

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROBERTO RAMOS, FRANK RODRIGUEZ, JOSE  
LUIS MALDONADO, JOSE FERNANDEZ, CHRIS  
MAIETTA, RANDY WRAY, ROGELIO SMITH,  
AGBAN AGBAN, YADIRA GONZALEZ, MAXIMO  
ESTRELLA, JR., JAIME OYARVIDE, NACIM  
BENNEKAA, BRENO ZIMERER, OMAR FLOREZ and  
RAFIU OWOLABI, individually and on behalf of all other  
persons similarly situated who are or were employed by  
SimplexGrinnell LP with respect to Public Works Projects  
mentioned in this Complaint.

07 Civ. 0981 (NG)(SMG)

**FIRST AMENDED**  
**CLASS ACTION**  
**COMPLAINT**

Plaintiffs,

-against-

SIMPLEXGRINNELL LP,

Defendant.

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Plaintiffs, Roberto Ramos, Frank Rodriguez, Jose Luis Maldonado, Jose Fernandez, Chris  
Maietta, Randy Wray, Rogelio Smith, Agban Agban, Yadira Gonzalez, Maximo Estrella, Jr.,  
Jaime Oyarvide, Nacim Bennekaa, Breno Zimerer, Omar Florez and Rafiu Owolabi  
("Plaintiffs"), on behalf of the putative class by their attorneys, Beranbaum Menken Ben-Asher  
& Bierman LLP, allege as follows:

**PRELIMINARY STATEMENT**

1. This action is brought on behalf of the plaintiffs, and a putative class of laborers,  
workmen and mechanics who furnished labor to defendants SimplexGrinnell LP, and/or any  
other entities affiliated with or controlled by SimplexGrinnell LP ("Defendants") on publicly  
financed construction projects, *including but not limited to*: Binghamton Psychiatric Center,

Hudson River Psychiatric Center, Mid-Hudson Forensic Psychiatric Center, Mohawk Valley Psychiatric Center, Sagamore Children's Psychiatric Center, St. Lawrence Psychiatric Center, Bronx Psychiatric Center, Bronx Children's Psychiatric Center, Brooklyn Children's Psychiatric Center, Creedmoor Psychiatric Center, Queens Children's Psychiatric Center, Kingsboro Psychiatric Center, Manhattan Psychiatric Center, Kirby Forensic Psychiatric Center, New York Psychiatric Institute, South Beach Psychiatric Center, Capital District Psychiatric Center and Rockland Group Psychiatric Center, New York City Department of Corrections, New York City Economic Development Corporation, New York State Department of Health, New York City Department of Education, New York State Department of Transportation and New York City Department of Transportation (the "Public Works Projects"). Plaintiffs seek to recover wages and benefits which they and members of the putative class were entitled to receive for work they performed on the Public Works Projects but did not receive.

### **JURISDICTION AND VENUE**

2. Jurisdiction and venue are proper in this federal district as this case was properly removed to this court without objection on March 7, 2007. Removal was based on the Class Action Fairness Act and the jurisdictional prerequisites for this statute as articulated in 28 U.S.C. Sec. 1332(d)(2). In his Declaration in Support of Defendant's Notice of Removal, Shawn Love, Defendant's then Regional Manager for Northern Operations, declared under penalty of perjury that over 400 different individuals have performed electrical work on public works jobs for Defendant since February 2, 2001 and, if the allegations in the complaint are true, have suffered over \$5,800,000 in damages exclusive of interest and costs.

### **PARTIES**

3. Plaintiffs, and other members of the putative class, are individuals residing in or

around the State of New York, who are laborers, workmen or mechanics as defined by Article 8 of the New York Labor Law, who performed labor pursuant to public works contracts for defendants and/or other subsidiaries, affiliates and joint ventures of this entity.

4. Upon information and belief, defendant SimplexGrinnell LP (hereafter "SG") is a limited partnership formed in the State of Delaware and a subsidiary of Tyco International Ltd. SG's headquarters is located at 50 Technology Drive, Westminister, Massachusetts 01441 and/or One Town Center Road, Boca Raton, Florida.. It has over 100 district offices located throughout the United States, including the following New York offices located in Long Island City, Clifton Park, Williamsville, Endicott, Hauppauge, Newburgh, Rochester and Syracuse. The New York City district office, that administers all of the work performed in the five boroughs of New York City, is located at 2323 Randolph Avenue, Avenel, New Jersey 07001. Unless otherwise alleged herein, all of SG's employees were acting as agents in doing the things alleged in this complaint and, as such, were acting within the course and scope of that agency and employment.

5. SG provides integrated security alarm, fire suppression, healthcare communications and emergency lighting systems to government agencies, corporations, hospitals and educational facilities. Not only does SG design, engineer and install such systems, they provide inspection, testing, maintenance and monitoring of them, as well.

#### **CLASS ALLEGATIONS**

6. This action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7. This action is brought on behalf of plaintiffs and a class consisting of all laborers, workmen and mechanics who performed work for SG on the sites of the public works projects listed above from February 2, 2001 to the entry of judgment in this case (the "class" and "class

period,” respectively).

8. The persons in the class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and facts on which the calculation of that number are presently within the sole control of the defendants, it is now believed that there are in excess of 400 members of the class during the class period.

9. There are questions of law and fact common to the class which predominate over any questions affecting only individual members.

10. The claims of plaintiffs are typical of the claims of the putative class.

11. Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

12. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. This is particularly true in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit against large corporate defendants such as SG.

13. There are questions of law and fact common to the class which predominate over any questions solely affecting individual members of the class, including:

(a) whether SG entered into certain contracts with various government agencies, such as the New York State Office of Mental Health and the New York City Department of Corrections, to furnish the necessary labor, material and equipment to perform work upon the public work projects;

(b) whether SG paid plaintiffs and the putative class the prevailing rates of wages and supplements due them and all workers furnishing labor on the sites of the public works projects; and,

(c) whether SG misclassified some or all of the plaintiffs and the putative class as apprentices rather than journeymen.

### FACTS

14. Upon information and belief, beginning in or about 2001, SG entered into certain contracts, as either a subcontractor or prime contractor, with certain government agencies (e.g., New York State Office of Mental Health and the New York City Department of Correction), or with prime contractors not currently known, to furnish labor, material and equipment to perform work on these public works projects.

15. Upon information and belief, the public works contracts required that SG pay and ensure payment of the prevailing rates of wages and supplements to all workers furnishing labor on the sites of the public works projects, including their direct employees and all other persons furnishing labor on the sites of the public works projects. Upon information and belief, the public works contracts also provided that any subcontracts that SG entered into contain language requiring the payment of prevailing rates of wages and supplements to all workers furnishing labor on the sites of the public works projects.

16. As required by law, a schedule containing prevailing rates of wages and supplemental benefits (“prevailing wage schedule”) 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.

17. The promise to pay and ensure payment of the prevailing wage and supplemental benefit rates in the public works contracts was made for the benefit of all workers furnishing labor on the sites of the public works projects and, as such, the workers furnishing labor on the

sites of the public works projects are the beneficiaries of that promise and the contracts entered into between SG and government agencies.

18. Upon information and belief, in furtherance of the public works contracts entered into by SG, plaintiffs and other members of the putative class performed various types of electrical and sprinkler related work including, *but not limited to*, installing, maintaining, inspecting, testing, repairing and/or replacing fire suppression and alarm and security system equipment.

19. Upon information and belief, for all work performed by plaintiffs and other members of the putative class for SG at the site of the public works projects, SG willfully paid plaintiffs and other members of the putative class less than the prevailing rates of wages and supplements to which they were entitled.

20. Upon information and belief, during the period of time for which plaintiffs and the members of the putative class performed work on the public works projects, SG also failed to ensure payment of the prevailing rates of wages and supplements to which plaintiffs and other members of the putative class were entitled.

### **FIRST CAUSE OF ACTION**

#### **BREACH OF CONTRACT**

21. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 20 herein.

22. Upon information and belief, the public works contracts entered into by SG contained schedules of the prevailing rates of wages and supplemental benefits to be paid plaintiffs and the other members of the putative class.

23. Those prevailing rates of wages and supplemental benefits were made a part of the

public works contracts for the benefit of the plaintiffs and the other members of the putative class.

24. SG breached the public works contracts by failing to pay plaintiffs and the other members of the putative class the prevailing rates of wages and supplemental benefits for all labor performed upon the public works projects.

25. As a result of its breach of the public works contracts, SG is liable to plaintiffs and the other members of the putative class in an amount yet to be determined but believed to exceed \$5,800,000.00 plus interest.

**SECOND CAUSE OF ACTION (Pled in the Alternative)**

**QUANTUM MERUIT**

26. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25 herein.

27. Plaintiffs and the other members of the putative class have performed numerous and valuable services at the request and for the benefit of SG. The reasonable value of those services for which plaintiffs and the other members of the putative class have not been paid is believed to be in excess of \$5,800,000.00, plus interest.

28. As a result, SG is liable to plaintiffs and the other members of the putative class in an amount not yet determined but believed to exceed \$5,800,000.00, plus interest.

**THIRD CAUSE OF ACTION (Pled in the Alternative)**

**UNJUST ENRICHMENT**

29. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 28 herein.

30. Plaintiffs and members of the putative class have performed a significant amount of

work for which they have not been paid.

31. Upon information and belief, when SG entered into the public works contracts, it agreed to pay the required prevailing wage, overtime and supplemental benefit rates of pay to plaintiffs and members of the putative class.

32. Upon information and belief, SG billed the public owner, such as the New York State Office of Mental Health or the New York City Department of Corrections, for labor performed by plaintiffs and members of the putative class at the higher prevailing, overtime and supplemental benefit rates, which SG did not pay.

33. As a result of this failure to pay said wages, SG was unjustly enriched for work and services performed by plaintiffs and members of the putative class in an amount believed to exceed \$5,800,000.00, plus interest.

#### **FOURTH CAUSE OF ACTION**

##### **NEW YORK OVERTIME**

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 herein.

35. SG violated New York Labor Law Sec. 655 and 12 NYCRR 142-3.2 by failing to pay plaintiffs and the other members of the putative class overtime compensation for work they performed in furtherance of the public works contracts.

36. SG's failure to pay overtime compensation to plaintiffs and the other members of the putative class was willful.

37. As a result, SG is liable to plaintiffs and the other members of the putative class in an amount to be determined.



**FIFTH CAUSE OF ACTION**

**FAILURE TO PAY WAGES**

38. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 37 herein.

39. Plaintiffs' wage rate and/or overtime compensation rate were within the meaning of and covered by New York Labor Law Sections 190, 191 and 198-c.

40. SG violated New York Labor Law Sec. 191 by failing to pay plaintiffs and other members of the putative class the required wage and overtime compensation rates for the work they performed during the putative class period.

41. SG violated New York Labor Law Sec. 198-c by failing to pay plaintiffs and other members of the putative class the agreed upon benefits and/or wage supplements owed to them for the work they performed during the putative class period.

42. Upon information and belief, this failure to pay the agreed upon wages, overtime compensation benefit and supplement rates, on the part of the SG was willful.

43. As a result, SG is liable to plaintiff and other members of the putative class in an amount not yet determined but believed to exceed \$5,800,000.00 plus attorneys' fees and costs and interest.

WHEREFORE, Plaintiffs demand judgment:

a. On their first cause of action, against defendant SG, in an amount in excess of \$5,800,000.00, plus interest;

b. On their second cause of action, against defendant SG, in an amount in excess of \$5,800,000.00, plus interest;

c. On their third cause of action, against defendant SG, in an amount in excess of \$5,800,000.00, plus interest;

d. On their fourth cause of action, against defendant SG, in an amount to be determined by a jury to fully compensate the plaintiffs and the other members of the class for due to defendant SG's failure to pay overtime under New York Labor Law;

e. On their fifth cause of action, against defendant SG, in an amount in excess of \$5,800,000.00, plus reasonable attorneys' fees, costs and interest;

f. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
July 14, 2008

BERANBAUM MENKEN BEN-ASHER & BIERMAN  
LLP

By: \_\_\_\_\_ /s/\_\_\_\_\_  
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