MEMORANDUM OF SUPPORT
S.9811 (Cooney)

May 2024

We represent support S.9811 and urge the Governor Kathy Hochul, the New York State Senate and the Assembly to immediately enact this compromise legislation into law and address the overly harsh penalties imposed by a court decision that has unjustly redefined an approximately 130 year old statute and has threatened the viability of countless employers, jobs, and communities from Buffalo to Long Island.

New York's businesses employ more than 8 million New Yorkers, supporting families and communities across the state. In order to continue to be able to fulfill our commitments, the State Legislature must fix the harmful impacts of the 2019 Appellate Division, First Department decision in *Vega v. CM & Associates Construction Management, LLC*.

The *Vega* decision held that payment of wages to "manual" workers other than every week (e.g., semi-monthly payments) is subject to the private right of action and substantial penalties associated with wage theft (Labor Law §198(1-a)), even when such workers are otherwise fully paid the wages owed. Pursuant to Labor Law §198(1-a), and due to the *Vega* decision, these frequency of payment claims are now subject to a private right of action and liquidated damages equal to half of all wages paid up to 6 years (the statute of limitation), plus interest and attorneys' fees. The result of this interpretation of the law is that private employers are now subject to significant claims – totaling in the hundreds of millions of dollars – in instances where employees were fully compensated. These are not claims where employees have not been paid their wages; they have received all of their wages. Payroll was simply processed biweekly instead of weekly.

A recent decision in the Appellate Division, Second Department, *Grant v. Global Aircraft Dispatch, Inc.*, determined that pay frequency claims are not subject to the penalties for wage theft – the opposite conclusion reached in *Vega*. While the *Grant* decision is welcomed and we believe is the appropriate interpretation of the law, we remain subject to arbitrary decisions depending on which decision – *Vega* or *Grant* - a judge may decide to follow. This is an unsustainable position for employers, and it is precisely why the State Legislature must act to amend the statute and restore a fair and reasonable standard for enforcement of pay frequency claims.

The massive size of these claims has provoked approximately 400 known cases filed since 2019 - with many more that have been settled, and likely hundreds of additional cases yet to be brought against employers in the months and years to come. The cascade of litigation has only just started and the damage to employers, jobs and the economy inflicted by these claims will grow as more cases are brought.

Businesses Will Close or Leave. New York employers subject to frequency of pay claims cannot absorb the millions of dollars in settlements and awards resulting from these cases. These employers already are dealing with increased costs for goods and services, unemployment insurance, bank lending, and wages, including the recently increased minimum wage. Coupled

with the anticipated contraction of the economy, this massive liability will certainly drive some targeted employers out of business, and impose significant damage on others.

Employees Will Be Laid Off. For employers who are forced to close and those that can endure despite the costs, there will be a significant number of employee layoffs. The additional job loss resulting from the *Vega* decision must be avoided if employers are to weather the predicted economic downturn and to keep New Yorkers employed.

Further Economic Consequences. Employers who are driven to close or that lose the ability to invest in their operations or to purchase goods and services have a direct impact upon other businesses that support or are supported by these employers. The ripple effect from these claims is further loss of jobs and economic activity. It even results in a loss in revenue for state and local governments, which will affect the services they provide.

It's Unjust. Labor Law §191 mandates that manual workers are paid each week. When they are paid biweekly instead—which is the default pay frequency in New York and in nearly every state across the nation—the law already expressly provides a remedy: the New York State Department of Labor is empowered to issue penalties to punish employers and to compel them to comply with the law. Such penalties are reasonable where employees do not otherwise suffer any monetary damages.

The impacts of the *Vega* decision must be addressed, and we urge the State Senate and the Assembly to pass S.9811 and address this issue prior to June 6, 2024 and protect New York's economy.

Sincerely,

Associated Builders and Contractors – Empire State Chapter
Associated General Contractors – New York State
Brooklyn Chamber of Commerce
Bronx Chamber of Commerce
Buffalo Niagara Partnership
The Business Council of New York State
The Business Council of Westchester
Capital Region Chamber
Empire State Restaurant & Tavern Association
Empire State Subcontractor's Association
Food Industry Alliance of New York State
Greater Binghamton Chamber of Commerce
Greater Rochester Chamber of Commerce
Greater Utica Chamber of Commerce
The Lawsuit Reform Alliance of New York
Long Island Association
Manhattan Chamber of Commerce
National Federation of Independent Business
National Payroll Reporting Consortium
National Retail Federation
New York Association of Convenience Stores
New York Construction Materials Association
New York Farm Bureau
New York State Restaurant Association
North Country Chamber of Commerce
Northeastern Retail Lumber Association
Partnership for New York City
Retail Council of New York State
Retail Industry Leaders Association
Save New York Jobs Coalition
Upstate United