

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO.:

COMMONWEALTH OF)
 MASSACHUSETTS,)
)
)
 Plaintiff,)
 v.)
)
 UNIVERSAL DRYWALL, LLC and,)
)
 RICHARD PELLETIER,)
)
 Defendants,)
)
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 _____)

COMPLAINT

1. This is an action by the Commonwealth of Massachusetts, by and through its Attorney General Martha Coakley, alleging unfair competition and unfair or deceptive trade practices in violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, §§ 2 and 4, seeking injunctive relief and assessment of penalties arising from the defendants’ unlawful misclassification of their employees as independent contractors in violation of the Massachusetts Independent Contractor Law (the “Independent Contractor Law”), G.L. c. 149, § 148B. The Independent Contractor Law makes it unlawful for employers to misclassify employees as independent contractors unless the employer can prove individuals they hire satisfy a three prong test for independent contractors. The defendants are drywall contractors who have and continue to knowingly or recklessly misclassify their employees as independent contractors to avoid the obligations and costs associated with a legitimate employment relationship, in violation of the

letter and the spirit of the Independent Contractor Law. By doing so, the defendants obtain an unfair competitive advantage over other drywall companies who classify their employees in accordance with the law. In addition to violating G.L. c. 93A, § § 2 and 4, defendants also violated the Massachusetts False Claims Act (“FCA”), *see* G.L. c. 12, §§ 5A-5O, by, without limitation, engaging in the following conduct with respect to subcontracts to install drywall and provide related services on the Tahanto Regional High School and Douglas Intermediate School construction projects: (1) knowingly presenting, or causing to be presented to a political subdivision of the commonwealth a false or fraudulent claim for payment or approval; (2) knowingly presenting, or causing to be presented to a political subdivision of the commonwealth false records or statements material to a false or fraudulent claim; and/or (3) benefiting from inadvertent submissions of false claims to the commonwealth or a political subdivision thereof. G.L. c. 12, 5B (a) (1), (2), (10). The defendants’ conduct was “knowing” within the meaning of G.L. c. 12, § 5A, because they possessed actual knowledge of relevant information, acted with deliberate ignorance of the truth or falsity of the information or acted in reckless disregard of the truth or falsity of the information. By this action, the Commonwealth seeks injunctive relief, assessment of civil penalties, treble damages and the reasonable costs and fees it has incurred in connection with the investigation and prosecution of this matter, pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 5B, *et seq.*

JURISDICTION AND VENUE

2. The Court has jurisdiction over these claims pursuant to G.L. c. 12, §§ 5C and 10; G.L. c. 93A § 4; G.L. c. 212, §§ 3 and 4; G.L. c. 214, §§ 1; and G.L. c. 223A, § 3. This action is brought in the Superior Court of Suffolk County pursuant to G.L. c. 223, § 5.

PARTIES

3. The Commonwealth of Massachusetts, through its Attorney General, whose principal place of business is One Ashburton Place, Boston, Massachusetts, brings this action in the public interest pursuant to G.L. c. 93A, § 4 and G.L. c. 12, §§ 3, 5A-5O, and 10.

4. Defendant Universal Drywall, LLC is a limited liability corporation organized under the laws of the State of New Hampshire and authorized to do business in Massachusetts. Universal's principal place of business is 320 Rockingham Road, Unit 8, Auburn, New Hampshire. Universal is in the business of providing drywall installation and related services to developers and general contractors for private and public construction projects.

5. Defendant Richard Pelletier ("Pelletier") is a New Hampshire resident residing at 320 Rockingham Road, Auburn, New Hampshire. Pelletier is Universal Drywall, LLC's Manager and its sole proprietor. As such, Pelletier is personally responsible for Universal Drywall, LLC's business operations, including, without limitation, bidding for contracts, hiring workers, negotiating contracts, overseeing payroll records, certifying payroll records for work performed by the company on public construction projects and the company's compliance with Massachusetts laws governing employee wages, workers compensation coverage, reporting and contributions to the Unemployment Insurance Trust Fund, reporting income earned by employees to the Massachusetts Department of Revenue and paying all withholding taxes.

FACTS

6. Since at least 2006, Pelletier and Universal Drywall, LLC (collectively "Universal") have entered into subcontracts with general contractors to install drywall and provide related services on private and public construction projects in Massachusetts. These subcontracts were lucrative, involving drywall work for residential apartment or condominium projects in multiple phases

with hundreds of thousands of square feet of space. The public construction projects were as lucrative and included school construction projects of comparable size. Universal was hired by general contractors or awarded subcontracts as a low bidder on at least 16 projects in Massachusetts.

7. Universal promised, through bids, estimates or other form of proposals, that Universal would perform the drywall installation and related services in accordance with each project owner or general contractor's specifications. In order to win these subcontracts, Universal offered these services at a price that was lower than competitors bidding for the same work. However, in order to earn a profit on each drywall subcontract, Universal had to ensure that its costs for the work it promised to perform did not exceed the revenue it expected to earn.

8. Universal and any similarly-situated drywall company would need to engage a sufficient number of workers trained as carpenters and "tapers" to complete the work promised under these drywall subcontracts for each project. The labor costs that would be incurred by the successful bidder on these drywall subcontracts would constitute a significant portion of the drywall subcontractor's costs on that job.

9. Universal had the incentive to keep labor costs as low as possible, to submit the lowest bid or proposal to the developer or general contractor seeking to award a drywall subcontract on one of these projects, and still maximize profits from the job once awarded the subcontract as lowest bidder.

10. To keep labor costs as low as possible, Universal unlawfully misclassified workers it hired to work on these drywall subcontracts as independent contractors. Under this model, Universal offered workers the purported option of being hired as an employee or as an independent subcontractor, but under terms that misled the worker to believe that choosing the

independent contractor option was to their financial benefit. This allowed Universal to pass on costs Universal would have incurred had it properly classified these workers as employees on Universal's payroll.

11. For private construction projects, Universal told workers they would earn a lower, hourly rate of pay if they chose the employee option, and a higher rate if they chose to be hired as an independent subcontractor. For instance, on the One North of Boston residential project in Chelsea, a worker could earn as little as \$15.00 and as much as \$32.50 per hour as an employee, but be paid \$59.00 per hour as an independent contractor. Presented with this choice, at least eight of the carpenters and tapers chose to be hired as independent subcontractors.

12. However, by choosing this independent subcontractor option, the workers had to absorb all of the labor costs that Universal would have incurred had the worker chosen to be an employee on the Universal payroll. The workers were required to obtain their own workers compensation coverage, commercial liability insurance coverage, report and contribute to the unemployment insurance trust fund, and report and pay their own withholding taxes.

13. On public construction projects, Universal was obliged to ensure that all workers, whether employees or unlawfully misclassified as independent contractors, were paid the prevailing wage rate. However, independent contractors had to absorb all of the same overhead costs that Universal would have had to pay itself, if the workers were hired as employees.

14. If Universal had not unlawfully misclassified these workers as independent contractors, then Universal would have incurred these labor-related costs just like any of its competitors who comply with the law and do not misclassify their employees unlawfully as independent contractors. By unlawfully misclassifying these workers, however, Universal unfairly obtained a competitive advantage over law-abiding competitors.

15. By unlawfully misclassifying these workers as independent contractors, Universal avoided all of its obligations as an employer to comply with the Massachusetts Wage and Hour laws. For instance, Massachusetts law requires employers to pay any employee who works in excess of 40 hours in a week one and one half times his or her regular rate of pay for each hour worked in excess of 40 hours. Universal's unlawfully misclassified independent contractors worked in excess of 40 hours per week on a regular basis, but were not paid at the overtime rate for those excess hours.

16. The Massachusetts Wage and Hour laws require employers to maintain true and accurate payroll records, including a record of the hours worked by employees each day, the rate of pay to the employee, and to provide employees with a pay stub with each paycheck issued within six days of the end of a pay period providing this information and deductions that are taken from the employee's pay. By unlawfully misclassifying these workers as independent contractors, Universal passed these administrative functions and their cost to the worker.

Universal Required Its Misclassified Employees to Form Sham Corporations

17. Universal required, as a condition to be hired as an independent contractor, that each worker create a corporation or limited liability corporation ("LLC) with the Massachusetts or New Hampshire Secretary of State. If a worker incorporated in New Hampshire, then Universal required that the worker being hired for a Massachusetts project register as a foreign corporation authorized to do business in Massachusetts. Universal assisted workers to incorporate by providing the forms and instructions they needed to register as a corporation or limited liability corporation.

18. In all but two cases, these corporations were wholly-owned by the individual worker. The corporate filing with the Massachusetts Secretary of State identified that worker as the only

shareholder, director, officer or, in the case of a LLC, manager. In the two other cases, two workers were identified as the sole owners, directors, officers or managers.

19. These corporations had no employees, other than the worker who incorporated the business. The corporations worked only for Universal. The corporations neither advertised nor offered their services for hire to the general public.

20. Universal required these workers to incorporate as a separate business to avoid detection of its scheme to pass along all of the costs to the workers and avoid its obligations under the Massachusetts Wage and Hour laws.

Universal Required Its Misclassified Employees To Execute Form Subcontract Agreements

21. Universal had each of these unlawfully misclassified independent contractors execute identical service contracts, drafted by Universal in letter form, for each project for which the worker was being hired. A copy of that form contract is attached as exhibit A to this complaint. In this form, Universal inserted the name of the project to which it applied, and the worker's hourly rate of pay. The boilerplate terms on this form provided, among other things, that the worker was being hired through his wholly-owned corporation as an independent contractor, and provided assurances from the worker that the sham corporation had secured worker's compensation coverage for all of his employees. The contract provided that the worker, as a subcontractor of Universal, was free to determine the manner and means of his work, without Universal's direction and control.

22. These boilerplate terms were intended by Universal to create the appearance of an independent contractor relationship, and distance that relationship on paper from any indicia of a true employer/employee relationship. In reality, each of these workers worked under the direction and control of Pelletier and a Universal foreman. They got their instructions from

Universal about the work they were to perform, where they would do the work, and how it would be done. They were told by Universal when they would arrive on the jobsite, and when they could take their breaks. While these workers did have to obtain their own workers compensation coverage, it was for the individual worker, only, since the option to be hired as an independent subcontractor never contemplated that these sham corporations would have any employees other than the worker himself.

23. Under the form agreement it drafted, Universal reserved for itself the right to terminate these agreements with as little as 24 hours' notice, if Universal believed that the independent contractor's work was of a quality or proceeding at a pace that put Universal's performance of its contract at risk. By retaining the discretion to determine the basis for terminating this worker's independent subcontract with no notice of any significance, Universal reserved the right to treat this worker as a *de facto* employee at will.

By Misclassifying its Employees, Universal Obtained An Unfair Competitive Advantage

24. Universal entered drywall subcontracts on as many as 11 private construction projects in Massachusetts. Universal unlawfully misclassified workers hired on each of the projects, in order to gain an unfair, competitive advantage over other drywall companies.

25. At least 11 workers chose the independent contractor option at the significantly higher hourly rate of pay. Each had to incorporate and sign a contract of adhesion drafted by Universal. By doing so, each worker unwittingly waived protections provided by Massachusetts Wage and Hour laws, while bearing the costs that Universal would have incurred had the workers been hired and classified as payroll employees.

26. Universal also unlawfully misclassified workers it hired for five public school construction projects, in order to gain the same unfair advantage in cost, over its competition in bidding.

27. Workers were offered the option of being hired as payroll employees or as independent contractors under the same form contract drafted and used by Universal on its private construction projects. However, the public construction projects were subject to prevailing wage laws. Universal had to offer workers the same prevailing wage rate as employees or as independent contractors.

28. Universal, nonetheless, was able to pass through to the worker the same costs under the independent contractor relationship on the public construction as it did on the private construction projects.

29. Universal engaged in this conduct for the purpose of gaining an unfair competitive advantage over drywall contractors who abide by the law.

30. The conduct is unfair and unconscionable, since it relies upon a contract of adhesion that takes advantage of vulnerable workers who, by signing the Universal contract, unwittingly forego overtime pay and other protections provided under the Massachusetts Wage and Hour laws, in order to lower Universal's costs to gain that competitive advantage over competitors.

Universal Creates False Records and Causes The False Records To Be Submitted
In Support of Claims Under the Subcontracts on Public Construction Projects

31. Universal knowingly made and caused its unlawfully misclassified workers to execute statements of compliance pursuant to G.L. c. 149, § 27B, a statute requiring every contractor and subcontractor to verify, execute and submit information material to processing claims for payment on the construction project in the same form ("Statements of Compliance"). The Statements of Compliance are required to verify, among other things, that all employees

working for the subcontractor on the project are being paid the prevailing wage for that job. Universal created Statements of Compliance for each worker it had unlawfully misclassified as independent contractors through a sham corporation, and had the worker execute the Statement of Compliance without telling that worker the purpose for that document or that the worker was, by signing it, stating that he and his sham corporation were in compliance with all applicable laws. Copies of these Statements of Compliance are attached hereto as exhibit B.

32. Specifically, Universal and Pelletier made or caused to be made materially false statements or records, in order to obtain payment from the awarding authority on the Tahanto and Douglas school construction projects. They are:

- a. Between October 17 and November 18, 2011, Universal prepared or caused to be prepared seven false Statements of Compliance for Alain Perrault's sham corporation, Cheyenne Drywall, Inc., which purported to verify that Alain Perrault paid himself the prevailing wage of \$58 per hour for the seven weeks working on the Tahanto Regional High School project.
- b. Between September 14 and December 21, 2012, Universal prepared or caused to be prepared 16 false Statements of Compliance for Alain Perrault's sham corporation, Cheyenne Drywall, Inc., which purported to verify that Alain Perrault paid himself the prevailing wage of \$59 per hour over the course of 18 work weeks on the Douglas Intermediate School construction project.
- c. Between September 15 and October 13, 2011, Universal prepared or caused to be prepared four false Statements of Compliance for Ricky Bickerstaff's sham corporation, Bickerstaff Builders, Inc. which purported to verify that Ricky

Bickerstaff paid himself the prevailing wage of \$58 per hour over the course of four work weeks on the Tahanto Regional High School project.

- d. Between August 30 and December 20, 2012, Universal prepared or caused to be prepared 16 false Statements of Compliance for Ricky Bickerstaff's sham corporation, Bickerstaff Builders, Inc. which purported to verify that Ricky Bickerstaff paid himself the prevailing wage of \$59 per hour over the course of 21 work weeks on the Douglas Intermediate School construction project.
- e. Between October 13 and November 17, 2011, Universal prepared or caused to be prepared seven false Statements of Compliance for Jimmy Quirion's sham corporation, JJQ, LLC, which purported to verify that Jimmy Quirion paid himself the prevailing wage of \$58 per hour over the course of seven work weeks on the Tahanto Regional High School construction project.
- f. Between September 28, 2012 and January 4, 2013, Universal prepared or caused to be prepared 16 false Statements of Compliance for Renald Guay's sham corporation, RGG Drywall, Inc., which purported to verify that Renald Guay paid himself the prevailing wage of \$59 per hour over the course of 16 work weeks on the Douglas Intermediate School construction project.

33. Each of these Statements of Compliance was submitted with certified payroll record forms for each work week to which the Statement of Compliance applied. Copies are attached with the Statements of Compliance at Exhibit B hereto. These documents were prepared by Universal or at Universal's direction, and never by the worker that Universal had unlawfully misclassified as an independent contractor. These workers were told they had to sign the Statements of Compliance, as a condition to being paid by Universal. The workers

were never told what these documents were, or why they had to be executed.

34. Each document itself was false, since it purported to come from a legitimate subcontractor when, in fact, it was prepared by Universal for a worker Universal had unlawfully misclassified as an independent contractor. By doing so, Universal caused a false record to be submitted to a political subdivision of the commonwealth in support of claims for payment under Universal's subcontracts to install drywall and provide related services on these public construction projects.
35. The document was false, because it stated that the sham corporation for which it was submitted was paying its sole employee the prevailing wage rate, when in fact that employee, as sole proprietor of the sham corporation employing him, was responsible for all of the overhead costs associated with hiring a legitimate employee. Thus, the employee identified as being paid the prevailing wage was earning less because of these costs unlawfully imposed upon him by Universal.
36. Universal's own certified payroll records contained its Statements of Compliance with all applicable laws, but provided records only for hours worked and prevailing wages paid by Universal to workers that Universal properly classified as employees. Universal's own certified payroll records did not include workers that Universal had hired for the projects who were unlawfully misclassified as independent contractors. As such, these certified payroll records constitute a false statement made and submitted by Universal to the awarding authority, in order to secure payments under the Tahanto Regional High School and Douglas Intermediate School projects.

COUNT I – VIOLATIONS OF G.L. c. 93A, § 2

37. The allegations contained in the foregoing paragraphs are incorporated and

re-alleged herein by reference.

38. Universal Drywall, LLC is a “person” as it is defined in G.L. c. 93A, § 1.

39. Richard Pelletier is a “person” as it is defined in G.L. c. 93A, § 1. Pelletier directly managed and oversaw the daily operations of Universal including the unlawful conduct described in this Complaint.

39. Universal obtained its drywall subcontracts and was able to provide the services called for in the subcontracts at a much lower cost than its competitors because it unlawfully misclassified its employees as independent contractors, in an effort to pass costs and avoid its obligations under the Massachusetts Wage and Hour laws. By violating the Massachusetts Wage and Hour laws, Universal obtained an unfair competitive advantage over law-abiding competitors, creating an uneven playing field and undermining the bid process on private construction projects and the bid process that governed the awarding of contracts and subcontracts on public construction projects. Universal’s unfair method of competition constitutes a violation G.L. c. 93A, § 2.

40. Defendants knew or should have known that their conduct violated G. L. c. 149, §§ 27 and 148; G.L. c. 151, §§ 1 and 1A; and G. L. c. 93A, § 2, including, without limitation, by violating 940 C.M.R. 3.11 and 3.16.

41. Defendants knew or should have known that their unfair and deceptive practices would cause substantial injury or otherwise harm competition in the marketplace, and the public at large.

COUNT II – SUBMITTING FALSE CLAIMS FOR PAYMENT IN VIOLATION OF G.L. c. 12, § 5B(a)

42. The allegations contained in the foregoing paragraphs are incorporated and re-alleged herein by reference.

43. In connection with its work on the Tahanto Regional High School and Douglas Intermediate School projects, Universal knowingly submitted and/or caused to be submitted to the awarding authorities false certified payroll records and false Statements of Compliance pursuant to G.L. c. 149, § 27.

44. By so doing, Universal: (1) knowingly presented, or caused to be presented to a political subdivision of the commonwealth a false or fraudulent claim for payment or approval; (2) knowingly presented, or caused to be presented to a political subdivision of the commonwealth false records or statement material to a false or fraudulent claim; and/or (3) benefited from inadvertent submissions of false claims to a political subdivision of the commonwealth. G.L. c. 12, 5B (1), (2), (10).

45. Universal's conduct was "knowing" within the meaning of G.L. c. 12, § 5A, because they possessed actual knowledge of relevant information, acted with deliberate ignorance of the truth or falsity of the information or acted in reckless disregard of the truth or falsity of the information.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Massachusetts requests that this Court enter the following relief:

1. As to Count I:

- (a) Preliminarily and permanently enjoin the Defendants from further violations of G.L. c. 93A, §2, by ceasing to employ in their business practices the unlawful misclassification of workers Universal hires for drywall installation, or any other services, as independent contractors; and
- (b) Order the Defendants to pay a \$5,000 civil penalty for each violation of G.L. c.

93A.

2. As to Count II:

(a) Enter a judgment for the Commonwealth against Defendants in the amount of all damages caused by the Defendants' conduct, pursuant to G.L. c. 12, § 5B(9).

(b) Award the Commonwealth an \$11,000 civil penalty for each false claim or false supporting document submitted to the Commonwealth and its political subdivisions, pursuant to G.L. c. 12, § 5B(9).

(c) Award the Commonwealth treble damages pursuant to G.L. c. 12, § 5B(9).

(d) Award the Commonwealth its costs and fees for the investigation and prosecution of this action pursuant to G.L. c. 12, § 5B(9) and G.L. c. 12, § 5I.

3. Grant such other relief for the Commonwealth as the court deems just and proper; and

4. The Commonwealth reserves the right to seek additional relief or orders, including relief available prior to the commencement of trial, should the public interest so demand.

THE COMMONWEALTH DEMANDS A TRIAL BY JURY

Respectfully submitted,
COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'M-Q Berge', is written over a horizontal line.

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