII**Charge: Taxes-false or fraudulent returns-file with commissioner**

Minnesota Statute: 289A.63.2(a)

Maximum Sentence: 5 years or \$10,000 fine, or both

Offense Level: Felony

Offense Date (on or about): 04/17/2025

Control #(ICR#): 25130530

Charge Description: On or about April 17, 2025, in the County of Ramsey, Minnesota, Jose Manuel Herrera filed with the Minnesota Department of Revenue a return, report, or other document for the 2024 tax year which was known by him to be fraudulent or false concerning a material matter.

COUNT VIII**Charge: Taxes-false or fraudulent returns-file with commissioner**

Minnesota Statute: 289A.63.2(a)

Maximum Sentence: 5 years or \$10,000 fine, or both

Offense Level: Felony

Offense Date (on or about): 10/01/2024

Control #(ICR#): 25130530

Charge Description: On or about October 1, 2024, in the County of Ramsey, Minnesota, Jose Manuel Herrera filed with the Minnesota Department of Revenue a return, report, or other document for the third quarter of 2024 which was known by him to be fraudulent or false concerning a material matter.

62-CR-25-6324
STATEMENT OF PROBABLE CAUSE

Filed in District Court
State of Minnesota
9/3/2025

This case arises from a collaborative law enforcement investigation into wage theft and other fraud committed at a government construction project. The project involved roofing replacement work at the McDonough Homes in St. Paul that was completed in 2024. The McDonough Homes provides housing for low-income families, and it is managed by the St. Paul Public Housing Agency ("PHA").

The St. Paul Police Department ("SPPD") initiated a wage theft investigation when it received reports that the workers at the roofing replacement project were not being paid the wages required both by law and by the contract for the project. SPPD interviewed multiple workers, and its investigation determined that JOSE MANUEL HERRERA (DOB 10-24-1953) committed wage theft through his operation of a business that had been subcontracted to supply labor for the project. Jose Herrera failed to pay tens of thousands owed to his employees. Jose Herrera did this by paying the workers in cash at rates far below the amounts he reported in payroll records for the project.

Jose Herrera's commission of wage theft was corroborated through additional investigations conducted by the Minnesota Bureau of Criminal Apprehension ("BCA") and the Minnesota Department of Revenue ("DOR"). The BCA's investigation determined that Jose Herrera committed insurance fraud related to his involvement with the McDonough Homes project. Jose Herrera failed to report the payroll for his employees, along with the nature of the construction work they performed, to the workers' compensation insurance provider for his business. In doing so, Jose Herrera avoided the payment of substantial premiums for that insurance coverage.

DOR further determined that Jose Herrera, along with his wife, CARRIE JANE GUTBROD-HERRERA (DOB 05-05-1959), and his son, JOSEPH EARL HERRERA (DOB 11-18-1983) committed felony tax evasion by failing to report the income they received for tax purposes. During the tax year at issue, Jose Herrera shared ownership of his business with his wife and son. Jose Herrera's business received over \$500,000.00 from the McDonough Homes project alone in 2024. All of the family members failed to report the significant income they received from this government-funded construction project for tax purposes, and they also failed to report the substantial income they otherwise received from Jose Herrera's business (which appears to have received at least \$4.8 million in gross revenue in 2024).

The McDonough Homes Project

In April 2024, the PHA entered a contract for a roofing replacement project at the McDonough Homes. The McDonough Homes consist of 580 townhome-style apartments providing housing for low-income families. The McDonough Homes are located in St. Paul, Ramsey County - off of Jackson Street and along Timberlake Road. The first residences at the McDonough Homes were built in 1952. The roofing project was part of PHA's efforts in recent years to modernize and otherwise invest in the townhomes.

PHA contracted with Marge Magnuson Construction Company, Inc. ("Magnuson Construction") to perform the roofing replacement project. The contract called for PHA to pay Magnuson Construction over \$1.5 million for the roofing work. Pursuant to the contract, workers performed the roofing replacement work at the McDonough Homes from approximately June 2024 to October 2024. The work included tearing off and replacing shingles on two-story multi-housing buildings at the McDonough Homes. The workers also replaced gutters and downspouts at the residences.

Reports of Safety Concerns and Failure to Pay Required Wages

While the project was ongoing, SPPD received reports of unsafe practices at the worksite. For example, the reports indicated that workers did not have fall protection. Applicable regulations typically require the use of a safety harness, or other fall protection measures, to prevent falls in a construction setting such as the roofing replacement work.

In addition to safety concerns, SPPD received reports that the workers were not being paid the wages required by the contract. SPPD started investigating soon after receiving the reported concerns. At the beginning of the investigation, PHA provided information to SPPD about the project, including bid responses, the final contract, and payroll information.

Wage Requirements for the McDonough Homes Roofing Project

The contract for the roofing replacement project at the McDonough Homes required the payment of prevailing wages to the individuals performing the work. Prevailing wage requirements for government contracts in Minnesota are set forth in Minnesota Statutes sections 177.41 through 177.50. As stated in Minnesota Statutes section 177.41, prevailing wage requirements ensure that individuals working on public works projects are fairly compensated for the value of the services they perform. Prevailing wage laws generally require contractors on government projects to pay wages to their workers that are similar to the rates being paid in the community as a whole.

Prevailing wage requirements in Minnesota apply to government contracts involving state funds when the estimated total cost to complete the project is greater than \$25,000.00. This threshold is established by Minnesota Statutes section 177.43, subdivision 7. The Minnesota Department of Labor and Industry ("DLI") establishes prevailing wage rates that apply to government contracts pursuant to the procedures set forth in Minnesota Rules Parts 5200.1000 to 5200.1120. DLI determines prevailing wages on a county-by-county basis under these rules.

In addition to the prevailing wage requirements established by state law, both Ramsey County and the City of St. Paul have enacted ordinances that require the payment of prevailing wages for construction work and for other taxpayer-funded contracts. These ordinances generally apply when Ramsey County or the City of St. Paul are the contracting party. The prevailing wage requirements in Ramsey County and the City of St. Paul largely overlap and are similar to the prevailing wage requirements set forth in the state statutes.

The contract issued by PHA for the McDonough Homes Roofing Project incorporated prevailing wage requirements. As a result, the individuals performing roofing work on the project were required to be paid \$68.54 an hour. Further, the individuals performing sheet metal work (i.e. performing the gutter replacement work on the project) were required to be paid \$83.74 an hour.

Wage Theft Investigation

SPPD began a wage theft investigation after receiving the reported concerns. SPPD reviewed documents maintained by PHA to monitor the project and its progress, including a subcontractor list, worker sign-in sheets, labor interview reports, daily reports, and certificates of insurance. PHA also provided certified payroll reports for the project to SPPD. A certified payroll report is a specific type of payroll document required for contractors and subcontractors working on a prevailing-wage government project. Contractors and subcontractors employing workers on the project complete certified payroll reports for the purpose of demonstrating that they are paying the required prevailing wage rate.

From the PHA records, SPPD learned that Magnuson Construction had hired a subcontractor to supply labor for the project. This subcontractor was Bayvista, Incorporated ("Bayvista"). Magnuson Construction engaged Bayvista shortly after it was awarded the roofing replacement contract for the McDonough

Homes.

Jose Herrera and Bayvista

Jose Herrera owns Bayvista, along with his wife and his son. According to records maintained by the Minnesota Secretary of State's Office, Jose Herrera registered Bayvista as a business in 1998, and he listed himself as the sole owner. In January 2022, Bayvista filed documents reporting a change in the ownership of the business. The updated ownership records listed Jose Herrera as a 50% owner of Bayvista. The records further listed Jose Herrera's wife, Carrie Gutbrod-Herrera as a 25% owner of the business, and Jose Herrera's son, Joseph Herrera, as another 25% owner of the business.

According to PHA's records, Magnuson Construction agreed to pay \$489,995.00 to Bayvista to supply labor for the project. The PHA records also indicate that Bayvista had approximately 17 employees when it joined the project as a subcontractor. The PHA records further reflect that Jose Herrera was controlling the supply of labor for the project through Bayvista. For example, Jose Herrera signed the document that identified Bayvista to PHA as a subcontractor on the project. The specific document is titled "Request for Approval of Subcontractor," and it referenced the prevailing wage requirements that applied to all individuals performing work on the government project.

Worker Interviews

During its investigation, SPPD interviewed seven individuals who worked on the roofing project at the McDonough Homes. SPPD conducted independent interviews of the workers on separate dates. These individuals confirmed that they worked for Jose Herrera and his company, Bayvista. The workers indicated that two crews, of around 8-10 people each, performed work on the project. They further indicated that a separate gutter installation crew, consisting of 2-4 workers, also worked on the project. The information provided by these individuals during their interviews was corroborated by the certified payroll reports and the daily reports received by PHA referencing approximately 16 to 22 workers at the project on a typical day.

The workers further reported that they were paid a daily rate in cash. The workers stated that they were paid by a crew leader. The workers generally described receiving cash payments from the crew leader at a daily rate varying between \$120.00 to \$200.00 per day, depending on the particular worker's level of experience. The only exception was one individual interviewed by SPPD who described being hired by Bayvista as a second-tier subcontractor to perform gutter replacement work for the project. This individual stated that Bayvista paid him for labor on a linear foot basis for gutter and downspout installation. It should be noted that this particular individual was not identified to PHA as an additional subcontractor for the project.

When informed of the prevailing wage rates for the project, the workers consistently stated that the payments they received in cash amounted to far less than the prevailing wage rates required both by law and by the project's contract. Moreover, multiple of the workers reported to SPPD that they had been instructed to falsely tell anyone who asks that they were in fact being paid at prevailing wage rates. Individuals performing the general shingle replacement work said that Jose Herrera instructed them to falsely state, to anyone who may ask, that they were being paid the prevailing wage rate of a little more than \$68.00 per hour and to not reference the daily rate in cash that they were actually receiving. Individuals performing gutter installation work similarly indicated that they had been instructed to say they were being paid \$83.74 per hour (i.e. the hourly prevailing wage for sheet metal work) rather than the daily rate they were in fact receiving.

Jose Herrera's Intentional Failure to Pay the Required Wages

SPPD determined that Jose Herrera intentionally failed to pay tens of thousands of dollars to the seven workers who were interviewed during the investigation. SPPD estimates that Jose Herrera failed to pay around \$13,000.00 in prevailing wages owed to each of the four roofing workers that SPPD interviewed. This estimate is based upon the prevailing wage rate for roofing work of \$68.54 per hour, which amounts to \$2,741.60 per week (assuming a 40-hour work week). The estimate is further based upon an average daily rate of \$175.00 (based upon the worker interviews) and an average of 38 days worked (based upon the certified payroll reports and other PHA documents). SPPD further estimates that the three gutter replacement workers who were interviewed failed to receive around \$22,000.00 in prevailing wages owed to each of them. This estimate is based upon the prevailing wage rate for sheet metal work of \$83.74 per hour, which amounts to \$3,349.60 per week (assuming a 40-hour work week). The estimated unpaid wages for gutter workers also assumes an average daily rate of \$175.00, and it includes an average of 48 days worked (based upon the certified payroll reports and other PHA documents).

SPPD also obtained records from Bayvista's Wells Fargo bank account during its investigation. Bayvista's bank records do not reflect the use of a payroll processing service, and they do not point to any payments by check having been made to the workers on the McDonough Homes project. This corroborates the workers' statements that they were paid in cash. In addition, the bank records documented Bayvista's receipt of payments from Magnuson Construction totaling over \$500,000.00. This corresponds to the PHA records indicating that Magnuson Construction agreed to pay this approximate amount to Bayvista to supply labor for the project.

SPPD compared the information gathered during its investigation with the certified payroll reports submitted by Bayvista over the course of the project. Jose Herrera signed all the certified payroll reports for Bayvista. The certified payroll reports list 24 different individuals as having performed work on the project from June 2024 to October 2024. The certified payroll reports all utilize the prevailing wage rates required for the project - \$68.54 for the roofing work and \$83.74 for the gutter replacement work. The certified payroll reports, on their face, indicate that Bayvista paid a total of \$434,812.78 to the identified workers during the project. However, SPPD's investigation points to Jose Herrera falsifying the claimed wage payments reflected on the certified payroll reports. Further, the reports point to Jose Herrera certifying the payroll records to approximate the amount Bayvista received from Magnuson Construction to supply labor for the project. In reality, the workers received a daily cash rate that paid them far less than the required prevailing wage and far less than the amounts Jose Herrera utilized when he completed and signed the certified payroll reports.

In addition to bank records, SPPD requested tax, unemployment, and workers' compensation insurance records for Jose Herrera and Bayvista to determine how the company treated the workers on the McDonough Homes project for those related purposes. For example, if Jose Herrera was operating Bayvista in a legitimate manner, then the expectation would be to find the nearly \$500,000.00 received from Magnuson Construction for work on a government project to be identified as income on 2024 tax returns. Further, one would expect Jose Herrera to identify the payroll costs set forth in the certified payroll reports as a deduction from income for tax purposes, and the expectation would also be for Jose Herrera to identify the workers and the amounts paid to them for workers' compensation insurance and unemployment purposes.

In response to SPPD's request for tax records, the Minnesota Department of Revenue ("DOR") indicated that both Jose Herrera and Bayvista had failed to file various tax returns in recent years. In addition, the Minnesota Department of Employment and Economic Development ("DEED") reported to SPPD that Bayvista did not report having paid any wages to its workers for quarters 2, 3, or 4 in 2024 for unemployment purposes. SPPD also received information from Superior Point Insurance Company

("Superior Point") regarding the workers' compensation insurance policies in effect for Bayvista. Superior Point provided copies of workers' compensation insurance policies for Bayvista going back several years. In those policies, Bayvista failed to identify the numerous individuals it had claimed as its employees in the certified payroll reports for the McDonough Homes project. Moreover, when Bayvista renewed its workers' compensation insurance policy for 2025, it reported that it did not utilize any employees requiring workers' compensation insurance coverage in 2024. This directly contradicts the information supplied by Jose Herrera in the certified payroll reports where Herrera claimed Bayvista employed 24 different individuals and paid them over \$434,000.00 in wages for job types requiring workers' compensation insurance coverage. These documents point to Jose Herrera concealing this information from Superior Point and avoiding the payment of workers' compensation insurance premiums that should have been paid to cover the work his employees performed on the McDonough Homes project.

BCA Investigation of Workers' Compensation Insurance Fraud

SPPD referred the information it received from Superior Point to the BCA to investigate potential fraud committed by Bayvista with its workers' compensation insurance coverage. Both the Minnesota Department of Commerce and the BCA have conducted numerous investigations into illegal practices involving the evasion of workers' compensation insurance premiums in the construction industry. When employers fail to report accurate payroll data to their workers' compensation insurer, the misrepresentations and omissions allow the business owners to enrich themselves through the evasion of substantial insurance premium expenses. Minnesota Statutes section 268.182 makes it a crime to conceal or otherwise misrepresent a material fact concerning an insurance transaction.

When the BCA initiated its investigation, it reviewed Bayvista's residential building contractor license. DLI issued the license to Jose Herrera as the qualifying person on the license. The license indicated that Bayvista had employees along with workers' compensation insurance coverage for its employees. The licensing documents from DLI further reference Bayvista receiving projected gross earnings of \$1,000,000.00 to \$5,000,000.00 per year.

The BCA also reviewed a sub-contractor compliance affidavit that Jose Herrera signed on May 24, 2024. Herrera signed the affidavit when Bayvista was identified to PHA as a sub-contractor that would be performing work on the McDonough Homes project. Through this document, Jose Herrera certified his knowledge of and compliance with various "responsible contractor" requirements that applied to Bayvista's involvement on the government construction project. When Jose Herrera signed this affidavit, he certified that Bayvista would comply with the project's requirements to carry sufficient workers' compensation insurance. Herrera also certified that Bayvista would comply with Minnesota's unemployment insurance requirements, including making required payments into the state unemployment insurance program.

Minnesota Statute section 176.181 generally requires employers to provide workers' compensation insurance for their employees. Workers' compensation coverage pays injured employees' expenses due to work injuries, including medical bills, wage loss benefits for lost income, compensation for permanent damage to or loss of function of a body part, benefits to spouses and/or dependents if an employee is killed, and vocational rehabilitation services if an employee cannot return to a pre-injury job or pre-injury location. Employers who are denied workers' compensation insurance in the private market are eligible to receive coverage from the Assigned Risk Plan. The plan was established to provide workers' compensation coverage to employers rejected by a private insurance carrier. This entity, the Assigned Risk Plan, is sometimes referred to as "the insurer of last resort." The Assigned Risk Plan is administered by the Minnesota Department of Commerce and the fund is managed by the Minnesota State Board of Investment.

As part of its investigation, the BCA analyzed the workers' compensation insurance documents for the

policy that Bayvista had in place during the time frame of the project. Those documents show that Bayvista had obtained its workers' compensation insurance policy through Minnesota's Assigned Risk Plan that involves and utilizes state funding. Bayvista first obtained its workers' compensation insurance policy through the Assigned Risk Plan in January 2019. Bayvista's policy was administered by Superior Point. The workers' compensation policy term applicable to the McDonough Homes project was January 18, 2024 to January 18, 2025.

The insurance provider calculates the premium for a workers' compensation policy utilizing numerous factors, including the type of work performed and employee payroll. Unlike other insurance policies, the provider only partially calculates and collects workers' compensation premiums at the time of application. The initial premium is based on projected exposures. The provider determines the remainder of the premium at the end of the policy term, after an audit. Premiums vary greatly depending on perceived risk. Construction labor has a high likelihood of injury, resulting in substantial premium expenses that are directly correlated with payroll for construction labor.

Workers' Compensation Insurance Fraud Committed by Jose Herrera

For its workers' compensation insurance policy in effect from January 2024 to January 2025, Bayvista made an initial premium payment of \$668.00. This initial premium amount was calculated from what Bayvista reported to Superior Point as projected payroll, prior year payroll, and the type of work to be performed. Superior Point issued a Premium Audit Notice to Bayvista on January 18, 2025, requesting documents to "make sure their premium is fair and accurate." The audit letter requested items such as IRS Form 941, payroll paid, number of employees by location, subcontractor certificates of insurance, and other supporting documents. Superior Point sent a second letter to Bayvista on February 12, 2025 to request the same records and information. Superior Point's audit attempted to determine the actual figures to be used to calculate the workers' compensation premium payment owed by Bayvista for the policy it held throughout most of 2024.

Bayvista supplied tax documents for the 2024 tax year to Superior Point in response to its premium audit; however, the tax documents completely contradict the certified payroll reports that Jose Herrera signed and submitted to PHA for the McDonough Homes project. The tax documents fail to reference both the payment of wages to the numerous individuals who worked on the project and the fact that those workers were performing riskier types of roofing replacement work. Instead, the tax documents reference the payment of wages to company ownership (i.e. to Jose Herrera and his wife and son). The tax documents directly contradict the certified payroll reports that reference Bayvista employing approximately 24 different individuals over the course of the roofing replacement project and paying those employees over \$434,000.00 in wages in 2024 for their work on the project.

The motivation for Jose Herrera to misrepresent and otherwise fail to disclose Bayvista's construction employees and the payment of wages to them for workers' compensation purposes is clear. Herrera engaged in these fraudulent actions to avoid the payment of costly premium expenses tied to providing workers' compensation coverage for employees performing roofing and sheet metal work. If the actual payments to its workers or identification of the employees' risky work classifications had been accurately reported, it would have resulted in a much higher premium for workers' compensation insurance.

In addition to Superior Point's audit of the coverage during the time frame of the McDonough Homes project, the BCA reviewed other premium audits that had been conducted for Bayvista's workers' compensation insurance policies in effect in previous years. The prior year audits reflected the same or similar information – with Bayvista claiming that only ownership received wages and thus no workers' compensation coverage was necessary. The audit documents consistently list Jose Herrera as the contact person for Bayvista. Further, the tax documents submitted to Superior Point for audit purposes were

consistently signed by Jose Herrera.

The BCA passed along the information supplied by Jose Herrera in the certified payroll reports for the McDonough Homes project to Superior Point to analyze the amount of workers' compensation insurance premiums that Jose Herrera and Bayvista fraudulently avoided paying. Superior Point indicated that, if it had been aware of the \$454,522.20 in purported prevailing wages that Bayvista claimed in the certified payroll reports, those figures would have been used to calculate the workers' compensation insurance premium for the corresponding job classes. Superior Point verified that the job-class of 5538 applied to the sheet metal work at issue, and it required a premium payment at a rate of 11.33 per \$100.00 of payroll. Superior Point further verified that the job-class of 5551 applied to the roofing work, and it required a premium payment at a rate of 37.02 per \$100.00 of payroll.

The BCA also shared with Superior Point the information pointing to Jose Herrera committing wage theft by paying cash to the workers for amounts far less than what was reported on the certified payroll reports. Superior Point stated that, since the certified payroll reports were an indication of what employees should have been paid, rather than what they were actually paid, those reports would have been utilized to calculate the risk exposure and would have been otherwise relied upon to calculate the premiums owed by Bayvista. Superior Point clarified that, if a particular employee was not paid the wages to which they were entitled, it would not have reduced the premiums for the corresponding workers' compensation insurance coverage.

During its investigation, the BCA also reviewed records for Bayvista's business bank account with Wells Fargo. Bayvista's Wells Fargo business account listed Jose Herrera as the authorized user of the account. The Wells Fargo account reflected \$533,206.97 in payments that Bayvista received from Magnuson Construction from July 2024 to October 2024, the time frame of the McDonough Homes project.

In addition, the bank records for the Wells Fargo account did not appear to reference Bayvista using a payroll company or any other payroll processing service to pay its employees. The bank records for Bayvista also did not reflect withdrawals that are typically associated with the payment of payroll. This is notable given the manner by which Jose Herrera completed the certified payroll reports on behalf of Bayvista for the McDonough Homes project. Jose Herrera generally completed the certified payroll reports on a weekly basis. In completing the certified payroll reports, Jose Herrera provided names for each Bayvista employee, along with an employee identification number, a labor code and classification title, and identification of the days and hours worked. In the certified payroll reports, Jose Herrera also purported to apply deductions to pay for FICA, Medicare, and state and federal tax withholding.

The BCA estimates that Jose Herrera and Bayvista fraudulently avoided paying \$135,504.53 in workers' compensation insurance premiums by failing to identify the employees performing roofing and sheet metal work and by failing to provide the certified payroll reports (or otherwise providing accurate payroll information to Superior Point). This estimate is based upon a comparison of the certified payroll reports and the applicable workers' compensation premium rates for the roofer and sheet metal worker job classifications. As referenced above, the certified payroll reports state that the workers on the McDonough Homes project received a total of \$454,552.30 in employee pay. Of that total, the certified payroll reports indicate that the workers classified as roofers received \$323,097.56. The premium rate for the roofer job classification required payment of 37.02 per \$100.00 of payroll. As a result, Jose Herrera avoided the payment of \$119,610.71 in workers' compensation insurance premiums for the employees performing roofing work on the project. In addition, the certified payroll reports indicate that the individuals classified as sheet metal workers received \$131,454.74. The premium rate for the sheet metal job classification required payment of 11.33 per \$100.00 of payroll. As a result, Jose Herrera avoided the payment of an additional \$14,893.82 in workers' compensation insurance premiums for the employees performing sheet metal work on the project. Jose Herrera's false statements, false representations, and knowing failure to

disclose material facts to Superior Point related to Bayvista's workers' compensation insurance premiums include the falsified certified payroll reports and other fraudulent actions that Jose Herrera engaged in at the McDonough Homes over the course of the construction project there.

Unemployment Insurance Fraud

Minnesota statute section 268.051 requires employers to pay quarterly unemployment taxes based in part on the wages of their employees. The Minnesota Unemployment Insurance Program provides temporary partial wage replacement to people who are unemployed, through no fault of their own. The program assists people to become reemployed, and a tax on employers funds the program. The required rates for employers is determined through multiple factors, including experience, job type, and past job losses.

Seasonal jobs that experience frequent layoffs, such as in the construction industry, tend to have higher rates. When an employer reports their employees' separation from employment, it will increase their unemployment rates. Therefore, an employer that reports a high number of employees separating from employment will receive increased rates. The amount of increase depends on the duration of the unemployment and the benefits ultimately paid. In addition, the unemployment insurance program in Minnesota does not provide unemployment benefits to undocumented immigrants.

DEED reported to the BCA that Bayvista failed to report any payroll for unemployment tax purposes during the time periods covered by its work on the McDonough Homes project. According to DEED, Bayvista's 2024 unemployment rate determination listed a base of 0.20% for the first \$42,000.00 of wages paid to each employee. The certified payroll reports completed by Jose Herrera indicate that none of the Bayvista employees earned or purportedly earned more than \$42,000.00. Based upon the rate of .20% applied to the payroll referenced in the certified payroll reports, it is estimated that Jose Herrera and Bayvista avoided the payment of approximately \$1,000.00 into Minnesota's unemployment insurance program by failing to report payroll to DEED for unemployment purposes.

DOR Investigation of Tax Evasion

SPPD and the BCA collaborated over the course of their respective wage theft and insurance fraud investigations. Given the fraudulent actions uncovered, SPPD and the BCA made a referral to DOR to consider examining whether Jose Herrera was accurately reporting all of his income for tax purposes. This was of particular concern because Herrera, through his company, Bayvista, received over \$500,000.00 as a sub-contractor on the taxpayer-funded construction work that was completed at the McDonough Homes in 2024.

At the beginning of its review, DOR examined the tax documents that Bayvista provided to Superior Point for the workers' compensation premium audit. DOR soon learned that the federal tax documents Jose Herrera supplied to Superior Point, to assert that Bayvista did not employ workers requiring workers' compensation insurance in 2024, had in fact never been filed with the Internal Revenue Service ("IRS"). This suggested that Jose Herrera had only filled out the Bayvista tax documents for the purpose of providing them to Superior Point for its insurance premium audit, and in fact, the documents were not actually filed with the IRS or other tax authorities. Based upon this red flag and the other indicia of fraud, DOR initiated a criminal investigation of Jose Herrera for tax evasion.

As part of its investigation, DOR reviewed the certified payroll reports completed by Jose Herrera over the course of the McDonough Homes project. The certified payroll reports indicate that Bayvista withheld amounts from the pay it purportedly issued to its employees at the prevailing wage rate. Based upon DOR's analysis of the claimed payroll, Bayvista should have withheld \$26,509.76 from its employee pay for the purpose of Minnesota withholding tax obligations. However, DOR's internal records indicate that

Bayvista never actually identified the 24 individuals it claimed as employees in the certified payroll reports for state withholding tax purposes, and Bayvista did not remit the \$26,509.76 in withholding tax liability associated with employee pay that Jose Herrera certified in the payroll reports.

DOR reviewed bank records from Wells Fargo during its investigation. Bayvista's business account reflected approximately \$4.8 million in deposits for tax year 2024. Like the other investigating law enforcement agencies, DOR observed that Bayvista's bank records did not reflect check payments that would support the payment of wages asserted by Jose Herrera in the certified payroll reports. This was of concern to DOR for tax purposes because, by not issuing business checks to workers, DOR would not be able to identify the individuals as employees of Bayvista for the purposes of an audit of the business's tax obligations. Because Jose Herrera classified all of the workers on the McDonough Homes project as employees in the certified payroll reports, DOR proceeded to classify the workers on the McDonough Homes project as employees of Bayvista for determining its tax obligations as a business, including for state withholding tax purposes.

DOR's investigation concluded that Bayvista had a lengthy history of failing to accurately report state withholding tax obligations for its employees. When DOR began its investigation, Bayvista also had not filed a corporate tax return since the 2018 tax year. However, as DOR was nearing the conclusion of its investigation, Bayvista did file a state corporate tax return for the 2024 tax year. DOR further determined that Jose Herrera and Carrie Gutbrod-Herrera failed to file income tax returns in 2022 and 2023. Moreover, although Jose Herrera and Carrie Gutbrod-Herrera did recently file a joint state income tax return as a married couple for the 2024 tax year, that tax return significantly under-reported the amount of income they received, including the significant proceeds they received through Bayvista's role as a sub-contractor performing work on the McDonough Homes project. In addition, DOR received information from the IRS indicating that Jose Herrera and Carrie Gutbrod-Herrera had not filed a federal income tax return even though they had filed a Minnesota return with DOR. Lastly, DOR determined that, although Jose Herrera's son, Joseph Herrera, had filed both state and federal income tax returns for the 2024 tax year, those returns were materially false and evaded significant tax obligations by failing to identify all of the income Joseph Herrera actually received in 2024.

Bayvista's Tax Requirements as a Subchapter S Corporation

For the 2024 tax year, Jose Herrera, and his wife and son, classified Bayvista as a Subchapter S Corporation ("S-Corporation") for income tax purposes. This placed Bayvista under a requirement to file a Federal Form 1120S to report the income, gains, losses, deductions, credits, and other information from the operation of Bayvista as an S-Corporation. An S-Corporation does not pay tax on its income but passes through any profits or losses to its owners on a Schedule K1 that is included with the owner's individual income tax return. All S-Corporations required to file a Federal Form 1120S that receive gross income in Minnesota must file a Minnesota Form M8 (i.e. a state tax return specific to Minnesota for S-Corporations). Each owner of an S-Corporation must include their income from the corporation on both their federal and Minnesota individual income tax returns. For state income tax purposes, Minnesota requires that the Form M8 be filed, with taxes paid, by March 15th of the following year.

Minnesota Withholding Tax

Minnesota Withholding Tax is a state tax that employers are required to take out of their employees' wages. Employers hold, in trust, the withholding taxes they collect from their employees. The employer is required to file state withholding tax returns and to submit the collected withholding taxes to DOR. Because employers hold the collected taxes in trust and then remit them to DOR, the withholding tax is frequently referred to as a "trust tax."

Withholding tax applies to almost all payments an employer makes to employees for services they provide to their employer. An employer must apply withholding tax for an employee even if it pays cash to its employee or gives the employee other goods or services in exchange for the work performed. It is the employer's responsibility to correctly withhold, file, and pay the Minnesota withholding taxes associated with the wages the employer pays to its employees. Lastly, all of the state tax returns at issue were either filed, or required to be filed, with DOR, which is located in St. Paul, Ramsey County.

Tax Filing History for Bayvista and the Family Members

Bayvista filed a state S-Corporation tax return, Form M8, with DOR for each year from 2005 through 2018. However, after the 2018 tax year, Bayvista failed to file the Form M8 to report the Minnesota income tax obligations associated with its operation as an S-Corporation until July 2025, when Bayvista late-filed a Form M8 for the 2024 tax year. Of note, the limited S-Corporation tax filings made by Bayvista indicate that they were prepared by Jose Herrera and signed by him.

Although Bayvista failed to report its employee payroll for withholding tax purposes for the 24 individuals Jose Herrera identified in the certified payroll reports for the McDonough Homes project, Bayvista has made some state withholding tax filings and payments to DOR. Jose Herrera is identified as the account holder for Bayvista with electronic access to file state withholding tax returns. Bayvista's failure to remit the withholding tax obligations associated with the employee pay in the certified payrolls for the McDonough Homes project has prompted DOR to demand payment from Bayvista for that tax obligation. For 2024, Bayvista submitted some minimal quarterly withholding tax payments electronically to DOR. Bayvista claimed to have between 2 to 4 employees subject to state withholding taxes in 2024. For those claimed employees, Bayvista submitted electronic payments totaling \$5,600.00 to DOR for Minnesota withholding taxes.

In addition to Bayvista's tax filing history, Jose Herrera and Carrie Gutbrod-Herrera consistently prepared and filed income returns from 2006 through 2021. They classified themselves as married-filing jointly in those returns. Jose Herrera and Carrie Gutbrod-Herrera failed to file income tax returns for the 2022 and 2023 tax years. However, in April 2025, they did file a tax return for the 2024 tax year, which appears to have grossly misrepresented the amount of income they actually received. Their extreme under-reporting of income for 2024 is exemplified through the indication in their joint income tax return that Bayvista only received income of \$12,357.00 that would pass through to them for income tax purposes. However, especially when considering the significantly reduced amount of wages that were actually paid to Bayvista's employees in cash, the amount of income they received from Bayvista in 2024 was actually much higher.

Carrie Gutbrod-Herrera is also registered as the owner of another roofing business, named Monarca Exteriors, Incorporated ("Monarca Exteriors"). Similar to Bayvista, Monarca Exteriors claims to operate as an S-Corporation. Carrie Gutbrod-Herrera previously filed tax returns related to Monarca Exteriors' classification as an S-Corporation in 2011, 2015, 2016, 2017, 2018, and 2021. However, also similar to Bayvista, Monarca Exteriors appears to have failed to fully identify its employees and to remit state withholding taxes associated with its employee payroll.

Jose Herrera's son, Joseph Herrera, has recently filed income tax returns classifying himself as married-filing jointly with his spouse, Lizeth Lotero. Joseph Herrera has filed state income tax returns in Minnesota for all tax years dating back to 2021. Prior to 2021, Joseph Herrera was not filing income tax returns for a period of time while he was in prison. Joseph Herrera previously faced federal criminal charges arising from a drug trafficking investigation. The charges were filed in the U.S. District Court for the District of Minnesota in court file number 11-163 (MJD/FLN). Joseph Herrera pled guilty to conspiring to distribute

cocaine in 2012, and he was sentenced to 188 months in prison. Records indicate that Joseph Herrera was released from federal prison in January 2022, which is when the registered ownership of Bayvista was changed to provide Joseph Herrera with 25% ownership of the company.

Analysis of 2024 Income

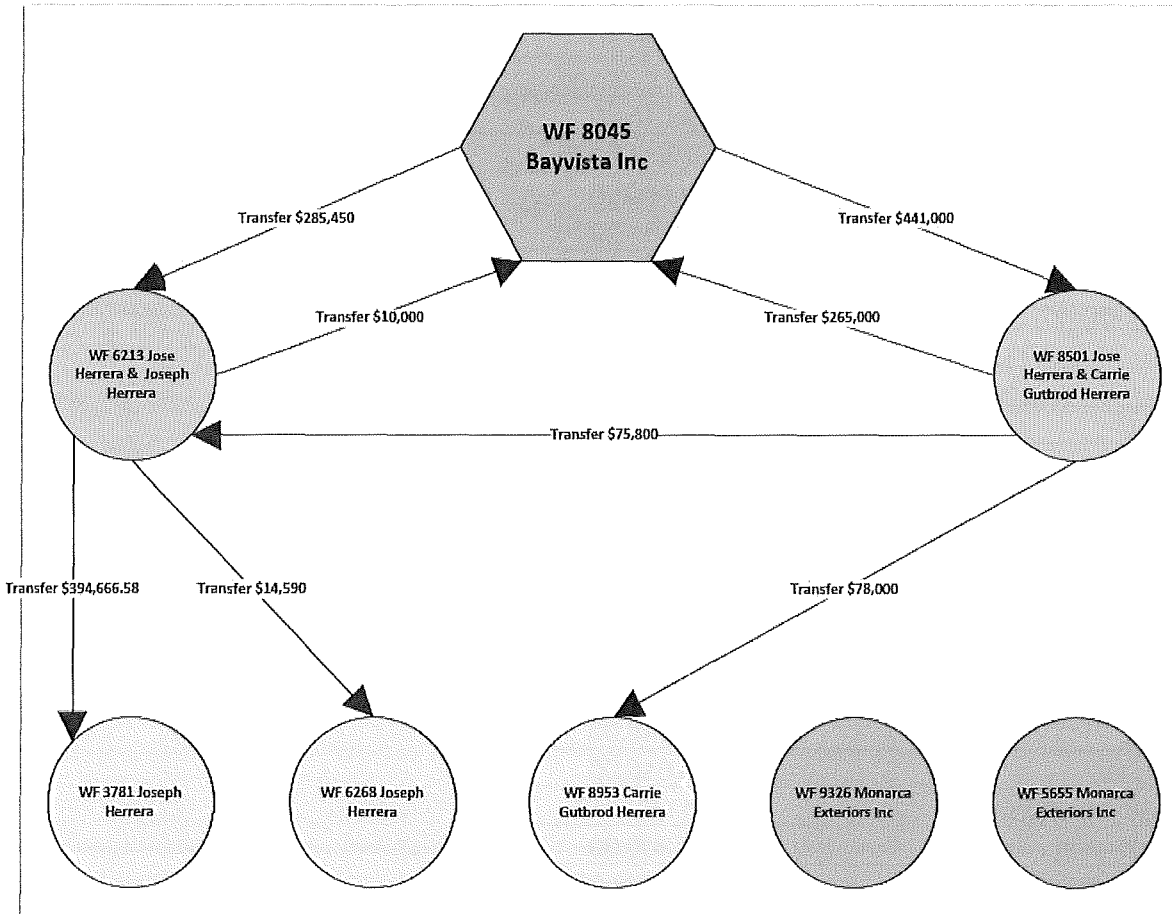
Jose Herrera, Carrie Gutbrod-Herrera, and Joseph Herrera, along with the related businesses identified above, utilized multiple Wells Fargo bank accounts in 2024. DOR obtained records for those accounts during its investigation. DOR's analysis of the records determined that the family members received significant income that was not reported on the tax returns they filed for the 2024 tax year.

The following table demonstrates the level of deposits the family members were receiving into various of their Wells Fargo bank accounts in 2024.

Acct.	Account Description	Starting Balance (1/24)	Ending Balance (12/24)	Total Deposits	Total Debits
5655	Monarca Exteriors Inc	\$3,571.59	\$4,343.03	\$771.44	\$0.00
6213	Jose & Joseph Herrera	\$13,006.51	\$11,000.00	\$403,992.37	-\$406,998.88
8045	Bayvista Inc	\$318,611.99	\$202,344.13	\$5,156,684.61	-\$5,272,952.47
8501	Jose & Carrie Herrera	\$143,370.42	\$161,265.66	\$497,134.13	-\$485,208.68
8953	Carrie Herrera	\$134,534.19	\$209,558.50	\$84,524.31	-\$16,000.00
9326	Monarca Exteriors Inc	\$3,402.00	\$3,302.00	\$200.00	-\$300.00

Other Construction Projects

DOR's analysis of the Wells Fargo bank accounts showed that money primarily flowed to Jose Herrera, Carrie Gutbrod-Herrera, and Joseph Herrera through Bayvista's Wells Fargo business account. The chart below shows the flows of funds through the various related Wells Fargo accounts – identified as transfers in the chart.



DOR also reviewed the deposits into the business account (ending 8045) for 2024 to determine where Bayvista was receiving its income. The bank records showed that numerous businesses, primarily other construction contractors, were making payments to Bayvista's business account. The chart below identifies businesses and other entities that made payments to Bayvista's business account (ending 8045) in 2024, along with the total amounts they paid.

Payee	Total Paid in 2024
A Better Way to Build	\$17,516.00
A.M. Burney Exteriors Inc	\$15,672.20
All American Restoration LLC	\$86,223.21
A-Team Construction Inc	\$19,486.10
Bayport Roofing & Siding LLC	\$35,347.70
Bruce Stahn Const Inc	\$3,210.00
Bruggeman Exteriors Co	\$185,140.56
Central Roofing Company	\$791,834.63
Classic Construction Consulting	\$146,236.50
Classica Construction Consulting	\$79,872.00
Copper Range Roofing	\$47,409.35
D&B Entertainment LLC	\$10,000.00
Elysian Construction	\$288,142.78

Emerge Construction	\$32,779.00
Emerge/Shermer Forbes	\$11,200.00
Everlasting Homes Inc	\$5,208.20
Everlasting Homes Inc	\$131,782.74
Forest Specialties LLC	\$3,014.00
GCM Construction and Maintenance	\$269,497.75
Global indemnity	\$2,000.00
Grussing Roofing & Exteriors Inc	\$18,857.00
Highmark Exteriors LLC	\$10,740.00
Highmark Restoration Inc	\$27,830.00
Hoffman Weber	\$37,615.00
Horizon Roofing Inc	\$122,933.00
KNN Construction LLC	\$3,142.00
Lang Legacy LLC	\$24,673.00
Magis LLC Payroll	\$26,584.48
Marge Magnuson Construction Co Inc	\$534,406.99
MN Workers Compensation Assigned Risk Plan	\$472.00
Modern Exterior Systems LLC	\$5,000.00
New Concepts Maintenance and Construction LLC	\$1,500,576.62
Next Generation Construction Service LLC	\$6,108.00
Property Cents LLC	\$3,748.00
Scarfone Contracting Inc	\$5,616.00
Schwickert's Tacta America LLC	\$11,602.42
St John's Episcopal Church	\$7,800.00
Terex Roofing & Sheet Metal LLC	\$67,498.00
Twin Cities Roofing and Siding LLC	\$40,544.00
United Roofing & Remodeling Inc	\$225.00
YB Construction LLC	\$5,000.00
TOTALS	\$4,642,544.23

After identifying the above businesses through its analysis of the Bayvista business account, DOR issued to subpoenas to multiple of the businesses to gather additional records regarding the basis for the payments they made to Bayvista in 2024. In response, DOR received invoices and other records upon which the above-identified businesses made payments to Bayvista.

Of particular interest are payments to Bayvista tied to other government and taxpayer-funded construction projects. During DOR's investigation, the Minneapolis Public Housing Authority ("MPHA") provided records related to another government-funded project with payments to Bayvista. The MPHA records showed that Bayvista was hired as a sub-contractor to provide roofing labor on the project. Payments to Bayvista on that project appear to total approximately \$55,864.26. The records from MPHA included a Responsible Contractor Affidavit signed by Jose Herrera along with certified payroll records that Jose Herrera signed. Bayvista's certified payroll reports for the MPHA project identified eight different employees along with the wages they were purportedly paid. Similar to the McDonough Homes project, the certified payroll reports purport to reflect gross pay and the application of deductions. The certified payroll reports from MPHA also purport to reflect check numbers for the employee payroll. However, none of the employees identified by Jose Herrera in the MPHA certified payroll records had been reported for withholding tax purposes to DOR. In addition, none of the eight individuals identified in the certified payroll reports from MPHA appear to be reflected in the certified payroll reports that Jose Herrera submitted for the McDonough Homes project.

Terex Roofing and Sheet Metal LLC ("Terex") also provided records to DOR showing Bayvista's involvement with a construction project through the Crystal Housing Group, LLC. This project involved Bayvista as a sub-contractor for the re-roofing of an apartment complex in the City of Crystal, and the project appears to have also involved government funds. The records indicate that over \$84,000.00 was paid to Bayvista through this project. Jose Herrera signed compliance records for this project as well, including certified payroll reports. The certified payroll reports again purport to reflect gross pay and the application of deductions. These certified payroll reports also identify eight different individuals as having performed work on the project. Jose Herrera did identify one individual in these certified payroll reports, L.C., who was also identified in the certified payroll reports for the McDonough Homes Project. Like the other government projects, none of the employees identified by Jose Herrera in these certified payrolls had been reported to DOR as Bayvista employees for state withholding tax purposes.

When Terex provided responsive documents to DOR, its owner, Rex Greenwald, communicated to DOR that he wanted to make a statement about his work with Bayvista. Greenwald stated that Jose Herrera does things right and that his company, Bayvista, is the only one that will take on government contracts. At the time Greenwald made these comments, it is unclear whether he was aware of Jose Herrera's practice of reporting purported employee pay to government entities through certified payroll reports but failing to identify those same employees and their pay to DOR for withholding tax purposes along with the nature of their construction work to Bayvista's workers' compensation insurance provider.

During its investigation, DOR identified 113 contractor affidavits filed by Bayvista tied to government projects it reported to have worked on from 2016 through 2025. Those affidavits reflect a dollar value of \$2,854,161.78 in government-funded projects where Bayvista was involved. However, DOR determined that Bayvista has repeatedly failed to file W-2 income reporting forms for the individuals it has purported to use as employees on these projects. DOR anticipates that a full withholding tax audit would likely be necessary to determine the number of employees Bayvista utilized to work on the identified government projects, along with the total wages paid that should have been subject to withholding taxes.

2024 Income Tax Liability for Jose Herrera and Carrie Gutbrod-Herrera

As part of its investigation, DOR prepared a Tax Deficiency Estimate ("TDE") to estimate the state income tax liability resulting from Jose Herrera and Carrie Gutbrod-Herrera failing to report all of the income they received when they filed their 2024 income tax return. The TDE compared what Jose Herrera and Carrie Gutbrod-Herrera reported on their 2024 income tax return with DOR's analysis of the income they received from Bayvista and all other sources based upon the financial records DOR obtained during its investigation.

For purposes of the TDE, income from Bayvista was assessed to Jose Herrera, Carrie Gutbrod-Herrera, and Joseph Herrera based upon their respective percentages of ownership. Because Jose Herrera and Carrie Gutbrod-Herrera were married and filed a joint return for 2024, their TDE was determined with a 75% ownership percentage for Bayvista. The remaining 25% of income from Bayvista was assessed to Joseph Herrera based upon his ownership percentage of the business. DOR also applied some deductions that may be available to Jose Herrera and Carrie Gutbrod-Herrera, based upon DOR's review of the investigation records, to reduce their taxable income for purposes of the TDE.

The TDE also took into account the 2024 joint tax return that Jose Herrera and Carrie Gutbrod-Herrera filed. Notably, Jose Herrera and Carrie Gutbrod-Herrera included a copy of a 2024 federal tax return, Federal Form 1040 SR (i.e. the Form 1040 federal tax return specific to seniors), when they filed their state tax return, Minnesota Form M1, with DOR. However, the IRS informed DOR that the 2024 federal tax return attached to the Minnesota Form M1 had not yet been filed with the IRS. The Minnesota tax return filed by

Jose Herrera and Carrie Gutbrod-Herrera claimed an adjusted gross income of \$82,257. As referenced above, the state tax return reported only \$12,357 as income from Bayvista. That amount is substantially less than the amount of income reflected in Bayvista's Wells Fargo business (ending 8045) in 2024. Moreover, Jose Herrera and Carrie Gutbrod-Herrera received over \$440,000.00 in transfers from Bayvista's business account into a personal Wells Fargo bank account (ending 8501) that they jointly held. The claimed income figure from Bayvista that Jose Herrera and Carrie Gutbrod-Herrera included on their 2024 Minnesota income tax return is significant evidence of the filing of a return containing material information that is false or fraudulent. The TDE also includes an analysis of the significant transfers Jose Herrera and Carrie Gutbrod-Herrera made from the Bayvista business account to personal bank accounts they held with Wells Fargo.

The following TDE sets forth the estimated Minnesota income tax liability for Jose Herrera and Carrie Gutbrod-Herrera in 2024:

2024 Individual Income Tax TDE - Jose Herrera & Carrie Gutbrod-Herrera						
Reported AGI	Adjusted AGI	2024 MN Tax Paid	Estimated MN Tax less Tax Paid	50% Fraud Penalty	Accrued Interest	Total
\$82,257.00	\$1,717,566.00	\$1,021.00	\$158,509.00	\$79,254.50	\$5,558.67	\$243,322.17

This TDE focuses only on 2024 state income tax liability. DOR anticipates that it will need to pursue additional audit and enforcement measures to address the state income tax liability resulting from Jose Herrera and Carrie Gutbrod-Herrera failing to file income tax returns for the 2022 and 2023 tax years.

2024 Income Tax Liability for Joseph Herrera

DOR also prepared a TDE to estimate the state income tax liability resulting from Joseph Herrera failing to report all of the income he received when he filed his 2024 income tax return. The TDE includes an analysis of the income Joseph Herrera received from Bayvista and all other sources based upon the financial records DOR obtained. As referenced above, income from Bayvista was assessed to Joseph Herrera utilizing 25% as his ownership percentage. DOR also applied some deductions that may be available to Joseph Herrera based upon its review of the investigation records, to reduce his taxable income for purposes of the TDE.

The TDE also took into account the 2024 tax return that Joseph Herrera filed. Of note, Joseph Herrera did not report receiving any income from Bayvista on his 2024 income tax return. In fact, because Joseph Herrera reported only a limited amount of income, he actually received a refund from the State of Minnesota upon the filing of his 2024 state income tax return. The claimed income figure by Joseph Herrera on his 2024 tax return is significant evidence of his filing of a return containing material information that is false or fraudulent. For example, DOR's review of the Wells Fargo records showed that Joseph Herrera received approximately \$394,000.00 into his personal Wells Fargo account (ending 3781) that is not accounted for in his income tax return. DOR's investigation also identified Joseph Herrera making significant payments to American Express from this Wells Fargo account from 2022 into 2025. During this time period, the reflected Joseph Herrera making \$914,000.00 in payments to American Express from his personal Wells Fargo account.

The following TDE sets forth the estimated Minnesota income tax liability for Joseph Herrera in 2024:

2024 Individual Income Tax TDE - Joseph Herrera						
Reported AGI	Adjusted AGI	2024 MN Refund	Estimated MN Tax + Refund	50% Fraud Penalty	Accrued Interest	Total
\$40,169.00	\$628,914.00	\$3,821.00	\$55,764.00	\$27,882.00	\$1,955.56	\$85,601.56

2024 Withholding Tax Liability for Bayvista

DOR also created a TDE to estimate the state withholding tax liability incurred by Bayvista for just the third quarter of 2024. DOR did not prepare a TDE to estimate the full year of withholding tax liability given the limited documentation DOR received about Bayvista's employees and the amount of pay provided to them over the course of the year. DOR's TDE for withholding tax liability considered two alternative amounts of tax liability. The first analysis utilizes the wages reported in the certified payroll reports submitted by Jose Herrera for the McDonough Homes project. The second utilizes the amount of payments in cash reported by the multiple workers interviewed by SPPD during its wage theft investigation.

The following TDE sets forth the estimated Minnesota withholding tax liability for Bayvista for the third quarter of 2024:

3rd Quarter 2024 Withholding Tax TDE							
Source of Wage Info	Wages	MN Tax Due	Payment Applied	MN Tax Owed	50% Penalty	Interest	Total
Certified Payroll Reports	\$428,008.14	\$28,109.76	\$1,600	\$26,509.76	\$13,254.88	\$2,354.40	\$42,119.04
Cash to Employees	\$179,190.00	\$9,888.75	\$1,600	\$8,288.75	N/A	N/A	\$8,288.75

This TDE references the two amounts of withholding tax liability that may apply. The first is the maximum amount of withholding tax liability that should have been remitted to DOR had Bayvista actually paid prevailing wages to its employees working on the McDonough Homes project. The second is the minimum estimate of withholding tax liability that would arise from the cash payments to employees at a substantially lower wage rate (i.e. showing the least amount of withholding tax liability tied to the underpayment of wages). For this lesser amount, based upon cash wages paid, DOR utilized an estimated average daily rate of pay of \$159.28 per worker on the McDonough Homes project.

DOR notes that it would need to conduct a full withholding tax audit to assess all the quarters of withholding tax liability Bayvista has incurred during the years implicated.

NOTICE: Pursuant to Minnesota Statute 609.49, subd. 1 (a) A person charged with or convicted of a felony and released from custody, with or without bail or recognizance, who intentionally fails to appear when required after having been notified that a failure to appear for a court appearance is a criminal offense, or after having been released on an order or condition that the release personally appear when required with respect to the charge or conviction, is guilty of a crime for failure to appear and may be sentenced to not more than one-half of the maximum term of imprisonment or fine, or both, provided for the underlying crime for which the person failed to appear, but this maximum sentence shall, in no case, be less than a term of imprisonment of one year and one day or a fine of \$1,500, or both.

62-CR-25-6324
SIGNATURES AND APPROVALS

*Filed in District Court
State of Minnesota
9/3/2025*

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant	Michael DeTomaso Sergeant 367 Grove St St Paul, MN 55101 Badge: 241	Electronically Signed: 08/25/2025 12:47 PM Ramsey County, Minnesota
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Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney	Thomas Madison 360 Wabasha Street N Suite 100 St Paul, MN 55101 (651) 266-3222	Electronically Signed: 08/25/2025 12:29 PM
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FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☒ **SUMMONS**

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear as directed in the Notice of Hearing before the above-named court to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☐ **WARRANT**

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ *Execute in MN Only*☐ *Execute Nationwide*☐ *Execute in Border States*☐ **ORDER OF DETENTION**

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$

Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: August 25, 2025.

Judicial Officer

David C Brown
Judge of District Court

Electronically Signed: 08/25/2025 01:30 PM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF RAMSEY
STATE OF MINNESOTA

State of Minnesota

Plaintiff

vs.

Jose Manuel Herrera

Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE

*I hereby Certify and Return that I have served a copy of this
Summons upon the Defendant herein named.*

Signature of Authorized Service Agent:

62-CR-25-6324
DEFENDANT FACT SHEET

*Filed in District Court
State of Minnesota
9/3/2025*

Name: Jose Manuel Herrera
DOB: 10/24/1953
Address: 4222 Xerxes Ave. N.
Minneapolis, MN 55412

Alias Names/DOB:

SID:

Height:

Weight: 325lbs.

Eye Color: Brown

Hair Color: Gray or Partially Gray

Gender: MALE

Race: Unknown

Fingerprints Required per Statute: Yes

Fingerprint match to Criminal History Record: No

Driver's License #:

Alcohol Concentration:

STATUTE AND OFFENSE GRID

Cnt Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	6/1/2024	609.52.2(a)(19) Theft - Theft of wages	Felony			MN0620900	25130530
	Other	6/1/2024	609.52.1(13) Theft - Wage theft defined	No-Level			MN0620900	25130530
	Penalty	6/1/2024	609.52.3(1) Theft - Firearm or property value over \$35,000	Felony			MN0620900	25130530
2	Charge	6/1/2024	609.52.2(a)(19) Theft - Theft of wages	Felony			MN0620900	25130530
	Other	6/1/2024	609.52.1(13) Theft - Wage theft defined	No-Level			MN0620900	25130530
	Penalty	6/1/2024	609.52.3(1) Theft - Firearm or property value over \$35,000	Felony			MN0620900	25130530
3	Charge	1/18/2025	609.611.1(a)(1) Insurance Fraud-Present False Representation/Conceals Facts-Policy Application	Felony			MN0620900	25130530
	Other	1/18/2025	609.611.3 Ins Fraud-Sentence	No-Level			MN0620900	25130530
	Penalty	1/18/2025	609.52.3(1) Theft - Firearm or property value over \$35,000	Felony			MN0620900	25130530
4	Charge	1/18/2025	609.611.1(a)(3) Insurance Fraud-Present False Representation/Conceals Facts-Payment	Felony			MN0620900	25130530
	Other	1/18/2025	609.611.3 Ins Fraud-Sentence	No-Level			MN0620900	25130530
	Penalty	1/18/2025	609.52.3(1) Theft - Firearm or property value over \$35,000	Felony			MN0620900	25130530
5	Charge	1/31/2025	268.182.1 Unemployment Benefits-False Representation-Concealment of fact-Penalty in 609.52	Felony			MN0620900	25130530
	Penalty	1/31/2025	609.52.3(3) Theft	Felony			MN0620900	25130530
6	Charge	1/31/2025	268.182.1 Unemployment Benefits-False Representation-Concealment of fact-Penalty in 609.52	Felony			MN0620900	25130530
	Penalty	1/31/2025	609.52.3(3) Theft	Felony			MN0620900	25130530
7	Charge	4/17/2025	289A.63.2(a) Taxes-false or fraudulent returns-file with commissioner	Felony			MN0620900	25130530
8	Charge	10/1/2024	289A.63.2(a) Taxes-false or fraudulent returns-file with commissioner	Felony			MN0620900	25130530