

UNITED STATES OF AMERICA
DISTRICT OF MASSACHUSETTS

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JASON P. O’LEARY; and RICHARD P.))	
LEONARD, individually and on behalf of))	
all others similarly situated,))	
))	
Plaintiffs,))	
))	
v.))	C.A. No. 1:15-cv-12335
))	
NEW HAMPSHIRE BORING, INC.; THOMAS))	
A. GARSIDE; and JAYNE F. BURNE,))	
))	
Defendants.))	
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CLASS ACTION COMPLAINT

I. INTRODUCTION

1. The Plaintiffs, Jason P. O’Leary (“O’Leary”) and Richard Leonard (“Leonard”), on behalf of themselves and all others similarly situated (collectively “Plaintiffs”), submit the following Class Action Complaint against New Hampshire Boring, Inc. (“NHB”), its president Thomas A. Garside (“Garside”), and its treasurer Jane F. Burne (“Burne”) (collectively, the “Defendants”) for violations of the Massachusetts Wage Act and the Massachusetts Prevailing Wage Law. *See* G. L. c. 149, §§ 26-28, 148 and 150; G. L. c. 151, § 1A.

II. THE PARTIES

- 2. Plaintiff Jason P. O’Leary is an individual domiciled in Dresden, Maine.
- 3. Plaintiff Richard P. Leonard is an individual domiciled in Dresden, Maine.
- 4. Defendant New Hampshire Boring, Inc. (“NHB”) is a New Hampshire Corporation with a principal place of business at 1215 West Chestnut Street, Brockton, Massachusetts.

5. Defendant Thomas Garside is an individual residing at 18 Welch Road, Londonderry, New Hampshire.
6. Garside is the president of NHB.
7. Defendant Jayne F. Burne is an individual residing at 6 Carriage Circle, Pelham, New Hampshire.
8. Burne is the treasurer of NHB.
9. Defendants regularly transacted business in this Commonwealth.
10. Defendants contracted with the Massachusetts Bay Transportation Authority (“MBTA”) and the Massachusetts Department of Transportation (“MassDOT”) to supply services such as boring, drilling and other construction related services for the Green Line Extension (“GLX”) project that substantially took place in Cambridge and Somerville, Massachusetts.
11. Because the GLX project was performed exclusively in the Commonwealth of Massachusetts, Defendants were required to pay its employees in accordance with the Massachusetts wage laws.

III. JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C., § 1332, diversity of jurisdiction. The plaintiffs are citizens of the State of Maine and the defendants are all citizens of the Commonwealth of Massachusetts and/or the State of New Hampshire.
13. The amount-in-controversy in this matter exceeds \$75,000.00.
14. Venue is proper pursuant to 28 U.S.C., § 1391 as a substantial part of the events or omissions giving rise to the claim (i.e., the failure to pay prevailing wages to employees working on the GLX project in the metropolitan Boston area) occurred in the District of

Massachusetts.

IV. FACTUAL ALLEGATIONS

15. NHB contracted with the MBTA and MassDOT to supply services such as boring, drilling and other construction related services for the GLX project.

16. All work for this project took place in the Commonwealth of Massachusetts. Most of the work took place in Cambridge and Somerville, Massachusetts.

17. At all times relevant hereto, given the nature of the public construction project, all work was subject to the Massachusetts Prevailing Wage Law. *See* G. L. c. 149, §§ 26, *et seq.*

18. Under the Prevailing Wage Law, wages for public construction employees are set by the Department of Labor Standards. *See* G. L. c. 149, § 27. A schedule of wage rates is provided to the employer, which includes an amount an employer should provide for health care and a pension; however should an employer opt not to offer health insurance or a pension plan, the full amount set forth on the schedule of wages must be paid to the employee. *See id.* An employer may not deduct more than that expressly authorized by the Act and/or the amounts established by the Department of Labor Standards. *See id.*

19. O'Leary and Leonard were employees of NHB; both worked on the GLX project.

20. Both O'Leary and Leonard were drillers who performed soil explorations and test borings at various sites along the projected GLX route.

21. Both O'Leary and Leonard worked on the GLX project from August of 2013 through April of 2014. In addition, Leonard (but not O'Leary) also worked on the GLX project from March of 2013 through May of 2013.

22. O'Leary and Leonard were required to be paid a prevailing wage for their work. *See* G. L. c. 149, § 27D.

23. Upon information and belief, the prevailing wage for this work was \$54.90 per hour.

24. Overtime must be calculated as one and a half times an employee's regular wage rate. *See* G. L. c. 151, § 1A. Where the wage rate is a prevailing wage set by the Department of Labor Standards, the proper overtime wage rate is one and a half times the prevailing wage (i.e., $\$54.90 \times 1.5 = \82.35). *See Mullally v. Waste Management of Mass., Inc.*, 452 Mass. 526, 530-531 (2008).

25. O'Leary was actually paid \$15.00 per hour for his work and \$22.50 per hour for all overtime work.

26. Leonard was actually paid \$20.00 per hour for his work and \$30.00 per hour for all overtime work.

27. In total, both O'Leary and Leonard are owed in excess of \$50,000.00 for their work on the GLX project.

28. In addition to Defendants' failure to pay a prevailing wage, the Defendants also made unlawful deductions listed as "uniform deduction." These deductions were made from both O'Leary and Leonard's pay.

29. Both O'Leary and Leonard have filed wage complaints with the Massachusetts Attorney General's Office and the Plaintiffs have been authorized to pursue this cause of action on behalf of themselves and all others similarly situated.

30. Upon information and belief, the unlawful conduct set forth herein (i.e., failing to pay a prevailing wage, failing to pay adequate overtime, and making unlawful deductions) affects all other employees similarly situated to O'Leary and Leonard.

V. CAUSES OF ACTION

COUNT ONE

THE MASSACHUSETTS WAGE ACT (UNLAWFUL DEDUCTIONS) – G. L. c. 149, § 148

31. The Plaintiffs readopt and reallege the preceding paragraphs, and incorporate them into this count.

32. Defendants have violated G. L. c. 149, § 148 by making unlawful deductions from Plaintiffs' pay each pay cycle.

33. These withholdings are not "valid setoffs" under G. L. 149, § 150.

34. Defendants made similar unlawful deductions from other employees similarly situated to the Plaintiffs.

35. As a direct and proximate cause of the Defendants' conduct, Plaintiffs and the Class have incurred significant financial damages.

36. Pursuant to G. L. c. 149, § 150, the Defendants are liable to Plaintiffs and the Class for three times the amount of any unpaid wages, plus costs and reasonable attorneys' fees.

COUNT TWO

THE MASSACHUSETTS WAGE ACT (UNPAID OVERTIME) – G. L. c. 151, §1A

37. The Plaintiffs readopt and reallege the preceding paragraphs, and incorporate them into this count.

38. The Defendants violated G. L. c. 151, § 1A by failing to pay Plaintiffs and the Class overtime compensation at one-and-a-half times their regular hourly rate for hours worked in excess of 40 hours per week.

39. As a direct and proximate cause of the Defendants' conduct, Plaintiffs and the Class have incurred significant financial damages.

40. Pursuant to G. L. c. 149, § 150, the Defendants are liable to Plaintiffs and the

Class for three times the amount of any unpaid overtime compensation, plus costs and reasonable attorneys' fees.

COUNT THREE

THE MASSACHUSETTS PREVAILING WAGE LAW – G. L. c. 149, § 27

41. The Plaintiffs readopt and reallege the preceding paragraphs, and incorporate them into this count.

42. By its conduct as set forth herein, Defendants violated the Massachusetts Prevailing Wage Law by failing to pay Plaintiffs and the Class their legally mandated minimum regular hourly wage pursuant to the prevailing wage rate established by the Department of Labor Standards.

43. Defendants further failed to comply with the Prevailing Wage Law by failing to pay overtime wages at a rate equal to one and one half times the prescribed prevailing wage, and by making deductions not authorized by the Prevailing Wage Act.

44. As a direct and proximate cause of Defendants' conduct, Plaintiffs and the Class have incurred significant financial damages.

45. Pursuant to G. L. c. 149, § 27, Defendants are liable Plaintiffs and the Class for three times the amount of any unpaid wages, plus costs and reasonable attorneys' fees.

COUNT FOUR
QUANTUM MERUIT

46. The Plaintiffs readopt and reallege the preceding paragraphs, and incorporate them into this count.

47. Plaintiffs and members of the Class conferred a benefit on the Defendants by working diligently on their behalf.

48. The Defendants received a benefit as a result of Plaintiffs and the work of other

Class members.

49. The Defendants were aware of the benefits received, and it would be unjust to allow the retention of these services without compensating Plaintiffs and other members of the Class.

VI. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, individually and on behalf of the other members of the Class, respectfully request that the Court order the following relief:

- A. An Order certifying the Class as requested herein;
- B. Actual and statutory damages;
- C. Treble damages as required by law;
- D. An Order enjoining Defendants from continuing to engage in the unlawful conduct alleged herein;
- E. Attorneys' fees and costs to Plaintiffs and the Class; and
- F. Such other and further relief as may be just and proper.

VII. JURY DEMAND

Plaintiffs and the Class all demand a trial by jury of all claims in this Complaint so triable.

Respectfully submitted,

/s/ Joshua N. Garick

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Dated: June 15, 2015