

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

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COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

BPI CONSTRUCTION MANAGEMENT, INC.

Defendant.

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**COMPLAINT**

**I. INTRODUCTION**

1. The Commonwealth of Massachusetts, by and through its Attorney General Maura Healey (the “Commonwealth”), brings this enforcement action against BPI Construction Management, Inc. (“BPI”) for violations of the Massachusetts False Claims Act, G.L. c. 12 § 5A, *et al.* (“MFCA”), committed in the course of its dealing with the Towns of Westport, Massachusetts and Middleborough, Massachusetts (collectively, the “Towns”).

2. This action arises from BPI’s repeated use of fraudulent documents submitted to the Towns in connection with work it was subcontracted to perform on two public construction projects. BPI knew these fraudulent documents contained false certifications that the laborers responsible for framing two police stations were paid the requisite prevailing wage when, in fact, they were paid far below the prevailing wage.

3. As a subcontractor on two public construction projects, BPI was required to compensate laborers in compliance with the Massachusetts Prevailing Wage Law, G.L. c. 149 §§

26-27 (the “Prevailing Wage Law”), which provides for the minimum allowable wage and benefit rates for workers on such projects.

4. To prove compliance with the Prevailing Wage Law, BPI was required to provide Certified Payroll Reports (“CPRs”) documenting the wages paid to each eligible worker on each public construction project. These CPRs were submitted to the Towns as mandatory supporting records for the prime contractor’s monthly payment claims.

5. BPI violated the MFCA by knowingly creating, using, or causing to be created and used, at least 32 fraudulent CPRs that were submitted to the Towns as required documentary support for 9 different monthly payment claims.

6. Each of the fraudulent CPRs falsely stated that BPI’s labor subcontractor, Superior Carpentry, Inc., (“Superior”) was complying with the Prevailing Wage Law when, in fact, BPI knew or should have known that Superior was paying its workers far less.

7. The fraudulent CPRs concealed the fact that workers on the two projects were collectively underpaid by at least \$256,539.92.

8. BPI’s conduct was “knowing” under the MFCA because BPI acted with actual knowledge, in deliberate ignorance, or in reckless disregard of the CPRs’ falsity.

9. For BPI’s role in concealing its noncompliance and causing the submittal of false claims, the Commonwealth seeks statutory damages, civil penalties, and other relief under the MFCA.

## **II. JURISDICTION AND VENUE**

10. The Attorney General is authorized to bring this action pursuant to G.L. c. 12, § 5C.

11. This Court has jurisdiction over the persons and subject matter of this action pursuant to G.L. c. 12, § 5C and G.L. c. 223A, § 3.

12. Venue is proper in Suffolk County pursuant to G.L. c. 12, § 5C and G.L. c. 223, § 5.

### **III. PARTIES**

13. Plaintiff is the Commonwealth of Massachusetts, represented by the Attorney General, who brings this action in the public interest pursuant to G.L. c. 12, § 5C.

14. BPI Construction Management, Inc. is a private construction firm with a principal place of business at 110 Mill St., Framingham, MA 01701.

### **IV. FACTS**

15. The violations alleged in this action occurred during the course of BPI's performance of two subcontracts to provide framing construction work on each Town's police station (the "Westport Project" and "Middleborough Project," respectively).

16. BPI Construction Management, Inc. was the corporate entity that subcontracted with the respective prime contractors for the work on the Westport and Middleborough Projects.

17. Joseph Daniel Ganley ("Ganley") is the General Manager of BPI and operates the business primarily out of his home office.

18. Although Ganley's wife, Nilzadete Ganley, is the registered Owner, President, Treasurer, Secretary, and Director of BPI, it was Ganley who made BPI's business decisions.

19. BPI had two other employees during the relevant time period: Emmanuela Lima, Ganley's daughter-in-law, who performed accounting tasks part-time, and Igor Alves, who provided day-to-day assistance to Ganley; BPI's employees lacked formal job titles.

20. Framing work constitutes the vast majority of BPI's construction business.

21. On the Westport Project, labor was BPI's primary cost and BPI subcontracted 100% of its labor obligation to Superior.

22. On the Middleborough Project, labor was BPI's primary cost and BPI subcontracted 100% of its labor obligation to Superior.

23. All of Superior's workers on the Westport and Middleborough Projects performed framing work and thus were technically classified as "Carpenters" entitled to earn a total hourly prevailing wage of \$66.68, which figure includes a base wage and contributions toward Health and Welfare Insurance and an ERISA pension plan. The relevant Prevailing Wage Law rate sheets are attached hereto as Exhibit A.

24. Ganley calculated BPI's bids, including its bids for the Westport and Middleborough Projects.

25. Ganley was aware of the prevailing wage requirement for these two public projects.

26. To calculate BPI's bid for the Westport and Middleborough jobs, Ganley relied upon his experience doing private projects that were not subject to prevailing wage requirements.

27. Ultimately, BPI drastically underbid labor costs on both projects, and consequently the subcontract prices it offered Superior were not enough to cover payment of the prevailing wage on either the Westport or Middleborough Project.

28. This Complaint follows an investigation by the Fair Labor Division of the Office of the Massachusetts Attorney General (the "AGO") conducted pursuant to the Prevailing Wage Law and the MFCA, which included the production of documents by, and taking of sworn testimony from, both BPI and Superior.



29. In response to the AGO investigation, Superior admitted its wrongdoing and entered into a settlement agreement pursuant to which it will repay \$256,539.92 in damages in addition to \$284,000 in statutory penalties.

30. In response to the AGO investigation, Superior admitted under oath that it paid all of the workers on the Westport and Middleborough Projects a variable hourly rate between \$25 and \$30. This hourly rate is not the prevailing wage for these projects.

31. None of the workers employed under the subcontracts between BPI and Superior were paid the prevailing wage or received insurance or pension benefits.

32. As a general practice, BPI forwarded Superior's CPR reports to the prime contractor on a biweekly basis in order for BPI to receive payment.

33. BPI did not review Superior's CPRs before they were forwarded to the prime contractor, did not supervise or visit Superior at the work sites, and undertook no due diligence to verify Superior's compliance with the Prevailing Wage Law.

34. On multiple occasions during the performance of the Westport and Middleborough Projects, Superior complained to Ganley that it could not afford to pay workers the prevailing wage. From the first CPR submittal for the Westport Project, BPI knew Superior was not actually paying the prevailing wage.

35. As illustrated in the following chart and explained further below, the AGO's investigation concluded that Superior underpaid workers on the Westport and Middleborough Projects by at least \$256,539.92:

Project	BPI's Initial Subcontract Price	Superior's Initial Subcontract Price	Hours Worked	Total Prevailing Wage Due to Workers	Maximum Possibly Paid to Workers	Unpaid Amount Owed to Workers
Westport	\$230,000	\$180,000	4756.5	\$317,163.42	\$142,695	\$174,468.42
Middleborough	\$317,900	\$256,000	2237.5	\$149,196.50	\$67,125	\$82,071.50
<b>Total:</b>						<b>\$256,539.92</b>

#### **A. BPI Violated the MFCA in Connection with the Westport Project**

36. The prime contract for the Westport Project was awarded to M. O'Connor Construction, Inc. of West Roxbury, Massachusetts ("O'Connor") in May of 2017.

37. Around that time, BPI submitted a bid to O'Connor, with whom it had worked previously on private construction jobs, to perform framing and siding work on the Westport Project.

38. Pursuant to G.L. c. 12, § 5A and G.L. c. 161A, § 2, the Town of Westport is a political subdivision of the Commonwealth.

39. Ultimately, BPI's contract price was a negotiated number, after O'Connor requested a reduction of around \$50,000 to Ganley's original bid.

40. O'Connor accepted BPI's reduced bid for the Westport Project, and, on June 20, 2017, the firms entered into a subcontract for BPI to perform the framing work for a price of \$230,000. The June 20, 2017 subcontract between BPI and O'Connor is attached hereto as Exhibit B.

41. BPI drastically underbid the Westport Project; BPI's work on the Westport Project ultimately required 4,756.5 labor hours, meaning labor alone on the Westport Project cost \$317,163.42 under the Prevailing Wage Law – almost \$90,000 more than BPI's entire \$230,000 contract price.

42. Section 12 of the subcontract between O'Connor and BPI stated that BPI would "comply with and be bound by all statutes, rules and regulations governing wage rates as provided in the Contract Documents," and went on to note, "**This is a public job and prevailing wage rates apply and weekly payroll reports are required.**" Ex. B, at 4-5 (emphasis in original).

43. Section 1 of the subcontract between O'Connor and BPI stated that BPI, "by signing this Agreement, acknowledges that it has assured itself that all of the Contract Documents have been made available to it and confirms that it has examined all such documents and agrees that all of the aforesaid Contract Documents shall be considered a part of this Agreement by reference thereto and [BPI] agrees to be bound to the Contractor and to the Awarding Authority/Owner by the terms and provisions thereof..." *Id.* at 1.

44. Labor was BPI's primary cost for the Westport Project under its subcontract with O'Connor; O'Connor provided most of the actual building material including lumber, windows, exterior doors, framing hardware, and trim. *Id.*

45. The subcontract between O'Connor and BPI did not contemplate that BPI would subcontract out its labor for the Westport Project.

46. BPI began performance on the Westport Project during the week ending September 29, 2017. All of the labor under BPI's subcontract was provided by the third party firm, Superior.

47. BPI and Superior did not have a written formal agreement in place at the time Superior began performing BPI's labor on the Westport Project.

48. At the time Superior began performing BPI's labor on the Westport Project, it had never worked on a public works job and was inexperienced with the Prevailing Wage Law.

49. Prior to Superior's performance on the Westport Project, BPI and Superior did not discuss the Prevailing Wage Law or the CPR requirement.

50. Superior hired workers for the Westport Project through a third-party company, ICNG Contractor, Inc. ("ICNG") of Framingham, MA.



51. After Superior already begun performing its work on the Westport Project in September 2017, BPI first informed Superior that it was required to complete CPRs compiling daily wage information for each worker on the Westport Project based on the current prevailing wage rates.

52. Superior owner Felipe Drumond (“Drumond”) met with Ganley at his home office in the fall of 2017. At this meeting, Drumond told Ganley he could not afford to pay the prevailing wage at the current contract price. Ganley responded that the CPRs were required paperwork, and that Superior would not be paid unless it filled out the forms using the prevailing wage rates.

53. At or around this meeting, BPI provided Superior with the worker classifications, prevailing wage rates, and benefit figures to fill out CPR forms for the Westport Project.

54. On October 20, 2017, BPI entered into a subcontract with Superior by which Superior agreed to provide all of the labor for the Westport Project required under BPI’s subcontract with O’Connor at a price of \$180,000. The October 20, 2017 subcontract between BPI and Superior is attached hereto as Exhibit C.

55. At the time it entered into the subcontract with BPI, Superior had already been performing work on the Westport Project for three weeks.

56. Superior’s contract price for the Westport Project was set by BPI and was not negotiated.

57. The subcontract between BPI and Superior for the Westport Project was a form contract that did not expressly state that the prevailing wage applied to the job, but included in Section 25 a “Prevailing Wage Addendum” outlining the general prevailing wage requirements “[f]or any and all projects for which M.G.L. c. 149 Section 27B applies.” Ex. C., at 9-10.



58. In response to the AGO investigation, Superior admitted that it did not pay any worker on the Westport Project the requisite \$66.68 prevailing hourly wage rate, but rather paid a variable hourly rate of \$25 to \$30.

59. Superior completed the CPRs for the Westport Project by applying prevailing wage rates supplied by BPI to the actual worker identification and hour information; the CPR forms thus falsely represented that all workers had been paid according to prevailing wage rates.

60. Superior's CPRs also misclassified the majority of its workers as "Laborer," designating only one worker per day a "Carpenter." The misclassification meant that Superior's CPRs were not only fraudulent but also inaccurately understated the actual wages owed.

61. The maximum possible amount Superior actually paid its workers on the Westport Project was \$142,695, which number was calculated using a \$30 hourly wage representing the high end of what Superior might have actually paid.

62. The total owed to these carpenters for their labor on the Westport Project, using the hours reported on the CPRs and the proper prevailing hourly wage rate of \$66.68, was \$317,163.42.

63. Overall, the carpenters working under BPI's subcontract on the Westport Project were underpaid by at least \$174,468.42.

64. Superior's false CPRs were submitted electronically to the Town of Westport by Superior, BPI, and/or O'Connor.

65. Between September 29, 2017 and February 24, 2018, BPI caused 22 false CPRs to be submitted to the Town of Westport; each CPR fraudulently indicated that workers had been paid according to rates set under the Prevailing Wage Law. The false CPRs from the Westport Project are attached hereto as Exhibit D.

66. For the months of September 2017 through February 2018, O'Connor presented 6 payment requisitions to the Town of Westport; the 22 false CPRs were submitted to the Town of Westport as supporting records required for approval of these payment claims.

67. BPI knew or should have known that its CPRs were fraudulent at the time they were submitted to O'Connor and Westport.

68. BPI is liable for knowingly making and using and/or causing to be made and used 22 false records material to 6 false claims for payment, and for causing the submittal of those false claims, in connection with the Westport Project.

**B. BPI Violated the MFCA in Connection with the Middleborough Contract**

69. The prime contract for the Middleborough Project was awarded to A.P. Whitaker & Sons, Inc of Bridgewater, MA ("Whitaker") in April of 2017.

70. Pursuant to G.L. c. 12, § 5A and G.L. c. 161A, § 2, the Town of Middleborough is a political subdivision of the Commonwealth.

71. BPI submitted a bid of \$317,900 to perform framing and siding work on the Middleborough Project. Whitaker accepted this bid and, on September 18, 2017, entered into a subcontract with BPI to perform the work. The September 18, 2017 subcontract between BPI and Whitaker is attached hereto as Exhibit E.

72. BPI's subcontract with Whitaker did not contemplate that BPI would subcontract out its labor on the Middleborough Project.

73. BPI's primary cost on the Middleborough Project was labor, though BPI was also responsible for furnishing all materials on the job.

74. While performance of the Westport Project was ongoing, BPI approached Superior about doing work on the Middleborough Project at a non-negotiated price set by BPI.

75. On December 18, 2017, BPI entered into a subcontract with Superior to provide all of the labor for framing on the Middleborough Project required under its own subcontract with Whitaker for a price of \$256,000. The December 18, 2017 subcontract between BPI and Superior is attached hereto as Exhibit F.

76. BPI's subcontract with Superior for the Middleborough Project used the same form as its Westport Project subcontract, and included the same Section 25 "Prevailing Wage Addendum" described above in Paragraph 57.

77. None of Superior's workers on the Middleborough Project were paid the prevailing wage or received insurance or pension benefits, but were paid a variable hourly rate of \$25 to \$30.

78. As on the Westport Project, all of Superior's workers were supplied by ICNG.

79. As on the Westport Project, BPI furnished Superior with prevailing wage rate sheets and CPR forms, which Superior completed to falsely certify that workers on the Middleborough Project were being paid according to the Prevailing Wage Law.

80. As on the Westport Project, Superior's CPRs used correct worker identification and hour information, but misclassified most of the workers as "Laborer" while designating only one worker per day "Carpenter," so that the CPRs were not only fraudulent but also inaccurately understated the actual prevailing wages owed.

81. On February 27, 2018, after the Westport Project was already complete, the AGO's Fair Labor Division issued a formal request for Superior's payroll records pursuant to G.L. ch. 151 § 15 and G.L. c. 149 § 27B.

82. Upon receiving the AGO's request, Superior ceased working on the Middleborough Project without completing performance.



83. The maximum possible amount that Superior's workers on the Middleborough Project were actually paid was \$67,125.

84. Under the hours reported on the CPRs and the proper prevailing wage rate, the workers on the Middleborough Project should have been paid \$149,196.50.

85. Superior underpaid workers on the Middleborough Project by at least \$82,071.50.

86. Between December 2017 and February 24, 2018, Superior created 10 false CPRs, which were then submitted by BPI to Whitaker and/or the Town of Middleborough. The false CPRs from the Middleborough Project are attached hereto as Exhibit G.

87. For the months of December 2017 through February 2018, Whitaker presented 3 payment requisitions to the Town of Middleborough; the 10 false CPRs were submitted to the Town of Middleborough in support of these payment claims.

88. BPI knew or should have known that its CPRs were false at the time they were submitted to Whitaker and Middleborough.

89. BPI is liable for knowingly making and using and/or causing to be made and used 10 false records material to 3 false claims for payment, and for causing the submittal of those false claims, in connection with the Middleborough Project.

## **V. CAUSES OF ACTION**

### **COUNT ONE:**

#### **VIOLATION OF THE FALSE CLAIMS ACT, G.L. c. 12 § 5B(a)(1)**

90. The Commonwealth realleges the allegations contained above and incorporates them herein by reference.

91. Defendant violated G.L. c. 12 § 5B(a)(1) by causing the presentment of false claims for payment on the Westport and Middleborough Projects.

92. Defendant knowingly participated in the creation and submittal of at least 32 false Certified Payroll Records that fraudulently concealed Defendant's ongoing violations of the Prevailing Wage Law and thereby rendered false portions of 9 monthly payment requisitions presented to the political subdivisions by the prime contractors.

93. Defendant's misconduct led to the presentment of at least nine false monthly payment requisitions.

**COUNT TWO:  
VIOLATION OF THE FALSE CLAIMS ACT, G.L. c. 12 § 5B(a)(2)**

94. The Commonwealth realleges the allegation contained above and incorporates them herein by reference.

95. Defendant violated G.L. c. 12 § 5B(a)(2) when they – for the purpose of obtaining payment on two public construction projects – made, used, or caused to be made or used 32 Certified Payroll Records they knew, or should have known after conducting minimal due diligence, contained false information.

96. In addition, Defendant fraudulently concealed the fact that none of the workers providing labor under Defendant's subcontracts for the Westport and Middleborough Projects were paid the requisite hourly wage under the Prevailing Wage Law.

**VI. PRAYER FOR RELIEF**

WHEREFORE, as to Counts I and II (MFCA), enter judgment in favor of the Commonwealth and against the Defendant, order that Defendant be debarred from participating in public construction in the Commonwealth of Massachusetts for a period of 5 years, and award the Commonwealth:

- a. Three times the amount of damages, including consequential damages, that the Commonwealth and its political subdivisions sustained because of Defendant's conduct, pursuant to G.L. c. 12 § 5B;
- b. An appropriate civil penalty for each violation of G.L. c. 12 § 5B;
- c. The expenses of this action including, without limitation, the Commonwealth's reasonable attorneys' fees and the costs of investigation; and
- d. Such other relief as the Court deems proper.

**VII. JURY DEMAND**


The Commonwealth demands a trial by jury.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL

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