

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

-against-

NEW YORK ENVIRONMENTAL SYSTEMS, INC.

Defendant

Index No.: 621167/2024

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into by and between ARLEY RUIZ and JOHN WILMAR GIRALDO ARISTITIZABAL (the “Named Plaintiffs”), on behalf of themselves and the Class (collectively, “Plaintiffs”) and NEW YORK ENVIRONMENTAL SYSTEMS, INC. (“Defendant”; together with Plaintiffs, the “Parties”).

I. RECITAL AND BACKGROUND

WHEREAS, on November 26, 2024, Named Plaintiffs filed a putative class and collective action complaint against Defendant in the Supreme Court for Nassau County, Index No. 621167/2024 (“the Action”) alleging violations of the Fair Labor Standards Act (the “FLSA”) and the New York Labor Law (the “NYLL”);

WHEREAS, the Parties agreed to participate in a mediation with respect to potential class-wide resolution of all claims against Defendant;

WHEREAS, the Parties have engaged in and completed informal discovery in connection with the potential settlement;

WHEREAS, the Parties, through their respective counsel, have also participated in extensive arms-length negotiations in efforts to settle the disputes underlying the Action;

WHEREAS, the Parties participated in a mediation before Martin Scheinman, Esq., after which they agreed upon a settlement in principle;

WHEREAS, Named Plaintiffs filed the Action and has agreed to extend Defendant’s time to respond to same to permit the approval of this settlement;

WHEREAS, solely for the purpose of settling the Action, and without admitting wrongdoing or liability with respect to the Released Claims and the alleged facts underlying the

Claims, or the propriety of permitting the Action to proceed as a class action, Defendant has agreed, for settlement purposes only, to class certification under Section 901 and 902 of the New York Civil Practice Law and Rules (“CPLR”) and to the certification of a collective action under § 216 *et. seq.* of the FLSA;

WHEREAS, Defendant denies and continues to deny all of the material allegations made by Plaintiffs in the Action and have denied and continue to deny that they are liable or owe damages to anyone with respect to the alleged facts, claimed damages, or Released Claims asserted in the Action. Nonetheless, solely for the purpose of settling the Action, and without admitting any wrongdoing or liability, Defendant has agreed to disseminate a notice of settlement pursuant to § 216 of the FLSA and Article 9 of the CPLR to all Class Members (as defined below);

WHEREAS, the purpose of this Agreement is to settle fully and finally all Released Claims, among the Parties, including all claims asserted in the Action in order to avoid the burden, expense, and uncertainty of continuing the Action; and

WHEREAS, Class Counsel (as defined below) analyzed and evaluated the merits of the claims made against Defendant and the impact of this Agreement on Named Plaintiffs and the Class Members and based upon Class Counsel’s analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of the Named Plaintiffs and Class Members; and

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Action on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth herein shall have the meanings ascribed to them below.

- 1.1 Action or Litigation.** The Action or Litigation shall mean the filed Complaint in the Supreme Court of the State of New York, County of Nassau, fashioned *Ruiz, et al. v. NEW YORK ENVIRONMENTAL SYSTEMS, INC.*, Index No.: 621167/2024 .
- 1.2 Administrator or Claims Administrator.** The “Administrator” or “Claims Administrator” will be Arden Claim Service, which was selected by the Named Plaintiffs and Defendant, subject to approval by the Court, to mail the Notices and administer the calculation, allocation, and distribution of the QSF. The Claims Administrator’s fees shall be borne by the QSF and shall not exceed \$50,000.
- 1.3 Approval Motion.** The “Approval Motion” shall mean the Named Plaintiffs’ anticipated motion, with supporting documents and materials, for the Court’s approval of the settlement and this Agreement pursuant to C.P.L.R. § 901 *et seq* and pursuant to § 216 *et seq* of the FLSA.

- 1.4 Approval Order.** The “Approval Order” means the Order entered by the Court: (i) certifying the Class and certifying the collective pursuant to § 216 of the FLSA; (ii) approving the terms and conditions of this Agreement; (iii) appointing Class Counsel; (iv) directing the manner and timing of providing Notice to the Class; and (v) setting the dates and deadlines for effectuating the settlement, including date of the mailing of Notice, the Claim Period, and the date of the Fairness Hearing if one is to be scheduled.
- 1.5 Check Void Date.** The “Check Void Date” refers to the date 120 calendar days from mailing of the Settlement Check by the Claims Administrator.
- 1.6 Claim Form Deadline.** “Claim Form Deadline” means the date 60 calendar days after the Notice and Claim Form are initially mailed to the Class Members.
- 1.7 Class or Class Members.** “Class” or “Class Members” mean Plaintiffs and all individuals who are or were employed in Covered Positions by Defendant in New York during the Relevant Time Period. There are approximately 751 Class Members.
- 1.8 Class Counsel or Plaintiffs’ Counsel.** “Class Counsel” or “Plaintiffs’ Counsel” shall jointly mean and refer to Jon L. Norinsberg, Esq., and Michael R. Minkoff, Esq. of Joseph & Norinsberg, LLC, 110 East 59th Street, Suite 3200, New York, New York 10022, Telephone: (212) 227-5700, and Kenneth Katz, Esq., of Katz Melinger PLLC, 370 Lexington Avenue, Suite 1512, New York, New York 10017, Telephone: (212) 460-0047. The terms Class Counsel and Plaintiffs’ Counsel shall be used interchangeably.
- 1.9 Class Member List.** The “Class Member List” shall mean a list of all Class Members identified by the following information, to the extent same is available in Defendant’s records: (i) name, (ii) last known address, last known phone number, and last known email address, (iii) Social Security Number, (iv) dates of employment, (v) position(s) held; and (vi) status as a driver (or not), in at least one workweek. The Class Member List information shall be contained in a Microsoft Excel spreadsheet that Defendant shall provide to Plaintiffs’ Counsel and the Claims Administrator. The Class Member List is only to be used by the Claims Administrator and/or Class Counsel, and only to effectuate settlement, and may not be copied, disseminated, or used for any other purpose.
- 1.10 Court.** “Court” means the Supreme Court of the State of New York, County of Nassau.
- 1.11 Covered Positions.** “Covered Positions” refers to all asbestos handlers / hazardous material handlers and asbestos handler supervisor drivers who were employed by Defendant in New York during the Relevant Time Period.
- 1.12 Defendant’s Counsel.** “Defendant’s Counsel” shall mean Sean P. Lynch, Esq., of Morgan, Lewis & Bockius LLP, 502 Carnegie Center, Princeton, NJ 08540-6241.
- 1.13 Effective Date.** “Effective Date” is the date on which this Agreement becomes effective, which shall mean the later of: (1) 30 calendar days after the Claim Form Deadline; or (2) 30 calendar days after a final order is entered, if the Court holds a Fairness Hearing, which authorizes the Parties to complete the settlement process, whichever is later. If, however, an appeal of the Approval Order is filed, then the Effective Date shall be 30 calendar days

after the latest of the following: (1) the appeal is dismissed, discontinued, or denied; (2) the Approval Order has been affirmed on appeal or remanded in a form substantially similar to the order entered by the Court; or (3) the time to petition for review of an appellate decision expires.

- 1.14 Fairness Hearing.** “Fairness Hearing” means the hearing before the Court, if required, relating to the fairness and approval of the Settlement, which occurs after the Claim Form Deadline.
- 1.15 Individual Settlement Award.** The “Individual Settlement Award” is the portion of the Net Settlement Fund attributable to each Class Member based on the allocation formula as described in Section 3.5 herein.
- 1.16 Net Settlement Fund.** “Net Settlement Fund” means the remainder of the Gross Settlement Amount (as defined below) after deductions for: (1) Claims Administrator’s fees and costs; (2) Court-approved attorneys’ fees and costs for Class Counsel; and (3) Court-approved Service Payment to the Named Plaintiffs.
- 1.17 Notice and Claim Form.** “Notice and Claim Form” means the form attached hereto as **Exhibit A**, approved by the Court that shall be sent to the Class Members. Class Members must timely submit the Claim Form to become a Participating Claimant and recover a payment pursuant to Section 3.5 herein. The Notice and Claim Form provided to each Class Member shall state that, by signing and returning the Claim Form, the Class Member affirmatively consents to participate in this Litigation. The Notice and Claim Form shall contain the Class Member’s estimated Individual Settlement Award. The Claim Form shall only require the Class Member’s signature and date.
- 1.18 Objector.** “Objector” means an individual Class Member who properly files an objection to this Agreement in accordance with Section 2.8 herein and does not include any individual who opts-out of this Agreement.
- 1.19 Opt-out Statement.** “Opt-out Statement” is a written signed statement that an individual Class Member has decided to opt-out and not be included in this Agreement, in accordance with Section 2.7 herein.
- 1.20 Participating Claimant(s).** “Participating Claimant(s)” means each Class Member who does not submit a valid Opt-out Statement in accordance with Section 2.7, and who properly and timely submits a Claim Form by the Claim Form Deadline in accordance with Section 2.6 herein. The Named Plaintiffs shall be considered Participating Claimants and will not be required to return a Claim Form to be a Participating Claimant and may not opt-out of the settlement.
- 1.21 Qualified Settlement Fund or QSF.** “Qualified Settlement Fund” or “QSF” means the account established by the Claims Administrator for the Settlement Payment paid by Defendant. The QSF will be controlled by the Claims Administrator subject to the terms of this Agreement and the Court’s Approval Order. Interest, if any, earned on the QSF will become part of the Net Settlement Fund.

- 1.22 Releasees.** The “Releasees” shall include Defendant, and all of its present and former individual and collective subsidiaries, parents, affiliates, partners (general and limited), members, owners, managers, directors, shareholders, employees, representatives, attorneys, trustees, creditors, heirs, spouses, transferees, insurers, sureties, agents, and assigns of any and all of them in both their individual and/or representative capacities, and all persons or entities acting by, through, under, or in concert with any of them, and any individual or entity which any of the Named Plaintiffs or the Class Members considered, or may have considered to be their employer(s). The term “Releasees” also shall include but is not limited to the following individuals: a) Robert Pavlovich and b) Ralph Severino.
- 1.23 Released Claims.** The “Released Claims” are claims identified in Paragraph 4.1.
- 1.24 Relevant Time Period.** The “Relevant Time Period” means October 2, 2017 through August 30, 2024.
- 1.25 Reserve Fund.** The “Reserve Fund” means fifteen thousand dollars (\$15,000) set aside from the Gross Settlement Amount to cover errors and omissions, including but not limited to paying any additional Settlement Administrator fees; providing a settlement check to individuals who should have been included in the Class List but were inadvertently omitted, or whose dates of affiliation were incorrect; or, at Defendant’s discretion, not to be unreasonably withheld, providing a settlement check to individuals who request payment after the Claim Form Deadline. Any amount remaining in the Reserve Fund after distribution of the Net Settlement Amount to the Class in accordance with the distribution formula set forth herein, and after final payment of any sums to be paid to the Settlement Administrator or of taxes on interest income of the Settlement Fund, shall revert to Defendant.
- 1.26 Gross Settlement Amount.** “Gross Settlement Amount or GSF” means Nine Hundred Eighty Thousand Dollars and Zero Cents (\$980,000.00). The Gross Settlement Amount does not include employer payroll taxes, which Defendant shall pay separately from the GSF.
- 1.27 Settlement Payment.** “Settlement Payment” means the total amount of all: (i) Individual Settlement Awards for all Participating Claimants, (ii) Court-approved Service Payments to the Named Plaintiffs; (iii) Court-approved attorneys’ fees and costs; and (iv) Court-approved Claims Administrator’s costs.
- 1.28 Settlement Checks.** “Settlement Checks” means the set of checks issued to Participating Claimants for their share of the Net Settlement Fund calculated in accordance with this Agreement.

2. PROCEDURAL ISSUES

- 2.1 Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2 Retention of the Administrator.** The Parties shall engage a Claims Administrator to send Notices and administer the settlement.

2.3 Retention and Responsibilities of the Claims Administrator. The Claims Administrator shall be responsible for:

- (A) preparing, printing and disseminating to Class Members the Notice and Claim Form with pre-paid postage, via email, and via text message; the Notice shall also direct recipients to the online version of the claim form as described immediately below;
- (B) creating a website, in English and Spanish languages, which will contain information about the Action and the Settlement, including a copy of the complaint, a copy of the Notice and Claim Form, and a means for Class Members to submit their Claim Forms electronically;
- (C) copying Class Counsel and Defendant's Counsel on material correspondence and promptly notifying them of any material requests or communications made by any Class Member;
- (D) receiving, reviewing, and responding to any Opt-out Statements or any other inquiries submitted by Class Members;
- (E) furnishing to Class Counsel and Defendant's Counsel copies of any requests for exclusion, objections or other written or electronic communications from Class Members which the Claims Administrator receives;
- (F) keeping track of requests for exclusion, including maintaining the original mailing envelope in which the request was mailed;
- (G) keeping track of returned Claim Forms;
- (H) calculating distribution amounts to Class Members in accordance with this Agreement;
- (I) preparing and mailing the Settlement Checks and any related tax reporting forms to Plaintiffs, Participating Claimants, Class Counsel, and any other party, entity, or individual for whom receipt of such documents is necessary or required;
- (J) timely responding to inquiries from Class Counsel and Defendant's Counsel consistent with the Administrator's duties specified herein;
- (K) promptly apprising Class Counsel and Defendant's Counsel of the activities of the Administrator and maintaining adequate records of its activities, including the dates of the dissemination of Notice and Claim Form(s), returned mail and other communications and attempted written or electronic communications with the Class;
- (L) promptly providing copies to Class Counsel and Defendant's Counsel of any Opt-out Statements and objections submitted by Class Members;

- (M) providing a final report, deliverable to Class Counsel and Defendant's Counsel, detailing the results of the class mailings and participation;
- (N) retaining and providing a copy of the Individual Settlement Checks signed by Plaintiffs which may be filed with the Court if necessary to establish an individual has joined the Action and waived the Released Claims;
- (O) making and filing annual reconciliation statements regarding payments into and out of the QSF as required by federal, state, and/or local taxing authorities, and timely submitting copies to Class Counsel and Defendant's Counsel after such statements are filed; and
- (P) such other tasks upon which the Parties mutually agree.

The Parties agree to cooperate with the Claims Administrator and assist it in any way reasonably possible in administering the settlement. The Claims Administrator's fees shall be paid from the Gross Settlement Amount. In addition, no later than 15 calendar days after the close of the Claim Period, the Claims Administrator shall certify jointly and provide to Plaintiffs' Counsel and to Defendant's Counsel: (a) a list of all Class Members with their estimated awards; (b) a list of all Class Members who timely returned their Notice and Claim Form; (c) a list of all Class Members who filed timely objections; and, (d) a list of all Class Members who requested to opt-out of the settlement at any time during the Opt-out Period and their estimated award(s). The Claims Administrator shall also provide the Parties with an updated address list for the Class. Throughout the period of claims administration, the Administrator will provide reports to the Parties upon request by either of the Parties regarding the status of the mailing of the Notice and Claim Forms to the Class, the claims administration process, and distribution of the Settlement Checks or any other aspect of the claims administration process.

2.4 Approval Motion

- (A) Within 30 calendar days after the execution of this Agreement, Class Counsel will file an unopposed Motion for Approval of the Class Action Settlement ("Approval Motion"), which shall be provided to Defendant's Counsel for review 10 calendar days prior to filing. In connection with the Approval Motion, Plaintiffs will seek an Order (among other things): (a) approving as to form and content the Proposed Notice and Claim Form, (b) directing the dissemination of the Notice and Claim Form to the Class Members via mail, email, and text message, and providing the Class Members an opportunity to submit a request to be excluded from the settlement; (c) approving the settlement as fair, adequate, reasonable, and binding on Plaintiffs and all Class Members who have not timely and properly opted out pursuant to Section 2.8 and incorporate the terms of this Agreement; (d) certifying the Class for settlement purposes; (e) granting collective certification under § 216 of the FLSA for settlement purposes; (f) approving Class Counsel's application for an award of attorneys' fees and costs; (g) approving the Service Payment in accordance with this Agreement; (h) appointing the Claims Administrator and approve the costs of administration; (i) and directing the distribution of the Settlement Payments.

- (B) If the Court denies the Approval Motion, unless the Parties jointly agree to seek reconsideration of the ruling, to seek appellate review, or to seek Court approval of a renegotiated settlement, the Litigation will resume as if no settlement had been attempted. The Parties retain all rights with respect to whether the Litigation should be maintained as a class action or collective action and with respect to the merits of the claims and defenses being asserted in the Litigation. Furthermore, Defendant shall be permitted to answer, move, or otherwise respond to the Complaint within 21 calendar days of said denial.
- (C) The Parties will work together, diligently and in good faith, to expeditiously obtain an Approval Order and Final Judgment and Dismissal.

2.5 Notice to Class Members

- (A) Within 10 business days of the entry of the Approval Order, Defendant will provide the Class Member List to the Claims Administrator.
- (B) Within twenty 20 business days of the Approval Order, the Claims Administrator will mail to all Class Members, via First Class United States Mail, postage prepaid, the appropriate Notice and Claim Form, using each Class Member's last known address, as recorded in Defendant's records. The Notice and Claim Form shall contain Class Members' estimated Individual Settlement Award. The Claim Form shall only require Class Members' signature and date. At the same time, the Claims Administrator will send the Notice and Claim Form to Class Members via text message, to the extent Defendant has maintained such contact information in its records and provided same to Class Counsel and the Claims Administrator.
- (C) The Claims Administrator shall take all reasonable steps to obtain the correct address of any Class Member for whom the Notice and Claim Form is returned by the post office as undeliverable, including using Social Security Numbers provided by Defendant to obtain better address information via the U.S. Post Office's National Change of Address System, and shall attempt a single re-mailing. The Claims Administrator will notify Class Counsel and Defendant's Counsel of any Notice and Claim Form sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Notice and Claim Form returned as undeliverable after the single re-mailing(s) as set forth in this Agreement.

2.6 Participating Claimants

- (A) Class Members who wish to become Participating Claimants must fully and timely complete, execute, and submit online or via mail, per the instructions therein, the Claim Form. If the Claim Form is not electronically submitted or postmarked on or before the Claim Form Deadline, then that Class Member will be deemed to have forever waived his or her right to be a Participating Claimant and receive payment under this settlement. Class Members who do not submit the Claim Form and Release in a timely and proper fashion and who fail to properly submit an Opt-out Statement shall be subject to the settlement and will release all Released Claims

from the beginning of time up to and through the date of the Approval Order except for any claims arising under the Fair Labor Standards Act. Only Participating Claimants shall be entitled to payment pursuant to the settlement and this Agreement, and will be issued a Settlement Check. Class Members whose Notice and Claim Forms were undeliverable, or were unable to file the Notice and Claim Form before the Claim Form Deadline due to such factors as documented change of address, military service, hospitalization, or other extraordinary circumstances shall have an additional 15 calendar days beyond the Claim Form Deadline to file a Notice and Claim Form.

- (B) A Class Member who submits an Opt-out Statement and also submits a Claim Form shall be sent a cure letter by the Settlement Claims Administrator seeking clarification of whether they intend to opt out of the settlement or become a Participating Claimant. Absent a response to the contrary, such Class Member shall be deemed to have opted-out of the settlement pursuant to Section 2.8.
- (C) Named Plaintiffs will be deemed to have opted into the Settlement and will not be required to return a Claim Form and cannot opt-out of the Settlement or object to same and will release all claims regardless of whether or not they cash their Settlement Checks.

2.7 Class Member Opt-outs.

- (A) Class Members, except for the Named Plaintiffs, who choose to opt-out of the settlement as set forth in this Agreement must mail via First Class United States Mail, a written and signed Opt-out statement to the Claims Administrator that states that he or she is opting out of the settlement and includes his or her name, address, and telephone number, and states, "I opt out of the New York Environmental Systems wage and hour settlement," or words to that effect.
- (B) To be effective, an Opt-out Statement must be post marked within 60 calendar days from the mailing of the Notice and Claim Form to the Class Member ("Opt-out Period").
- (C) The Claims Administrator will stamp the postmark date on the original of each Opt-out Statement that it receives and shall serve copies of each Opt-out Statement on Class Counsel and Defendant's Counsel not later than 3 business days after receipt thereof. The Claims Administrator will, within 24 hours of the end of the Opt-out Period, send a final list of all Opt-out Statements to Class Counsel and Defendant's Counsel by email. The Claims Administrator shall retain in its files the stamped originals of all Opt-out Statements and the original envelopes containing Opt-out Statements. Within 10 business days of the end of the Claim Period, Class Counsel will file a final list of all Opt-Out Statements and copies of those Opt-Out Statements with the Court via NYSCEF.
- (D) Any Class Member who (i) fails to exclude him/herself from the settlement pursuant to this Section, or (ii) whose Opt-out Statement does not include all

required information, or is untimely, shall be bound by the settlement and terms of this Agreement and release all Released Claims except for those arising under the FLSA.

- (E) Any Class Member who affirmatively opts-in shall release all Released Claims as well as those that arise under the FLSA.

2.8 Objections to Settlement.

- (A) Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Claims Administrator within 60 calendar days after the Claims Administrator mails Notice and Claim Forms to Class Members. The statement must also include the name, address, and telephone number for the Class Member making the objection. It must also contain the words “I object to the settlement in the New York Environmental Systems wage and hour case” (or words to that effect) and set forth the reasons for the objection. The Claims Administrator shall stamp the date received on the original objection and send a copy of the objection to Class Counsel and Defendant’s Counsel not later than 3 business days after receipt thereof. Class Counsel shall file the date-stamped originals of any and all objections with the Clerk of the Court via NYSCEF within 10 business days after the end of the Claim Period.
- (B) An individual who files objections to the settlement (“Objector”) also has the right to appear at a Fairness Hearing, if one is scheduled, either in person or through counsel hired and paid for by the Objector. An Objector who wishes to appear before the Court must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections. The failure to specifically request the right to appear at a fairness hearing despite submitting an objection shall deem such Objector to waive his or her right to present his or her arguments to the Court at any fairness hearing. An Objector may withdraw his or her objections at any time. No Class Member may present an objection at a Fairness Hearing based on a reason not stated in his or her written objections. A Class Member who has submitted an Opt-out Statement may not submit objections to the Settlement. Class Counsel shall promptly file the objection and request such a hearing if necessary.
- (C) It is in the Court’s discretion whether to schedule a hearing and allow the objecting Class Member or their counsel to appear or speak at a Fairness Hearing, if such a hearing is scheduled. If the Court schedules such a Fairness Hearing, Class Counsel shall notify the objecting Class Member(s) via first class U.S. Mail, and, if the Objector provides their electronic contact information, via email, of the date, time, and location of the hearing.
- (D) The Parties may file with the Court written responses to any filed objections no later than 7 calendar days before the Fairness Hearing if one is scheduled.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

- (A) Defendant agrees that the Gross Settlement Amount shall fully resolve and satisfy any claim for attorneys' fees and costs approved by the Court, any and all amounts to be paid to Participating Claimants, any Court-approved Service Payments to the Named Plaintiff, and the Claims Administrator's fees and costs.
- (B) Defendant shall cause the Settlement Payment, *as that term is defined in Section 1.27, above*, to be paid to the Claims Administrator (or to an account established by the Claims Administrator) and the corresponding amount of payroll taxes within 20 business days after the Effective Date.
- (C) Within 5 business days after receiving the Settlement Payment, the Claims Administrator shall distribute the money in the QSF by making the following payments:
 - i. Paying the Court-approved Service Payment to the Named Plaintiffs as described in Section 3.3
 - ii. Paying the Claims Administrator's Court-approved fees and costs as described in Section 3.4;
 - iii. Paying all Paying Participating Claimants their portion of the Net Settlement Fund as described in Section 3.5; and
 - iv. Paying Class Counsel's Court-approved attorneys' fees and costs as described in Section 3.2.

3.2 Settlement Amount Payable as Attorneys' Fees and Costs.

- (A) In the Motion for Approval, Class Counsel will petition the Court for an award of attorneys' fees of no more than one-third (\$326,666.67) of the Gross Settlement Amount and for reimbursement of their actual costs and expenses to be paid from the Gross Settlement Amount of no more than \$10,000.00. The attorneys' fees are to compensate Class Counsel for all work already performed in the Litigation, and all the work remaining to be performed in documenting the settlement, securing Court approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal with prejudice of the Litigation. The approved attorneys' fees and costs shall be paid from the Gross Settlement Amount. Defendant will not oppose such application and will file a statement of non-opposition, which shall not be construed to be an affirmative representation by Defendant that Class Counsel's requested attorneys' fees were reasonable.

The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for

Approval and shall be reviewed separately by the Court. Any amounts not approved by the Court will become part of the Net Settlement Fund and will be reallocated pro-rata to the Participating Claimants.

3.3 Service Payment to the Named Plaintiffs.

- (A) In return for services rendered to the Class, the Named Plaintiffs will apply to the Court to each receive a Service Payment of \$7,500 from the Gross Settlement Amount, amounting to a combined total of \$15,000.00.
- (B) The outcome of the Court's ruling on the application for Service Payment will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Approval or for Final Judgment and Dismissal. The Court shall review separately from the fairness of the Agreement any request for Service Payments. Any amounts not approved by the Court will become part of the Net Settlement Fund and will be reallocated pro-rata to the Participating Claimants. Defendant will not oppose such application.

3.4 Settlement Amounts Payable to the Claims Administrator.

- (A) In the Motion for Approval, Class Counsel will ask the Court to approve the Claims Administrator's fees for reimbursement of its actual costs and expenses to be paid from the Gross Settlement Amount not to exceed \$50,000.00.
- (B) The outcome of the Court's ruling on the application for Claims Administrator's fees will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Approval or for Final Judgment and Dismissal. Any amounts not approved by the Court will become part of the Net Settlement Fund and will be reallocated pro-rata to the Participating Claimants. Defendant will not oppose such application.

3.5 Distribution to Participating Claimants.

- (A) Only Participating Claimants will be deemed eligible for a payment hereunder.
- (B) Each Participating Claimant shall be entitled to a base settlement payment of \$600 from the Net Settlement Fund (the "Base Payment").
- (C) In addition, Participating Claimants shall be entitled to receive a proportionate share of the Net Settlement Fund allocated below to Class Members based upon the following groups and calculation:
 - (i) GROUP ONE: Non-Driving Claimants
 - Participating Claimants who were not drivers, and who worked up to four weeks during the Covered Period, will be eligible to receive only the Base Payment;

- Participating Claimants who were not drivers, and who worked between four and twenty six weeks during the Covered Period, will be eligible to receive the \$200 in addition to the Base Payment (a total of \$800);
- Participating Claimants who were not drivers, and who worked between twenty six weeks and seventy eight weeks during the Covered Period, will be eligible to receive the \$400 in addition to the Base Payment (a total of \$1,000);
- Participating Claimants who were not drivers, and who worked more than seventy eight weeks during the Covered Period, will be eligible to receive the \$600 in addition to the Base Payment (a total of \$1,200);

(ii) GROUP TWO: Driving Claimants

- Participating Claimants who were drivers and recorded up to twenty hours of drive time during the Covered Period, will be eligible to receive \$820.00 each in addition to the Base Payment (a total of \$1,420);
- Participating Claimants who were drivers and recorded between twenty hours and fifty hours of drive time during the Covered Period, will be eligible to receive \$1,000.00 in addition to the Base Payment (a total of \$1,600);
- Participating Claimants who were drivers and recorded between fifty hours and one hundred hours of drive time during the Covered Period, will be eligible to receive \$1,355 in addition to the Base Payment (a total of \$1,955);
- Participating Claimants who were drivers and recorded more than one hundred hours of drive time during the Covered Period, will be eligible to receive \$1,500 in addition to the Base Payment (a total of \$2,100);

- (D) The calculation of all workweeks pursuant to this Section shall be based on Class Member List.
- (E) The Claims Administrator shall mail to all Participating Claimants their Individual Settlement Awards and any unpaid Service Payment to the Named Plaintiffs within 5 calendar days after the QSF is funded as set forth in Paragraph 3.1, above.
- (F) Participating Claimants will have 120 calendar days after their Settlement Check mail date to redeem their Individual Settlement Awards and/or Service Payment. If Participating Claimants and the Named Plaintiffs do not redeem their Individual Settlement Awards and/or Service Payments within the 120-day period, their Settlement Checks will be void. If a Participating Claimant or a Named Plaintiff alerts the Claims Administrator or Class Counsel during the 120-day period to redeem Individual Settlement Awards or any Service Payment that he or she has not received his or her Settlement Check or to request a replacement check, the

Claims Administrator will, upon confirming that the Settlement Check in question has not been redeemed, issue a stop payment on the original Settlement Check and reissue that Participating Claimant's or Plaintiff's Settlement Check. All reissued Settlement Checks will be valid for 45 calendar days after the date of issue and will be void thereafter. Requests for replacement Settlement Checks after 120 calendar days of the original Settlement Check's issue date will not be honored.

- (G) Any Settlement Checks that remain uncashed after the Check Void Date will be returned to Defendant.

3.6 Tax Characterization.

- (A) Settlement Checks paid to Participating Claimants shall be allocated fifty percent (50%) to W-2 wage payments subject to withholdings, and fifty (50%) to 1099 non-wage compensation, including liquidated damages and prejudgment interest.
- (B) Payments of attorneys' fees and costs pursuant to Section 3.2(A) shall be made without withholding. Class Counsel will each receive a Form 1099 for their share of this payment, if required under applicable law.
- (C) Payment of the Claims Administrator's fees and costs pursuant to Section 3.4(A) shall be made without withholding. The Claims Administrator will receive a Form 1099 for this payment, if required under applicable law.
- (D) Service Payments to the Named Plaintiffs pursuant to Section 3.3(A) shall not be deemed to be wages and will be made without withholding and reported to the IRS and the payee under the payee's name and social security number on an IRS Form 1099.
- (E) The Settlement Claims Administrator is responsible for calculating tax withholdings and the employer's share of payroll taxes for Participating Claimants (and providing appropriate documentation supporting such calculations), issuing and filing appropriate forms associated with payments of any amounts to Participating Claimants, including, but not limited to, issuing the W-2 and 1099 Forms for all amounts paid to the Participating Claimants and Service Award recipients and for remitting all taxes withheld to the appropriate authorities.
- (F) Defendant's share of payroll taxes shall not come out of the Gross Settlement Fund. Rather, Defendant's share of payroll taxes shall be paid by Defendant in addition to the sum of the Gross Settlement Fund.

4. RELEASE

4.1 Release of Claims.

- (A) **Release of New York State and Federal Wage and Hour Claims.** Named Plaintiffs and all Class Members who do not opt out of the settlement, as well as their representatives, beneficiaries, conservators, attorneys, heirs, administrators,

executors, agents, and assigns, fully release and discharge Defendant and Releasees from any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues arising in any way from the beginning of time until the date of the Approval Order whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that were, could have been, or might be asserted in any court, tribunal or proceeding arising under the New York Labor Law, the New York Hospitality Industries Wage Order, the New York Miscellaneous Industries Wage Order, the New York Wage Theft Prevention Act, New York Minimum Wage Act, and/or any other rule, regulation, statute, or ordinance promulgated by any city, county, town, village, or municipality within the state of New York governing the payment of wages. Class Members who return a Claim Form will also fully release and discharge Defendant and Releasees from any and claims under the Fair Labor Standards Act. For the avoidance of doubt, this release includes such aforementioned claims for statutory, constitutional, contractual or common law claims for unpaid regular or overtime wages, meal breaks, payment of final wages, earned sick time, accrued benefit time prevailing wages, improper notice, improper paystubs, spread of hours, unpaid gratuities, service charges, living wage, tips, any related wage and hour claims, interest on such claims, penalties, damages, liquidated damages, attorney's fees, expenses, disbursements, litigation costs and attorneys' fees, restitution, or However, notwithstanding the foregoing, this release shall not encompass claims of retaliation under NYLL § 215 or § 15(a)(3) of the FLSA.

- (B) All Settlement Checks shall contain, on the back of the check, in English and Spanish languages, the following limited endorsement:

By accepting this payment, I consent to join the action, *Ruiz et al. v. New York Environmental Systems, Inc., et al.*, and agree to waive any right to bring suit for any claims arising under the Fair Labor Standards Act, the New York Labor Law, and/or any other rule, regulation, statute, or ordinance promulgated by any city, county, town, village, or municipality within the state of New York governing the payment of wages. I agree that by accepting this payment, I have settled all wage claims under the Fair Labor Standards Act, the New York Labor Law, and/or any other rule, regulation, statute, or ordinance promulgated by any city, county, town, village, or municipality within the state of New York governing the payment of wages, including claims for unpaid wages, minimum wage, overtime, and associated liquidated damages, interest, attorneys' fees, and fees and penalties for those weeks through *[date of approval order]*.

- (C) **Further Release by the Named Plaintiffs.** As of the date this Agreement is signed by the Named Plaintiffs, in addition to the release contained in 4.1(A) above, and in consideration for the Service Payments received under 3.3(A), Named Plaintiffs as well as their spouses, children, representatives, beneficiaries, conservators, attorneys, heirs, executors, administrators, and assigns fully release and discharge Defendant and Releasees from any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs,

expenses, matters and issues arising in any way from the beginning of time until the date of the Approval Order whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, that were, could have been, or might be asserted in any court, tribunal or proceeding of any kind or nature that the Named Plaintiffs as well as their spouses, children, representatives, beneficiaries, conservators, attorneys, heirs, executors, administrators, agents, or assigns may have or may have against Releasees, including but not limited to any alleged violation of: Title VII of the Civil Rights Act of 1964; The Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code; The Equal Pay Act; the Genetic Information Nondiscrimination Act of 2008; The Employee Retirement Income Security Act of 1974; The Immigration Reform and Control Act; The Consolidated Omnibus Budget Reconciliation Act; The Americans with Disabilities Act of 1990; The Fair Credit Reporting Act; The Occupational Safety and Health Act; The Rehabilitation Act; The Federal Worker Adjustment and Retraining Notification Act; The Family and Medical Leave Act; The Federal False Claims Act; The New York Worker Adjustment and Retraining Notification Act; The New York Corrections Law, including Sections 750-755 thereof; The New York State Human Rights Law; The New York Civil Rights Law; The New York City Human Rights Law; The New York City Earned Safe and Sick Time Act; and any other federal, state, and/or local law or ordinance. This release includes all claims for all damages arising from any such released claims, including claims for liquidated damages, interest, and attorneys' fees and costs.

- (D) In the event that the Court denies a Service Payment in its entirety to the Named Plaintiffs, Section 4.1(C) of the Agreement will not apply to that Named Plaintiffs and in such instance, the Named Plaintiffs shall only release the claims outlined in Section 4.1(A) of the Agreement.

5. MISCELLANEOUS, INTERPRETATION AND ENFORCEMENT

- 5.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 5.2 Non-Admission of Liability.** By entering into this Agreement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiffs, individually or collectively, all such liability being expressly denied. Likewise, by entering into this Agreement, Defendant in no way admits to the suitability of this case for class or collective action litigation other than for purposes of settlement. Rather, Defendant enters into this Agreement to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs. Settlement of the Litigation, negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement: (i) are not, shall not be deemed to be, and may not be used as an admission

or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in any and all Complaints filed in the Litigation; and (ii) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendant in any civil, criminal, administrative or arbitral proceeding. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement. Neither the Named Plaintiffs nor the Class Members shall be deemed or considered a prevailing party or parties.

- 5.3 No Assignment.** Class Counsel and Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including but not limited to any interest in the Litigation, or any related action.
- 5.4 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 5.5 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to the Named Plaintiff, Class Members, and all Participating Claimants, their spouses, children, representatives, heirs, administrators, executors, agents, beneficiaries, conservators, attorneys and assigns.
- 5.6 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 5.7 Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 5.8 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 5.9 Blue Penciling.** If any provision of this Agreement, except for the releases contained in Section 4.1, is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 5.10 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

- 5.11 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction or authority to modify the terms of the Agreement or to increase Defendant's payment obligations hereunder.
- 5.12 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement by such Party, notwithstanding such failure.
- 5.13 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its execution and occurrence of the Effective Date. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Parties had signed the same instrument.
- 5.14 Right of Appeal.** The Parties agree to maintain the right to appeal denial of approval of the settlement.
- 5.15 Electronic Signatures.** Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via email to counsel for the other party. Class Counsel and Defendant's Counsel hereby represent that they are fully authorized to bind the Parties they represent to the terms and conditions hereof and that they have authorization to execute this Agreement on their behalf. This Agreement is valid and binding if signed by the Parties' authorized representatives. Any signature made and transmitted by email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by email.

11/26/2024 05:42PM UTC

Date: _____

By: AR
ARLEY RUIZ

Date: _____

By: _____
JOHN WILMAR GIRALDO ARISTITIZABAL

Date: _____

By: _____
New York Environmental Systems, Inc.

Title: _____

Agreed to in form and content as putative Class Counsel:

Date: _____

By: _____
Michael R. Minkoff, Esq.
As Putative Class Counsel

Date:

By: _____
ARLEY RUIZ

11/26/2024 05:48PM UTC

Date:

By: *John W Giraldo Arstitizabal*

JOHN WILMAR GIRALDO ARSTITIZABAL

Date:

By: _____
New York Environmental Systems, Inc.

Title: _____

Agreed to in form and content as putative Class Counsel:

Date:

By: _____
Michael R. Minkoff, Esq.
As Putative Class Counsel

Date:

By: _____
ARLEY RUIZ

Date:

By: _____
JOHN WILMAR GIRALDO ARISTITIZABAL

12/11/24

Date:

By: 
New York Environmental Systems, Inc.

Title: _____
Robert R. Pavlovich
President

Agreed to in form and content as putative Class Counsel:

11/27/24

Date:

By: 
Michael R. Minkoff, Esq.
As Putative Class Counsel