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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

JESSE ROBLES, an individual, on behalf of
himself and others similarly situated

PLAINTIFF,

v.

GEREMIA POOLS; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 34-2022-00329920

[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

BY FAX

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff JESSE ROBLES, an individual, on behalf of himself, all others similarly situated,
2 and on behalf of the people of the State of California and as an “aggrieved employee” under Labor
3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (hereafter “PAGA”), complains of
4 Defendant GEREMIA POOLS (“Defendant”) and each of them, as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
8 382, on behalf of Plaintiff and a Proposed Class defined as:

9 All persons who worked as a non-exempt employee by Geremia
10 Pools, in the State of California who worked one or more pay
11 periods since four (4) years prior to the filing of this action to the
12 present plus any additional time during which the statutes of
13 limitation for the causes of action herein were tolled pursuant to
14 Emergency Rule 9 of the California Rules of Court, the ‘Emergency
15 Rules Related to COVID-19’. (“Proposed Class”)

16 2. Any limitations period referenced in this letter is extended pursuant to Emergency
17 Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of
18 Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed
19 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding
20 any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days
21 are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or
22 statute of limitations referenced in this letter is extended into the past by the number of days in
23 which this tolling was in effect.

24 3. From at least four (4) years prior to the filing of this action continuing to the present,
25 Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the
26 Proposed Class. Plaintiff and the Proposed Class were not properly compensated for all hours
27 worked over eight (8) hours in one day or forty (40) hours in one week the appropriate rate of pay.
28 Plaintiff and the Proposed Class were not properly compensated for overtime because when they
were paid travel pay, the travel pay was not correctly blended into their regular rate of pay for the
purpose of calculating the overtime rate. Defendant’s failure to blend travel pay into the regular
rate of pay resulted in the unlawful withholding of wages and/or overtime.

1 4. For at least four (4) years prior to the filing of this action and continuing to the
2 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using
3 their personal cell phones for business related purposes. Defendant required that Plaintiff and the
4 Proposed Class be available by cell phone, use their cell phones while working to make and receive
5 calls, and take and send pictures. This was required by Defendant and was necessary to perform
6 their job duties. These cell phones were not provided by Defendant. Defendant failed to reimburse
7 Plaintiff and the Proposed Class for the costs associated with using these personal cell phones.

8 5. For at least one (1) year prior to the filing of this action continuing to the present,
9 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 5-2001
10 and Labor Code § 226(a) by failing to provide Plaintiff and the Proposed Class with accurate
11 itemized wage statements that show total hours worked, the name and address of the legal entity
12 that is the employer, and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee.

14 6. For at least three (3) years prior to the filing of this action continuing to the present,
15 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
16 the Proposed Class.

17 7. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
18 pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802; Wage Order
19 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unpaid
20 wages/overtime, unreimbursed expenses, accurate itemized wage statements, other penalties,
21 injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

22 8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
23 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
24 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

25 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
26 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
27 PAGA and continuing to the present and as extended by Emergency Rule 9 referenced in paragraph
28 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise to a claim

1 pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or
2 formerly employed by Defendant during the liability period as defined in her PAGA notice letters
3 (see Exhibit “1”), brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking
4 penalties for Defendant’s violations of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2,
5 1199, and 2802.

6 **II.**

7 **JURISDICTION AND VENUE**

8 10. This Court has subject matter jurisdiction over all causes of action asserted herein
9 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
10 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
11 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
12 State of California or is subject to adjudication in the courts of the State of California.

13 11. This Court has personal jurisdiction over Defendant because Defendant has caused
14 injuries in the County of Sacramento and the State of California through their acts, and by their
15 violation of the California Labor Code, California state common law, and California Business &
16 Professions Code § 17200, *et seq.*

17 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
18 Civil Procedure § 395. Defendant operates within California and does business within Sacramento
19 County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class
20 Members within the State of California and the county of Sacramento.

21 13. This case should be classified as complex according to Rule 3.400 of the California
22 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
23 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
24 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
25 require substantial post judgment judicial supervision.

26 14. Plaintiff files this amended complaint adding a claim for penalties pursuant to
27 Labor Code § 2699, *et seq.* as a matter of right, pursuant to Labor Code § 2699.3(a)(2)(C)].

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III.
PARTIES

A. PLAINTIFF

15. Plaintiff JESSE ROBLES is a resident of California.

16. Plaintiff and all Proposed Class Members, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate of pay;
- b. Work without being reimbursed for their out-of-pocket expenses; and,
- c. Work without being provided accurate itemized wage statements.

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

19. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

20. Defendant GEREMIA POOLS is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 7901 14th Ave., Sacramento, CA 95826. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

23. Furthermore, Defendants acted in all respects as the employers or joint employers of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

IV.

FACTUAL BACKGROUND

24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant, paid on an hourly basis.

25. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal. Code of Regs. § 11050).

26. On a regular and consistent basis, Plaintiff and the Proposed Class Members were not paid at the proper rate of compensation for all hours worked. Plaintiff and Proposed Class Members were not properly compensated for overtime at the appropriate rate of pay because when they were paid travel pay, the travel pay was not correctly blended into their regular rate of pay for the purpose of calculating the overtime rate. The failure to properly blend resulted in an underpayment of wages to Plaintiff and the Proposed Class.

27. On a regular and consistent basis, Plaintiff and the Proposed Class have not been properly reimbursed for expenses associated with the cost of using their personal cell phones for business-related purposes. Defendant required that Plaintiff and the Proposed Class be available by cell phone, use their cell phones while working to make and receive calls, and send take pictures. This was required by Defendant and necessary to perform their job duties. These cell

phones were not provided by Defendant. Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with using these personal cell phones.

28. On a regular and consistent basis, Defendant engaged in a practice of failing to provide accurate itemized wage statements that show total hours worked, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code §§ 226(a)(2), (8), and (9) respectively.

29. Defendant willfully failed to pay wages and compensation, when Plaintiff and all Proposed Class Members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiff's and Class Members' rights.

30. As a result of the acts alleged herein, Defendant violated Labor Code §2699, et seq.

V.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a proposed class composed of and defined as follows:

All persons who worked as a non-exempt employee by Geremia Pools, in the State of California who worked one or more pay periods since four (4) years prior to the filing of this action to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the 'Emergency Rules Related to COVID-19'. ("Proposed Class")

32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

33. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation and the Proposed Classes are easily ascertainable.

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1 **A. NUMEROSITY**

2 34. The potential members of the Proposed Class as defined are so numerous that
3 joinder of all the members of the Proposed Class is impracticable. While the precise number of
4 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
5 that Defendant currently employ, and during the relevant time periods employed over 50 members
6 of the Proposed Class.

7 35. Plaintiff alleges that Defendant's employment records would provide information
8 as to the number and location of all Proposed Class Members. Joinder of all members of the
9 Proposed Class is not practicable.

10 **B. COMMONALITY**

11 36. There are questions of law and fact common to the Proposed Class that predominate
12 over any questions affecting only individual Proposed Class Members. These common questions
13 of law and fact include, without limitation:

14 a. Whether Defendant failed to pay wages and/or overtime compensation as
15 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1194.2 and 1199;

16 b. Whether Defendant violated Labor Code § 2802 and/or Wage Order 5-2001
17 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost
18 of using personal cell phones;

19 c. Whether Defendant violated Labor Code § 226(a) and Wage Order 5-2001
20 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11050 by failing to
21 provide accurate itemized wage statements as required to Plaintiff and the members of the
22 Proposed Class;

23 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
24 compensation due and owing at the time that any Proposed Class Member's employment with
25 Defendant terminated;

26 e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
27 Code by engaging in the acts previously alleged; and

28 f. Whether Plaintiff and the members of the Proposed Class are entitled to

equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

38. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

39. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to reimburse expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

41. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

5 **LABOR CODE §§ 510, 1194, 1194.2, AND 1199**

6 42. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 43. Labor Code §§ 510, 1194, 1194.2 and 1199 require an employer to compensate its
9 employees at the rate of no less than one and one-half times the regular rate of pay for any work
10 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.
11 Labor Code §§ 1194 and 1194.2 and Code of Regulations, title 8, section 11050 also requires that
12 every employer pay each employee not less than the applicable minimum wage for all hours
13 worked.

14 44. Plaintiff and the Proposed Class were forced to work on a regular and consistent
15 basis without receiving compensation for all hours worked at the proper rate. Plaintiff and the
16 Proposed Class were not paid at the proper overtime rate when they were working more than eight
17 (8) hours in one day or forty (40) hours in one week. Plaintiff and the Proposed Class were not
18 properly compensated for overtime because when they were paid travel pay, the travel pay was
19 not correctly blended into their regular rate of pay for the purpose of calculating the correct
20 overtime rate. Defendant's failure to correctly blend travel pay into the regular rate of pay resulted
21 in the unlawful withholding of wages and/or overtime. As such, Plaintiff and the Proposed Class
22 were paid at a rate less than the rate required under California law.

23 45. By their policy of requiring Plaintiff and members of the Proposed Class to work
24 without being paid all wages for all hours worked at the appropriate rate of pay and to work in
25 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
26 them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the
27 provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

28 46. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class

1 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
2 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
3 costs.

4 **VII.**

5 **SECOND CAUSE OF ACTION**

6 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

7 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

8 **LABOR CODE § 2802**

9 47. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
10 by reference all previous paragraphs.

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

16 49. Defendant has failed to reimburse Plaintiff and the Proposed Class the cost of using
17 their personal cell phones for business related purposes. Defendant required that Plaintiff and the
18 Proposed Class be available by cell phone, use their cell phones while working to make and receive
19 calls, and to take and send pictures. This was required by Defendant and was necessary to perform
20 their job duties. These cell phones were not provided by Defendant. Defendant failed to reimburse
21 Plaintiff and the Proposed Class for the costs associated with using these personal cell phones.

22 50. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
23 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
24 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

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1 **VIII.**

2 **THIRD CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **VIOLATION OF LABOR CODE § 226(A)**

5 51. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 52. California Labor Code § 226(a) requires employers to furnish to his or her
8 employee an accurate itemized statement in writing showing total hours worked by the employee,
9 the name and address of the legal entity that is the employer, and all applicable hourly rates in
10 effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee. (Labor Code §§ 226(a)(2), (8), and (9).)

12 53. The itemized wage statements provided to Plaintiff and the Proposed Class did not
13 accurately show the total hours worked by the employee and all applicable hourly rates in effect
14 during the pay period and the corresponding number of hours worked at each hourly rate by the
15 employee in violation of Labor Code § 226(a)(2) and (9).

16 54. In addition, Plaintiff and the Proposed Class are issued wage statements that do not
17 include the complete name and address of the legal entity that is the employer. Specifically,
18 Defendant failed to include the city, state and zip code of the legal entity on the wage statements
19 issued to Plaintiff and the Proposed Class in violation of Labor Code § 226(a)(8).

20 55. Defendants' failure to provide accurate itemized wages statements according to
21 Labor Code § 226(a) was all done on a regular and consistent basis.

22 56. An employee suffering injury as a result of a knowing and intentional failure by an
23 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
24 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
25 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
26 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
27 reasonable attorneys' fees.

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1 **IX.**

2 **FOURTH CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

5 57. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
6 by reference all previous paragraphs.

7 58. Numerous members of the Proposed Class including the Plaintiff are no longer
8 employed by Defendant. They were either fired or quit Defendant's employ.

9 59. Defendant's failure to pay wages, as alleged above was willful in that Defendant
10 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
11 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
12 penalty until paid for a period of up to thirty (30) days from the time they were due.

13 60. Defendant has failed to pay Plaintiff and others a sum certain at the time of
14 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
15 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
16 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
17 Members' daily wage multiplied by thirty (30) days.

18 **X.**

19 **FIFTH CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

22 61. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
23 by reference all previous paragraphs.

24 62. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,
25 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
26 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
27 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
28 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public

1 interest within the meaning of Code of Civil Procedure § 1021.5.

2 63. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
3 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
4 appropriate equitable relief.

5 64. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
6 practices.

7 65. California’s wage and hour laws express fundamental public policies. Providing
8 employees with proper wages and compensation are fundamental public policies of this State and
9 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
10 vigorously minimum labor standards, to ensure that employees are not required or permitted to
11 work under substandard and unlawful conditions, and to protect law-abiding employers and their
12 employees from competitors who lower their costs by failing to comply with minimum labor
13 standards.

14 66. Defendant has violated statutes and public policies as alleged herein. Through the
15 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
16 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
17 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
18 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
19 guaranteed to all employees under law.

20 67. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
21 violation of § 17200, *et seq.* of the Business & Professions Code.

22 68. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
23 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
24 § 17200, *et seq.* of the Business & Professions Code.

25 69. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
26 others similarly situated have been damaged in a sum as may be proven.

27 70. Unless restrained, Defendant will continue to engage in the unlawful conduct as
28 alleged above. Pursuant to the Business & Professions Code, this court should make such orders

or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

XI.

SIXTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

71. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

72. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* use of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802; Wage Order 5-2001; and California Code of Regulations, Title 8, Section 11050, which call for civil penalties.

73. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

74. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

75. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA¹ and mailed a letter by certified mail to Defendant's entity address, which is 7901 14th Avenue, Sacramento, CA 95826, as proscribed by the Code on November 17, 2022, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802. (*see* Exhibit "1.") Plaintiff received signed green return receipts from Defendant, indicating that it received Plaintiff's notice letter. (*see* Exhibit "2.") Plaintiff also obtained an e-

¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/308>).

1 filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit “3”).

2 76. As no letter evidencing the LWDA’s intention to investigate was received by
3 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
4 action as though the LWDA had not chosen to investigate pursuant to Labor Code
5 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
6 Amended Class and Representative Action Complaint immediately.

7 **RELIEF REQUESTED**

8 **WHEREFORE**, Plaintiff prays for the following relief:

9 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
10 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
11 action to the present as may be proven;

12 2. For compensatory damages in the amount of Plaintiff’s and each Proposed Class
13 Members’ unreimbursed out of pocket expenses as a requirement of employment;

14 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
15 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
16 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
17 an aggregate penalty of four thousand dollars (\$4,000);

18 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated
19 or resigned equal to their daily wage times thirty (30) days;

20 5. An award of prejudgment and post judgment interest;

21 6. An order enjoining Defendant and its agents, servants, and employees, and all
22 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
23 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon
24 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199,
25 and 2802, and IWC 5-2001;

26 7. For restitution for unfair competition pursuant to Business & Professions Code
27 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

28 8. For penalties under Labor Code § 2699, *et seq.* for Defendant’s violation of Labor

Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802 and Wage Order 5-2001;

9. An award providing for payment of costs of suit;

10. An award of attorneys' fees; and

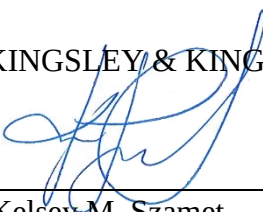
11. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: January 23, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

Attorneys for Plaintiff JESSE ROBLES and the
Proposed Class

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

November 17, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Geremia Pools
7901 14th Avenue
Sacramento, CA 95826
Via Certified Mail # 7018 1130 0001 5815 2014

Re: Jesse Robles v. Geremia Pools
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Jesse Robles (“Plaintiff”) and a proposed group of current and former employees working for Geremia Pools (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who worked as a non-exempt employee by Geremia Pools, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 17, 2022

Page 2 of 3

hours in one workday and any work in excess of 40 hours in any one workweek. 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*. California law also required that any compensation must be included in the regular rate if pay for the purpose of determining the correct overtime rates.

Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Plaintiff and the aggrieved employees were not properly compensated for overtime because when they were paid travel pay, the travel pay was not blended into their regular rate of pay for the purpose of calculating the correct overtime rate. Defendant's failure to blend travel pay into the regular rate of pay resulted in the unlawful withholding of wages and/or overtime. As such, Plaintiff and the aggrieved employees were paid at a rate less than the rate required under California law.

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone, use their cell phones while working to make and receive calls, and take and send pictures. This was required by Defendant and necessary to perform their job duties. These cell phones were not provided by Defendant. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phone.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a). Labor Code §226(a)(2) requires that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not accurately show the total hours worked by the employee. Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not accurately show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9).

Additionally, Labor Code §226(a)(8) requires that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing the name and address of the legal entity that is the employer. Plaintiff and the aggrieved employees are issued wage statements that do not include the complete address of the legal entity that is the employer. Specifically, Defendant failed to include the city, state and zip code of the legal entity on the issued wage statements. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

November 17, 2022

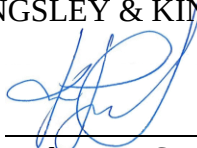
Page 3 of 3

Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 510, 1194, 1194.2, 1199, and 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/lis

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. Geremia Pools via USPS Certified Mail # 7018 1130 0001 5815 2014
 3. Winston Law Group, PC, 1180 S Beverly Dr, Suite 320, Los Angeles, CA90035

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Geremia Pools
7901 14th Avenue
Sacramento, CA 95826



9590 9402 7019 1225 1705 80

2. Article Number (Transfer from service label)

7018 1130 0001 5815 2014

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X S. Back

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted DeliveryMail Restricted Delivery
(0)

Domestic Return Receipt

USPS TRACKING#



SACRAMENTO CA 957

21 NOV 2020 PM 4 L

9590 9402 7019 1225 1705 80

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

PAGA Ltr. 11-17-22
Geremia Pools

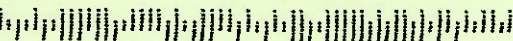


EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite

Your Mobile Phone Number

Your City *

Encino

Your Work Phone Number

8189908300

Your State *

California



Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Jesse Robles

Plaintiff/Aggrieved Employee Occupation *

Laborer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

Geremia Pools

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

7901 14th Avenue

Employer City *

Sacramento

Employer State *

California ▼

Employer Zip/Postal Code *

95826

Employer Industry *

Construction ▼

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information**Billing First Name ***

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd Suite 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

[REDACTED] ▼

Credit Card Number *

[REDACTED]

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File

LWDA Letter –...mia Pools.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 17, 2022 9:27 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

11/17/2022

LWDA Case No. LWDA-CM-919999-22
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Jesse Robles
Employer: Geremia Pools
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=05%7C01%7CLealie%40kingsleykingsley.com%7Cbeedf02af4a04b0eaffb08dac8c0f5cc%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C1%7C0%7C638043028339224534%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=b%2FvnrN6ySViL8amcKPIZHW0iVycFYea2DI%2FAWgKkOpc%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Thursday, November 17, 2022 9:27 AM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-919999-22

Order Number: ORD-000200976

Total:\$75.00

Card Type: Master Card

Date: 11/17/2022

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd Suite 1200

Encino, California

91436