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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN

10 PRISCILLA PERRY,

11 Plaintiff,

12 vs.

13 RICHMAR ASSOCIATES, INC., and
14 DOES 1-10, inclusive,

15 Defendants.

Case No.:

COMPLAINT FOR DAMAGES AND
PENALTIES FOR

1. FAILURE TO PAY WAGES
2. FAILURE TO PAY MINIMUM WAGE
3. FAILURE TO PAY OVERTIME
4. FAILURE TO PROVIDE REST BREAKS
5. FAILURE TO PROVIDE MEAL BREAKS
6. FAILURE TO INDEMNIFY
7. FAILURE TO FURNISH COMPLETE
AND ACCURATE WAGE STATEMENTS
8. FAILURE TO PAY ALL WAGES UPON
TERMINATION
9. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)

JURY TRIAL DEMANDED

22 Plaintiff Priscilla Perry ("Perry") brings this action against Richmar Associates, Inc.,
23 ("Richmar") and Does 1-10, inclusive as referred to herein, for compensatory damages, declaratory
24 relief, penalties, interest, costs, and attorneys' fees resulting from the defendants' unlawful and
25 tortious conduct. Perry brings claims both individually and as a proxy for the California Labor and
26 Workforce Development Agency ("LWDA") under the California Labor Code Private Attorneys
27 General Act of 2004 ("PAGA"). As grounds Perry therefore alleges:

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1 **PARTIES**

2 1. Perry is and was at all times relevant herein an individual and a resident of San
3 Joaquin County, California.

4 2. Richmar is and was at all times relevant herein a California corporation.

5 3. Richmar and Does 1-10 are referred to collectively herein as “Defendants.”

6 4. Perry is not aware of the true names and capacities of the defendants sued herein as
7 Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such
8 defendants by these fictitious names. Perry will amend this complaint to allege their true names and
9 capacities when ascertained. Perry is informed and believes, and on that basis alleges, that each of
10 the fictitiously named defendants is responsible in some manner for the occurrences herein alleged
11 and that the injuries and damages herein alleged were legally caused by such defendants. Unless
12 otherwise indicated, each defendant was acting within the course and scope of said agency and/or
13 employment, with the knowledge and/or consent of said co-defendant.

14 **VENUE AND JURY TRIAL DEMAND**

15 5. Venue is proper in this Court because unlawful acts alleged herein as to Perry,
16 whose employment with Richmar was within San Joaquin County, occurred in San Joaquin
17 County.

18 6. Perry hereby demands a jury trial.

19 **GENERAL ALLEGATIONS**

20 7. Perry was employed by Richmar in San Joaquin County in a non-exempt position
21 from June 8, 2017, to August 28, 2020.

22 8. Within the relevant time period, including within the past year, not including the
23 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
24 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
25 in accordance with a uniform, statewide policy within and throughout California, Richmar failed to
26 pay Perry and other non-exempt California employees, current and former, for all overtime hours
27 worked, including work in excess of 40 hours in a workweek and 8 hours in a workday. Instead,
28 Richmar paid these individuals \$0 for some overtime hours worked, in violation of Labor Code §§

1 510, 558, 1194, and 1198. In regards to Perry specifically, Richmar misclassified her as an exempt
2 employee until May 2020, when it acknowledged the misclassification by expressly characterizing
3 her as a non-exempt employee, although Perry’s job duties and position remained unchanged.
4 However, Richmar failed to remedy the Labor Code violations that had already resulted from the
5 misclassification, including Richmar’s failure to pay Perry for overtime hours worked, in violation
6 of Labor Code §§ 510, 558, 1194, and 1198. Furthermore, even after it acknowledged Perry’s non-
7 exempt status in May 2020, Richmar knowingly failed to compensate Perry for all hours worked,
8 including overtime hours, that she worked on her worksite and during off-schedule hours,
9 including at home, again, in violation of Labor Code §§ 510, 558, 1194, and 1198.

10 9. Also within the relevant time period, including within the past year, not including
11 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
12 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
13 in accordance with a uniform, statewide policy within and throughout California, Richmar failed to
14 pay Perry and other non-exempt California employees, current and former, at least the minimum
15 wage, including for the work they performed in excess of 40 hours in a workweek and 8 hours in a
16 workday for which they were not compensated – i.e., the hourly rate of compensation for this work
17 was \$0 – in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197. In addition,
18 Richmar failed to pay Perry and other non-exempt California employees, current and former, for
19 “off the clock” time that they were required to perform, in violation of §§ 558, 1182.12, 1194,
20 1194.2, and 1197. In regards to Perry specifically, Richmar, caused Perry to be contacted on her
21 personal cell phone outside of her scheduled work hours and to work remotely by way of her
22 personal internet connection away from her regular worksite, including at her home. Richmar
23 failed to compensate Perry and other non-exempt California employees for such work, in violation
24 of §§ 558, 1182.12, 1194, 1194.2, and 1197.

25 10. Also within the relevant time period, including within the past year, not including
26 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
27 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
28 in accordance with a uniform, statewide policy within and throughout California, Richmar failed to

1 pay non-exempt California employees, current and former, at the correct overtime hourly wages,
2 because it at times miscalculated these individuals' regular rate of pay for purposes of paying the
3 correct overtime hourly rates, in violation of Labor Code §§ 510, 558, 1194, and 1198. Richmar
4 caused these violations by not factoring in non-discretionary bonuses when calculating the
5 individuals' regular rate of pay for purposes of calculating the individuals' applicable overtime
6 rates for overtime hours worked in the same pay period, in violation of Labor Code §§ 510, 558,
7 1194, and 1198.

8 11. Also within the relevant time period, including within the past year, not including
9 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
10 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
11 in accordance with a uniform, statewide policy within and throughout California, and as a result of
12 the violations set forth above, Richmar failed to pay Perry and the other California non-exempt
13 employees, current and former whom it failed to properly compensate for all overtime and off-
14 schedule hours worked in a timely manner, in violation of Labor Code § 204. To be clear, Richmar
15 has never to date paid these wages to these individuals, such that Richmar has failed to pay the
16 wages despite several subsequent pay period having come and gone in most instances, in violation
17 of Labor Code § 204.

18 12. Also within the relevant time period, including within the past year, not including
19 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
20 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
21 in accordance with a uniform, statewide policy within and throughout California, and as a result of
22 the violations set forth above, Richmar has failed to furnish complete and accurate wage statements
23 to the non-exempt individuals in California whom Richmar failed to properly compensate for all
24 overtime and off-schedule hours worked, because the wage statements Richmar furnished as to pay
25 periods in which the failures to compensate occurred fail to **accurately** show the following
26 information:

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- a. **Actual** gross wages earned, in violation of Labor Code § 226(a)(1);
- b. **Actual** total hours worked, in violation of Labor Code § 226(a)(2)
- c. **Actual** net wages earned, in violation of Labor Code § 226(a)(5); and
- d. **Actual** applicable hourly rates in effect during the pay period and the **actual** corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

13. Also within the relevant time period, including within the past year, not including the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and in accordance with a uniform, statewide policy within and throughout California, Richmar failed to pay Perry and other former California employees, including but not limited to those individuals whom Richmar failed to properly compensate for all overtime and off-schedule hours worked, all wages due immediately at the time of discharge, in violation of Labor Code §§ 201 and 203, as with Perry, and other former California employees who quit within 72 hours, in violation of Labor Code §§ 202 and 203.

14. Also within the relevant time period, including within the past year, not including the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and in accordance with a uniform, statewide policy within and throughout California, Richmar intentionally and regularly failed to provide all 10 minute rest breaks to Perry (both as a result of her misclassification and afterwards) and current and other former non-exempt employees in California for every 4 hours they worked, in violation of Labor Code §§ 226.7 and 512.

15. Also within the relevant time period, including within the past year, not including the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and in accordance with a uniform, statewide policy within and throughout California, Richmar intentionally employed Perry and current and other former non-exempt employees in California for a work period of more than five hours per day without providing them with a meal period of not less than 30 minutes, in violation of Labor Code §§ 226.7 and 512.

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1 16. Also within the relevant time period, including within the past year, not including
2 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
3 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
4 in accordance with a uniform, statewide policy within and throughout California, Richmar has
5 failed to pay sick time at the correct rate to its non-exempt California employees, current and
6 former, in violation of Labor Code § 246, for the same reasons that it failed to pay overtime as the
7 correct rate, namely, Richmar has failed to include non-discretionary bonuses when calculating
8 these individuals' "regular rate of pay" for purposes of paid sick time.

9 17. Also within the relevant time period, including within the past year, not including
10 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
11 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
12 in accordance with a uniform, statewide policy within and throughout California, Richmar has
13 failed to indemnify its California employees, including Perry, for all necessary expenditures or
14 losses incurred in direct consequence of the discharge of their duties, including, for instance, cell
15 phones, cell phone service, internet service, and computer equipment, in violation of Labor Code §
16 2802. These individuals were forced to incur expenditures and losses in relation to these items and
17 services in direct consequence of the discharge of their job duties. Nevertheless, to date, Richmar,
18 aware of the need and use of such items and services, just as it was in Perry's case (e.g., when
19 Richmar instructed employees and applicants to contact Perry on her personal cell phone), has
20 failed to indemnify these employees, current and former, including Perry, for the necessary
21 expenditures and losses, in violation of Labor Code § 2802.

22 18. Also within the relevant time period, including within the past year, not including
23 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
24 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
25 in accordance with a uniform, statewide policy within and throughout California, Richmar, a
26 temporary services employer, has failed to furnish complete and accurate wage statements to non-
27 exempt individuals in California, because the wage statements Richmar furnished to these
28 individuals do not show the rate of pay and the total hours worked for each temporary services

1 assignment, in violation of Labor Code § 226(a)(9).

2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF LABOR CODE §§ 510 and 1198**
4 **(Failure to Pay Wages)**
5 **Against Defendants**

6 19. Perry hereby realleges and incorporates by reference each and every allegation set
7 forth above as though fully set forth herein.

8 20. As evidenced above, Defendants did not compensate Perry for all hours she worked.

9 21. Wherefore, Perry seeks relief as set forth below.

10 **SECOND CAUSE OF ACTION**
11 **VIOLATION OF LABOR CODE §§ 1182 *ET SEQ.***
12 **(Failure to Pay Minimum Wages)**
13 **Against Defendants**

14 22. Perry hereby realleges and incorporates by reference each and every allegation set
15 forth above as though fully set forth herein.

16 23. Labor Code § 1182.12 provides the applicable minimum wage in California.

17 24. Labor Code § 1197 provides that the minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
19 unlawful.

20 25. As evidenced above, Defendants knowingly and intentionally failed to compensate
21 Perry for all hours worked, effectively paying her at an hourly rate of \$0, less than the applicable
22 minimum wage.

23 26. Wherefore, Perry seeks relief as set forth below.

24 **THIRD CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE §§ 510, 1198, and 2698 *ET SEQ.***
26 **(Failure to Pay Overtime)**
27 **Against Defendants**

28 27. Perry hereby realleges and incorporates by reference each and every allegation set
29 forth above as though fully set forth herein.

30 28. Pursuant to Labor Code § 510, any work in excess of 8 hours in one workday and
any work in excess of 40 hours in any one workweek and the first eight hours worked on the

seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

29. Pursuant to Labor Code § 1198 and applicable IWC Wage Order(s), it is unlawful to compensate an employee at a rate less than either one and one-half or two times the regular rate of pay for overtime hours worked, depending upon the number of hours worked by the employee on a daily or weekly basis.

30. As evidenced above, Defendants did not compensate Perry for all overtime hours worked.

31. Wherefore, Perry seeks relief as set forth below.

FOURTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7 and 512
(Failure to Provide Rest Breaks)
Against Defendants

32. Perry hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

33. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission.

34. As evidenced above, Perry was entitled to but was not provided with rest breaks by Defendants as required by law.

35. Wherefore, Perry requests relief as set forth below.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 226.7 and 512
(Failure to Provide Meal Breaks)
Against Defendants

36. Perry hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

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1 37. Labor Code § 226.7 requires employers to provide employees meal periods as
2 mandated by Order of the Industrial Welfare Commission.

3 38. As evidenced above, Perry was entitled to but was not provided with meal breaks by
4 Defendants as required by law.

5 39. Wherefore, Perry requests relief as set forth below.

6 **SIXTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 2802**
8 **(Failure to Indemnify)**
 Against Defendants

9 40. Perry hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein.

11 41. Labor Code § 2802(a) requires an employer to indemnify his or her employee for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
13 of his or her duties, or if his or her obedience to the directions of the employer, even though
14 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

15 42. As evidenced above, Defendants knowingly and intentionally failed to indemnify
16 Perry.

17 43. Wherefore, Perry seeks relief as set forth below.

18 **SEVENTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 226**
20 **(Failure to Furnish Complete and Accurate Wage Statements)**
 Against Defendants

21 44. Perry hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein.

23 45. Pursuant to Labor Code § 226(a), “An employer shall, semimonthly or at the time of
24 each payment of wages, furnish each of his or her employees, either as a detachable part of the
25 check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by
26 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
27 (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of
28 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and, (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”

46. As evidenced above, Defendants knowingly and intentionally failed to timely furnish complete and accurate wage statements to Perry.

47. As a result, Perry has suffered “injury” as defined in Labor Code § 226(e).

48. Wherefore, Perry seeks relief as set forth below.

EIGHTH CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 201 and 203
(Failure to Pay All Wages Upon Termination)
Against Defendants

49. Perry hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

50. Pursuant to Labor Code § 201, an employer is required to pay all wages earned and unpaid immediately at the time of discharge.

51. To date, Defendants have failed to pay Perry all wages earned and unpaid.

52. Wherefore, Perry seeks relief as set forth below.

NINTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 ET SEQ.
(Private Attorneys General Act)
Against Defendants

53. Perry hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

1 54. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
2 pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”)
3 after the following requirements have been met:

- 4 a. The aggrieved employee shall give written notice by certified mail to the
5 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
6 provisions of the Labor Code alleged to have been violated, including the
7 facts and theories to support the alleged violations;
- 8 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
9 employer and the aggrieved employee by certified mail that it does not
10 intend to investigate the alleged violation within 60 calendar days of the
11 postmark date of the Employee’s Notice. Upon receipt of the LWDA’s
12 Notice, or if the LWDA does not provide notice within 65 calendar days of
13 the postmark date of the Employee’s Notice, the aggrieved employee may
14 commence a civil action pursuant to Labor § 2699 to recover civil penalties
15 in addition to any other penalties to which the employee may be entitled.

16 55. Perry provided written notice by online submission to the LWDA, and by certified
17 mail to Richmar, on December 4, 2020, of Richmar’s violations of the Labor Code set forth above,
18 i.e., violations of Labor Code § 510, 558, 1194, and 1198 (failure to pay overtime); violations of
19 Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197 (failure to pay minimum wage); violations of
20 Labor Code § 204 (failure to timely pay wages); violations of Labor Code § 226 (failure to furnish
21 complete and accurate wage statements); violations of Labor Code §§ 201, 202, and 203 (failure to
22 timely pay wages upon termination and resignation); violations of Labor Code §§ 226.7 and 512
23 (failure to provide rest breaks); violations of Labor Code §§ 226.7 and 512 (failure to provide meal
24 breaks); violations of Labor Code § 246 (failure to pay sick time); and violations of Labor Code §
25 2802 (failure to indemnify); including the facts and theories to support the alleged violations. As of
26 today’s date, more than 65 days have passed without the LWDA providing written notice that it
27 intends to investigate the allegations in the December 4, 2020 notice. Accordingly, Perry has
28 satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the time of the

1 postmark of her notice to bring a civil action to recover penalties against Richmar under PAGA.

2 56. Wherefore, Perry requests relief as set forth below.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Perry prays judgment against Defendants as follows:

5 **As to the First through Third Causes of Action:**

- 6 1. For all unpaid wages;
- 7 2. For restitution;
- 8 3. For penalties including but not limited to those recoverable under Labor Code §
9 558;
- 10 4. For liquidated damages including but not limited to those recoverable under Labor
11 Code §§ 1194.2 and 1197.1;
- 12 5. For attorneys' fees and costs including but not limited to those recoverable under
13 Labor Code §§ 218.5 and 1194;
- 14 6. For prejudgment and post-judgment interest; and
- 15 7. For such other and further relief as the court deems just and proper.

16 **As to the Fourth and Fifth Causes of Action:**

- 17 1. For compensatory damages including but not limited to unpaid premium wages for
18 missed meal and rest breaks;
- 19 2. For penalties including but not limited to those recoverable under Labor Code §§
20 226.7 and 558;
- 21 3. For restitution;
- 22 4. For attorneys' fees and costs including but not limited to those recoverable under
23 Code of Civil Procedure § 1021.5 and Labor Code § 218.5;
- 24 5. For prejudgment and post-judgment interest; and
- 25 6. For such other and further relief as the court deems just and proper.

26 **As to the Sixth Cause of Action:**

- 27 1. For indemnity and restitution;

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2. For attorneys' fees and costs including but not limited to those recoverable under Labor Code § 2802(c);
3. For prejudgment and post-judgment interest; and
4. For such other and further relief as the Court deems just and proper.

As to the Seventh Cause of Action:

1. For penalties, including but not limited to those recoverable under Labor Code § 226(e);
2. For attorneys' fees and costs including but not limited to those recoverable under Labor Code § 226(e);
3. For prejudgment and post-judgment interest; and
4. For such other and further relief as the Court deems just and proper.

As to the Eighth Cause of Action:

1. For penalties including but not limited to those recoverable under Labor Code § 203;
2. For attorneys' fees and costs including but not limited to those recoverable under Labor Code § 218.5 and Code of Civil Procedure § 1021.5;
3. For prejudgment and post-judgment interest; and
4. For such other and further relief as the Court deems just and proper.

As to the Ninth Cause of Action:

1. For penalties including but not limited to those recoverable under Labor Code §§ 204, 226.3, 256, and 2699(f);
2. For a declaration that Perry is an aggrieved employee within the meaning of Labor Code §§ 2699(a) and (c);
3. For a declaration that Richmar has violated Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802;
4. For a declaration that Richmar is liable for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2802;

- 1 5. For attorneys' fees and costs including but not limited to those recoverable under
2 Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
3 6. For prejudgment and post-judgment interest; and
4 7. For such other and further relief as the court deems just and proper.
5

6 **DATED:** August 20, 2021

MAYALL HURLEY P.C.

7
8 By _____



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
PRISCILLA PERRY