

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
TRIAL DEPT.

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Israel Aponte and others<sup>1</sup>

Plaintiffs

CIVIL ACTION NO.16-3616H

vs.

Xtralight Manufacturing, Ltd. d/b/a  
Utility Metering Solutions & Jerry H. Caroom

Defendants

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FIRST AMENDED COMPLAINT

Plaintiffs Israel Aponte and others (collectively "Plaintiffs") bring this action against Xtralight Manufacturing, Ltd. d/b/a Utility Metering Solutions ("UMS") and its owner and Chief Executive Officer Jerry H. Caroom ("Caroom") (UMS and Caroom collectively "Defendants"), upon information and belief, except as to their own actions, the investigation of their counsel, and facts that are a matter of public record, as follows:

OVERVIEW

1. As is alleged more fully below, Plaintiffs claim that the Defendants have violated and continues to violate: 1) the Massachusetts Prevailing Wage Act (M.G.L. c. 149, §§ 26-27 *et seq*) as a result of a company-wide policy pursuant to which UMS fails to pay the applicable prevailing wage rate for all prevailing wage hours worked by the Plaintiffs; 2) the Massachusetts Overtime Act (M.G.L. c. 151, § 1A) as a result of a company-wide policy pursuant to which UMS fails to pay the Plaintiffs time and one half for all hours worked over 40 in a work week; 3) the

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<sup>1</sup> Natanael Aragon-Martinez, Joseph Manuel Azevedo, Julian Joseph Azevedo, Julian P. Azevedo, Manny Azevedo William H. Boushell, Kyle Chevalier, Derrick Davies, Drew Taylor Frenette, Martin Thomas Forhan, Aaron Daniel Gadd, Thomas J. Gamble, Jamil Gimenez, Jeremy A. Gonsalves, Lino Grace, Timothy Greenwell, Christian Howell, Jay Levey, Matthew Lisowski, Jack Rose, Jacyn Norfleet, John Marco Ramos, Cheryl Robinson, David M. Wendowski, and Herbert Wilkinson.

Massachusetts Minimum Wage Act (M.G.L. c. 151, § 1) as a result of a company-wide policy pursuant to which UMS requires the Plaintiffs to supply their own personal vehicles and pay for gasoline and parking tickets directly attributable to and arising out their employment with UMS; the effective equivalent of an indirect deduction from wages that causes the Plaintiffs' hourly wage rate to fall below the minimum wage; and 4) the Massachusetts Wage Act as a result of their failure to pay the Plaintiffs all wages earned in a timely manner.

2. The Plaintiffs further allege that the Defendants have been unjustly enriched as a result of UMS's company-wide policy of requiring the Plaintiffs to supply their own personal vehicles and pay for gasoline and parking tickets directly attributable to and arising out of their employment with UMS.
3. In addition to the foregoing, Plaintiff Julian Joseph Azevedo alleges that he been unlawfully denied overtime compensation in violation of M.G.L. c. 151, § 1A as a result of the Defendants' erroneous classification as an exempt employee since approximately October 7, 2016.
4. Plaintiffs seek payment of all unpaid wages, statutorily mandated treble damages, attorneys' fees and costs, and all mandated and/or permissible legal interest.

#### **THE PLAINTIFFS**

5. Plaintiff Israel Aponte is a resident of New Bedford, Massachusetts and is employed by the Defendants out of Roslindale, MA.
6. Plaintiff Natanael Aragon Martinez is a resident of Dorchester, Massachusetts and is employed by the Defendants out of Roslindale, MA.
7. Plaintiff Joseph Manuel Azevedo is a resident of New Bedford, Massachusetts and is employed by the Defendants out of Roslindale, MA.
8. Plaintiff Julian Joseph Azevedo is a resident of New Bedford, Massachusetts and is employed by the Defendants out of Roslindale, MA.

9. Plaintiff Julian P. Azevedo is a resident of New Bedford, Massachusetts and is employed by the Defendants out of Roslindale, MA.
10. Plaintiff Manny Azevedo is a resident of New Bedford, Massachusetts and was employed by the Defendants out of Roslindale, MA.
11. Plaintiff William H. Boushell is a resident of Milford, Massachusetts and is employed by the Defendants out of Roslindale, MA.
12. Plaintiff Kyle Chevalier is a resident of New Bedford, Massachusetts and is employed by the Defendants out of Roslindale, MA.
13. Plaintiff Derrick Davies is a resident of Brockton, Massachusetts and is employed by the Defendants out of Roslindale, MA.
14. Plaintiff Drew Taylor Frenette is a resident of New Bedford, MA and is employed by the Defendants out of Roslindale, MA.
15. Plaintiff Martin Thomas Forhan is a resident of Mansfield, MA and is employed by the Defendants out of Roslindale, MA.
16. Plaintiff Aaron Daniel Gadd is a resident of Acushnet, MA and was employed by the Defendants out of Roslindale, MA.
17. Plaintiff Thomas J. Gamble is a resident of Fairhaven, MA and is employed by the Defendants out of Roslindale, MA.
18. Plaintiff Jamil Gimenez is a resident of New Bedford, MA and is employed by the Defendants out of Roslindale, MA.
19. Plaintiff Jeremy A. Gonsalves is a resident of New Bedford, MA and is employed by the Defendants out of Roslindale, MA.
20. Plaintiff Lino Grace is a resident of Boston, MA and is employed by the Defendants out of Roslindale, MA.
21. Plaintiff Timothy Greenwell is a resident of Foxboro, MA and is employed by the Defendants out of Roslindale, MA.

22. Plaintiff Christian Howell is a resident of Boston, MA and is employed by the Defendants out of Roslindale, MA.
23. Plaintiff Jay Levey is a resident of S. Boston, MA and is employed by the Defendants out of Roslindale, MA.
24. Plaintiff Matthew Lisowski is a resident of Smithfield, RI and is employed by the Defendants out of Roslindale, MA.
25. Plaintiff Jack Rose is a resident of Wilmington, MA and is employed by the Defendants out of Roslindale, MA.
26. Plaintiff Jacyn Norfleet is a resident of Boston, MA and is employed by the Defendants out of Roslindale, MA.
27. Plaintiff John Marco Ramos is a resident of New Bedford, MA and is employed by the Defendants out of Roslindale, MA.
28. Plaintiff Cheryl Robinson is a resident of Boston, MA and is employed by the Defendants out of Roslindale, MA.
29. Plaintiff David M. Wendowski is a resident of New Bedford, MA and is employed by the Defendants out of Roslindale, MA.
30. Plaintiff Herbert Wilkinson is a resident of Braintree, MA and is employed by the Defendants out of Roslindale, MA.

#### **THE DEFENDANTS**

31. Defendant UMS is a foreign limited partnership headquartered in Houston, Texas. It has transacted and conducted business in the Commonwealth of Massachusetts since at least the Spring of 2016 out of Roslindale, Massachusetts and throughout the City of Boston.
32. Defendant Caroom is the owner and Chief Executive Officer of UMS. Upon information and belief, Caroom controls, directs and participates to a substantial degree in the formulation and determination of all UMS company policies,

including but not limited to UMS's policies regarding the payment of wages to its employees.

**FACTUAL ALLEGATIONS COMMON TO ALL PLAINTIFFS**

33. In or about the spring of 2016, Boston Water & Sewer ("BW&S") entered into a contract with UMS (either directly or as a subcontractor through Barletta Construction), pursuant to which UMS was to perform upgrades to BW&S's automatic water meter reading system.
34. Since at least April or May 2016, UMS employed individuals, including the Plaintiffs, who performed water meter installation work pursuant to UMS's contract with BW&S and/or Barletta.
35. To perform the work, UMS employees were required to enter the homes of Boston residents, and replace their current water meter transmitter with a new, upgraded transmitter.
36. A typical installation generally includes the following tasks:
  - a. The UMS employee enters the subject home and locates the water meter (typically in the basement);
  - b. If access to the water main is impeded, the UMS employee spends time clearing space to access the meter;
  - c. The UMS employee then diagnoses the condition of the meter, and traces the wire connecting the meter to the transmitter;
  - d. On occasion, the UMS employee has to use a ladder if the transmitter is located in a high area;
  - e. The UMS employee then attaches a small round device (referred to as a "puck") to the transmitter. The puck transmits information from the water meter transmitter to the UMS employee's handheld device;
  - f. The UMS employee then scans the transmitter which causes information to be displayed on his handheld device;

- g. The UMS employee then writes the information displayed on his handheld device on a document referred to as a "changeout sheet";
- h. The UMS employee uses the information described above to make sure he is performing work on the correct account;
- i. The UMS employee is then required to take a photograph of the transmitter to have a record of its final meter reading;
- j. The UMS employee then detaches the transmitter from the wall, turns it off and cuts the wire going into the transmitter;
- k. The UMS employee then takes the new transmitter, and splices the wires from the old transmitter and new transmitter together so that the water meter becomes wired to the new transmitter;
- l. The UMS employee then attaches the puck to the new transmitter and begins to program the new transmitter;
- m. UMS employees often encounter problems when installing the new transmitter as evidenced by error messages that they receive on their handheld (these problems can cause the installation process to be delayed);
- n. The UMS employee then writes information related to the new transmitter onto a changeout sheet, and scans the required account information into the new transmitter;
- o. Finally, the UMS employee is required to take a picture of the new transmitter and a picture of handheld to prove that the installation has been completed and that the system is working.

37. The Plaintiffs were/are entitled to be paid the hourly prevailing wage rate corresponding to the occupational classification "Water Meter Installation/Testing" for all the time spent performing the tasks described in paragraph 36(a)-(o).

38. At all times relevant hereto, \$77.57 was the minimum hourly prevailing wage rate corresponding to the occupational classification "Water Meter Installation/Testing."
39. UMS employees performed multiple water meter transmitter installations each day, and spend on average 25-60 minutes performing the tasks described in paragraphs 36(a)-(o) at each location.
40. Despite that UMS employees spent on average 25-60 minutes per installation, UMS paid all of its employees a flat 15 minutes of prevailing wage pay per installation.
41. As a result, UMS has failed to pay the Plaintiffs the applicable prevailing wage rate for all time spent performing prevailing wage compensable tasks.
42. The Plaintiffs' typical work day was/is approximately 7:00 a.m. to 5-5:30 p.m., five days a week (i.e. the Plaintiff and putative class would typically arrive the UMS's office at or around 7:00 a.m. and would leave the office at or around 5-5:30 p.m. each day.
43. As a result, the Plaintiffs typically work/worked 50-52.5 hours per work.
44. Without regarding to the foregoing, UMS requires each employee to list their daily work hours as 7:00 a.m. to 4:00 p.m.
45. Despite the number of hours the Plaintiffs typically worked, UMS only paid the Plaintiffs a predetermined 40 hours per week.
46. Indeed, UMS employee Jason Parker has expressly stated to the Plaintiffs that UMS does not pay overtime compensation.
47. In addition to the foregoing, UMS also required/requires the Plaintiffs to supply their own vehicles, pay for their own gas and pay for parking tickets necessary and directly attributable to the work that the Plaintiffs perform for the benefit of UMS.

48. As a result of the practice outlined in paragraph 47, UMS has effectively imposed an unlawful indirect deduction which caused/continues to cause the Plaintiffs' hourly wage rate to drop below the statutorily prescribed minimum wage.
49. As a result of the practice outlined in paragraph 47, the Plaintiffs have conferred a benefit upon the Defendants, which Defendants had knowledge of, and the retention of the value associated therewith would be unjust.

**FACTUAL ALLEGATIONS SPECIFIC TO  
PLAINTIFF JULIAN JOSEPH AZEVEDO**

50. On or about October 7, 2016, Plaintiff Julian Joseph Azevedo ("Azevedo") was "promoted" to a so-called "manager" position.
51. Prior to receiving his so-called "promotion," Azevedo was compensated in the manner described above in paragraphs 33-49.
52. Upon receiving his so-called "promotion," Azevedo was given a yearly salary, was no longer paid by the hour, and did not and has not received overtime compensation for hours worked over 40 in a work week (although he also never received overtime compensation for hours worked over 40 in a work week prior to his "promotion").
53. Since his "promotion," the Defendants have unlawfully classified Azevedo as an exempt employee when the facts demonstrate that he is not exempt.
54. Azevedo does not customarily and regularly direct the work of at least two or more full-time employees or their equivalent.
55. Azevedo does not have the authority to hire or fire other employees, and Azevedo does not and has not given suggestions or recommendations as to the hiring, firing, advancement, promotion or any other change of status of any employee.
56. Azevedo has worked approximately 50-55 hours per week since his so-called "promotion" to "manager."
57. Azevedo has not been paid time and one half his regular hourly rate for any hours worked over 40 in a work week since his so-called "promotion" to "manager."



**COUNT 1**

**Violation of M.G.L. c. 149, § 26-27 et seq (The Massachusetts Prevailing Wage Act)**

58. Plaintiffs re-allege and incorporate by reference ¶¶ 1-57 above as if fully set forth herein.
59. By their conduct as set forth herein, the Defendants have violated M.G.L. c. 149, § 26-27 et seq.
60. The Defendants are liable for the full amount of the Plaintiffs' unpaid wages, treble damages, plus interest and their reasonable attorney's fees and expenses.

**COUNT 2**

**Violation M.G.L. c. 151, §1A – The Massachusetts Overtime Act**

61. Plaintiffs re-allege and incorporate by reference ¶¶ 1-60 above as if fully set forth herein.
62. By their conduct as set forth herein, the Defendants have violated M.G.L. ch. 151, § 1A.
63. The Defendants are liable for the full amount of the Plaintiffs' unpaid overtime wages, treble damages, plus interest and their reasonable attorney's fees and expenses.

**COUNT 3**

**Violation M.G.L. c. 151, §1 – The Massachusetts Minimum Wage Act**

64. Plaintiffs re-allege and incorporate by reference ¶¶ 1-63 above as if fully set forth herein.
65. By their conduct as set forth herein, the Defendants have violated M.G.L. ch. 151, § 1.
66. The Defendants are liable for the full amount of the Plaintiffs' unpaid wages, treble damages, plus interest and their reasonable attorney's fees and expenses.

**COUNT 4**  
**Violation of M.G.L. c. 149, § 148 (The Massachusetts Wage Act)**

67. Plaintiffs re-allege and incorporate by reference ¶¶ 1-66 above as if fully set forth herein.
68. By their conduct as set forth herein, the Defendants have violated M.G.L. c. 149, § 148.
69. The Defendants are liable for the full amount of the Plaintiffs' unpaid wages, treble damages, plus interest and their reasonable attorney's fees and expenses.

**COUNT 5**  
**Unjust Enrichment**

70. Plaintiffs re-allege and incorporate by reference ¶¶ 1-69 above as if fully set forth herein.
71. The Plaintiffs conferred a benefit upon the Defendants as a result of the Defendants' policy requiring their employees to provide their personal vehicles, pay for gas and pay parking tickets necessary and directly attributable to their employment with UMS.
72. The Defendants have/had knowledge of the benefits they received from the Plaintiffs.
73. Acceptance or retention by the Defendants of the benefits conferred on them by the Plaintiffs without payment of their value would be inequitable and unjust.

**WHEREFORE**, the Plaintiffs pray for judgment against the Defendants as follows:

- A. A judgment and order awarding Plaintiffs their unpaid wages;
- B. A judgment and order requiring the Defendants to pay Plaintiffs their unjust enrichment damages;

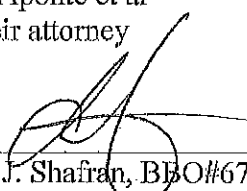
- C. A judgment and order requiring the Defendant to immediately cease their wrongful conduct as set forth herein;
- D. A judgment and order requiring a certified, independent accounting at Defendants' expense of all payroll and financial records in the possession of the Defendants, and/or the appointment of a Master or Receiver to determine the correct compensation owed to the Plaintiffs;
- E. A judgment and order requiring the Defendants to pay the Plaintiffs all statutorily mandated treble damages;
- F. A judgment and order requiring Defendants to pay the Plaintiffs' reasonable attorneys' fees and the costs of this action;
- G. A judgment and order requiring the Defendants to pay all legal interest permissible; and
- H. Such other relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demands a trial by jury on all causes of action so triable.

Respectfully submitted,

Israel Aponte et al  
By their attorney



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Adam J. Shafran, BBO#670460  
ashafran@rflawyers.com  
Rudolph Friedmann LLP  
92 State Street  
Boston, MA 02109  
617-723-7700  
617-227-0313 (fax)