

198 and 198-e. Plaintiffs also seek to recover damages for violations of N.Y. Labor Law §§ 195(1) and (3), which required their employer to provide a notice of wage rate at the time of hire and to provide pay statements at the time wages were paid.

JURISDICTION AND VENUE

4. This case is brought pursuant to N.Y. City Civ. Ct. Act § 202 and § 301 (McKinney).
5. The total dollar amount of damages sought in this case is less than \$50,000.
6. The work performed by all Plaintiffs giving rise to the causes of action in this Complaint took place in Kings County, NY.

PARTIES

7. Plaintiff Arias resides in Queens, NY.
8. Plaintiff Gavilanez resides in the Bronx, NY.
9. Plaintiff Gonzalez resides in Queens, NY.
10. Plaintiff Puentes resides in Queens, NY.
11. Upon information and belief, Defendants Rogers Builders and Development LLC and Rogers Developers Group LLC reside at 311 Rogers Avenue in Brooklyn, NY.

STATEMENT OF FACTS

12. Plaintiffs performed construction-related labor and services primarily at 290 Linden Boulevard and 600 Myrtle Boulevard in Brooklyn, NY (“Worksites”). Plaintiffs primarily performed tasks related to painting.
13. Plaintiffs were hired by subcontractor SDA Precise Painting Corporation and its owner William Cardoso (“Subcontractor SDA”) to work on the Worksites and other locations, from February through April 2022.

14. Misiu Designs LLC (“Subcontractor Misiu”) contracted with Mr. Cardoso and SDA Precise Painting Corporation to provide construction services of Plaintiffs at the Worksites.
15. Defendants Rogers Builders and Development LLC and Rogers Developers Group LLC contracted with Subcontractor Misiu to provide construction services at the Worksites.
16. Plaintiffs typically worked five days per week, Monday through Friday, at one or both of the Worksites. Plaintiffs’ typical schedule was 8 a.m. to 4:30 p.m.
17. Subcontractor SDA promised to pay Plaintiff Arias \$170/day for his work on the Worksites.
18. Plaintiff Arias worked from February 14, 2022 through February 25, 2022 on the Worksites and was not paid for any work performed during this period.
19. Subcontractor SDA promised Plaintiff Gavilanez to pay \$810/week for his work on the Worksites.
20. Plaintiff Gavilanez worked from February 7, 2022 through April 8, 2022 on the Worksites.
21. Plaintiff Gavilanez was paid for three (3) of his nine (9) weeks of work. Plaintiff Gavilanez has not been paid any wages for six (6) of these weeks worked on the Worksites.
22. Subcontractor SDA promised to pay Plaintiff Gonzalez \$130/day for her work on the Worksites.
23. Plaintiff Gonzalez worked from February 7, 2022 through March 2, 2022 on the Worksites.
24. Plaintiff Gonzalez was not paid any wages for 13 days of work on the Worksites.
25. Subcontractor SDA promised to pay Plaintiff Puentes \$170/day for his work on the Worksites.
26. Plaintiff Puentes worked from February 2, 2022 through March 2, 2022 on the Worksites. Plaintiff was paid for one (1) week but was paid no wages for three (3) weeks of work on the Worksites.

27. Defendants have not paid Plaintiffs any monies for the wages owed for work performed on the Worksites as described above.

NOTICE AND PAY STUB VIOLATIONS

28. None of the Plaintiffs received a notice of wage rate at the time of their hire to work at worksites, or at any time thereafter, in violation of N.Y. Lab. Law § 195(1).

29. None of the Plaintiffs received pay statements while working at worksites, as required by N.Y. Lab. Law § 195(3).

PRIOR NOTICE TO DEFENDANT

30. Plaintiffs, through their legal counsel, notified Defendants on several occasions that Plaintiffs had not been paid their lawfully-due wages for the relevant period of work.

31. Plaintiffs, through their legal counsel, sent a letter via U.S. certified mail to Defendants on November 10, 2022. This letter identified Plaintiffs, the buildings and months in which they worked, the subcontractor for whom they worked, and a rough amount owed. The letter described Defendants' liability under N.Y. Lab. Law § 198-e.

32. On November 14, 2022, Mendi Schwimmer called Plaintiffs' counsel and identified himself as an employee of Defendants.

33. On November 29, 2022, Mr. Schwimmer communicated again with Plaintiffs' counsel, who informed him of Defendants' liability under N.Y. Lab. Law § 198-e.

34. On December 19, 2022, Plaintiffs' counsel again spoke with Mr. Schwimmer, who asked that Plaintiffs' counsel communicate with his colleague Morris (last name unknown).

35. On January 10, 2023, Morris spoke with Plaintiffs' counsel and indicated that Defendants had hired an attorney.

36. Defendants' counsel first contacted Plaintiffs' counsel on January 17, 2023.

37. From late January through early May 2023, Plaintiffs' counsel and Defendants' counsel attempted to negotiate a settlement of Plaintiffs' claims. Parties were unsuccessful.

COUNT I – VIOLATION OF N.Y. LAB. LAW § 191

38. Plaintiffs re-allege and reincorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

39. At all times relevant to this action, SDA Precise Painting and William Cardoso were “subcontractors” within the meaning of N.Y. Lab. Law § 198-e.

40. At all times relevant to this action, Plaintiffs were “employees” employed by Subcontractor SDA within the meaning of the N.Y. Lab. Law §§ 2 and 190.

41. At all times relevant to this action, within the meaning of N.Y. Lab. Law § 198-e, Defendants Rogers Builders and Development LLC and Rogers Developers Group LLC were “contractors” who operated above Subcontractor SDA.

42. At all times relevant to this action, within the meaning of N.Y. Lab. Law § 198-e, Defendants “made” or “took” a “construction contract” at 290 Linden Boulevard and 600 Myrtle Boulevard in Brooklyn.

43. In violation of N.Y. Lab. Law § 191.1(a), Subcontractor SDA withheld Plaintiffs' wages for more than 7 days and has not since paid Plaintiffs' wages.

44. Accordingly, Defendants are liable to Plaintiffs for these violations, pursuant to N.Y. Lab. Law § 198-e.

45. Due to these New York Labor Law violations, Plaintiffs are entitled to recover from Defendants their unpaid wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

COUNT II – FAILURE TO PROVIDE PAY STATEMENTS

46. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.
47. Subcontractor SDA never provided Plaintiffs, with each payment of wages or at any time thereafter, a written statement containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate(s) of pay and basis thereof; gross wages; deductions; allowances, if any; net wages; regular hourly rate of pay; overtime rate of pay; number of regular hours worked; and number of overtime hours worked, in violation of N.Y. Lab. Law § 195(3).
48. Subcontractor SDA's violations continued throughout Plaintiffs' employment.
49. Accordingly, Defendants are liable to Plaintiffs for these violations pursuant to N.Y. Lab. Law § 198-e.
50. Due to Subcontractor SDA's violations, Plaintiffs are entitled to recover from Defendants statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the Court deems necessary and appropriate.

COUNT III – FAILURE TO PROVIDE NOTICE OF WAGE RATE

51. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.
52. Subcontractor SDA never provided Plaintiffs, within ten business days of the time of hiring, written notice containing the information required by N.Y. Lab. Law § 195(1)(a).
53. Subcontractor SDA's violations continued throughout Plaintiffs' employment.
54. Accordingly, Defendants are liable to Plaintiffs for these violations pursuant to N.Y. Lab. Law § 198-e.

55. Due to Subcontractor SDA's violations, Plaintiffs are entitled to recover from Defendants statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the Court deems necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be granted:

1. Declaring that Defendants' conduct complained of herein is in violation of N.Y. Lab. Law;
2. Awarding Plaintiffs damages for their unpaid wages;
3. Awarding Plaintiffs liquidated damages;
4. Awarding Plaintiffs damages due to violations of N.Y. Lab. Law § 195 for failure to provide required wage notices and pay statements;
5. Awarding Plaintiffs the reasonable attorneys' fees and costs incurred in this action;
6. Awarding Plaintiffs pre- and post-judgment interest;
7. Awarding Plaintiffs an order pursuant to NYLL § 198(4) that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent; and
8. Awarding Plaintiffs any such further relief as may be just and proper.

Dated: Sunnyside, New York
May 22, 2023

Respectfully submitted,

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