

INFINITY LAW GROUP LLP

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Attorneys for Plaintiff,
ANDRII BLYZENKO and AUBRIELA GARCIA,
individually, on behalf of all aggrieved employees,
and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF STATE OF CALIFORNIA
THE COUNTY OF SAN FRANCISCO

ANDRII BLYZENKO, and AUBRIELA
GARCIA, individually, on behalf of all aggrieved
employees, and on behalf of all others similarly
situated,

Plaintiff,

v.

AVA Inc., a California Corporation, dba Reliable
Roofing; and DOES 1 through 50, inclusive,

Defendants.

Case No.: CGC-21-595923

**FIRST AMENDED
REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL FINES**

1. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code, § 226.7, 512);
2. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code, § 226.7, 512);
3. Violation of PAGA for Failure to Pay All Wages Including Minimum Wages and Overtime Wages (Lab. Code, § 510, 1194);
4. Violation of PAGA for Failure to Keep Accurate Payroll Records (Lab. Code, § 1174, 226, subd. (a), (e));
5. Violation of PAGA for Failure to Reimburse for Necessary Expenditures (Lab. Code, § 2802); and
6. Violation of PAGA for Waiting Time Penalties (Lab. Code, § 201, 202, 203).

DEMAND FOR JURY TRIAL

ANDRII BLYZENKO (“Mr. Blyzenko”) and AUBRIELA GARCIA (“Ms. Garcia”) (collectively, “Plaintiffs”), as representatives of the State of California and the Labor and Workforce Development Agency (“LWDA”), and on behalf of themselves and all other current and former employees similarly situated, complain and allege as follows:

PRELIMINARY STATEMENT

1. This case arises out of the violation of numerous Labor Code provisions by AVA Inc., doing business as Reliable Roofing (“AVA” or “Defendant”), a California corporation, owning offices located in San Jose and Valley Village, California, and that employed Plaintiffs and similarly aggrieved employees throughout the State of California. Plaintiffs and similarly aggrieved employees seek wages and reimbursements that Defendant has failed and/or refused to pay to their employees.

2. This case also arises out of the violation of numerous Labor Code provisions, including, but not limited to, Defendant's failure to provide meal periods, failure to provide rest periods, failure to pay overtime wages, failure to reimburse employees for business-related expenses, failure to keep accurate payroll records, and failure to pay waiting time penalties as set forth more fully herein. These violations concern current and past employees of AVA.

3. Plaintiffs and other similarly situated employees seek recovery of unpaid wages, including, but not limited to, overtime wages, and waiting time penalties in the State of California, as a result of Defendant's failure to provide meal and rest periods and failing to pay employees all wages, including vacation time, overtime wages, and seek recovery of unreimbursed job-related expenses due and owing at the time of their termination.

JURISDICTION AND VENUE

4. Venue is proper in San Francisco County, because the Defendant transacts business in this county, the obligations and liability primarily arise in this county, and work was primarily performed by one or both Plaintiffs and similarly aggrieved employees in San Francisco County.

5. The California Superior Court has jurisdiction in the matter because the individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal court and, upon information and belief, Plaintiffs and Defendant are residents of and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein is based solely on California

1 Statutes and law, including the Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil
2 Procedure, Rule of Court and Business and Professions Code.

3 **THE PARTIES**

4 **Plaintiffs**

5 6. Individual and Representative Plaintiff BLYZENKO is an individual residing in San
6 Francisco County. Plaintiff was employed by Defendant as an “Estimator” from October 2019 through
7 May 2020, and then as a “Quality Assurance” technician from May 2020 through January 2021.

8 7. Individual and Representative Plaintiff Garcia is an individual residing in California.
9 Plaintiff was employed by Defendant to work in the accounting department from September 2020
10 through January 28, 2021.

11 **Defendant**

12 8. Plaintiffs are informed and believe, and based thereon allege, that AVA is a California
13 corporation organized under the laws of the State of California and is and/or was Plaintiffs’ and similarly
14 aggrieved employees’ employer during the Relevant Time Period, herein defined as the period of one (1)
15 year preceding the filing of the original complaint.

16 9. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
17 participation in the conduct herein alleged of the Defendant sued herein as DOES 1 through 50, inclusive,
18 but on information and belief allege that said Defendant is legally responsible for the occurrences alleged
19 herein, and that the damages of Plaintiffs and similarly aggrieved employees were proximately caused
20 by such Defendant. Plaintiffs will amend this complaint to allege the true names and capacities of the
21 DOE Defendant when ascertained.

22 10. Plaintiffs are informed and believe, and based thereon allege, that each Defendant herein
23 was, at all times relevant to this action, the agent, employee, representing partner, and/or joint venture of
24 the remaining Defendant and was acting within the course and scope of the relationship. Plaintiffs are
25 further informed and believe, based thereon allege, that each of the Defendant herein gave consent to,
26 ratified and authorized the acts alleged herein to the remaining Defendant.

27 11. Plaintiffs are further informed and believe, and based thereon allege, that Defendant
28 herein acted as a “single employer” at all relevant times. At all relevant times, Defendant managed and

1 completed roofing work across the state of California. Defendant acted in all respects pertinent to this
2 action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all
3 respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendant.

4 **ADMINISTRATIVE PREREQUISITE**

5 12. By this complaint, Plaintiffs bring this action as a representative action seeking penalties
6 for the State of California in a representative capacity, as provided by the Private Attorneys' General Act
7 ("PAGA"), Labor Code sections 2698 et seq., to the extent permitted by law, as aggrieved employees
8 who were employed by Defendant and subject to alleged violations set forth in Labor Code section
9 2699.5. Plaintiffs specifically alleged the following in their notice to the LWDA and the employer:
10 violation of Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 246, 510, 512, 558,
11 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802.

12 13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause of action
13 under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
14 to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or
15 after sixty-five (65) days have passed without notice from the LWDA.

16 14. On August 2, 2021 prior to the filing of this complaint, Plaintiff Blyzenko gave written
17 notice of the specific provisions alleged to have been violated, including the facts and theories to support
18 the alleged violations, as required by Labor Code section 2699.3. The written notice was given via
19 certified mail to Defendant(s), and the LWDA by electronically filing the notice via the Department of
20 Industrial Relations website. Plaintiff Blyzenko was given an LWDA case number of LWDA-CM-
21 840009-21. A true and correct copy of Plaintiff Blyzenko's notice to the LWDA and Defendant(s), dated
22 August 2, 2021, is attached hereto as Exhibit A.

23 15. On October 13, 2021 prior to the filing of this First Amended Complaint, Plaintiff Garcia
24 gave written notice of the specific provisions alleged to have been violated, including the facts and
25 theories to support the alleged violations, as required by Labor Code section 2699.3. The written notice
26 was given via certified mail to Defendant(s), and the LWDA by electronically filing the notice via the
27 Department of Industrial Relations website. Plaintiff Garcia was given an LWDA case number of
28 LWDA-CM-848508-21. A true and correct copy of Plaintiff Garcia's notice to the LWDA and

Defendant(s), dated October 13, 2021, is attached hereto as Exhibit B.

GENERAL ALLEGATIONS

16. Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

17. During all or a portion of the Relevant Time Period, Plaintiffs and similarly aggrieved employees were employed by Defendant in the State of California. Plaintiffs and similarly aggrieved employees were misclassified as independent contractors and /or were non-exempt employees covered under one (1) or more Industrial Welfare Commission ("IWC") Wage Orders, and Labor Code section 510, and/or other applicable wage orders, regulations and statutes, and were not subject to an exemption for executive, administrative and professional employees, which imposed obligations on the part of Defendant to pay Plaintiffs and similarly aggrieved employees lawful overtime compensation. Plaintiffs and similarly-aggrieved employees were covered by one (1) or more IWC Wage Orders, and Labor Code section 226.7 and other applicable Wage Orders, regulations, and statutes which imposed an obligation on the part of the Defendant to pay Plaintiffs and similarly-aggrieved employees rest and meal period compensation.

18. During the Relevant Time Period, Defendant was obligated to pay Plaintiffs and similarly-aggrieved employees overtime compensation for all hours worked over eight (8) hours of work in one (1) day or forty (40) hours in one (1) week.

19. During the Relevant Time Period, Defendant was obligated to provide Plaintiffs and similarly-aggrieved employees with a work-free meal and/or rest period.

20. Plaintiffs and similarly-aggrieved employees primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled Plaintiffs and similarly-aggrieved employees to overtime compensation at time and a half rate, and when applicable, double-time rates as set forth by the applicable Wage Orders, regulations and/or statutes.

21. Plaintiffs and similarly-aggrieved employees were not paid the above due overtime

1 compensation timely upon the termination of their employment as required by Labor Code sections 201,
2 202, and 203, and are entitled to penalties as provided by Labor Code section 203.

3 22. During the Relevant Time Period, Defendant required Plaintiffs and similarly-aggrieved
4 employees to work overtime without lawful compensation, in violation of the various applicable Wage
5 Orders, regulations, and statutes, and Defendant: (1) Willfully failed and refused, and continue to fail
6 and refuse to pay lawful overtime compensation to Plaintiffs and similarly-aggrieved employees; and
7 (2) willfully failed and refused, and continue to fail and refuse to pay due and owing wages promptly
8 upon termination of employment to Plaintiffs and similarly-aggrieved employees.

9 23. During the Relevant Time Period, Defendant failed and/or refused to schedule Plaintiffs
10 and similarly-aggrieved employees in an overlapping manner so as to reasonably ensure meal and/or rest
11 breaks and/or shift relief for Plaintiffs and similarly-aggrieved employees, thereby causing Plaintiffs and
12 similarly-aggrieved employees to work without being given paid ten (10) minute rest periods for every
13 four (4) hours or major fraction thereof worked and without being given a thirty (30) minute meal period
14 for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of at least ten
15 (10) hours during which Plaintiffs and similarly-aggrieved employees were relieved of all duties and free
16 to leave the premises. Defendant further failed and/or refused to schedule Plaintiffs and similarly-
17 aggrieved employees in a manner so as to reasonably ensure meal and/or rest breaks were taken within
18 the required statutory time frame and uninterrupted as required by law. Furthermore, Defendant failed
19 and/or refused to pay Plaintiffs and similarly-aggrieved employees one (1) hour's pay at the employees'
20 regular rate of pay as premium compensation for failure to provide rest and/or meal periods or not
21 providing such rest and/or meal periods within the statutory time frame as a result of their scheduling
22 policy.

23 24. During the Relevant Time Period, Defendant failed and/or refused to reimburse Plaintiffs
24 and similarly-aggrieved employees for necessary business expenditures incurred in connection with the
25 performance and execution of their job duties. Specifically, Defendant had a corporate practice and
26 policy of requiring Plaintiffs and similarly-aggrieved employees to shoulder the burden of Defendant's
27 cost of doing business by failing to reimburse Plaintiffs and similarly-aggrieved employees for necessary
28 business expenditures. Plaintiffs and similarly-aggrieved employees were required to regularly use their

1 personal vehicles to drive to and from potential and existing customers' homes, city and county Building
2 Departments throughout California, construction supply stores, and other locations without reimbursing
3 them for mileage and wear and tear on their vehicles. Further, Defendant required Plaintiffs and
4 similarly-aggrieved employees to use their personal cell phones and tools, among other things, to perform
5 their job duties for Defendant. Defendant failed to maintain adequate insurance coverage, reimburse
6 Plaintiffs and similarly-aggrieved employees for additional insurance premiums for the use of their
7 personal vehicles to perform job-related tasks and pay any deductibles or costs associated with
8 automobile accidents that arose while Plaintiffs and similarly-aggrieved employees used their personal
9 vehicles to perform their duties for Defendant.

10 **FIRST CLAIM FOR RELIEF**

11 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
12 **PROVIDE MEAL PERIODS**
13 **(Lab. Code, § 226.7 and 512)**

14 25. Plaintiffs reallege and incorporate by reference the allegations in the preceding
15 paragraphs.

16 26. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for
17 a work period of more than five (5) hours without providing a meal period of not less than thirty (30)
18 minutes or employ any person for a work period of more than ten (10) hours without a second meal
19 period of not less than thirty (30) minutes.

20 27. Labor Code section 226.7 provides that if an employer fails to provide an employee a
21 meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at
22 the employee's regular rate of compensation for each workday that the meal period is not provided in
23 accordance with this section.

24 28. Defendant failed implement a meal break policy, and failed to schedule Plaintiffs and
25 similarly-aggrieved employees in an overlapping manner so as to reasonably ensure Plaintiffs and
26 similarly-aggrieved employees could take and/or receive uninterrupted and timely meal periods within
27 the statutory timeframe. As a result, Plaintiffs and similarly-aggrieved employees were often forced to
28 forego a meal period and/or work during their meal period. In so doing, Defendant has intentionally and

1 improperly denied meal periods to Plaintiffs and similarly-aggrieved employees in violation of Labor
2 Code sections 226.7 and 512 and other regulations and statutes.

3 29. At all times relevant hereto, Plaintiffs and similarly-aggrieved employees have worked
4 more than five (5) hours in a workday.

5 30. At varying times relevant hereto, Plaintiffs and similarly-aggrieved employees at times
6 have worked more than ten (10) hours in a workday.

7 31. By virtue of the Defendant's failure to offer meal breaks and to schedule Plaintiffs and
8 similarly-aggrieved employees in such a way as to provide a meal period, and/or work free meal period
9 to Plaintiffs and similarly-aggrieved employees thereby causing Plaintiffs and similarly-aggrieved
10 employees to suffer, and continue to suffer, damages in amounts which are presently unknown, but will
11 be ascertained according to proof at trial.

12 32. Plaintiffs and similarly-aggrieved employees request recovery of civil penalties pursuant
13 to Labor Code section 226.7 which they are owed prior to filing this complaint, in a sum as provided by
14 the Labor Code and/or other statutes.

15 **SECOND CLAIM FOR RELIEF**

16 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
17 **PROVIDE REST PERIODS**
18 **(Lab. Code, § 226.7 and 512)**

19 33. Plaintiffs reallege and incorporate by reference the allegations in the preceding
20 paragraphs.

21 34. Labor Code section 226.7 provides that employers authorize and permit all employees to
22 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

23 35. Labor Code section 226.7(b) provides that if an employer fails to provide employee rest
24 periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the
25 employees' regular rate of compensation for each workday that the rest period is not provided.

26 36. Defendant failed and or refused to implement a rest break policy and a relief system by
27 which Plaintiffs and similarly-aggrieved employees could receive rest breaks and/or work free rest
28 breaks. Furthermore, due to Defendant's policy and practice of requiring Plaintiffs and similarly-

1 aggrieved employees to work through their rest breaks, Plaintiffs and similarly-aggrieved employees did
2 not receive their rest breaks within the required statutory time frame. By and through their actions,
3 Defendant intentionally and improperly denied rest periods to Plaintiffs and similarly-aggrieved
4 employees in violation of Labor Code sections 226.7 and 512.

5 37. At all times relevant hereto, Plaintiffs and similarly-aggrieved employees have worked
6 more than four (4) hours in a workday.

7 38. By virtue of Defendant's unlawful failure to provide rest periods to Plaintiffs and
8 similarly-aggrieved employees as a result of their scheduling and shift relief system, Plaintiffs and
9 similarly-aggrieved employees have suffered, and will continue to suffer, damages, in amounts which
10 are presently unknown, but will be ascertained according to proof at trial.

11 39. Plaintiffs and similarly-aggrieved employees request recovery of civil penalties pursuant
12 to Labor Code section 226.7, which they are owed prior to filing this complaint, in a sum as provided by
13 the Labor Code and/or any other statute.

14 **THIRD CLAIM FOR RELIEF**

15 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
16 **PAY ALL WAGES INCLUDING MINIMUM WAGES AND OVERTIME WAGES**

17 **(Lab. Code, § 510, 1194)**

18 40. Plaintiffs realleges and incorporates by reference the allegations in the preceding
19 paragraphs.

20 41. Plaintiffs and similarly aggrieved employees regularly worked over eight (8) hours per
21 day and forty (40) hours per week. Defendant misclassified certain employees as independent
22 contractors, misclassified certain employees as exempt employees, and failed to record actual hours
23 worked for employees that Defendant classified as non-exempt. Consequently, Defendant failed to pay
24 Plaintiffs and similarly aggrieved employees for all hours worked, including, during meal periods, rest
25 periods, while being on-call, and driving to and from potential and existing customers' homes, city and
26 county Building Departments throughout California, construction supply stores, and other locations,
27 among other things. As a consequence, Defendant failed to pay Plaintiffs and similarly aggrieved
28 employees all minimum, regular, overtime, and/or double-time wages for all hours worked, including

1 hours in excess of over eight (8) per day and 40 per workweek. Pursuant to Labor Code 1194, Plaintiffs
2 and similarly aggrieved employees seek the payment of all minimum, regular, overtime, and/or double-
3 time compensation which they earned and accrued prior to filing this complaint, according to proof.

4 42. To the extent that such unpaid wages were for hours worked in excess of eight (8) in one
5 day or forty (40) in one week, such wages were required to be paid at an overtime rate of one-and-a-
6 halftimes each employee's base rate of pay. Further, to the extent that such unpaid wages were for hours
7 worked in excess of twelve (12) hours in one day or in excess of eight (8) hours on the seventh day of
8 work in any one workweek, such wages were required to be paid at the rate of no less than twice the
9 regular rate of pay for an employee.

10 43. By virtue of Defendant's unlawful failure to provide all wages owed to Plaintiffs and
11 similarly-aggrieved employees, Plaintiffs and similarly-aggrieved employees have suffered, and will
12 continue to suffer, damages in amounts which are presently unknown, but will be ascertained according
13 to proof at trial.

14 44. Plaintiffs and similarly-aggrieved employees request recovery of civil penalties pursuant
15 to Labor Code section 226.7, which they are owed prior to filing this complaint, in a sum as provided by
16 the Labor Code and/or any other statute.

17 45. Additionally, Plaintiffs and similarly-aggrieved employees is entitled to attorneys' fees,
18 costs, pursuant to Labor Code section 1194 and prejudgment interest.

19 **FOURTH CLAIM FOR RELIEF**

20 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
21 **KEEP ACCURATE PAYROLL RECORDS**

22 **(Lab. Code, § 1174, 226, subd. (a), (e))**

23 46. Plaintiffs reallege and incorporate by reference the allegations in the preceding in the
24 preceding paragraphs.

25 47. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
26 location in California or at the plant or establishment at which the employees are employed, payroll
27 records showing the hours worked daily, and the wages paid to each employee. Plaintiffs are informed
28

1 and believe, and based thereon allege, that Defendant willfully failed to make or keep accurate records
2 for Plaintiffs and similarly-aggrieved employees.

3 48. Labor Code section 226, subdivision (a), requires employers to furnish each employee
4 with a statement that accurately reflects the total number of hours worked and applicable hourly overtime
5 rates in effect during the pay period at the time of each payment of wages or semi-monthly. Labor Code
6 section 226, subdivision (e), provides that if an employer knowingly and intentionally fails to provide a
7 statement itemizing, *inter alia*, the total hours worked by the employee and the applicable hourly
8 overtime rates, causing the employee injury, then the employee is entitled to recover the greater of all
9 actual damages or fifty dollars (\$50.00) for each subsequent violation, up to four thousand dollars
10 (\$4,000.00).

11 49. Plaintiffs are informed and believe that Defendant willfully and intentionally failed to
12 make and/or keep records which accurately reflect the hours worked by Plaintiffs and similarly-aggrieved
13 employees. Specifically, Plaintiffs believe that Defendant's records do not accurately reflect (1) actual
14 hours worked; (2) total hours worked; (3) number of hours worked for each hourly rate; (4) gross wages
15 earned; (5) net wages earned; and (6) premium wages earned per pay period. Further, Plaintiff believes
16 that Defendant's records do not accurately reflect instances when Plaintiffs and similarly-aggrieved
17 employees worked during their meal and/or rest breaks due to Defendant's failure to offer meal and rest
18 breaks and to failure to schedule Plaintiffs and similarly-aggrieved employees in an overlapping manner
19 so as to provide them with a meal and/or rest break.

20 50. Plaintiffs are informed and believe, and based thereon allege, that Defendant's failure to
21 keep accurate payroll records, as described above, violated Labor Code section 1174, subdivision (d),
22 and the applicable wage order. Plaintiffs and similarly-aggrieved employees are entitled to penalties of
23 one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each
24 subsequent violation for every pay period during which these records and information were not kept by
25 Defendant.

26 51. Plaintiffs are informed and believe, and based thereon allege, that Defendant's failure to
27 keep and maintain accurate records and information, as described above, was willful, and Plaintiffs and
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1 similarly-aggrieved employees are entitled to a civil penalty of five hundred dollars (\$500.00) per
2 employee pursuant to Labor Code section 1174.5.

3 52. Defendant knowingly and intentionally failed to, and continues to fail to, furnish Plaintiffs
4 and similarly-aggrieved employees with timely, itemized statements that accurately reflect the total
5 number of hours worked, as required by Labor Code section 226, subdivision (2), and Plaintiffs and
6 similarly-aggrieved employees suffered injury as a result. Consequently, Defendant is liable to Plaintiffs
7 and similarly-aggrieved employees for the amounts provided by Labor Code section 226, subdivision
8 (e).

9 53. Plaintiffs have complied with the reporting requirements under Labor Code sections
10 2698-2699, individually and on behalf of all aggrieved employees. Plaintiffs request and are entitled to
11 recover from Defendant penalties for failure to keep accurate payroll records, interest, attorney's fees
12 and costs pursuant to Labor Code sections 226 and 1174, as well as all statutory penalties and attorneys'
13 fees against Defendant.

14 **FIFTH CLAIM FOR RELIEF**

15 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
16 **REIMBURSE FOR NECESSARY EXPENDITURES**

17 **(Lab. Code, § 2802)**

18 54. Plaintiffs reallege and incorporate by reference the allegations in the preceding
19 paragraphs.

20 55. Labor Code section 2802 states that "An employer shall indemnify his or her employee
21 for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
22 of his or her duties"

23 56. Plaintiffs and similarly-aggrieved employees were not reimbursed by Defendant for
24 necessary expenditures as a direct consequence of the discharge of their duties.

25 57. Defendant knowingly, willingly, and intentionally attempted to offset the cost of doing
26 business on Plaintiffs and similarly-aggrieved employees.

27 58. Defendant had a corporate practice and policy of requiring Plaintiffs and similarly-
28 aggrieved employees to shoulder the burden of Defendant's cost of doing business by failing to reimburse

1 Plaintiffs and similarly-aggrieved employees for necessary business expenditures. Specifically,
2 Plaintiffs and similarly-aggrieved employees were required to regularly use their personal vehicles to
3 drive to and from potential and existing customers' homes, city and county Building Departments
4 throughout California, construction supply stores, and other locations without reimbursing them for
5 mileage and wear and tear on their vehicles. Further, Defendant required Plaintiffs and similarly-
6 aggrieved employees to use their personal cell phones and tools, among other things, to perform their job
7 duties for Defendant. Defendant failed to maintain adequate insurance coverage, reimburse Plaintiffs
8 and similarly-aggrieved employees for additional insurance premiums for the use of their personal
9 vehicles to perform job-related tasks and pay any deductibles or costs associated with automobile
10 accidents that arose while Plaintiffs and similarly-aggrieved employees used their personal vehicles to
11 perform their duties for Defendant.

12 59. Accordingly, Plaintiffs and similarly-aggrieved employees are entitled to an award of
13 "necessary expenditures or losses" and civil penalties in accordance with Labor Code section 2802,
14 which shall also include all reasonable costs, including, but not limited to, attorneys' fees and interest.

15 **SIXTH CLAIM FOR RELIEF**

16 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR WAITING TIME**

17 **PENALTIES**

18 **(Lab. Code, § 201,202,203)**

19 60. Plaintiffs reallege and incorporate by reference the allegations in the preceding
20 paragraphs.

21 61. Plaintiffs and similarly-aggrieved employees were entitled to be promptly paid lawful
22 overtime compensation and other premiums, as required by Labor Code sections 201, 202, and 203, upon
23 the termination of their employment with Defendant. Defendant refused and/or failed to promptly
24 compensate Plaintiffs and similarly-aggrieved employees all wages owed as a result of their unlawful
25 rounding scheme and failure to provide meal and/or rest periods. Plaintiffs seek the payment of civil
26 penalties pursuant to Labor Code section 203, according to proof.

27 62. Plaintiffs also seek attorneys' fees, costs, and prejudgment interest pursuant to Labor
28 Code section 203.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs pray for the following relief:

- 3 1. For penalties in an amount according to proof.
- 4 2. For reasonable attorney's fees and costs, pursuant to the PAGA; and
- 5 3. For such other and further relief as this Court may deem just and proper.

6 Dated: December 17, 2021

INIFNITY LAW GROUP LLP

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9 By: _____



Ilya Filmus, Esq.
Attorney for Plaintiffs

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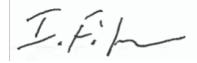
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated: December 17, 2021

INFINITY LAW GROUP LLP

By: _____



Ilya Filmus, Esq.
Attorney for Plaintiffs

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EXHIBIT A



INFINITY LAW GROUP

August 2, 2021

VIA CERTIFIED MAIL AND ONLINE SUBMISSION TO THE LWDA

Labor & Workforce Development Agency

By Online Submission

AVA INC. dba Reliable Roofing

c/o Shant H. Hagopian

Agent for Service of Process

15760 Ventura Blvd., Suite 700

Encino, CA 91436

RE: ANDRII BLYZENKO, ET AL V. AVA INC.

Dear PAGA Administrator:

Infinity Law Group LLP represents Mr. Andrii Blyzenko in respect to matters arising out of his employment with AVA INC. dba Reliable Roofing and, as appropriate, any of their parent companies, subsidiaries, or affiliates (hereinafter, “Reliable Roofing” or collectively, “Companies”). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Mr. Blyzenko.

This letter provides notice on behalf of Mr. Blyzenko and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Mr. Blyzenko is an “aggrieved employee” as defined by Labor Code section 2698 et seq., due to the Companies’ numerous violations of the Labor Code, including Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 2698 et seq., 2750.3, 2802, as well as the provisions of the IWC Wage Orders which pertain to the payment of compensation for all hours worked, payment of daily, weekly, and seventh-day overtime compensation, payment of minimum and double-time compensation, and payment of all expense reimbursement due during employment and upon separation of employment; the maintenance of accurate records of hours worked, the provision of legally compliant meal and rest periods; provision of sick leave; the timely payment of wages during employment and upon termination; and the itemized pay statement requirements. As a result of these violations, Mr. Blyzenko is entitled to damages, interest, penalties, attorneys’ fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, “Aggrieved Employees” should be considered to include all non-exempt employees, including employees misclassified as exempt or independent contractors, of the Companies who have worked for the Companies during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency (“LWDA”) and to the Companies via certified mail to their addresses for business operations.

Based on the below summary of the facts and legal theories upon which Mr. Blyzenko bases his claims, he requests that the LWDA regard this notice as written notice pursuant to California Labor Code

201 Spear Street, Suite 1100, San Francisco, CA 94105

3450 Geary Blvd., Suite 210, San Francisco, CA 94118 | 1020 Aileen St. Lafayette, CA 94549

Tel: 415-426-3580 | Fax: 415-426-3581 | www.infinitylawca.com | info@infinitylawca.com

section 2699.3 of his intent to seek civil penalties against Reliable Roofing and any parent companies, subsidiaries or affiliates identified as co-defendants prior to and during litigation of this matter.

I. FACTS

a. Background on Reliable Roofing

Mr. Blyzenko is informed, believes and thereupon alleges that Reliable Roofing was incorporated in California, with its principal place of business in Valley Village, California, and was his employer at all times relevant herein. Reliable Roofing's principal business is roof repair and installation.

b. Background on Mr. Blyzenko

Mr. Blyzenko began working for Reliable Roofing in or around October 2019. He was asked to sign an "Independent Contractor Estimator Agreement" ("the Agreement") around the time that he began his employment. Mr. Blyzenko signed the Agreement, which contained various provisions for his pay. Per the Agreement, Mr. Blyzenko was expected to work as an "Estimator" to estimate the cost of roofing and related construction services. Indeed, Reliable Roofing was in the business of providing construction services to the general public. Mr. Blyzenko was contracted to assist Reliable Roofing with this business. Later, Mr. Blyzenko was transitioned to work for Reliable Roofing in a "Quality Assurance" role.

Mr. Blyzenko was to be paid on a commission-only, pay-for-performance basis, as an independent contractor. Essentially, subject to certain time limitations, he earned a fee for construction services Mr. Blyzenko helped sell and/or helped complete. He did not have, nor was he required by Reliable Roofing to have, a business license to sell construction services. Mr. Blyzenko was required to report to Reliable Roofing's San Jose, CA office every workday at 7 am and was required to regularly report back to Reliable Roofing with regard to his work. Mr. Blyzenko was provided strict guidance for performing his job responsibilities.

Notwithstanding the independent contractor agreement he signed with Reliable Roofing, the Companies treated Mr. Blyzenko like an employee – exerting an immense level of control over his employment. They expected Mr. Blyzenko would work approximately 75 hours per week. Mr. Blyzenko should have been treated as an employee rather than an independent contractor. During his employment, Mr. Blyzenko worked under the direction and control of the Companies. Upon information and belief, he also performed work that was identical to the usual course of Defendants' own construction business.

As an employee of the Companies, Mr. Blyzenko was not properly paid for his time. He was not timely paid during his employment or at the conclusion of his employment. He was not reimbursed for business expenses incurred during the performance of his responsibilities for the Company. Mr. Blyzenko was not provided sick leave and was not paid for all hours worked, was not paid for overtime or double-time work, nor was he paid for missed meal or rest breaks. He was also not provided with accurate, itemized wage statements.

Mr. Blyzenko observed that other Aggrieved Employees of the Companies were misclassified and paid in the same manner as he, with the same violations of the Labor Code. Mr. Blyzenko observed that other Aggrieved Employees of the Companies who were classified as employees were not paid properly with the same violations of the Labor Code. More specifically, other Aggrieved Employees were not timely paid during their employment or at the conclusion of their employment. There were not reimbursed for business expenses incurred during the performance of their responsibilities for the Company. Aggrieved Employees were not provided sick leave and were not paid for all hours worked, were not paid for overtime or double-time work, nor were they paid for missed meal or rest breaks. They were also not provided with accurate, itemized wage statements.

II. LABOR CODE VIOLATIONS

A. Failure to Pay Minimum, Overtime or Double-time Wages

Mr. Blyzenko and Aggrieved Employees regularly worked or continue to work in excess of eight (8) or twelve (12) hours per day and/or forty (40) hours per workweek and/or on the seventh consecutive day in a given workweek, but the Companies, as a matter of policy, failed and fail to pay all applicable overtime or double-time compensation for all hours actually worked by employees as required by Labor Code §§ 204, 510, 1194, 1194.2 and Industrial Welfare Commission Wage Order 4-2001 (“Wage Order 4-2001”), § 3 and Industrial Welfare Commission Wage Order 16-2001 (“Wage Order 16-2001”), § 3. The Companies simply did not pay proper overtime and double-time rates for these premium hours worked or sometimes even any compensation at all.

B. Failure to Pay Wages Due Upon Termination

As the Companies failed to pay all wages due, including all minimum, overtime and double-time wages, and premium wages for missed and denied meal and rest breaks, upon termination of the employment relationship with Mr. Blyzenko and Aggrieved Employees, the Companies willfully failed to pay Mr. Blyzenko and Aggrieved Employees all wages earned and owed in violation of California Labor Code §§ 201 and 202. Pursuant to § 203 of the Labor Code, Mr. Blyzenko and Aggrieved Employees are now also entitled to recover up to thirty (30) days of wages due to the Companies willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

C. Failure to Provide Meal Breaks

The Companies failed and continue to fail to maintain a policy that provides Aggrieved Employees with off-duty meal periods as required by California law. Aggrieved Employees regularly work or worked in excess of five (5) hours a day and at times in excess of ten (10) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, Wage Order 4-2001, § 11, and Wage Order 16-2001, § 10. The Companies failed and continues to fail to pay Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods.

D. Failure to Provide Rest Breaks

The Companies failed and continues to fail to maintain a policy that provides Aggrieved Employees with off-duty rest periods as required by California law. Aggrieved Employees regularly work in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order 4-2001, § 12, and Wage Order 16-2001, § 11. When they were provided with a rest break, they were interrupted and not permitted to leave the work premises, thus resulting in an impermissible on-duty rest period. The Companies failed and continue to fail to pay Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods.

E. Failure to Furnish Accurate Itemized Wage Statements

The Companies failed to issue accurate and complete wage statements to Mr. Blyzenko and Aggrieved Employees. As Mr. Blyzenko and Aggrieved Employees were not paid all wages due for all minimum, overtime and double-time wages, and premium wages for missed and denied meal and rest breaks, as discussed above, the wage statements fail to set forth all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

Moreover, and independent of the above allegations, the Companies have violated and continue to violate California Labor Code § 226(a) by willfully failing to furnish Mr. Blyzenko and Aggrieved Employees with accurate, itemized wage statements showing the actual hours worked on a daily basis and properly distinguishing overtime from non-overtime work, in violation of Labor Code § 226(a)(2) and (a)(9), respectively.

F. Failure to Reimburse Expenses

The Companies have violated and continue to violate California Labor Code § 2802 by willfully failing to reimburse Mr. Blyzenko and Aggrieved Employees with all expenses they incurred in the performance of their job duties. Mr. Blyzenko and Aggrieved Employees would routinely travel between Company locations and potential and existing customers' homes, and would incur costs for travel, including gas, automobile insurance and maintenance costs, cell phone and tools usage, among other necessities. However, the Companies failed to reimburse them for their business expenses, in violation of Labor Code § 2802.

G. Failure to Pay All Wages in a Timely Fashion

The Companies consistently failed and continue to fail to pay Mr. Blyzenko and Aggrieved Employees all wages earned and owed within the time periods specified in Labor Code §§ 204(d) and 210 twice each calendar month on the regular paydays, including, but not limited to, overtime wages, minimum wages, wages for missed meal periods, and wages for missed rest periods.

H. Failure to Provide Sick Leave

The Companies failed and continue to fail to notify Mr. Blyzenko and Aggrieved Employees of their right to take sick leave. Further, the Companies failed and continue to fail to provide paid sick leave to Mr. Blyzenko and Aggrieved Employees. This was done in violation of Labor Code §§ 246 and 248.5.

I. Failure to Keep Accurate Payroll Records of Daily Hours Worked

The Companies failed and continue to fail to maintain adequate payroll and time-clock records showing the total hours worked daily and wages paid to employees in violation of Labor Code § 1174.

III. CONCLUSION

The Companies' violations were extensive, voluminous, and not subject to simple itemization. As in the ordinary course, it is understood that additional legal implications of the above violations under the California Labor Code and/or applicable Wage Orders are evident from or derivative from the facts referenced in this letter or the circumstances of Mr. Blyzenko's employment. It is the intention of Mr. Blyzenko to pursue penalties and other available relief in connection with all such claims regardless of whether specifically itemized here.

As a result of the foregoing violations, the Companies are liable for civil penalties pursuant to California Labor Code §§ 210, 226.3, 558, 1174.5, and 2698 et seq. Pending a full investigation, any later discovered violations may also be subject to our enforcement.

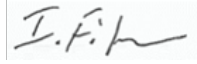
This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. In view of the duties imposed on your agency and this office by the statutes cited above, please be advised we will advance our calendars sixty-five (65) days of the date of this letter.

If the LWDA elects not to take any action, Mr. Blyzenko intends to pursue his complaint on behalf of himself and all other Aggrieved Employees in the California Superior Court seeking wages for misclassification; failure to pay wages for all hours worked, overtime work, meal and rest period premiums; failure to reimburse business expenses; failure to provide accurate, itemized wage statements; failure to provide sick leave; interest, penalties, attorneys' fees, and costs; and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Filmus", enclosed within a light gray rectangular border.

Ilya Filmus, Esq.
Infinity Law Group LLP

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EXHIBIT B



INFINITY LAW GROUP

October 13, 2021

VIA CERTIFIED MAIL AND ONLINE SUBMISSION TO THE LWDA

Labor & Workforce Development Agency

By Online Submission

AVA INC. dba Reliable Roofing

c/o Shant H. Hagopian

Agent for Service of Process

15760 Ventura Blvd., Suite 700

Encino, CA 91436

RE: AUBRIELA GARCIA, ET AL. V. AVA INC.

Dear PAGA Administrator:

Infinity Law Group LLP represents Ms. Aubriela Garcia in respect to matters arising out of her employment with AVA INC. dba Reliable Roofing and, as appropriate, any of their parent companies, subsidiaries, or affiliates (hereinafter, “Reliable Roofing” or collectively, “Companies”). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Ms. Garcia.

This letter provides notice on behalf of Ms. Garcia and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Ms. Garcia is an “aggrieved employee” as defined by Labor Code section 2698 et seq., due to the Companies’ numerous violations of the Labor Code, including Labor Code sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2750.3, 2800, 2802, as well as the provisions of the IWC Wage Orders which pertain to the payment of compensation for all hours worked, payment of daily, weekly, and seventh-day overtime compensation, payment of minimum and double-time compensation, and payment of all expense reimbursement due during employment and upon separation of employment; the maintenance of accurate records of hours worked, the provision of legally compliant meal and rest periods; provision of sick leave; the timely payment of wages during employment and upon termination; and the itemized pay statement requirements. As a result of these violations, Ms. Garcia is entitled to damages, interest, penalties, attorneys’ fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, “Aggrieved Employees” should be considered to include all non-exempt employees, including employees misclassified as exempt, of the Companies who have worked for the Companies during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency (“LWDA”) and to the Companies via certified mail to their address for business operations.

Based on the below summary of the facts and legal theories upon which Ms. Garcia bases her claims, she requests that the LWDA regard this notice as written notice pursuant to California Labor Code

201 Spear Street, Suite 1100, San Francisco, CA 94105

3450 Geary Blvd., Suite 210, San Francisco, CA 94118 | 1020 Aileen St. Lafayette, CA 94549

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section 2699.3 of her intent to seek civil penalties against Reliable Roofing and any parent companies, subsidiaries or affiliates identified as co-defendants prior to and during litigation of this matter.

I. FACTS

a. Background on Reliable Roofing

Ms. Garcia is informed, believes and thereupon alleges that Reliable Roofing was incorporated in California, with its principal place of business in Valley Village, California, and was her employer at all times relevant herein. Reliable Roofing's principal business is providing construction services to the general public, namely roof repair and installation.

b. Background on Ms. Garcia

Ms. Garcia began working for Reliable Roofing in or around September 2020 to work in Accounting. Ms. Garcia was initially paid \$24 per hour, but her regular rate of pay was later reduced to \$20 per hour. As an employee of the Companies, Ms. Garcia was not properly paid for her time – among other things, she was required to work “off the clock,” and work through her meal breaks and rest periods. She was not timely paid during her employment or at the conclusion of her employment. She was not reimbursed for business expenses incurred during the performance of her responsibilities for the Company. Ms. Garcia was not provided sick leave and was not paid for all hours worked, was not paid for overtime or double-time work, nor was she paid for missed meal or rest breaks. Further, she was also not provided with accurate, itemized wage statements.

Ms. Garcia observed that other Aggrieved Employees of the Companies were victims of illegal wage and hour practices in the same manner as her, with the same violations of the Labor Code. Ms. Garcia observed that other Aggrieved Employees of the Companies who were classified as non-exempt employees, who were misclassified as exempt employees, and who were misclassified as independent contractors were not paid properly with the same violations of the Labor Code. More specifically, other Aggrieved Employees were not timely paid during their employment or at the conclusion of their employment. They were not reimbursed for business expenses incurred during the performance of their responsibilities for the Company. Aggrieved Employees were not provided sick leave and were not paid for all hours worked, were not paid for overtime or double-time work, nor were they paid for missed meal or rest breaks. They were also not provided with accurate, itemized wage statements.

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4-2001”), § 3 and Industrial Welfare Commission Wage Order 16-2001 (“Wage Order 16-2001”), § 3. The Companies simply did not pay proper overtime and double-time rates for these premium hours worked or sometimes even any compensation at all.

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As the Companies failed to pay all wages due, including all minimum, overtime and double-time wages, and premium wages for missed and denied meal and rest breaks, upon termination of the employment relationship with Ms. Garcia and Aggrieved Employees, the Companies willfully failed to pay Ms. Garcia and Aggrieved Employees all wages earned and owed in violation of California Labor Code §§ 201 and 202. Pursuant to § 203 of the Labor Code, Ms. Garcia and Aggrieved Employees are now also entitled to recover up to thirty (30) days of wages due to the Companies willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

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earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

Moreover, and independent of the above allegations, the Companies have violated and continue to violate California Labor Code § 226(a) by willfully failing to furnish Ms. Garcia and Aggrieved Employees with accurate, itemized wage statements showing the actual hours worked on a daily basis and properly distinguishing overtime from non-overtime work, in violation of Labor Code § 226(a)(2) and (a)(9), respectively.

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The Companies have violated and continue to violate California Labor Code § 2802 by willfully failing to reimburse Ms. Garcia and Aggrieved Employees with all expenses they incurred in the performance of their job duties. Ms. Garcia and Aggrieved Employees would routinely travel between Company locations and potential and existing customers' homes, and would incur costs for travel, including gas, automobile insurance and maintenance costs, cell phone and tools usage, among other necessities. However, the Companies failed to reimburse them for their business expenses, in violation of Labor Code § 2802.

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III. CONCLUSION

The Companies' violations were extensive, voluminous, and not subject to simple itemization. As in the ordinary course, it is understood that additional legal implications of the above violations under the California Labor Code and/or applicable Wage Orders are evident from or derivative from the facts referenced in this letter or the circumstances of Ms. Garcia's employment. It is the intention of Ms. Garcia

to pursue penalties and other available relief in connection with all such claims regardless of whether specifically itemized here.

As a result of the foregoing violations, the Companies are liable for civil penalties pursuant to California Labor Code §§ 210, 226.3, 558, 1174.5, and 2698 et seq. Pending a full investigation, any later discovered violations may also be subject to our enforcement.

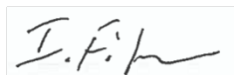
This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. In view of the duties imposed on your agency and this office by the statutes cited above, please be advised we will advance our calendars sixty-five (65) days of the date of this letter.

If the LWDA elects not to take any action, Ms. Garcia intends to pursue his complaint on behalf of herself and all other Aggrieved Employees in the California Superior Court seeking wages for misclassification; failure to pay wages for all hours worked, overtime work, meal and rest period premiums; failure to reimburse business expenses; failure to provide accurate, itemized wage statements; failure to provide sick leave; interest, penalties, attorneys' fees, and costs; and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "I. Filmus", enclosed within a thin black rectangular border.

Ilya Filmus, Esq.
Infinity Law Group LLP