

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF QUEENS

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

**FELONY COMPLAINT**  
NYS Office of the Attorney General

RCM PAINTING INC.,

Dkt. No. \_\_\_\_\_

Defendant.

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Investigator Elsa Rojas of the Office of the New York State Attorney General, being duly sworn, deposes and says that:

On or about and between January 1, 2016 and December 31, 2017, in the County of Queens, State of New York, and elsewhere,

**THE DEFENDANT COMMITTED THE OFFENSES OF:**

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|-----------------------------|---|
| <b>Penal Law §155.30(1)</b> | <b>Grand Larceny in the Fourth Degree (“E” Felony) (1 count)</b>              |
| <b>Penal Law §175.10</b>    | <b>Falsifying Business Records in the First Degree (“E” felony) (1 count)</b> |

Committed the crime of grand larceny in the fourth degree when the defendant steals property and the value of the property exceeds one thousand dollars.

Committed the crime of falsifying business records in the first degree when, with intent to defraud, the defendant makes or causes a false entry in the business records of an enterprise or omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he or she knows to be imposed upon him or her by law or by the nature of his or her position, and when the intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.

**THE GROUNDS FOR DEPONENT’S BELIEF ARE AS FOLLOWS:**

**Background**

1. I am a police officer and an Investigator with the New York State Office of the Attorney General (“OAG”) for approximately thirteen (13) years and am familiar with the processes regarding labor standards and payment of proper wages, and the law governing minimum wage and overtime payments in New York State. This felony complaint is based upon my personal knowledge and information and

belief, the sources of which include: my familiarity with New York State Labor Laws, including without limitation, Article 6 (Payment of Wages), Article 18 (Unemployment Insurance Law), and Article 19 (Minimum Wage Act) of the New York State Labor Law and the New York Codes, Rules, and Regulations (“N.Y.C.R.R.”), Title 12, Chapter II, Subchapter B, Part 142 (“Minimum Wage Order for Miscellaneous Industries and Occupations” or “Miscellaneous Wage Order”); my review of business records of the defendant, including bank records, payroll records, receipts, paystubs, time cards, obtained from the defendant pursuant to a subpoena executed by OAG; interviews of witnesses known to OAG; my review of documents and information maintained and provided to me by the NYSDOL Unemployment Insurance Division; my review of a wage underpayment calculation of workers; and my review of audits calculating the underpayment of the wages between 2016 and 2017 (“OAG Wage Audit”) and unemployment insurance contributions by defendant for the same time period (“NYSDOL Unemployment Insurance Audit”).

2. I have reviewed records of the New York State Department of State, which show that defendant is a domestic business corporation created under the laws of the State of New York, incorporated on or about March 11, 2016, with its principal location at 213-37 39<sup>th</sup> Avenue, Suite 26, Bayside, 11361, Queens County, State of New York. Moreover, I am informed by defendant’s employees that they worked on various construction projects located throughout Queens County.

3. Based upon my familiarity with the New York Labor Law, I know that employers are required to pay workers at least the applicable state minimum wage for all hours worked and at the rate of one and one-half times their regular rate of pay for hours worked in excess of 40 in any given workweek. I also know that manual workers, also known as laborers, must be paid within seven calendar days after the end of the workweek in which all of the wages earned. Additionally, an employer must report all remuneration earned by its employees and must make contributions to the NYS Unemployment Insurance Fund based upon the reported remunerations on a quarterly basis.

### **Grand Larceny**

4. I have reviewed the OAG Wage Audit calculating the amount of minimum and overtime wages that defendant failed to pay to over one hundred and fifty (150) employees who worked on various projects as laborers. The OAG Wage Audit was based upon business records of defendant, including payroll and timekeeping records provided by defendant to NYSDOL and OAG, bank records, and payroll and timekeeping records obtained from the defendant pursuant to a subpoena executed by OAG. The OAG Wage Audit was also based upon information from employees regarding their hours worked and wages paid. In calculating any underpayments made by defendant, the OAG Wage Audit calculated an average number of hours per week worked by the employees and multiplied by the applicable minimum wage and overtime rate for all hours worked in excess of 40 in a given workweek. The OAG Wage Audit then subtracted from that figure the weekly salaries of employees, resulting in the non-payment of overtime wages to more than one hundred and fifty employees in the amount of \$238,472.88.

5. I have reviewed defendant’s payroll records obtained from defendant for an individual known to me as Employee 1. The payroll records demonstrate that between April 1, 2016, and March 17, 2017, defendant withheld overtime wage payments from Employee 1 in an amount that exceeds \$1,000, totaling \$1,369.50.

### **Falsifying Business Records**

6. Based upon my experience as an OAG Investigator and prior investigations, I am familiar with New York Tax Law § 674, which requires that employers file New York State Department of Taxation and Finance (“Department of Taxation and Finance”) NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns (“NYS-45”) with the Department of Taxation and Finance for each calendar quarter in which they employ and pay wages to employees and thereby report accurately all wages paid to employees during each such quarter. These quarterly returns are additionally required to be submitted to the New York State Department of Labor (“NYSDOL”) for the purpose of calculating the liability of employers for contributions to the NYS Unemployment Insurance Fund based in part on the number of employees an employer has working for it. I am further familiar with Labor Law § 633 which makes it an unclassified misdemeanor to willfully refuse or fail to pay contributions to the Unemployment Insurance Fund.

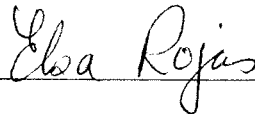
7. I received defendant’s NYS-45s for the Second and Third Quarters of 2016 from the NYSDOL. I reviewed each said NYS-45 for each quarter, and compared those filings to the employment and payroll records provided by defendant. I reviewed the NYS-45 of the Second Quarter of 2016, which covers the period from April 1, 2016, to June 30, 2016, and observed only six employee names listed for said quarter, which included the owner John Massino. I then reviewed defendant’s payroll records, as provided by defendant, for the period from April 1, 2016, to June 30, 2016, and observed that defendant paid at least 112 employees during that period. I have concluded that there were at least 105 employees omitted from defendant’s 2016 Second Quarter NYS-45.

8. I reviewed the NYS-45 of the Third Quarter of 2016, which covers the period from July 1, 2016, to September 30, 2016, and observed only four employee names listed for said quarter, including owner John Massino. I then reviewed defendant’s payroll records, as provided by defendant, for the period from July 1, 2016, to September 30, 2016, and observed that defendant paid at least 105 employees during that period. I have concluded that there were at least 100 employees omitted from defendant’s 2016 Third Quarter NYS-45.

9. I am informed by NYSDOL Unemployment Insurance Investigator Louis Adinolfi that defendant filed NYS-45s for the Second and Third Quarters of 2016 with the New York State Department of Taxation and Finance, during the time defendant was operational, as required of employers by New York Tax Law § 674. I am informed by Investigator Adinolfi that defendant filed said NYS-45s with the Department of Taxation and Finance and NYSDOL as official business records of defendant. Defendant thereby willfully failing to make a contribution to the NYS Unemployment Insurance Fund by failing to accurately report the number of employees who defendant had employed during said time period on its 2016 NYS-45s for the Second and Third Quarterly Returns.

10. I have reviewed the NYSDOL Unemployment Insurance Audit calculating the underpayments of unemployment insurance between January 1, 2016, and December 31, 2017. The NYSDOL Unemployment Insurance Audit was based upon business records of defendant, including all quarters of the NYS-45s that had been filed with the Department of Taxation and Finance from January 1, 2016, through December 31, 2017, as well as employee, payroll and timekeeping records provided by defendant to OAG. Specifically, the NYSDOL Unemployment Insurance Audit calculated the quarterly rates and underpayments for this time period with interest, and calculated that defendant owes and failed to pay \$70,103.97, to the NYS Unemployment Insurance Fund for failing to accurately report all of the employees during this time frame, and to pay the proper unemployment insurance contributions, with interest.

False statements made herein are punishable as a class A misdemeanor pursuant to § 210.45 of the Penal Law.



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INVESTIGATOR ELSA ROJAS  
New York State Attorney General's Office

Dated: January 18, 2018  
New York, New York