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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**RACHEL HERMAN, RENDA
GREENHILL, and RANDY WILKINS,
Individually and on Behalf of the Putative
Class Members,**

Plaintiffs,

-against-

JUDLAU CONTRACTING, INC.,

Defendant.

Index No. _____/2017

**VERIFIED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

Plaintiffs Rachel Herman, Renda Greenhill and Randy Wilkins (the “Plaintiffs”), individually and on behalf of all class members, upon personal knowledge as to themselves and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. Plaintiffs are flaggers who worked for Defendant Judlau Contracting, Inc. on various public and private projects throughout New York City. For their work, Defendant paid Plaintiffs an hourly rate that did not include prevailing wages or supplemental benefits when they performed work on public projects, including New York City roadways.

2. Plaintiffs seek to recover unpaid prevailing wages, daily overtime and supplemental benefits which they and members of the putative Class were entitled to receive for work they performed pursuant to contracts entered into between Defendant and public entities, including but not limited to, New York City Department of Transportation (“DOT”) and New York City Department of Design & Construction (“DDC”).

3. Plaintiffs also bring a claim for Defendant’s failure to provide them with proper wage notices, pursuant to NYLL §§ 190 *et seq.* and the supporting regulations.

4. Plaintiffs bring their claims under the NY common law on behalf of themselves and a New York Civil Practice Law & Rules (“NY CPLR”) § 901 class of all employees of Defendant in New York who worked as flaggers on public works projects over the six (6) year period preceding the filing of this complaint.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to NY CPLR §§ 301 and 302(a)(1) because the Defendant is domiciled in New York and/or conducts business within the State of New York.

6. Venue is proper in this district pursuant to NY CPLR § 501 because, upon information and belief, one or more of the contracts pursuant to which Plaintiffs performed which contain venue provisions requiring that any action related to the contract be commenced in this Court.

7. Venue is also proper in this district because a substantial portion of the events underlying this action occurred in this district.

THE PARTIES

Plaintiffs:

8. Plaintiff Rachel Herman (“Herman”) was, at all relevant times, an adult individual residing in New York County, New York.

9. Plaintiff Renda Greenhill (“Greenhill”) was, at all relevant times, an adult individual residing in Queens County, New York.

10. Plaintiff Randy Wilkins (“Wilkins”) was, at all relevant times, an adult individual residing in Kings County, New York.

Defendant:

11. Upon information and belief, Judlau Contracting, Inc. (“Judlau” or the “Defendant”) is an active New York corporation with headquarters located at 26-15 Ulmer St., College Point, New York 11354.

NEW YORK CLASS ACTION ALLEGATIONS

12. Pursuant the New York common law, Plaintiffs brings their First through Third Causes of Action under NY CPLR § 901 on behalf of themselves and the following class:

All persons employed by Defendant at any time since April 26, 2011 and through the entry of judgment in this case (the “Class Period”) who worked as flaggers on public works projects (the “Class Members”).

13. The Class Members are readily ascertainable. The number and identity of the Class Members are determinable from the records of Defendant. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendant. Notice can be provided by means permissible under NY CPLR § 901.

14. The Class Members are so numerous that joinder of all members is impracticable. Although the precise number of Class Members is unknown to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

15. Upon information and belief, there are in excess of forty (40) Class Members.

16. Common questions of law and fact exist as to all Class Members and such questions predominate over any questions solely affecting individual Class Members. Such common questions will determine Defendant's liability to all (or nearly all) Class Members. These common questions include:

- a. whether Defendant breached contracts with local, state and/or federal governmental entities by failing to pay Plaintiffs and the Class Members, who were third-party beneficiaries of such contracts, at New York State and/or New York City prevailing wage rates;
- b. whether Defendant failed and/or refused to pay Plaintiffs and the Class Members supplemental benefits on prevailing wage jobs as required by the New York City and New York State prevailing wage schedules;
- c. whether Defendant was unjustly enriched by failing to pay Plaintiffs and the Class Members at prevailing wage rates on prevailing wage jobs;
- d. whether Defendants failed to provide proper wage notice to Plaintiffs and Class Members at the beginning of their employment and/or on February 1 of each year as required by the NYLL;
- e. whether Defendant's failure to properly pay Plaintiffs and the Class Members lacked a good faith basis; and
- f. whether Defendant is liable for all damages claimed hereunder, including but not limited to compensatory damages, interest, and costs and disbursements.

17. Plaintiffs' claims are typical of the Class Members' claims. Plaintiffs, like all Class Members, were flaggers on New York City roadways and worked for Defendant pursuant

to its corporate policies. Plaintiffs, like all Class Members, were, inter alia, not paid prevailing wages or supplemental benefits or provided with wage notices. If Defendant is liable to the Plaintiffs for the Class claims enumerated in this Complaint, it is also liable to all Class Members.

18. The Plaintiffs and their Counsel will fairly and adequately represent the Class. There are no conflicts between Plaintiffs and the Class Members, and the Plaintiffs bring this lawsuit out of a desire to help all Class Members, not merely out of a desire to recover their own damages.

19. Plaintiffs' counsel are experienced class action litigators who are well-prepared to represent the interests of the Class Members.

20. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant is a sophisticated party with substantial resources. The individual plaintiff lacks the financial resources to vigorously prosecute a lawsuit in court against the corporate Defendant. The individual members of the Class have no interest or capacity to bring separate actions; Plaintiffs are unaware of any other litigation concerning this controversy; it is desirable to concentrate the litigation in one case; and there are no likely difficulties that will arise in managing the class action.

STATEMENT OF FACTS

Defendant's Company

21. At all relevant times, Defendant "Judlau Contracting, Inc. has been a leader in the heavy construction industry business, specializing in large public works projects." (<http://www.judlau.com/presentation/about-us/>). Judlau's "work includes tunnels, bridges, subways, highways, electrical and signal modernization, delivered in both design-build and

design-bid-build. From our early roots as a water and sewer main contractor, we have grown to successfully build large and complex transportation projects.” (*Id.*).

22. Upon information and belief, Defendant’s corporate headquarters is located at 26-15 Ulmer Street, College Point, New York 11354.

23. According to Defendant’s website, “Judlau is known for innovative leadership, experienced project management and a commitment to safety and quality second to none. We are proudly ISO 9001:2008 Registered. With our detailed planning, innovative techniques and accomplished teams of experts, we have a strong track record of completing projects on time and under budget. Most important of all, our employees are united by a commitment to be the best in our industry, to work cooperatively with our business partners, and to always meet and exceed the expectations of our clients.” (*Id.*).

The Public Works Contracts

24. Upon information and belief, Defendant has entered into certain contracts, as either a prime contractor or a subcontractor, with public agencies to provide flagging and other labor on New York City roadways (the “Public Works Contracts”).

25. Upon information and belief, the Public Works Contracts obligated Defendant to pay Plaintiffs and the Class Members at or above the local prevailing wage rates, including any required supplemental benefits and overtime premiums for hours worked in excess of forty (40) hours per week, eight (8) hours per day, hours worked on Saturday and Sunday, and hours worked during the evening. Defendant’s failure to pay Plaintiffs proper prevailing wage rates and supplemental benefits was a corporate policy that also applied to all of Defendant’s other similarly situated employees.

26. As employees of Defendant who were assigned to work on Defendant’s publicly-

financed projects, Plaintiffs and the Class Members were intended third-party beneficiaries of Defendant's Public Works Contracts.

27. As required by law, a schedule containing the prevailing rates of wages and supplemental benefits ("prevailing wage schedules") to be paid to the plaintiff Class should have been annexed to and formed a part of the Public Works Contracts. If not annexed to the Public Works Contracts, these schedules were expressly or impliedly incorporated into the contracts as a matter of law and/or public policy.

28. The promise to pay and ensure payment of the prevailing wage and supplemental benefit rate stated in the Public Works Contracts was made for the benefit of all workers furnishing labor on New York City roadways and, as such, the workers furnishing labor on New York City roadways are the beneficiaries of that promise and the contracts entered into between Defendants and government agencies.

29. Upon information and belief, in furtherance of the Public Works Contracts entered into by Defendants, Plaintiffs and other members of the putative Class performed various flagging tasks, including, but not limited to, holding stop/go signs, directing pedestrian and vehicular traffic around construction sites, directing construction vehicles in and out of the construction zones, positioning barrels and cones in and around the construction site, sweeping the construction site, and walking behind the excavator and/or steamroller as they move from one construction site to another.

30. Upon information and belief, the work performed pursuant to the Public Works Contracts required a DOT street opening permit, which requires that all employees working on the project be paid prevailing wages pursuant to NYLL § 220.

31. Upon information and belief, Plaintiffs and class members should have been paid

at the prevailing rate of wages (including supplemental benefits) of:

- a. July 1, 2010 through June 30, 2011: \$37.71 plus \$28.70 in supplemental benefits per hour¹;
- b. July 1, 2011 through June 30, 2012: \$38.84 plus \$28.70 in supplemental benefits per hour;
- c. July 1, 2012 through June 30, 2013: \$38.99 plus \$32.15 in supplemental benefits per hour;
- d. July 1, 2013 through June 30, 2014: \$39.67 plus \$33.55 in supplemental benefits per hour;
- e. July 1, 2014 through June 30, 2015: \$40.32 plus \$35.15 in supplemental benefits per hour;
- f. July 1, 2015 through June 30, 2016: \$40.98 plus \$36.92 in supplemental benefits per hour;
- g. July 1, 2016 through June 30, 2017: \$41.48 plus \$38.95 in supplemental benefits per hour.

Plaintiffs' Work for Defendant

32. Plaintiff Herman worked for Defendant as a flagger on New York City roadways from in or around July 1, 2015 through in or around December 2015 (the "Herman Employment Period").

33. Throughout the Herman Employment Period, Herman typically worked forty (40) hours per week.

34. Herman's job duties included holding stop/go signs, directing pedestrian and

¹ The rates listed are those of a "Paver & Roadbuilder - Laborer" from the Office of the Comptroller, City of New York's § 220 Prevailing Wage Schedules.

vehicular traffic around construction sites, directing construction vehicles in and out of the construction zones, positioning barrels and cones in and around the construction site, sweeping the construction site, and walking behind the excavator and steamroller as they move from one construction site to another.

35. For her work, Herman was paid fifteen dollars (\$15.00) per hour throughout her employment with Defendant without any supplemental benefits even though she was working on Public Works Projects.

36. For the first two to three (2-3) weeks of the Herman Employment Period until in or around mid-July 2015, Herman worked on a project on Chambers Street and Church Street. From in or around mid-July 2015 until in or around September of 2015, Herman worked on a project on Pitt Street moving from Irvington to Clinton. From in or around October 2015 through the end of the Herman Employment Period, Herman worked on a project on Bowery.

37. Plaintiff Greenhill worked for Defendant as a flagger on New York City roadways from in or around March 2014 through October 23, 2015 and again from in or around the first week in October 2016 through in or around March 2017 (the "Greenhill Employment Period").

38. Throughout the Greenhill Employment Period, Greenhill typically worked forty (40) hours per week.

39. Greenhill's job duties included holding stop/go signs, directing pedestrian and vehicular traffic around construction sites, directing construction vehicles in and out of the construction zones, positioning barrels and cones in and around the construction site, sweeping the construction site, and walking behind the excavator and steamroller as they move from one construction site to another.

40. For her work, Greenhill was paid eighteen dollars (\$18.00) per hour throughout

her employment with Defendant without any supplemental benefits even though she was working on Public Works Projects.

41. From the beginning of the Greenhill Employment Period until in or around October 23, 2015, Plaintiff worked on a project on Delancey Street and Pitt Street. From in or around the first week of October 2017 until in or around March 9, 2017, Plaintiff worked on a project on West 13th Street.

42. Plaintiff Wilkins worked for Defendant as a flagger on New York City roadways from in or around April 2015 through in or around April 2017² (the “Wilkins Employment Period”).

43. Throughout the Wilkins Employment Period, Plaintiff typically worked forty (40) hours per week.

44. Wilkins’ job duties included bringing out tools, holding stop/go signs, directing pedestrian and vehicular traffic around construction sites, directing construction vehicles in and out of the construction zones, positioning barrels and cones in and around the construction site, sweeping the construction site, walking behind the excavator and steamroller as they move from one construction site to another, directing traffic through the construction sites, and closing off streets to traffic.

45. For his work, Wilkins was paid eighteen dollars (\$18.00) per hour throughout his employment with Defendant without any supplemental benefits even though she was working on Public Works Projects.

46. From the beginning of the Wilkins Employment Period until in or around August 2015, Wilkins worked on a project on Delancey Street and Pitt Street. From in or around August

² Wilkins was laid off for approximately one (1) month in or around January 2016, one (1) week in or around March 2016 and approximately one (1) month in or around January 2017.

2015 through in or around December 24, 2015, Wilkins worked on a project on East Houston and Bowery. From in or around February 2016 through in or around March 2016, Wilkins worked on a project on West 12th Street and 6th Avenue. From in or around March 2016 through in or around May 2016, Wilkins worked on a project on 6th Avenue and 13th Street. From in or around June 2016 through in or around July 2016, Wilkins worked on a project on Gansevoort and Washington. From in or around August 2016 through in or around December 2016, Wilkins worked on a project on West 13th Street and Washington. From in or around February 2017 through the end of the Wilkins Employment Period, Wilkins worked on a project on Jane Street and Washington Street.

47. In order to work as a flagger for Defendant, Wilkins was required to have an OSHA certificate. Moreover, Wilkins was given a flagger certificate from Defendant when she began working for them. Wilkins was required to attend a safety certification course.

48. Plaintiffs would typically work with a group of four to six (4-6) flaggers per project at any one time.

49. OSHA occasionally comes to job sites and checks Plaintiffs' and other flagger's flagger cards.

50. Plaintiffs were required to wear safety gear including working boots, reflective vest, hard-hat, gloves, and goggles when working as a flagger for Defendant.

51. Upon information and belief, all of Defendant's flaggers are required to take a flagger safety course and wear safety gear when working as a flagger.

52. Throughout Plaintiffs' respective employment periods, Plaintiff were rarely, if ever, able to take a thirty (30) minute uninterrupted break.

53. At no point during Plaintiffs' employment did they receive a wage notice showing

their hourly or overtime rate at the date of their hiring or by February 1 of each year.

54. Defendant's failure to pay Plaintiffs prevailing wage and supplemental benefits for work performed on public works projects and failure to provide wage notices were corporate policies of Defendant which applied to all of Defendant's flaggers throughout the relevant period.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

55. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

56. Upon information and belief, the Public Works Contracts entered into by Defendant contained schedules of the prevailing rates of wages and supplemental benefits to be paid to Plaintiffs and the employees performing work pursuant to such contracts.

57. Those prevailing rates of wages and supplemental benefits were made part of the Public Works Contracts for the benefit of the Plaintiffs and the other employees performing work pursuant to such contracts. In the event that the contracts or agreements entered into failed to explicitly contain prevailing wage schedules, the prevailing wage requirements were supplemented as a matter of law, requiring Defendant to pay the Plaintiffs and Class Members prevailing wages, daily/weekly overtime and supplemental benefits for all work performed.

58. Defendant's failure to pay Plaintiffs at the correct prevailing wage rates for straight time, overtime, and supplemental benefits for work performed on Public Works Projects constituted a material breach of the contracts entered into directly or indirectly between Defendant and certain public entities.

59. As a result of Defendant's failure to pay Plaintiffs at prevailing wage rates, they

are entitled to relief from Defendant for breach of contract under New York common law of contracts.

SECOND CAUSE OF ACTION
UNJUST ENRICHMENT & QUANTUM MERUIT
(Pled in The Alternative)

60. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

61. Based on Defendant's failure to pay Plaintiffs the appropriate prevailing wage rates, Defendant was unjustly enriched at the expense of Plaintiffs.

62. Equity and good conscience require that Defendant pay restitution to Plaintiffs.

63. Upon information and belief, when Defendant entered into the contract, it agreed to pay the required prevailing wages, overtime, shift-differential and holiday premiums, and supplemental benefit rates of pay to Plaintiffs and other employees who performed work pursuant to the contracts.

64. Plaintiffs provided valuable services to Defendant performing prevailing wage jobs for which Plaintiffs expected compensation. Defendant knowingly accepted such services yet failed to pay Plaintiffs the reasonable value of such services as defined by the New York City prevailing wage schedules.

65. As a result of Defendant's failure to pay Plaintiffs at prevailing wage rates on prevailing wage jobs and Defendant's corresponding unjust enrichment, Plaintiffs are entitled to relief from Defendant under New York's common law of unjust enrichment.

66. As a result of Defendant's failure to pay Plaintiffs the reasonable value of the valuable services they rendered, Plaintiffs are entitled to relief from Defendant under New

York's common law of quantum meruit.

THIRD CAUSE OF ACTION
NEW YORK LABOR LAW – FAILURE TO PROVIDE WAGE NOTICE

65. Plaintiffs, on behalf of themselves and the Class Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

66. Defendant has willfully failed to supply Plaintiffs and the Class Members notice as required by Article 6, § 195, in English or in the language identified by Plaintiffs and the Class Members as their primary language, containing Plaintiffs' and Class Members' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay, if applicable; the regular pay day designated by the employer in accordance with the NYLL, Article 6, § 191; the name of the employer; or any "doing business as" names used by the employer' the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

67. Due to Defendant's violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants fifty dollars (\$50) per employee for each workweek that the violations occurred or continue to occur, up to a maximum of five thousand dollars (\$5,000) per employee, as provided for by NYLL, Article 6, §§ 190, *et seq.*, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, pre-judgment and post-judgment interest, and injunctive and declaratory relief.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and all other similarly Class Members, respectfully request that this Court grant the following relief:

- a. Certification of this action as a class action pursuant to NY CPLR §§ 901 *et seq.* on behalf of the Class, appointing Plaintiffs and their counsel to represent the Class and ordering appropriate monetary, equitable and injunctive relief to remedy Defendants' violation of the common law and New York State law;
- b. An order tolling the statute of limitations;
- c. A declaratory judgment that the practices complained of herein are unlawful under the New York Common Law;
- d. An injunction against Defendant and its officers, agents, successors, employees, representatives and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- e. An award of monetary damages to be proven at trial for all unpaid prevailing wages, daily/weekly overtime and supplemental benefits owed to Plaintiffs and the Class;
- a. Fifty dollars (\$50) per Plaintiff and each of the Class Members for each workweek that the violations of NYLL, Article 6 § 195 occurred or continue to occur, up to a maximum of five thousand dollars (\$5,000) per Plaintiff and each of the Class Members as provided for by NYLL, Article 6 § 198(1)-b;
- f. An award of prejudgment and post judgment interest;
- g. An award of costs and expenses of this action together with reasonable expert fees; and
- h. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to CPLR § 4102, Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

Dated: New York, New York
April 26, 2017

Respectfully submitted,

PELTON GRAHAM LLC

By: 

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Attorneys for Plaintiffs and the putative class

INDIVIDUAL VERIFICATION

STATE OF NEW YORK

ss.:

COUNTY OF *New York*

I, Rachel Herman, being duly sworn, deposes and says, that I am one of the plaintiffs in the within action, that I have read the foregoing SUMMONS AND VERIFIED COMPLAINT and know the contents thereof; that the same is true to my own knowledge; except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Rachel Herman

Rachel Herman

Sworn to before me on this *26* day of April, 2017

Alison Lobban

Notary Public

ALISON GAYLE LOBBAN
Notary Public, State of New York
No. 02LO6286420
Qualified in New York County
Commission Expires July 22, 2017