

**COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT**

SUFFOLK, SS

Civil Action No.

\_\_\_\_\_  
ANTHONY WHYTE,  
Individually and on behalf of all  
others similarly situated,  
  
Plaintiffs,  
  
v.  
  
SUFFOLK COUNTY SHERIFF'S  
DEPARTMENT  
and  
COMMONWEALTH OF  
MASSACHUSETTS,  
  
Defendants.  
\_\_\_\_\_

JURY DEMANDED

**CLASS ACTION COMPLAINT**

**Introduction**

1. This is a class action brought by Plaintiff Anthony Whyte, an immigration detainee who has worked as a laborer in the Suffolk County House of Correction (“HOC”). The Plaintiff challenges the Defendants’ unlawful failure to pay minimum wages, in violation of M.G.L. c. 151, § 1, and failure to pay wages on a weekly or biweekly manner, in violation of M.G.L. c. 149 § 148. The Plaintiff brings this complaint on behalf of himself and all other similarly situated immigration detainee-laborers who have worked at the Suffolk County House of Correction (hereinafter “detainee-laborers”).

2. During their immigration detention, the Plaintiff and other detainee-laborers worked one or more of four shifts, performing janitorial services. The Suffolk County Sheriff’s

Department (“Department”) paid, and still pays, detainee-laborers one dollar (\$1.00) per day of work, which is less than the minimum wage. The Suffolk County Sheriff’s Department also failed, and still fails, to pay overtime compensation on weeks that Plaintiff and all others similarly situated worked over 40 hours in that week. Through the Department’s unlawful practice reducing overhead, the detainees’ labor usurps the services that government employees or contractors would otherwise perform.

3. Plaintiff and all others similarly situated are subject to extensive control by the Suffolk County Sheriff’s Department and correctional officers. The HOC exercises control over the Plaintiffs’ working conditions, and each can prevent Plaintiff and all others similarly situated from working on a temporary or permanent basis. At the same time, the HOC does not take any responsibility for ensuring that Plaintiff and all others similarly situated earn minimum wage.

### **Parties**

4. Plaintiff Anthony Whyte is a citizen of Jamaica and a Lawful Permanent Resident (“LPR”). He has been detained by the U.S. Immigrations and Customs Enforcement (“ICE”) at the Suffolk County HOC since approximately September 16, 2013, and was previously detained at Bristol County House of Correction and Jail from February 28, 2012, through November 18, 2012. Mr. Whyte has worked in the Suffolk County HOC since a few days after his arrival in September 2013 through the present.

5. Defendant Suffolk County Sheriff’s Department is an employer of members of the proposed Class. It is an employer of members of the proposed Class because detainees perform occupational services at the Suffolk County House of Correction under the direction of the correctional officers. The Suffolk County Sheriff’s Department is a state office as a result of the abolishment of county government in Massachusetts.

6. Defendant Commonwealth of Massachusetts is an employer of members of the proposed Class because the Suffolk County Sheriff's Department is a state office, and thereby, the Commonwealth of Massachusetts is by extension an employer of this Class.

### **Factual Allegations**

7. Immigration detainees are civil detainees held for immigration purposes. They are in ICE custody for the duration of their immigration removal proceedings, and ICE contracts with facilities such as the Suffolk County House of Correction to house the detainees. Some of the detainees, such as Mr. Whyte, have lawful immigration status in the U.S. prior to and during detention, and were engaged in lawful employment prior to detention.

8. Any immigration detainee housed in the Suffolk County House of Correction may sign up for a work detail and receive \$1 per day in wages.

9. The dedicated ICE detention facilities at the Suffolk County House of Correction are contained in Building 8, which consists of four floors. Unit numbers refer to the floors, e.g., Units 8-1, 8-2, 8-3, and 8-4.

10. Duties of the work details include serving food and drink, cleaning tables, sweeping, mopping, taking out garbage, laundry for the entire unit, cleaning the staff and communal bathrooms, cleaning the infirmary, barbering, shoveling snow, and buffing floors.

11. All detainees are responsible for cleaning their individual cells, but detainee-laborers are responsible for common areas on their assigned floor/unit such as the recreation/day room, an adjoining multi-use room, television rooms, computer room, the medical infirmary, and staff and communal bathrooms.

12. The floor-buffing crew spans the entire building instead of exclusively covering the detainee-workers' assigned unit. In the winter, correctional officers also ask a detainee to shovel the snow outside of the dedicated ICE detention building at the Suffolk County HOC.

13. Occasionally, correctional officers create additional work duties for the detainee-laborers that facilitate the continued operation of the ICE contract facility.

#### Control

14. The Plaintiff and all others similarly situated operate under the control of the Suffolk County House of Correction. The correctional officers that are on duty during a work shift oversee the time, place, and manner of the detainees' labor.

15. The Suffolk County Sheriff's Department control the numerous terms and conditions of the work performed by detainee-laborers, including the following:

- (a) The Department issues and controls the list of detainees who are assigned work details and the schedules of the details. As a result, the HOC plays an active and ongoing role in determining whether and when a detainee-laborer can work. The HOC has the power to deny, suspend, or terminate a detainee-laborer's work detail assignment.
- (b) The HOC determines the rate of pay for the detainee-laborers, which is \$1.00 per day, and is responsible for paying them.
- (c) The HOC establishes the number and duration of daily shifts, as well as staffing needs per shift. The available shifts are (1) 6-7am, (2) 7am-2:30pm, (3) 3-10pm, and (4) 11pm-1am. There are six to ten workers per shift in each unit.

- (d) The HOC directs the standard of performance. Correctional officers inspect the detainee-laborers' work, and if the officer finds the work unsatisfactory, the detainee-laborer must redo the job until the officer approves of the result.

Usual Course of Business of Suffolk County Sheriff's Department

16. The Suffolk County Sheriff's Department, among other operations, operates a business as an ICE contractor housing immigration detainees. This includes the maintenance and upkeep of the detention facilities, and the services provided by the immigration detainees are in the usual course of, and indeed are an essential part of, that business.

Wages

17. Detainee-laborers receive only \$1.00 per day for their work, regardless of the number of hours worked by a detainee-laborer, which may range from 1 to 8 hours a day. Detainee-laborers work seven days a week.

18. During the two to three days prior to a Massachusetts Department of Correction or ICE inspection, correctional officers require detainee-laborers to do significantly more cleaning than usual, often doubling the usual amount of cleaning time. Inspections occur about two to three times a year. Some detainees work over 40 hours a week during inspection weeks.

19. At the beginning of each month, the HOC deposits each detainee-laborer's monthly earnings for the previous month into their respective inmate accounts. The line-item is described as "DETAIL," indicates the month and year for which the payment is made, and is usually in the amount of \$30 or \$31, corresponding with the number of days in that month. Furthermore, these payments were not immediately available as liquid funds due to Department's standard delays in issuing checks from detainee-laborers' financial accounts.

20. Pursuant to the state law requirements as set forth in M.G.L. c. 149 § 150, the Plaintiffs have filed a complaint with the Office of the Attorney General asserting employee misclassification as well as insufficient and untimely payments.

### **Class Allegations**

21. The Defendants have employed hundreds of immigration detainees to perform labor in and around their units. Many of these detainee-laborers have been deported to other countries or relocated to their respective residences, many of which are outside Massachusetts. As a result, joinder of all detainee-laborers is impracticable.

22. The Defendants' treatment of detainee-laborers has been uniform in the following respects, among others: (a) detainee-laborers have not been paid the minimum wage by the Defendants, (b) detainee-laborers have not been paid overtime compensation by the Defendants, and (c) detainee-laborers are paid a lump sum following the end of each month's work. As a result, there are questions of fact and law common to all detainee-laborers.

23. The claims of the Plaintiff and all others similarly situated with respect to these common issues are typical of the claims of all detainee-laborers with respect to those issues.

24. The Plaintiff and his counsel will fairly and adequately represent the interests of the class and Plaintiff's counsel's firm has the resources and experience necessary to do so.

25. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members. The common questions include, among other things, whether detainee-laborers have been misclassified as nonemployees and whether detainee-laborers are entitled to minimum wage. Although the amount of each detainee-laborer's damages may vary depending on their individual circumstances, these can be determined by a simple equation, and the common issues of liability predominate over individualized issues.

26. A class action is superior to other available methods for the fair and efficient adjudication of these claims. Among other things, individual adjudications would result in a highly inefficient duplication of discovery, briefing of legal issues, and court proceedings. Moreover, since the damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation makes it practically impossible for the members of the class individually to redress the wrongs done to them.

27. The Plaintiff seeks certification of a class of all detainee-laborers who performed services for the Suffolk County HOC for \$1.00 per day.

**COUNT I  
Misclassification**

28. As set forth above, the Defendants' misclassification of detainee-employee as non-employees violates M.G.L. c. 149 § 148B. This claim is brought pursuant to M.G.L. c. 149 §§ 27C and 150.

**COUNT II  
Minimum Wage Violations**

29. As set forth above, the Defendants' knowing and willful failure to pay, or to ensure the payment of, minimum wage violates M.G.L. c. 151 § 1. This claim is brought pursuant to M.G.L. c. 151 § 20. The Defendants were required to pay the applicable minimum wage for each hour of work, and the Plaintiffs are entitled to back pay and statutory damages for the difference between that wage and the \$1-per-day rate they received.

**COUNT III  
Wage Law Violations**

30. The Defendants' knowing and willful failure to pay the Plaintiff and class members all wages due to them on a weekly or bi-weekly basis within six days of the

termination of the pay period during which the wages were earned, pursuant to M.G.L. c. 149 § 148. This claim is brought pursuant to M.G.L. c. 149 §§ 27C and 150.

**COUNT IV**  
**Breach of Contract or Quasi-contract**

31. The Defendants entered into an employment contract with Plaintiff and all others similarly situated. All federal and Commonwealth wage laws were implied terms of that contract. The wage term and payday in the contract was illegal under state and federal law and is replaced in *quantum meruit*, or at the minimum wage including applicable overtime. The Defendants breached the contract by failing to pay the legal wages when due, and the Plaintiff and all others similarly situated suffered damages because of the late underpayment.

**COUNT V**  
***Quantum Meruit* or Unjust Enrichment**

32. If the contract fails completely, the Plaintiff and class members have been deprived by the Defendants of the fair value of their services and are thus entitled to recovery in *quantum meruit* pursuant to the common law of Massachusetts. Alternatively, the Commonwealth has unfairly benefited from the labor of Plaintiff and all others similarly situated and should be disgorged of its ill-gotten gains.

WHEREFORE, the Plaintiff respectfully requests this Court to:

A. Certify a class, including any appropriate sub-classes, of all similarly-situated immigrant detainee workers, pursuant to Mass. R. Civ. P. 23 and/or M.G. L. c. 149 § 150.

B. Issue a declaratory judgment that the Plaintiff and other detainee-laborers are employees;

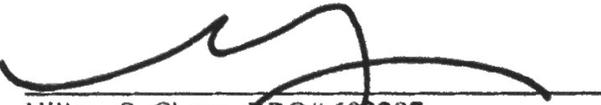
- C. Award damages for all wages or other forms of restitution that are due to the Plaintiff and other detainee-laborers because of their misclassification and/or failure to pay all wages due to them in a timely manner under the Massachusetts wage laws and common law;
- D. Award treble damages;
- E. Award attorneys' fees and costs, and
- F. Award any other relief to which the Plaintiff and other detainee-laborers may be entitled.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.**

Respectfully submitted,

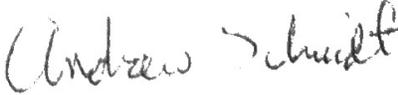
ANTHONY WHYTE, on behalf of himself and all others similarly situated,

By his attorneys,



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\*Motion for admission *pro hac vice* forthcoming.

Dated: February 12, 2015