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JAMES B. DEHMAN
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION**

**UNITED STATES OF AMERICA ex
rel. PAINTERS & ALLIED TRADES
DISTRICT COUNCIL NO. 6,**

Relator,

vs.

**UNIQUE CONSTRUCTION
SERVICES, INC.,
c/o Kamlesh A. Kothari,
Statutory Agent
12193 Bath Ct.
Cincinnati, OH 45241**

and

**KAMLESH KOTHARI
12139 Bath Ct.
Cincinnati, OH 45241**

Defendants.

CASE NO.: 14 CV 016

JUDGE: J. BECKWITH M.J. LITKOVITZ

**COMPLAINT SUBMITTED
UNDER SEAL FOR VIOLATIONS
OF THE FALSE CLAIMS ACT**

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Relator, United States of America, ex rel. Painters & Allied Trades District Council No. 6, through its attorneys, complaining of Defendants, Unique Construction Services, Inc. and Kamlesh Kothari (collectively referred to herein as "Defendants"), and alleges as follows:

PARTIES

1. Relator, Painters & Allied Trades District Council No. 6 (“Relator” or “PDC 6”), brings this action on behalf of the United States Government. Relator is a labor organization within the meaning of the National Labor Relations Act, 29 U.S.C. § 152(5), with a principal place of business in Strongsville, Ohio.

2. Defendant, Unique Construction Services, Inc. (“Defendant Corporation” or “Unique”), is an Ohio For-Profit Corporation whose principle place of business is at 10999 Reed Hartman Hwy, Suite 313, Cincinnati, Ohio. Defendant’s statutory agent for service of process is Kamlesh A. Kothari (“Defendant Kothari”), 12193 Bath Ct., Cincinnati, Ohio.

3. Defendant, Kamlesh Kothari, is the Owner and President of Defendant Corporation, and upon information and belief, is domiciled at 12193 Bath Ct., Cincinnati, Ohio.

JURISDICTION AND VENUE

4. The causes of action in this Complaint arise from Defendants’ violations of the False Claims Act, 31 U.S.C. §§ 3729, *et seq.* (“FCA”). This Court has jurisdiction over those claims pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1331.

5. Venue is properly laid in the Southern District of Ohio as Defendant Corporation’s principal place of business is located within this Federal District, upon information and belief, Defendant Kothari’s residence is located within this Federal District, and the alleged violations contained herein occurred, at least in part, within this Federal District.

FACTUAL ALLEGATIONS

6. Defendant Corporation is a construction company specializing in painting and drywall work.

7. Defendant Corporation, under the supervision of Defendant Kothari, responded to

bid solicitations for work covered by the Davis-Bacon Act, 40 U.S.C. §§ 3141, *et seq.* (“DBA”) to be completed on the Hyde Park Elementary School in Cincinnati, Ohio (the “Project”).

8. The Project was subject to the DBA because it was a construction contract in excess of \$2,000.00 that was, at least in part, funded by agencies of the United States Government.

9. The U.S. Department of Labor (“DOL”) has set forth the standards for determining proper Davis-Bacon Wage Determination (“Wage Determination”), including a wage setting for the Painter’s Classification.

10. At the time Defendant Corporation began work on the Project, the wage setting for commercial work covered by the DBA for Painters was comprised of \$23.10 as hourly compensation and \$8.33 as an hourly fringe benefit rate, for a combined wage rate of \$31.43 per hour.

11. The wage rate identified in Paragraph 10 above had remained unchanged since May 1, 2012.

12. DOL regulations require contractors and subcontractors to submit Certified Payroll Registers (“CPR”) and Statements of Compliance (“SOC”) on a weekly basis for every week of the Project to the federal agency, or its representative providing the funding on the project – the Cincinnati Public Schools Purchasing Department (“CPSPD”) – in order to be paid on the project.

13. Empire Building Company LLC (“Empire”), of Cincinnati, Ohio, was awarded the contract on the Project as the General Contractor.

14. Empire subcontracted a portion of the Project to Defendant Corporation.

15. Upon information and belief, the Project is not the first DBA project on which Defendant Corporation has performed work.

16. Defendant Corporation began performing work on the Project in or around March 2013.

17. Defendant Corporation submitted weekly CPRs and SOCs as outlined in Paragraph 12 above for the Project.

18. PDC 6 Business Development Representative, Scott Cook ("Cook"), began an effort to organize Defendant Corporation's workforce to become members of PDC 6 in June of 2013.

19. Cook acted as an agent for PDC 6 at all times relevant to this litigation.

20. Cook is aware of the DBA regulation on payment of wage rates and the requirement to submit CPR and SOC in order to receive payments on projects covered by the DBA.

21. On or about June 18, 2013 and July 9, 2013, Cook spoke to Defendant Corporation's employees who worked on the Project, including, but not limited to Lance Gates ("Gates").

22. Cook explained the wage rate required by the DBA on the Project and asked Gates if he was being paid that rate.

23. Gates told Cook he was paid \$17.00 per hour without fringe benefits for work on the Project. Other employees of Defendant Corporation told Cook they were paid as little as \$10.00 per hour without fringe benefits.

24. Based on the statements of Defendant Corporation's employees and his knowledge of the DBA, Cook knew Defendants submitted false CPRs and SOCs on the Project.

25. Defendants submitted CPRs and SOCs, signed by Defendant Kothari, certifying the wages they paid employees on the Project were in compliance with the Wage Determination. However, Defendants' employees who worked on the Project were compensated at a rate much less than that required by the Wage Determination.

26. By way of example, Gates was paid \$17.00 per hour without fringe benefits for the

hours he worked on the Project during the weeks identified in Paragraphs 27 and 28 below.

27. During the weeks of May 5, 2013 through May 11, 2013 and May 12, 2013 through May 18, 2013, Gates worked on the Project for 40 hours. *See* Exhibit A, Gates' daily log of work hours.

28. During the weeks of May 19, 2013 through May 25, 2013 and May 26, 2013 through June 1, 2013, Gates worked on the Project for 32 hours. *See* Exhibit A.

29. Defendants underpaid Gates at a rate of \$14.43 per hour, for a total underpayment of \$577.20 for the weeks of May 5, 2013 through May 11, 2013 and May 12, 2013 through May 18, 2013; and a total underpayment of \$461.76 for the weeks of May 19, 2013 through May 25, 2013 and May 26, 2013 through June 1, 2013.

30. Defendants submitted CPRs and SOCs, signed by Defendant Kothari, for the weeks of May 5, 2013 through May 11, 2013; May 12, 2013 through May 18, 2013; May 19, 2013 through May 25, 2013; and May 26, 2013 through June 1, 2013. *See* Exhibit B, CPRs and accompanying SOCs signed by Defendant Kothari.

31. For the week of May 5, 2013 through May 11, 2013, Defendants certified that Gates worked a total of 16 hours and earned a rate of pay of \$31.43 per hour in compliance with the Wage Determination for that week. Defendants falsified the number of hours Gates worked during that week and falsified the amount he was paid per hour.

32. For the week of May 12, 2013 through May 18, 2013, Defendants certified that Gates worked a total of 16 hours and earned a rate of pay of \$31.43 per hour in compliance with the Wage Determination for that week. Defendants falsified the number of hours Gates worked during that week and falsified the amount he was paid per hour.

33. For the week of May 19, 2013 through May 25, 2013, Defendants certified that Gates worked a total of 10.5 hours and earned a rate of pay of \$31.43 per hour in

compliance with the Wage Determination for that week. Defendants falsified the number of hours Gates worked during that week and falsified the amount he was paid per hour.

34. For the week of May 26, 2013 through June 1, 2013, Defendants certified that Gates worked a total of 16 hours and earned a rate of pay of \$31.43 per hour in compliance with the Wage Determination for that week. Defendants falsified the number of hours Gates worked during that week and falsified the amount he was paid per hour.

35. Defendants would not have been paid for the work on the Project without presenting the CPRs and SOCs to the government.

36. Defendants transmitted the CPRs and SOCs from its office at 10999 Reed Hartman Hwy., Suite 313, Cincinnati, Ohio 45242 to CPSPD and/or other federal agencies requiring the submission of said documents.

37. Defendants consistently and deliberately falsified CPR and SOC documents that it submitted to CPSPD even though they knew that their employees were not being paid the proper Wage Determination rate.

38. The attached documents are a representative sample of the knowing falsification of the wages due to Gates. Relator believes and avers that there are additional employees of Defendants who were not paid the proper Wage Determination rate on DBA projects, including the Project.

39. Information about the actual wage rates of each employee is peculiarly within Defendants' knowledge.

40. Additional dates and projects may also be identified as additional information becomes available.

41. The CPR and SOC are claims under the FCA. *See* 31 U.S.C. § 3729(b)(2)(A).

COUNT ONE
LIABILITY UNDER THE FALSE CLAIMS ACT FOR
MAKING OR CAUSING TO BE MADE FALSE RECORDS
MATERIAL TO A FALSE CLAIM

42. Relator realleges paragraphs one (1) through forty-two (41) as if fully set forth verbatim below.

43. Defendants made or caused to be made the CPR and SOC documents in order to comply with the reporting requirements of the DBA, the Copeland Act, 18 U.S.C. § 874, and the provisions of the subcontract for the Project.

44. Defendants knew the CPR and SOC documents they submitted were false within the meaning of the FCA because it knew that Gates, among other employees, were not receiving the compensation required by the DBA wage determination.

45. The CPR and SOC documents were material to Defendants receiving payment on the Project because Defendant could not be paid absent submitted – or presented – CPR and SOC.

46. Defendants presented the false records contained in the CPR and SOC to CPSPD for every week of the work Defendant Corporation performed work on the Project.

47. CPSPD, responsible for enforcement of the DBA and the Copeland Act on the Project, did not discover Defendants' violation of the DBA or the Copeland Act because of the falsity of the CPR and SOC.

48. The U.S. Government was damaged by Defendants' conduct because it did not receive the bargain it made for the Project. Specifically, the U.S. Government bargained for all individuals performing work on the Project to be paid at the rates established in the Wage Determination, and Defendants did not pay employees such rates.

49. The U.S. Government was further damaged by Defendants' violation of the FCA because it would not have paid Defendant Corporation any money if Defendants would

have submitted the claims containing truthful information about the amount of compensation Defendants provided its employees.

COUNT TWO
LIABILITY UNDER THE FALSE CLAIMS ACT FOR
PRESENTING A FALSE CLAIM FOR PAYMENT

50. Relator realleges paragraphs one (1) through forty-nine (49) as if fully set forth verbatim below.

51. The CPR and SOC documents were false because the documents did not correctly identify the hours worked by Gates on the Project and the compensation actually provided to Gates.

52. Defendants are required to present the CPR and SOC documents to CPSPD in order to receive payment on a contract covered by the DBA.

53. The DBA demonstrates it is the official policy of the U.S. Government to ensure that workers are paid the prevailing wage in the area for construction projects funded in whole or part by the Government.

54. Defendants presented the CPR and SOC documents to CPSPD on a weekly basis in order to receive payment on the contract.

55. Defendants knew that the CPR documents were false in that they did not contain the actual amount paid to employees for work on the Project or the actual number of hours worked.

56. Defendants knew that the SOC documents were false in that Defendants did not pay employees the applicably hourly DBA wage rate.

57. Based on the foregoing, Defendants submitted fraudulent CPR and SOC document with the intention that the false documents be material to the U.S. Government's decision to pay or approve their false claims.


58. The U.S. Government was damaged by Defendants' conduct because it did not receive the bargain it made for the Project. Specifically, the U.S. Government bargained for all individuals performing work on the Project to be paid at the rates established in the Wage Determination, and the individuals who worked for Defendants did not get paid such rates.

59. The U.S. Government was further damaged by Defendants' violation of the FCA because it would not have paid Defendants any money if Defendants would have submitted the claims containing truthful information about the amount of compensation Defendants paid employees.

WHEREFORE, Relator demands that judgment be rendered jointly and severally against Defendants, granting Relator the following relief:

- A. The entire value of Defendant Corporation's subcontract for the Project on which Defendants falsified the documents necessary to receive payment on the contract, plus three (3) times this amount as liquidated damages pursuant to 31 U.S.C. §3729(a)(1);
- B. Relator's expenses, fees, including attorneys' fees, and costs in pursuing this action pursuant to 31 U.S.C. § 3730(d)(1);
- C. Civil penalties for each false claim made, presented, or submitted or caused to be made, presented or submitted on the project pursuant to 31 U.S.C. § 3802(a); and
- D. Any other relief, legal, equitable or injunctive that is warranted.

Respectfully submitted,



Kera L. Paoff (0082674)
Elijah D. Baccus (0086048)

CERTIFICATE OF SERVICE

I hereby certify Relator's Complaint and Disclosure Statement was sent by ordinary U.S. mail, postage prepaid, this 3rd day of January 2014 to:

The Honorable Eric H. Holder, Jr.
U.S. Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

U.S. Department of Justice
Civil Frauds Section
Commercial Litigation Branch
P.O. Box 261
Ben Franklin Station
Washington, DC 20044

Office of the United States Attorney
303 Marconi Blvd., Suite 200
Columbus, OH 43215



Elijah D. Baccus (0086048)