

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

ARLEY RUIZ and JOHN WILMAR GIRALDO, on  
behalf of themselves, individually, and on behalf  
of all others similarly-situated,

Plaintiffs,

-against-

NEW YORK ENVIRONMENTAL SYSTEMS, INC.

Defendant.

**CLASS AND COLLECTIVE  
ACTION COMPLAINT**

Index No.:

**JURY TRIAL DEMANDED**

Plaintiffs, ARLEY RUIZ and JOHN WILMAR GIRALDO (“Plaintiffs”), on behalf of themselves, individually, and on behalf of all others similarly-situated, (the “Class Plaintiffs”), by and through their attorneys, JOSEPH & NORINSBERG, LLC and KATZ MELINGER PLLC, as and for their Complaint against NEW YORK ENVIRONMENTAL SYSTEMS, INC. (“NYES” or “Defendant”), allege upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters, as follows:

**NATURE OF THE CASE**

1. This is a civil action for damages and equitable relief based upon willful violations that the Defendant committed of Plaintiffs’ rights guaranteed to them by: (i) the overtime provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160 *et seq.*, and New York Comp. Codes R. & Regs (“NYCRR”) Tit. 12, § 142-2.2; (iii) the NYLL’s requirement that employers pay manual worker employees all wages owed on a weekly basis according to the terms and conditions of their employment, NYLL §§ 190, 191, and 663(1); (iv) the NYLL’s requirement that employers furnish employees with wage statements containing specific categories of accurate information on

each payday, NYLL §195(3), as codified in the New York Wage Theft Prevention Act (“WTPA”); and (v) any other cause(s) of action that can be inferred from the facts set forth herein.

### **PRELIMINARY STATEMENT**

2. NYES operates as an asbestos abatement and removal company in New York.
3. Ruiz is a former hourly employee who worked for Defendant as an asbestos handler at multiple locations in and around New York City from on or around 2007 until on or around February 2019.
4. Giraldo is a former hourly employee who worked for Defendant as an asbestos handler at multiple locations in and around New York City from on or around July 2016 until on or around August 2019.
5. Defendant failed to pay Plaintiffs for all hours worked, or according to the terms and conditions of their employment, in violation of the NYLL.
6. Defendant also violated the FLSA and NYLL’s overtime requirements in those weeks where the wage underpayment resulted in Defendant’s failure to pay Plaintiffs one and one-half times their regular rate, for all hours over forty.
7. Defendant further violated the NYLL by failing to furnish Plaintiffs with accurate wage statements on each pay day listing, *inter alia*, their actual hours worked, and, when applicable, their overtime rate of pay owed.
8. Plaintiffs therefore bring this lawsuit against Defendant pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of themselves, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of the Defendant’s willful violations of the FLSA.

9. Plaintiffs bring this lawsuit as a class action pursuant to CPLR § 901, on behalf of themselves, individually, and on behalf of all other persons similarly-situated during the applicable NYLL limitations period who suffered damages as a result of the Defendant's violations of the NYLL and the supporting New York State Department of Labor regulations.

### **JURISDICTION AND VENUE**

10. This court has jurisdiction over this action pursuant to CPLR §§ 301 and 302, and venue is proper pursuant to CPLR § 503. The Court also has jurisdiction under the New York Constitution, Art. VI, § 7, and New York Judiciary Law § 140-b.

11. On March 20, 2020, then-New York Governor Andrew M. Cuomo signed Executive Order 202.8, which tolled for thirty (30) days “any specific time limit[s] for the commencement, filing, or service of any legal action, notice, motion or other process or proceeding” under any New York State laws or court procedural rules. The thirty (30)-day tolling period began on March 20, 2020 and continued through subsequent extensions of that Order via Executive Orders 202.14, 202.28, 202.38, 202.48, 202.55, 202.60, and 202.67, through November 3, 2020. In total, the Executive Orders provided for a toll of 228 days.

12. In addition, prior to filing this action, a separate action was filed on October 2, 2023, styled as *German Bunay et al v. New York Environmental Systems, Inc., et al.*, 1:23-cv-07355-DLI-LB (E.D.N.Y.), which asserted some of the same claims herein on a class-wide basis, which was since resolved and approved by the presiding judge on October 24, 2024, which effectuated a toll of the statute of limitations herein from October 2, 2023 through and including the date of its dismissal. As a result, in addition to the Executive Order tolling described above, Plaintiffs, FLSA Plaintiffs, and CPLR § 901 Plaintiffs' claims were further tolled for 388 additional days.

## PARTIES

### *Plaintiff Arley Ruiz*

13. Ruiz is an individual, who at all times relevant to this Complaint, was and is a resident of New York.

14. Ruiz was employed by Defendant in New York as an asbestos handler.

15. At all relevant times herein, Ruiz was a “person” and an “employee” of Defendant within the meaning of the FLSA, NYLL, NYCRR, and WTPA.

### *Plaintiff John Wilmar Giraldo*

16. Giraldo is an individual, who at all times relevant to this Complaint, was and is a resident of New York.

17. Giraldo was employed by Defendant in New York as an asbestos handler.

18. At all relevant times herein, Giraldo was a “person” and an “employee” of Defendant within the meaning of the FLSA, NYLL, NYCRR, and WTPA.

### *Defendant New York Environmental Systems, Inc.*

19. At all relevant times herein, NYES is and was a domestic corporation with its principal place of business located at 460 Morgan Avenue, Brooklyn, New York 11222.

20. At all relevant times herein, Defendant NYES was an “employer” within the meaning of the FLSA and NYLL. Additionally, Defendant’s qualifying annual business exceeds \$500,000.00, Defendant employed and employs two or more people, and Defendant was and is engaged in interstate commerce within the meaning of the FLSA, as Defendant offered asbestos abatement services, it and/or purchased and used tools and supplies that traveled across state lines on a daily basis in the course of providing its asbestos abatement services, which subjects Defendant to the FLSA’s overtime requirements as an enterprise.

### COLLECTIVE ACTION ALLEGATIONS

21. Plaintiffs seeks to bring this suit to recover from Defendant unpaid overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 216(b), on their own behalf, as well as on behalf of those in the following collective action:

Current and former hourly non-managerial asbestos handler and driver-supervisor employees, who during the applicable FLSA limitations period, performed any work who performed work in support of or as part Defendant's asbestos abatement services, and who consent to file a claim to recover damages for: (1) overtime compensation that is legally due to them; and/or (2) liquidated damages that are legally due to them ("FLSA Plaintiffs").

22. Defendant treated Plaintiffs and all FLSA Plaintiffs similarly in that Plaintiffs and all FLSA Plaintiffs: (1) performed similar tasks, as described in the "Background Facts" section below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours in a workweek; and (5) were not paid the required one and one-half times their respective regular rates of pay for all hours worked per workweek in excess of forty.

23. At all relevant times, Defendant was aware of the requirements to pay Plaintiffs and all FLSA Plaintiffs at an amount equal to the rate of one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet they purposefully and willfully chose not to do so.

24. The precise number of FLSA Plaintiffs should be readily available from a review of the Defendant's personnel, scheduling, time, and payroll records, and from input received from the collective action as part of the notice and "opt-in" process provided by 29 U.S.C § 216(b).

25. Thus, all FLSA Plaintiffs are victims of Defendant's practice of willfully refusing to pay their employees overtime compensation for all hours worked per workweek above forty, in violation of the FLSA.

### **CPLR § 901 CLASS ALLEGATIONS**

26. Plaintiffs seeks to maintain this action as a class action pursuant to CPLR § 901, individually, on their own behalf, as well as on behalf of those who are similarly situated who, during the applicable limitations period, were subjected to violations of the NYLL and the NYCRR.

27. Plaintiffs seeks certification of the following CPLR § 901 class:

Current and former hourly, non-managerial asbestos handler and driver-supervisor employees who performed work in support of or as part Defendant's asbestos abatement services during the statutory period within the State of New York ("CPLR § 901 Plaintiffs").

### **Numerosity & Ascertainability**

28. During the previous six years plus 388 days, Defendant has, in total, employed at least forty employees, and upon information and belief, more than 700 employees, that are putative members of this class.

29. The precise number of the CPLR § 901 Plaintiffs is readily ascertainable through a review of Defendant's personnel, time, and payroll records.

### **Common Questions of Law and/or Fact**

30. There are questions of law and fact common to each CPLR § 901 Plaintiffs that predominate over any questions solely affecting individual members of the CPLR § 901 class, including but not limited to the following: (1) the duties that the Defendant required and requires each CPLR § 901 Plaintiffs to perform; (2) the manner of compensating each CPLR § 901 Plaintiffs; (3) whether CPLR § 901 Plaintiffs worked in excess of forty hours in a week; (4)

whether Defendant failed to pay CPLR § 901 Plaintiffs overtime compensation of one and one-half their regular rates of pay for all hours worked in excess of forty hours in a week; (5) whether Defendant failed to pay Plaintiffs and CPLR § 901 Plaintiffs for all hours worked according to the terms and conditions of their employment; (6) whether Defendant furnished CPLR § 901 Plaintiffs with accurate wage statements on each payday containing the information required by N.Y. Lab. Law § 195(3); (7) whether Defendant kept and maintained accurate records of hours worked by CPLR § 901 Plaintiffs; (8) whether Defendant kept and maintained records with respect to the compensation that they paid to the CPLR § 901 Plaintiffs for each hour worked, including whether the CPLR § 901 Plaintiffs worked at multiple job sites in any one given day; (9) whether Defendant has any affirmative defenses to any of the CPLR § 901 Plaintiffs' claims; (10) whether Defendant's actions with respect to the CPLR § 901 Plaintiffs were in violation of the NYLL and supporting regulations; and (11) if so, what constitutes the proper measure of damages.

### **Typicality of Claims and/or Defenses**

31. As described in the "Background Facts" section below, Defendant employed Plaintiffs and CPLR § 901 Plaintiffs within the meaning of the NYLL. Plaintiffs' claims are typical of the claims of the CPLR § 901 Plaintiffs whom they seeks to represent, as the CPLR § 901 Plaintiffs: work and/or have worked for Defendant as hourly, non-managerial employees in New York; Defendant did not pay them overtime compensation of one and one-half times their regular rates of pay for all hours worked in a week over forty based on Defendant's practice of deducting between job-site travel time; Defendant did not provide them with their regular rates of pay; and Defendant did not provide them with accurate wage statements on each pay day.

32. Plaintiffs and the CPLR § 901 Plaintiffs enjoy the same statutory rights under the NYLL to receive overtime wages for all hours worked each week over forty hours, to be paid at

least at the minimum wage, to be paid all of their owed wages on a weekly basis, and to be furnished with accurate wage statements on each payday. Plaintiffs and the CPLR § 901 Plaintiffs have all sustained similar types of damages because of the Defendant's failure to comply with the NYLL and supporting regulations. Plaintiffs and the CPLR § 901 Plaintiffs all have suffered injury including lack of compensation due to the Defendant's common policies, practices, and patterns of conduct. Thus, Plaintiffs' claims and/or Defendant's defenses to those claims are typical of the CPLR § 901 Plaintiffs' claims and the Defendant's defenses to those claims.

### Adequacy

33. Plaintiffs, as described below, worked the same or similar hours as the CPLR § 901 Plaintiffs throughout their employments with Defendant. Defendant did not pay Plaintiffs overtime for all hours worked over forty hours in a week, statutory minimum wages, and did not furnish Plaintiffs with accurate wage statements on each payday, which is substantially similar to how Defendant paid and treated the CPLR § 901 Plaintiffs. Plaintiffs anticipate providing discovery responses and testifying under oath as to all of the matters raised in this Complaint and that will be raised in Defendant's Answer. Thus, Plaintiffs would properly and adequately represent the current and former employees whom Defendant has subjected to the unlawful treatment alleged herein.

### Superiority

34. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein, because such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of evidence, effort, and expense that numerous individual actions would engender. This action will result in the orderly and expeditious administration of



Class claims. Uniformity of decisions will be assured, thereby avoiding the risk of inconsistent and varying determinations. Plaintiffs know of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

35. Plaintiffs have no, or very few, material facts relating to the CPLR § 901 Plaintiffs' claims that are atypical of those of the putative class. Indeed, at all relevant times herein, Defendant treated Plaintiffs identically, or at the very least, substantially similarly, to the CPLR § 901 Plaintiffs.

36. Any lawsuit brought by any hourly, non-managerial asbestos handler and driver-supervisor employee of Defendant would be identical to a suit brought by any other such employee for the same violations. Thus, separate litigation would risk inconsistent results.

37. Accordingly, this means of protecting CPLR § 901 Plaintiffs' rights is superior to any other method, and this action is properly maintainable as a class action under CPLR § 901(b)(3).

38. Additionally, Plaintiffs' counsel, Joseph & Norinsberg, LLC ("J&N") and Katz Melinger PLLC ("KM") have substantial experience in this field of law. J&N and KM are a well-respected litigation firms that represents Plaintiffs primarily in a wide variety of employment matters, including individual and class action litigation concerning wage and hour, discrimination, and harassment claims among others. J&N and KM are dedicated to their clients, working tirelessly to achieve the best outcome for them, sometimes at a significant cost to the firm in terms of time, resources, and financial risk.

39. Plaintiffs' counsels have handled hundreds of employment cases in federal district courts and in New York state court, including dozens of class actions either under Federal Rule of Civil Procedure 23, or CPLR § 901, as well as FLSA collective actions. Accordingly, Plaintiffs'

counsel will fairly and adequately represent the interests of the putative class and will take all steps necessary to obtain class certification and appointment as class counsel.

### **BACKGROUND FACTS**

40. Defendant NYES is a New York-based asbestos abatement company that provides commercial and residential asbestos abatement services throughout New York.

41. Ruiz is a former hourly employee who worked for Defendant as an asbestos handler at multiple locations in and around New York City from on or around 2007 until on or around February 2019.

42. Giraldo is a former hourly employee who worked for Defendant as an asbestos handler at multiple locations in and around New York City from on or around July 2016 until on or around August 2019.

43. Defendant did not pay Plaintiffs for all time worked, including, without limitation for time spent transporting equipment and materials via company vans to and from the job sites.

44. Defendant paid Plaintiffs on a weekly basis by check.

45. On each occasion that Defendant paid Plaintiffs, Defendant failed to furnish Plaintiffs with an accurate wage statement that listed, *inter alia*, their actual hours worked, or, when applicable, their overtime rate of pay.

46. Plaintiffs relied on the information reflected in their paystub and as a result, they did not become aware that Defendant was underpaying them each week by failing to include all for their work time in their wages.

**AS AND FOR A FIRST CAUSE OF ACTION****Unpaid Overtime under the FLSA**

47. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

48. 29 U.S.C. § 207(a) requires employers to compensate employees at a rate not less than one and one-half times their regular rate of pay for all hours worked exceeding forty in a workweek.

49. As described above, Defendant is an “employer” within the meaning of the FLSA, while Plaintiffs and FLSA Plaintiffs are “employees” within the meaning of the FLSA.

50. Plaintiffs and FLSA Plaintiffs worked in excess of forty hours per week, yet Defendant failed to compensate Plaintiffs and FLSA Plaintiffs in accordance with the FLSA’s overtime provisions.

51. Defendant willfully violated the FLSA.

52. Plaintiffs and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

53. Plaintiffs and FLSA Plaintiffs are also entitled to liquidated damages, interest, attorneys’ fees, and costs for Defendant’s violations of the FLSA’s overtime provisions.

**AS AND FOR A SECOND CAUSE OF ACTION****Unpaid Overtime under the NYLL and the NYCRR**

54. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

55. N.Y. Lab. Law § 160 and 12 NYCRR § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rate of pay, or one and one-half times the minimum wage rate, if greater, for all hours worked exceeding forty in a workweek.

56. Defendant is an “employer” within the meaning of the NYLL and the NYCRR, while Plaintiffs, CPLR § 901 Plaintiffs, and any FLSA Plaintiffs who opts-into this action are “employees” within the meaning of the NYLL and the NYCRR.

57. Plaintiffs, CPLR § 901 Plaintiffs, and any FLSA Plaintiffs who opts-into this action worked in excess of forty hours in a workweek, yet Defendant failed to compensate them in accordance with the NYLL’s and the NYCRR’s overtime provisions.

58. Plaintiffs, CPLR § 901 Plaintiffs, and any FLSA Plaintiffs who opts-into this action are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their regular rate of pay.

59. Plaintiffs, CPLR § 901 Plaintiffs, and any FLSA Plaintiffs who opts-into this action are also entitled to liquidated damages, interest, attorneys’ fees, and costs for Defendant’s violations of the NYLL’s and NYCRR’s overtime provisions.

**AS AND FOR A THIRD CAUSE OF ACTION**

**Failure to Timely Pay Minimum Wages / All Wages in Violation of the NYLL**

60. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if fully set forth herein.

61. N.Y. Lab. Law § 652(1) and 12 NYCRR § 142-2.1 prescribe a minimum wage that employers must pay to their employees for each hour worked.

62. Similarly, NYLL §§ 190, 191, and 663(1) require that employers pay wages to their employees in accordance with the agreed terms of employment, and in the case of manual workers, at least as frequently as on a weekly basis.

63. Moreover, Plaintiffs and the CPLR § 901 Plaintiffs are “manual workers,” as they spend virtually 100% of their working time, and therefore well more than 25% of their time,

performing physically laborious tasks such as sweeping, mopping, dusting, vacuuming, carrying supplies, and other cleaning-related tasks.

64. As also described above, Defendant did not compensate Plaintiffs or the CPLR § 901 Plaintiffs at the minimum hourly rate required by the NYLL for all hours worked each day and week.

65. Plaintiffs and the CPLR § 901 Plaintiffs are entitled to payment at the minimum wage for every hour worked for Defendant pursuant to the NYLL's minimum wage provisions.

66. Plaintiffs and the CPLR § 901 Plaintiffs are also entitled to liquidated damages, interest, and attorneys' fees for Defendant's violations of the NYLL's minimum wage provisions.

**AS AND FOR A FOURTH CAUSE OF ACTION**

*Failure to Furnish Proper Wage Statements in Violation of the NYLL*

67. Plaintiffs repeat, reiterate, and reallege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

68. N.Y. Lab. Law § 195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.

69. As described above, Defendant, on each payday, failed to furnish Plaintiffs and the CPLR § 901 Plaintiffs with accurate wage statements containing the criteria required under the NYLL.

70. Pursuant to NYLL § 198(1-d), Defendant is liable to Plaintiffs and the CPLR § 901 Plaintiffs in the amount of \$250.00 for each workday that the violations occurred, up to a statutory cap of \$5,000.00.

**JURY DEMAND**

71. Plaintiffs respectfully demand a trial by jury of all issues and claims in this action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs demand judgment against the Defendant as follows:

- a. Preliminary and permanent injunctions against Defendant, and its officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with the Defendant, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein, and compelling them to undergo appropriate training and certification sessions, assuring the Defendant's future compliance with the major legal mandates violated in this case;
- b. A judgment declaring that the practices complained of herein are unlawful and in violation of the aforementioned and applicable laws as detailed herein;
- c. An order restraining Defendant from any retaliation against Plaintiffs, CPLR § 901 Plaintiffs, and/or FLSA Plaintiffs for participation in any form in this litigation;
- d. Designation of this action as an FLSA collective action on behalf of Plaintiffs and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA Plaintiffs, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;
- e. Certification of the claims brought in this case under the NYLL as a class action pursuant to CPLR § 901;
- f. Designation of Plaintiffs and his counsel as class/collective action representatives under the CPLR and the FLSA;
- g. Granting judgment in favor of Plaintiffs, CPLR § 901 Plaintiffs, and FLSA Plaintiffs against Defendant, and awarding the amount of unpaid overtime wages calculated at the rate of one and one-half times Plaintiffs' applicable regular rates of pay, or one and one-half times

the minimum wage, if greater, multiplied by all hours that they worked in excess of the prescribed number of hours per week;

h. Granting judgment in favor of Plaintiffs, CPLR § 901 Plaintiffs, and FLSA Plaintiffs against Defendant, and awarding the amount of unpaid minimum wages and/or wages due based on the terms and conditions of their employment/their straight-time regular rates of pay, if greater than the minimum wage rate, for the shortfall between their hours paid each week and the remaining hours up to forty hours in a week, based on their alleged unpaid work time;

i. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;

j. An award to the Plaintiffs for costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, and expert witness fees;

k. Awarding Plaintiffs with a service award for their role as class action representative and in recognition for his dedication to the CPLR § 901 Plaintiffs and their willingness to come forward as the lead Plaintiffs on behalf of the FLSA Plaintiffs and CPLR § 901 Plaintiffs;

l. Pre-judgment and post-judgment interest, as provided by law; and

m. Granting Plaintiffs, CPLR § 901 Plaintiffs, and FLSA Plaintiffs such other and further relief as this Court finds necessary and proper.

Date: New York, New York  
November 26, 2024

Respectfully submitted,  
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