

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

AVATAR CONTRUCTION CORPORATION and
NAZAR VINCENT, in his individual capacity

Defendant.

COMPLAINT

I. INTRODUCTION

1. The Commonwealth of Massachusetts, by and through its Attorney General Andrea Joy Campbell (the “Commonwealth”), brings this enforcement action against Avatar Construction Corporation (“Avatar”) and its owner, Nazar Vincent (“Vincent”) in his individual capacity (collectively, “Defendants”) for violations of the Massachusetts False Claims Act, G.L. c. 12 § 5A, *et al.* (“MFCA”), committed in connection with public construction projects in the Towns of Watertown and Stoughton, Massachusetts and the Cities of Cambridge and Lawrence, Massachusetts (collectively, the “Municipalities”).

2. This action arises from Defendants’ repeated use of fraudulent payroll records, which they submitted to the Municipalities in connection with work Avatar contracted to perform on five public construction projects for the Municipalities (the “Five Projects”), and which thereby caused the submission of multiple false claims.

3. Avatar was required to compensate workers on the Five Projects in compliance with the Massachusetts Prevailing Wage Law, G.L. c. 149 § 26, *et seq.* (the “Prevailing Wage

Law”), which provides the rules and procedures for paying the minimum allowable hourly wage and benefit rates to each classification of workers on public projects.

4. As a statutory and contractual condition on each of the Five Projects, Avatar was required to provide Certified Payroll Reports (“CPRs”) certifying its compliance with the Prevailing Wage Law and itemizing the daily wages paid to each eligible worker. These CPRs were submitted to the Municipalities as material support for Avatar’s monthly payment claims on each of the Five Projects.

5. Defendants violated Section 5B(a)(2) of the MFCA by knowingly creating, using, or causing to be created and used, at least 66 fraudulent CPRs that were submitted to the Municipalities as required material support for 17 different monthly payment claims.

6. The fraudulent CPRs concealed the fact that workers on the Five Projects were collectively underpaid by at least \$171,095.37.

7. Defendants’ conduct also violated Section 5B(a)(1) of the MFCA for causing false claims because each of the fraudulent CPRs it used as support for a monthly payment claim submitted to the government rendered that claim false.

8. Defendants’ conduct was “knowing” under the MFCA because Avatar used the CPRs to support its payment claims with actual knowledge, in deliberate ignorance, or in reckless disregard of their falsity, and thereby caused the Commonwealth to pay out wage reimbursements under false pretenses.

9. At the outset of Avatar’s dealings with the Commonwealth, Defendants also omitted material information concerning its owner’s prior criminal conviction and bankruptcy from its prequalification applications to the Massachusetts Division of Capital Asset Management (“DCAMM”) and in its bid for the project in Watertown. These omissions violated

Section 5B(8) of the MFCA's prohibition against entering into an agreement with the government knowing it contains false information.

10. For each of Defendants' violations of the MFCA, the Commonwealth seeks statutory damages, civil penalties, and other relief under Section 5B of the MFCA.

II. JURISDICTION AND VENUE

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

12. 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.

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

III. PARTIES

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

15. Avatar Construction Corporation is a private construction firm with a principal place of business at 60 Arsenal St., Watertown, MA 04274.

16. Nazar Vincent is an individual with a residence at 4 Robin Hood Rd., Arlington, MA 02474. He is the owner and principal officer of Avatar.

IV. FACTS

A. The Massachusetts False Claims Act

17. The MFCA is a broad, remedial statute modeled after the federal False Claims Act, 31 USC § 3729, *et seq.* (the "FCA"), with which it shares the statutory purpose of curbing

fraud by those who receive money from the government and ensuring that the government enjoys the full value of its bargains.

18. Section 5B of the MFCA outlines the broad range of fraudulent conduct that triggers MFCA liability, including the overlapping liability provisions of Section 5B(a)(1) which makes it a violation to knowingly *cause* a false claim, and Section 5B(a)(2) which makes it a violation each time a person knowingly “makes, uses, or causes to be made or used a false record material to a false or fraudulent claim.”

19. The MFCA does not require the Commonwealth to allege specific intent to defraud, but rather punishes violators who use false records and/or cause false claims while “possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information.” G.L. c. 12 § 5A.

20. The reckless disregard standard, derived from the FCA, stands for “the concept that individuals and contractors receiving public funds have some duty to make a limited inquiry so as to be reasonably certain they are entitled to the money they seek.” S-Rep. 99-345, at 20 (1986).

B. The Massachusetts Prevailing Wage Law

21. The Prevailing Wage Law required the respective awarding authority for each of the Five Projects to issue a schedule of applicable prevailing wages for the job to each bidder, including Avatar, and to incorporate that schedule into the contract. G.L. c. 149 § 27.

22. The Prevailing Wage Law also required Avatar to submit CPRs with its periodic payment requests for each of the Five Projects, as follows:

“Every contractor, subcontractor or public body engaged in said public works project by an agency, executive office, department, board, commission, bureau, division or authority

of the commonwealth or county, or municipality or any subdivision thereof to which sections twenty-seven and twenty-seven A apply keep a true and accurate record of all . . . laborers employed thereon, showing the name, address and occupational classification of each such employee on said works, and the hours worked by, and the wages paid to, each such employee, and shall submit weekly to the awarding authority by mail, first class postage prepaid, or by electronic mail, certified payroll records that shall consist of a complete copy of those records accompanied by a statement signed by the employer that indicates (1) the records are correct; and (2) the rate of wages paid to each performing the work of mechanic, apprentice, teamsters, chauffeurs, and laborers, and shall promptly furnish to the attorney general or his representative, upon his request, a copy of said record, signed by the employer or his authorized agent under the penalties of perjury.”

G.L. c. 149 § 27B.

23. The Prevailing Wage Law provides procedures for the government in the event the Attorney General identifies an underpayment on an ongoing project, including stopping work on the impacted item of work until the violator pays “such penal sum as the Attorney General shall determine.” G.L. c. 149 § 27.

C. The Five Prime Contracts

24. The Five Projects on which Avatar served as prime contractor and committed violations of the MFCA are: the Lawrence Senior Center Project, the Lawrence City Yards Project, the Watertown Project, the Stoughton Project, and the Cambridge Project, as defined below.

25. Each of the Five Projects was awarded to Avatar by the respective Municipality through the public bidding process.

26. Vincent, the owner and Operations Manager of Avatar, endorsed the bid and contract for each of the Five Projects on behalf of Avatar.

27. Avatar’s winning bid for each of the Five Projects was prepared by Vincent.

28. Avatar entered into a \$298,600 prime contract dated November 18, 2019 with the City of Lawrence, Massachusetts (the “Lawrence Senior Center Contract”) for construction work at the Lawrence Senior Center (the “Lawrence Senior Center Project”).

29. Avatar entered into a \$565,815 prime contract dated November 22, 2019 with the City of Lawrence, Massachusetts (the “Lawrence City Yards Contract”) for construction work at the Lawrence City Yards (the “Lawrence City Yards Project”).

30. The bidding specifications for both the Lawrence Senior Center and Lawrence City Yards Contracts stated: “The contractor is required to pay the prevailing wage on all projects associated with this contract in accordance with the attached Prevailing Wage Statement. Certified payroll records must be submitted to the ordering department.”

31. Avatar entered into a \$536,000 prime contract with the Town of Watertown, Massachusetts awarded on March 19, 2020 (the “Watertown Contract”) for limited classroom renovation work at the Watertown Philips School (the “Watertown Project”).

32. The bidding specifications for the Watertown Contract stated:

The Commonwealth of Massachusetts Department of Labor & Workforce Development has established Wage Rates for the entire project in accordance with M.G.L. Chapter 149, Section 26 to 27J. Copies of Certified payroll are to be forwarded weekly or with the submittal of any invoice to the Town.

33. Avatar entered into a \$498,600 prime contract dated February 10, 2020 with the Town of Stoughton, Massachusetts (the “Stoughton Contract”) for construction work at the Stoughton Wilkins School (the “Stoughton Project”).

34. The bidding specification for the Stoughton Contract stated:

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the bidder, before bid opening, to request any additional information on Prevailing

Wage Rates for those tradespeople who may be employed for the proposed work under this contract.

35. Avatar entered into a \$977,000 prime contract dated April 3, 2020 with the City of Cambridge, Massachusetts (the “Cambridge Contract”) for construction work at the Community Charter School of Cambridge (the “Cambridge Project”).

36. As part of Avatar’s bids for both the Stoughton and the Cambridge Contracts, Vincent signed the following certification on behalf of Avatar:

The undersigned bidder hereby certifies, under pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the Awarding Authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the contractor, to pay laborers employed on the project the said applicable prevailing wage rates.

D. Avatar’s Labor Subcontracts with Gonza

37. On each of the Five Projects, Avatar subcontracted with the third-party firm Gonza Construction, Inc. to provide labor.

38. On each of the Five Projects, Avatar did not provide notice to the respective awarding authority that it had subcontracted its labor responsibilities to Gonza.

39. On both the Lawrence Senior Center and City Yards Projects, Avatar did not comply with the requirement that “[n]one of the work or services covered by the Agreement[s] shall be subcontracted without the prior written approval of the City.”

40. Gonza had served as a labor subcontractor for Avatar prior to working on the Five Projects.

41. Avatar’s principal contact at Gonza was Jose Gonzalez (“Gonzalez”).

42. Gonzalez co-owned Gonza with his wife, Shiara Cabrera, and Gonzalez made all of Gonza's business decisions.

43. Gonza submitted a bid to Avatar for work on each of the Five Projects.

44. For each of the Five Projects, Avatar either accepted or negotiated Gonza's bid to arrive at a price that comported with Avatar's own bid calculations for the job.

45. Gonza was issued a \$12,600 work order by Avatar for labor on the Lawrence Senior Center Project, dated April 16, 2020 (the "Lawrence Senior Center Order"). Gonza did not enter into a formal subcontract with Avatar for its work on the Lawrence Senior Center Project.

46. Gonza was issued a \$18,480 work order by Avatar for labor on the Lawrence City Yard Project, dated June 8, 2020 (the "Lawrence City Yard Order"). Gonza did not enter into a formal subcontract with Avatar for its work on the Lawrence City Yards Project.

47. The Lawrence Senior Center and City Yards Work Orders did not mention the Prevailing Wage Law or the CPR requirement.

48. Gonza entered into a \$69,400 subcontract with Avatar to provide labor on the Watertown Project, dated April 10, 2020 (the "Watertown Subcontract").

49. The Watertown Subcontract did not mention the Prevailing Wage Law or the CPR requirement.

50. Gonza entered into a \$29,000 subcontract with Avatar to provide labor on the Stoughton Project, dated April 10, 2020 (the "Stoughton Subcontract").

51. The Stoughton Subcontract did not mention the Prevailing Wage Law or the CPR requirement.

52. Gonza entered into a \$65,800 subcontract with Avatar to provide labor on the Cambridge Project, dated April 2, 2020 (the “Cambridge Subcontract”).

53. The Cambridge Subcontract did not mention the Prevailing Wage Law or the CPR requirement.

54. The Watertown, Stoughton, and Cambridge Subcontracts were endorsed on Avatar’s behalf by Vincent.

E. Avatar and Gonza’s Prevailing Wage Noncompliance

55. Pursuant to Section 27 of the Prevailing Wage Law, the respective awarding authority provided Avatar with a schedule of the minimum prevailing wage rates for each of the Five Projects.

56. On each of the Five Projects, Avatar delegated responsibility for complying with the Prevailing Wage Law, including preparing and signing CPRs, to Gonza.

57. At no time during Gonza’s performance on the Five Projects did Gonza pay any workers the prevailing wage.

58. In some instances, Gonza hired and paid workers on the Five Projects through a third-party company called ICNG Contractors, Inc. (“ICNG”).

59. Gonza and/or ICNG paid workers on the Five Projects a sliding scale of \$25 to \$30 an hour.

60. In May of 2021, in response to a public complaint, the Attorney General’s Fair Labor Division (“FLD”) issued a payroll demand letter to Gonza pursuant to the Prevailing Wage Law.

61. In response to the FLD payroll demand, Gonza admitted that it had not paid the prevailing wage on the Five Projects, that it had instead paid a variable rate of \$25 to \$30 to all of the workers on the Five Projects, and that it had falsified all of the CPR records on those jobs.

62. Gonza stated that Vincent was aware that Gonza was not paying the prevailing wage at all times during the performance of the Five Projects.

63. Following its investigation, the Attorney General's Fair Labor Division cited Gonza with fines for its false certifications on each of the Five Projects. Gonza failed to pay these penalties and was disbarred. Gonza's involuntary dissolution took effect on December 31, 2021.

64. The Commonwealth now seeks to hold Avatar and Vincent accountable for their own role as the prime contractor in knowingly using and profiting from 66 false CPRs in violation of the MFCA, and for causing 18 false claims by submitting them as support for payment claims.

F. Avatar Used 66 False CPRs which Caused 18 False Claims

65. Prior to subcontracting for the Five Projects, Avatar told Gonza to pay workers Gonza's usual private wage rate but to inflate the wage figures it reported on the CPR forms to falsely indicate Prevailing Wage Law compliance.

66. On each CPR it prepared, Gonza falsely reported paying workers inflated hourly wage rates and falsely certified its compliance with the Prevailing Wage Law.

67. All of the falsified CPRs completed by Gonza on the Five Projects were submitted to Avatar.

68. On each of the Five Projects, Defendants used each false CPR received from Gonza to the government as support for a monthly payment request.

69. In some instances on the Five Projects, Gonza submitted a copy of a CPR directly to the government at the same time the CPR was submitted to Avatar.

70. All of the CPRs certified by Gonza and used by Avatar on the Five Projects contained entirely false, inflated wage figures and false certifications of compliance with the Prevailing Wage Law.

71. In some instances, Avatar had to ask Gonza repeatedly to submit late CPRs for the Five Projects.

72. For example, on September 21, 2020, the Town of Stoughton informed Avatar by email that it was withholding payment until it received outstanding CPRs.

73. On each of the Five Projects, Avatar submitted periodic payment claims to the respective awarding authority on a monthly basis.

74. Avatar's payment claims were signed by Vincent on behalf of Avatar.

75. The Watertown, Stoughton, and Cambridge Contracts each mandated a monthly payment schedule.

76. During the time Gonza worked on the Five Projects, each monthly payment claim submitted by Avatar was supported by one to four false CPRs, corresponding to the number of weeks Gonza worked that month.

77. On the Five Projects, Defendants used a total of 64 false CPRs as support for 18 false claims, causing a total underpayment of \$171,095.37, as explained in detail below and summarized in the following chart:

Project	Underpayment	# of False CPRs	# of Payment Claims
Lawrence Senior Cntr.	\$7,638.95	4	2
Lawrence City Yards	\$12,078.58	3	1
Watertown	\$57,747.90	20	5
Stoughton	\$49,335.40	17	4
Cambridge	\$44,294.54	22	6
TOTAL	\$171,095.37	66	18

i. Lawrence Senior Center Project Workers Were Underpaid by at Least \$7,638.95

78. Gonza’s performance on the Lawrence Senior Center Project lasted from approximately April 20, 2020 until May 17, 2020 and produced at least 4 false CPRs that were submitted by Avatar to the City of Lawrence (the “LSC CPRs”). The LSC CPRs are attached hereto as Exhibit A.

79. Workers hired by Gonza and/or INCA worked as carpenters for 187 hours during the four weeks corresponding to the LSC CPRs.

80. The LSC CPRs falsely reported paying \$6,504.83 in wages.

81. The LSC CPRs falsely reported paying workers a carpenter’s prevailing wage rate of \$69.75 and an apprentice carpenter rate of \$32.81. Although higher than what Gonza actually paid, these were not the correct prevailing wage rates for the Lawrence Senior Center Project.

82. In fact, Gonza paid workers on the Lawrence Senior Center Project a sliding scale of around \$25 to \$30.

83. Assuming all workers were paid Gonza’s maximum rate of \$30 an hour, Gonza paid workers on the Lawrence Senior Center Project at most \$5,610 for work during the four weeks covered by the LSC CPRs.

84. The proper prevailing wage rate for carpenters on the Lawrence Senior Center Project was \$70.85.

85. The bid specifications for the Lawrence Senior Center stated the following regarding apprentices:

All apprentices working on the project are required to be registered with the Massachusetts Department of Labor Standards, Division of Apprentice Standards (DLS/DAS). Apprentice must keep his/her apprentice identification card on his/her person during all work hours on the project. An apprentice registered with DAS may be paid the lower apprentice wage rate at the applicable step as provided on the prevailing wage schedule. **Any apprentice not registered with DLS/DAS regardless of whether or not they are registered with any other federal, state, local, or private agency must be paid the journeyworker's rate for the trade.**

86. None of the workers hired by Gonza were registered apprentices, and therefore the proper prevailing wage rate for Gonza's "apprentices" on the Lawrence Senior Center Project was the regular journeyworker rate of \$70.85.

87. At the proper prevailing wage rates, the workers hired by Gonza on the Lawrence Senior Center Project should have been paid at least \$13,248.95 for 187 hours of work.

88. On the Lawrence Senior Center Project, workers were underpaid by at least \$7,638.95.

89. The LSC CPRs were used by Avatar as material support for at least 2 monthly payment claims it submitted to the City of Lawrence on the Lawrence Senior Center Project.

ii. Lawrence City Yards Project Workers Were Underpaid by at Least \$12,078.58

90. Gonza's performance on the Lawrence City Yards Project lasted from approximately June 8, 2020 until July 5, 2020 and produced at least 3 false CPRs that were submitted by Avatar to the City of Lawrence (the "LCY CPRs"). The LCY CPRs are attached hereto as Exhibit B.

91. Workers hired by Gonza and/or INCA worked as carpenters for 296 hours during the three weeks corresponding to the LCY CPRs.

92. The LCY CPRs falsely reported paying \$15,678.11 in wages.

93. The LCY CPRs falsely reported paying workers a carpenter's prevailing wage rate of \$69.75 and, in one instance, a painter/taper rate of \$70.76. Although higher than what Gonza actually paid, these were not the correct prevailing wage rates for the Lawrence City Yards Project.

94. In fact, Gonza paid workers on the Lawrence City Yards Project a variable hourly rate of \$25 to \$30.

95. Assuming all workers were paid Gonza's maximum rate of \$30 an hour, Gonza paid workers on the Lawrence City Yards Project at most \$8,880 for work during the three weeks covered by the LCY CPRs.

96. The proper prevailing wage rate for carpenters on the Lawrence City Yards Project was \$70.85, and for painters the rate was \$69.92.

97. At the proper prevailing wage rates, the workers hired by Gonza on the Lawrence City Yards Project should have been paid at least \$20,958.58 for 296 hours of work.

98. On the Lawrence Senior Center Project, workers were underpaid by at least \$12,078.58.

99. The LCY CPRs were used by Avatar as material support for at least 1 monthly payment claim it submitted the City of Lawrence on the Lawrence City Yards Project.

iii. Watertown Project Workers Were Underpaid by at Least \$57,747.90

100. Gonza's performance on the Watertown Project lasted from approximately May 4, 2020 until September 21, 2020 and produced 20 false CPRs that were submitted by Avatar to

the Town of Watertown (the “Watertown CPRs”). The Watertown CPRs are attached hereto as Exhibit C.

101. Workers hired by Gonza and/or INCA worked as carpenters for 1370 hours during the 20 weeks corresponding to the Watertown CPRs.

102. The Watertown CPRs falsely reported paying \$69,711.56 in wages.

103. The Watertown CPRs falsely reported paying workers a prevailing wage rate between \$31.27 and \$70.76. Although higher than what Gonza actually paid, these were not the correct prevailing wage rates for the Watertown Project.

104. In fact, Gonza paid all workers on the Watertown Project a variable hourly rate of \$25 to \$30.

105. Assuming all workers were paid Gonza’s maximum rate of \$30 an hour, workers on the Watertown Project were paid at most \$41,100 for work during the 20 weeks covered by the Watertown CPRs.

106. The following prevailing wage rates applied to the Watertown Project:

- a. Carpenters - \$70.85 (until 9/01/20), \$71.50 (after 9/01/20);
- b. Cement Masonry / Plastering - \$84.85;
- c. Painter - \$68.92 (before 7/1/20), \$69.92 (after 7/1/20); and
- d. Laborer - \$58.43.

107. Applying the proper wage prevailing rates, the workers hired by Gonza for the Watertown Project should have been paid at least \$98,847.90.

108. On the Watertown Project, workers were underpaid by at least \$57,747.90.

109. The Watertown CPRs were used by Avatar as material support for 5 monthly payment claims it submitted to the Town of Watertown for the Watertown Project.

iv. Stoughton Project Workers were Underpaid by at Least \$49,335.40

110. Gonza's performance on the Stoughton Project lasted from approximately June 29, 2020 until October 24, 2020 and produced 17 false CPRs that were submitted by Avatar to the Town of Stoughton (the "Stoughton CPRs"). The Stoughton CPRs are attached hereto as Exhibit D.

111. Workers hired by Gonza and/or INCA worked as carpenters for 1294 hours during the 17 weeks corresponding to the Stoughton CPRs.

112. The Stoughton CPRs falsely reported paying \$66,842.08 in wages.

113. The Stoughton CPRs falsely reported paying workers a prevailing wage rate between \$31.27 and \$70.76. Although higher than what Gonza actually paid, these were not the correct prevailing wage rates for the Stoughton Project.

114. In fact, Gonza paid workers on the Stoughton Project a variable hourly rate of \$25 to \$30.

115. Assuming all workers were paid Gonza's maximum rate of \$30 an hour, workers on the Stoughton Project were paid at most \$38,820 for work in the 17 weeks covered by the Stoughton CPRs.

116. The following prevailing wage rates applied to the Stoughton Project:

- a. Carpenters - \$70.85 (until 9/01/20), \$71.50 (after 9/01/20)
- b. Cement Masonry / Plastering - \$84.85
- c. Painter - \$69.92
- d. Laborer - \$58.43

117. The carpenters hired by Gonza for the Stoughton Project should have been paid at least \$88,155.40.

118. On the Stoughton Project, workers were underpaid by at least \$49,335.40.

119. The Stoughton CPRs were used by Avatar as material support for 4 monthly payment claims it submitted to the Town of Stoughton on the Stoughton Project.

v. Cambridge Project Workers were Underpaid by at Least \$44,294.54

120. Gonza's performance on the Cambridge Project lasted from approximately July 13, 2020 until December 21, 2020 and produced 22 false CPRs that were submitted by Avatar to the City of Cambridge (the "Cambridge CPRs"). The Cambridge CPRs are attached hereto as Exhibit E.

121. Workers hired by Gonza and/or INCA worked for 1016 hours during the 22 weeks corresponding to the Cambridge CPRs.

122. The Cambridge CPRs falsely reported paying \$66,572.06 in wages.

123. The Cambridge CPRs falsely reported paying workers a prevailing wage rate between \$58.43 and \$69.75. Although higher than what Gonza actually paid, these were not the correct prevailing wage rates for the Cambridge Project.

124. In fact, Gonza paid workers on the Cambridge Project a variable hourly rate of \$25 to \$30.

125. Assuming all workers were paid Gonza's maximum rate of \$30 an hour, workers on the Cambridge Project were paid at most \$30,480 for work in the 22 weeks covered by the Cambridge CPRs.

126. The following prevailing wage rates applied to the Cambridge Project:

- a. Carpenters - \$78.99 (until 9/01/20), \$79.89 (after 9/01/20); and
- b. Laborer - \$64.84.

127. The carpenters hired by Gonza for the Cambridge Project should have been paid \$74,774.54.

128. The Cambridge CPRs were used by Avatar as material support for 6 monthly payment claims it submitted to the City of Cambridge on the Cambridge Project.

129. On the Cambridge Project, workers were underpaid by at least \$44,294.54.

G. Avatar had Reason to Know Gonza was Falsifying CPRs

130. Defendants should have known Gonza was not paying the prevailing wage because Avatar's respective subcontract prices with Gonza were far too low to pay the prevailing wage in the first place, as the following chart illustrates:

Project	Gonza Subcontract Price	Wages Falsely Reported	Prevailing Wages Owed	Estimated Wages Paid
Lawrence Senior Cntr.	\$12,600	\$6,504.83	\$25,069.55	\$5,610
Lawrence City Yards	\$18,480	\$15,678.11	\$20,958.58	\$8,880
Watertown	\$69,400	\$99,952.26	\$98,847.90	\$41,100
Stoughton	\$29,000	\$64,446.83	\$88,155.40	\$38,820
Cambridge	\$65,800	\$66,572.06	\$74,774.54	\$30,480
TOTAL	\$195,280	\$253,154.09	\$307,805.97	\$124,890

131. Had Vincent actually used the proper prevailing wage rates to calculate Avatar's bids for the Five Projects, Defendants would have known that the subcontract prices set with Gonza were far too low to cover the cost of compliance with the Prevailing Wage Law on those jobs.

132. As the above chart illustrates, had Gonza spent every penny it earned from its deals with Avatar for the Five Projects on wages, it would still have paid less than two thirds of what it owed workers under the Prevailing Wage Law.

133. For each of the Five Projects, Avatar supervisors and other employees were present at the job site and, at times, directly supervised workers hired by Gonza.

134. Avatar did not ask the workers hired by Gonza what they were being paid.

135. Testifying on behalf of Avatar pursuant to a Civil Investigative Demand (“CID”) issued as part of the Commonwealth’s investigation pursuant to Section 5N of the MFCA, Vincent denied having actual knowledge of the CPRs’ falsity, but stated that Avatar did not review CPRs it received from Gonza for truthfulness and did not take any other steps to determine whether Gonza was complying with the Prevailing Wage Law.

136. Even if Avatar had not known the CPRs contained false wage information, Defendants acted, at best, in “reckless disregard” of the CPRs’ falsity when they used them to obtain payment without review and without making *any* effort to ensure its labor contractor was complying with the Prevailing Wage Law.

137. As explained above, in addition to being fraudulent each of the 66 false CPRs used by Avatar on the Five Projects included incorrect prevailing wage *rates* for the respective job, an error that was facially apparent on every single false CPR used by Avatar.

138. On December 10, 2020, Avatar received a notice of noncompliance from the Boston Housing Authority, notifying it that Gonza’s CPRs for a federally funded project (the “BHA Project”) were being rejected. The wage rates Gonza had reported on its CPRs for the BHA Project were far below the proper federal prevailing wage rates. Avatar contacted Gonza by text-message and instructed it to draft new CPRs with the proper rates, which Avatar then submitted. In text-message records produced by Avatar in response to CID, Avatar never asked Gonza whether it had actually paid the prevailing wage at this time.

139. The Attorney General's investigation concluded that Gonza did not pay the prevailing wage on the BHA Project, but rather paid a variable rate of \$25 to \$30.

140. At the time it received the notice of noncompliance on the BHA Project, Avatar had still not submitted all of the CPRs for the Cambridge Project to the City of Cambridge.

141. Even if Defendants did not conspire with Gonza to falsify payroll records, they should have known that Gonza could not afford to pay the prevailing wage on the Five Projects at the low subcontract prices, should have noticed the red flag that Gonza used incorrect rates on all of its CPRs, or at the very least should have discovered the extensive fraud after receiving the notice regarding noncompliance on the BHA Project.

H. Defendants also Violated the MFCA by Making Material Omissions on Avatar's DCAMM Prequalification Applications and its bid for the Watertown Contract

142. At all times relevant to the Five Projects, Avatar held itself out as a company that had been in business for 15 years. In fact, in its bid for the Stoughton Project Avatar falsely represented that it had been in business "under [its] present name" for 15 years.

143. Avatar repeatedly failed to disclose to the government, however, that Vincent had filed for bankruptcy in 2010, and that Vincent's prior construction business in the State of New Hampshire was shut down after he pled guilty in 2013 to criminal fraud in connection with public bidding.

144. In order to bid on the prime contracts for the Five Projects, Avatar had to obtain contractor certification from the Massachusetts Division of Capital Asset Management and Maintenance ("DCAMM"). Avatar was DCAMM certified as a prime/general contractor in 2018, 2019, and 2020.

145. On May 22, 2013, Vincent, under his former name Nazar Lopushanksy, was sentenced in federal court to one year and one day in prison after pleading guilty to six counts of

mail fraud in connection with falsifying financial statements for his construction business in order to improperly obtain public construction contracts (the “Prior Conviction”).

146. The DCAMM certification application asks contractors:

Have any proceedings by a local, state, or federal agency been brought, concluded, or settled relating to decertification, debarment or suspension of your Company and/or any principal or officer or individual with a Financial Interest in your Company from construction contracting?

147. On Avatar’s DCAMM certification applications in 2018 and 2019, it did not disclose the Prior Conviction in response to this question.

148. Under the DCAMM certification guidelines, a criminal conviction for falsifying records that is less than 5 years old results in an automatic denial. Avatar filed its 2018 DCAMM application on April 25, 2018, or 29 days *before* the Prior Conviction was out of the period for automatic denial.

149. Avatar also failed to disclose Vincent’s Prior Conviction in response to the same question in its bid for the Watertown Project signed by Vincent and submitted to the Town of Watertown in 2020.

150. On both its 2019 DCAMM application and bid for the Watertown Project, Avatar also failed to disclose Vincent’s 2010 bankruptcy in response to the question: “Has your Company and/or any principal, officer, or individual with a Financial Interest in your Company filed for bankruptcy?”

151. Avatar eventually did disclose the Prior Conviction to DCAMM after Avatar had already been licensed in the Commonwealth for two years, answering “Yes - State of NH DOT until 8/19/2021” on its 2020 application form.

152. Each of Avatar's DCAMM applications was signed by Vincent subject to the condition that "failure to provide all required information" was among the possible "grounds for denial, decertification and/or debarment of Certification or other action(s)."

V. CAUSES OF ACTION

COUNT ONE: SIXTY-SIX VIOLATIONS OF THE FALSE CLAIMS ACT, G.L. c. 12 § 5B(a)(2)

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

154. Pursuant to G.L. c. 12, § 5A and G.L. c. 161A, § 2, the City of Lawrence is a political subdivision of the Commonwealth.

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

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

157. Pursuant to G.L. c. 12, § 5A and G.L. c. 161A, § 2, the City of Cambridge is a political subdivision of the Commonwealth.

Defendants violated G.L. c. 12 § 5B(a)(2) when they – for the purpose of obtaining payment on five public construction projects – made, used, or caused to be made or used 66 Certified Payroll Records they knew, or should have known after conducting minimal due diligence, contained false information and fraudulently concealed the fact that none of the workers providing labor under Defendants' prime contracts for the Five Projects were paid the requisite hourly wage under the Prevailing Wage Law.

COUNT TWO:
18 VIOLATIONS OF THE FALSE CLAIMS ACT, G.L. c. 12 § 5B(a)(1)

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

159. Defendants violated G.L. c. 12 § 5B(a)(1) by causing the presentment of a total of 18 false claims for payment on the Five Projects.

160. Defendants knowingly participated in the submittal of at least 66 false Certified Payroll Records that fraudulently concealed Defendants' ongoing violations of the Prevailing Wage Law and thereby rendered false material portions of 18 monthly payment requisitions presented to the political subdivisions by the prime contractors.

161. Defendants' misconduct caused the presentment of at least 18 false monthly payment requisitions.

COUNT THREE:
3 VIOLATIONS OF THE FALSE CLAIMS ACT, G.L. c. 12 § 5B(a)(8)

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

163. Pursuant to G.L. c. 12, § 5A and G.L. c. 161A, § 2, the Division of Capital Asset Management and Maintenance is a political subdivision of the Commonwealth.

164. Defendants violated G.L. c. 12 § 5B(a)(8) when they made material omissions while entering into agreements with political subdivisions of the Commonwealth. Specifically, Avatar submitted two successful applications for its contractor's license to DCAMM and one successful bid to the Town of Watertown that each failed to disclose Avatar's owner's prior criminal conviction and/or its owner's bankruptcy in response to direct questions.

VI. PRAYER FOR RELIEF

WHEREFORE, as to Counts I, II and III (MFCA), enter judgment in favor of the Commonwealth and against the Defendants, order that Defendants 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 Defendants' 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. Order such other relief as the Court deems proper.

VII. JURY DEMAND

The Commonwealth demands a trial by jury on all issues so properly tried.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Dated: March 14, 2023

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