

MAYALL HURLEY P.C.
VLADIMIR J. KOZINA (SBN: 284645)
vjkozina@mavallaw.com
112 South Church Street
Lodi, California 95240
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/27/2023
Clerk of the Court
BY: MARK UDAN

Deputy Clerk

Attorneys for Plaintiffs Amy Vuu and Lily Trieu

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-23-607958

AMY VUU, an individual and as proxy for the
California Labor and Workforce Development
Agency; LAN HUE TRIEU, an individual and
as proxy for the California Labor and
Workforce Development Agency;

Plaintiffs,

vs.

LERNER TAMBOR BLACK, INC. d/b/a
FLOORCRAFT; and DOES 1-100, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

1. FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME
2. FAILURE TO PAY WAGES
3. FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
4. FAILURE TO TIMELY FURNISH COPIES OF ITEMIZED WAGE STATEMENTS ON REQUEST
5. UNLAWFUL BUSINESS PRACTICES
6. LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004

JURY TRIAL DEMANDED

Plaintiffs Amy Vuu and Lan Hue Trieu bring this action against Lerner Tambor Black, Inc. d/b/a Floorcraft and Does 1 through 100, for violations of the California Labor Code and the Business and Professions Code.

PARTIES

1. Amy Vuu ("Vuu") is and at all times relevant herein was employed in San Francisco County, California, and is an "employee" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

2. Lan Hue Trieu ("Trieu") is and at all times relevant herein was employed in San Francisco County, California, and is an "employee" as defined by the California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission ("IWC") Order(s).

3. Vu and Trieu are collectively referred to herein as “Plaintiffs”

4. Lerner Tambor Black, Inc. d/b/a Floorcraft (“Employer”, “Defendant” or “Floorcraft”) is a corporation, organized and existing under the laws of California, with its principal place of business located in San Francisco, California and which does business within California.

5. At all times relevant herein, Floorcraft has been an “employer” as defined by the California Labor Code (“Labor Code”) and the applicable California Industrial Wage Commission (“IWC”) Order(s) and is and was Plaintiffs’ employer.

6. Floorcraft and Does 1-100 are collectively referred to as Defendants.

7. Plaintiffs are not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such Defendants by these fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiffs' injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

8. Plaintiffs are informed and believe and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

9. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of San Francisco pursuant to Code of Civil Procedure section 385(a) because

1 Plaintiffs performed work for Floorcraft within San Francisco County and the violations against
2 Plaintiffs were committed in San Francisco County. Plaintiffs hereby demand a jury trial.

3 **GENERAL ALLEGATIONS**

4 10. Plaintiffs are current employees of Floorcraft and at all times relevant herein have been
5 employed by Floorcraft. Plaintiffs and several other Floorcraft employees primarily work as
6 salespeople and are eligible to earn commission.

7 11. Although Plaintiffs are paid commission, Plaintiff Trieu was never provided with a
8 written commission agreement by Floorcraft, which is in violation of Labor Code section 2751.

9 12. At all times relevant herein, and through the present, Plaintiffs and other sales
10 employees working for Floorcraft have been paid at a base rate of \$20 per hour.

11 13. Floorcraft at all relevant times herein has paid Plaintiffs and its other sales employees on
12 a bi-weekly basis.

13 14. Floorcraft does not track employee time, instead assigning employees eight hours of
14 work per workday irrespective of how many hours they actually worked (unless the employee called
15 out for the day or took part of a day off). As a result, employee wage statements nearly always indicate
16 a total of exactly 80 paid hours every biweekly pay period. However, Plaintiffs and other sales
17 employees have regularly worked in excess of eight hours in a workday and forty hours in a workweek.

18 15. Since July 1, 2018, the minimum wage in San Francisco, where Plaintiffs performed
19 their work for Floorcraft, has been at least \$15.00 per hour.

20 16. At all relevant times herein, Floorcraft has paid commissions to Plaintiffs and its other
21 sales employees no more frequently than every other pay period.

22 17. At all relevant times herein, for the pay periods in which commissions are not paid,
23 Plaintiffs and Floorcraft's other sales employees are paid at an hourly rate of less than one and one half
24 times the applicable minimum wage. Accordingly, Plaintiffs and Floorcraft's other sales employees are
25 entitled to be paid overtime for all hours worked in excess of eight hours in a workday and forty hours
26 in a workweek during those pay periods. *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662,
27 670. However, Floorcraft never paid Plaintiffs or its other sales employees overtime pay (or any pay at
28 all) for time worked in excess of eight hours per day and forty hours per week.

1 18. As a result, Plaintiffs and Floorcraft's other sales employees have been underpaid wages
2 and overtime wages to which they were entitled under California law.

3 19. In addition, Floorcraft has and continues to engage in a pattern and practice of
4 intentionally and willfully underpaying earned employee commissions by, among other things:
5 arbitrarily decreasing what Floorcraft determines to be the "profit" from sales so as to intentionally and
6 fraudulently depress the commission it pays to Plaintiffs and other sales employees, paying a lower
7 commission margin than the agreed-upon amount, keeping manufacturer "spiffs" that by agreement
8 were to have been paid to Plaintiffs and other sales employees, paying lower commission margins than
9 they agreed to pay Plaintiffs and other sales employees, and refusing to credit Plaintiffs and other sales
10 employees commissions earned by those employees. As a result of these unlawful practices, which are
11 ongoing, Plaintiffs and Floorcraft's other sales employees have been underpaid wages owed them in
12 violation of California law.

13 20. Because Floorcraft has and continues to regularly underpay Plaintiffs and its other sales
14 employees owed wages as set forth above, Floorcraft has also failed to timely pay all wages earned to
15 Plaintiffs and its other sales employees in violation of Labor Code section 204.

16 21. Because of the violations set forth above, the wage statements furnished by Floorcraft to
17 Plaintiffs and its other sales employees violate California Labor Code section 226(a) insofar as they fail
18 to accurately show:

- 19 a. The gross wages earned, in violation of section 226(a)(1);
20 b. The total hours worked, in violation of section 226(a)(2);
21 c. The net wages earned, in violation of section 226(a)(5); and
22 d. All applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate in violation of section 226(a)(9).

24 22. Floorcraft was, at all times relevant herein, aware of the requirements of California
25 Labor Code section 226.

26 23. Floorcraft has, at all times relevant herein, furnished wage statements to each of its
27 California employees pursuant to an established set of policies, procedures and practices.
28

1 24. Plaintiffs and Floorcraft's other sales employees, both current and former, have suffered
2 injury as a result of Defendants' knowing and intentional failure to comply with California Labor Code
3 section 226(a) and its subdivisions as outlined herein.

4 25. Plaintiffs and Floorcraft's other sales employees, both current and former, were unable
5 to promptly and easily determine their gross wages earned from the wage statements furnished.

6 26. Plaintiffs and Floorcraft's other sales employees, both current and former, have suffered
7 injury as a result of Defendants' knowing and intentional failure to furnish wage
8 statements accurately showing the gross wages earned by them in violation of California Labor Code
9 section 226(a)(1).

10 27. Plaintiffs and Floorcraft's other sales employees, both current and former, have suffered
11 injury as a result of Defendants' knowing and intentional failure to furnish wage statements accurately
12 showing the total hours worked by them in violation of California Labor Code section 226(a)(2).

13 28. Plaintiffs and Floorcraft's other sales employees, both current and former, were unable
14 to promptly and easily determine their net wages earned from the wage statements furnished.

15 29. Plaintiffs and Floorcraft's other sales employees, both current and former, have suffered
16 injury as a result of Defendants' knowing and intentional failure to furnish wage statements accurately
17 showing the net wages earned by them in violation of California Labor Code section 226(a)(5).

18 30. Plaintiffs and Floorcraft's other sales employees, both current and former, were unable
19 to promptly and easily determine each applicable hourly rate and the corresponding number of hours
20 worked at each.

21 31. Plaintiffs and Floorcraft's other sales employees, both current and former, have suffered
22 injury as a result of Defendants' knowing and intentional failure to furnish wage statements accurately
23 showing all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate in violation of section 226(a)(9).

25 32. On March 29, 2023, Plaintiffs, through their counsel as authorized representatives, sent a
26 written request by certified mail to Floorcraft requesting copies of their itemized wage statements
27 pursuant to Labor Code section 226(b). Floorcraft signed for receipt of this written request on April 1,
28 2023. However, Floorcraft did not respond to Plaintiffs' request until April 28, 2023, more than 30

1 days from the date of the request and 27 days after acknowledging receipt of the request, in violation of
2 Labor Code section 226(c) which requires employers to respond no later than 21 days following an
3 employee's request for copies of their itemized wage statements.

4 33. Plaintiffs are informed and believe that Floorcraft has similarly failed to timely respond
5 to requests from other employees during the relevant time period.

6 34. From at least four years prior to the filing of this action, Floorcraft has adopted and
7 employed unfair business practices. These unfair business practices include, but are not limited to,
8 failing to properly pay all overtime wages due and failing to pay earned commissions.

9 **FIRST CAUSE OF ACTION**
10 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**
11 **(Failure to Pay Overtime)**
Against Defendants

12 35. Plaintiffs hereby reallege and incorporate by reference each and every allegation as
13 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
14 cause of action.

15 36. Pursuant to California Labor Code section 510, any work in excess of eight hours in one
16 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on
17 the seventh day of work in any one workweek shall be compensated at the rate of no less than one and
18 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall
19 be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
20 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate
21 of no less than twice the regular rate of pay of an employee.

22 37. Pursuant to California Labor Code section 1198, the maximum hours of work and
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
24 standard conditions of labor for employees and the employment of any employee for longer hours than
25 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

26 38. The "regular rate of pay" includes all remuneration for employment paid to the
27 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
28

1 commissions, non-discretionary bonuses, and the value of meals and lodging. See 29 U.S.C. § 207(e);
2 DLSE Enforcement Policies and Interpretations Manual Section 49.

3 39. During the relevant time period, Plaintiffs and Defendants' other sales employees
4 regularly worked overtime, both during pay periods in which they were paid commission and pay
5 periods during which they were not.

6 40. During the relevant time period, Plaintiffs and Defendants' other sales employees also
7 earned commissions. These commissions were paid to employees every other pay period.

8 41. As set forth above, during pay periods in which Plaintiffs and Defendants' other sales
9 employees worked overtime but were not paid commission, they were not paid overtime premium
10 wages, or any wages at all, for their overtime work.

11 42. Wherefore, Plaintiffs have been injured as set forth above and request relief as hereafter
12 provided.

13 **SECOND CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE SECTIONS 200, 218, 1197**
15 **(Failure to Pay Wages)**
16 **Against Defendants**

17 43. Plaintiffs hereby reallege and incorporate by reference each and every allegation as
18 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
19 cause of action.

20 44. As set forth above, Plaintiffs and other sales were not paid overtime wages (or any
21 wages at all) for time worked in excess of forty hours per week during pay periods in which they were
22 not paid a commission.

23 45. Also as set forth above, Defendants willfully and fraudulently underpaid earned
24 commissions to Plaintiffs and other sales employees. Commissions are "wages" within the meaning of
25 the Labor Code.

26 46. Because Defendants failed to pay Plaintiffs and its other sales employees wages for time
27 worked in excess of eight hours in a workday and forty hours in a workweek and failed to pay earned
28 commissions, Defendants failed to pay wages due to Plaintiffs and other sales employees in violation of

1 California law, including in violation of Labor Code sections 200, 218, and 1197.

2 47. Wherefore, Plaintiffs have been injured as set forth above and request relief as hereafter
3 provided.

4 **THIRD CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 226(a)**
6 **(Failure to Furnish Accurate Itemized Wage Statements)**
7 **Against Defendants**

8 48. Plaintiffs hereby reallege and incorporate by reference each and every allegation as
9 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
10 cause of action.

11 49. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly
12 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
13 part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are
14 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
15 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
17 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
18 employee and only the last four digits of his or her social security number or an employee identification
19 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
20 rates in effect during the pay period and corresponding number of hours worked at each hourly rate by
21 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
22 hours worked for each temporary services assignment.”

23 50. An employee suffering injury as a result of the knowing and intentional failure by an
24 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
25 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
26 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
27 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
28 fees. Labor Code § 226(e)(1).

1 51. An employee is deemed to suffer injury if the employer fails to provide a wage
2 statement or if the employer fails to provide accurate and complete information as required by any one
3 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
4 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
5 during the pay period or any of the other information required to be provided pursuant to Labor Code
6 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
7 and address of the employer and iv) the name of the employee and the last four digits of his or her
8 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
9 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
10 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

11 52. As set forth above, Defendants intentionally and willfully failed to furnish accurate
12 itemized wage statements which complied with Labor Code section 226.

13 53. Wherefore, Plaintiffs have been injured as set forth above and request relief as hereafter
14 provided.

15 **FOURTH CAUSE OF ACTION**
16 **VIOLATION OF LABOR CODE SECTION 226(c)**
17 **(Failure to Timely Furnish Copies of Wage Statements)**
 Against All Defendants

18 54. Plaintiff hereby realleges and incorporates by reference each and every allegation as
19 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
20 cause of action.

21 55. Labor Code section 201 requires an employer, when discharging an employee, to
22 immediately pay the wages earned and unpaid at the time of discharge. Labor Code section 202
23 mandates that employers provide all wages within seventy-two (72) hours of an employee
24 voluntarily leaving employment unless the employee provides more than seventy-two (72) hours’
25 notice.

26 56. During the relevant time, Defendants unlawfully withheld overtime and sick pay
27 wages as a result of their uniform policy, pattern, and practice of failing to pay overtime and sick
28 pay at the “regular rate of pay”; including failing to include non-discretionary bonuses and other

1 remuneration when determining the rate to compensate members of the Overtime Class and the
2 Sick Pay Class for overtime and redeemed sick pay, respectively.

3 57. Since Defendants failed to pay Plaintiff and other members of the Overtime Class
4 and the Sick Pay Class all wages due and owing during their employment, there were necessarily
5 additional wages outstanding at the time of separation. As a result, Plaintiff and the other members
6 of the Overtime Class and the Sick Pay Class were not paid all wages due and owing at
7 separation—those wages remain outstanding.

8 58. Labor Code section 203(a) provides a statutory penalty of up to 30 days wages.

9 59. As a direct and proximate result of Defendants' misconduct, Plaintiff and the
10 members of the Waiting Time Penalty Sub-Class have been denied wages and benefits.

11 60. Wherefore, Plaintiff and the members of the Waiting Time Penalty Sub-Class have
12 been damaged as set forth above and request relief as hereafter provided.

13 **FIFTH CAUSE OF ACTION**
14 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200 *ET***
15 ***SEQ.***
16 **(Unfair Business Practices)**
17 **Against Defendants**

18 61. Plaintiffs hereby reallege and incorporate by reference each and every allegation as
19 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
20 cause of action.

21 62. The statutory violations, as alleged above, are unfair business practices within the
22 meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and
23 include, but are not limited to failing to properly pay for all hours worked, including failing to properly
24 calculate and pay overtime, failing to pay minimum wage for all hours worked, and failing to pay owed
25 commissions.

26 63. These violations resulted in actual injury to Plaintiffs in the form of wages that were
27 improperly withheld and retained by Defendants.

28 64. Wherefore, Plaintiffs have been injured as set forth above and request relief as
hereafter provided.

1 65. Plaintiffs request that the court order restitution by Defendants to Plaintiffs with
2 interest thereon.

3 66. Defendants are continuing to treat Plaintiffs unlawfully and will continue to do so
4 unless enjoined by this Court.

5 67. Wherefore, Plaintiffs have been damaged as set forth above and request relief as
6 hereafter provided.

7 **SIXTH CAUSE OF ACTION**
8 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004**
 Against Defendants

9 68. Plaintiffs hereby reallege and incorporate by reference each and every allegation as
10 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
11 cause of action.

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

- 15 a. The aggrieved employee shall give written notice by certified mail to the LWDA
16 and the employer (hereinafter “Employee’s Notice”) of the specific provisions of
17 the Labor Code alleged to have been violated, including the facts and theories to
18 support the alleged violations;
- 19 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
20 and the aggrieved employee by certified mail that it does not intend to investigate
21 the alleged violation within 60 calendar days of the postmark date of the
22 Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not
23 provide notice within 65 calendar days of the postmark date of the Employee’s
24 Notice, the aggrieved employee may commence a civil action pursuant to Labor §
25 2699 to recover civil penalties in addition to any other penalties to which the
26 employee may be entitled.

27 70. For reasons set forth above, Plaintiffs are aggrieved employees as they have been
28 subjected to one or more violations of the California Labor Code within the last year.

71. On May 9, 2023, Plaintiffs electronically filed an Employee's Notice with the LWDA and served the same on Defendant by certified mail. The May 9, 2023, Employee's Notice is attached hereto as **Exhibit 1**, and is incorporated by this reference.

72. As of today's date, more than 65 days have passed without the LWDA providing any LWDA Notice that it intends to investigate the allegations in the notices. Accordingly, Plaintiffs have satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of his notice to bring a civil action to recover penalties against Defendants under the PAGA.

73. As set forth in detail in **Exhibit 1**, within the relevant time period, including the past year and 65 days and continuing, and in accordance with uniform policy, Defendants have violated the Labor Code as to Plaintiffs and other former and current sales employees, including Labor Code Sections 200, 204, 218, 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(9), 226(c), and 510.

74. Wherefore, Plaintiffs pray for relief set forth below.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

1. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Plaintiffs as permitted by applicable law;
2. That this Court award injunctive relief, including that available under Labor Code section 226(h) and Business and Professions Code Section 17203;
3. That this Court award civil and statutory penalties and liquidated damages including, but not limited to, those available under Labor Code sections 226, 226.3, 210, 558, 1194.2, and 2699(f);
4. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226(e)(1), 226(h), 2699(g) as well as Code of Civil Procedure section 1021.5;
5. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law; and

1 6. That this Court award such other and further relief as the court deems just and proper.

2
3 **DATED:** July 27, 2023

MAYALL HURLEY P.C.

4
5 By _____

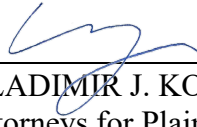

VLADIMIR J. KOZINA
Attorneys for Plaintiffs

Exhibit 1

SOUTHERN CALIFORNIA OFFICE
.....
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY
A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

TELEPHONE: (209) 477-3833
FACSIMILE: (209) 473-4818
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
SHANE M. HOOVER
ALI HASHEMI

OF COUNSEL
J. ANTHONY ABBOTT

May 9, 2023

SENT VIA ONLINE FILING (<https://dir.tfaforms.net/308>)

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Lerner, Tambor, Black, Inc.
470 Bayshore Blvd.
San Francisco, CA 94124

Re: Amy Vuu; Lan Hue Trieu

To Whom It May Concern:

This firm represents Amy Vuu and Lan Hue Trieu (“Employees”) in relation to their employment with Lerner, Tambor, Black, Inc. d/b/a/ Floorcraft (“Employer”) in California. Vuu was hired in 2018 as a Kitchen Appliance Sales Representative, paid in part by commission, who Employer improperly classified as a salaried employee who was overtime exempt at all times. Trieu was hired in 2019, also as a sales employee paid in part by commission.

In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Priola’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Employers regarding the following violations, and facts and theories supporting the violations, on Ms. Priola’s behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Employer.

During the prior year and beyond, Employers have failed to do all of the following with respect to Employees and its other current and former sales employees in violation of the California Labor Code:

1. Pay overtime in violation of Labor Code § 510.

- a. California law requires employees paid by commission be paid overtime unless they are paid at least one- and one-half times the applicable minimum wage. Employer is located in San Francisco, where the minimum wage, since 2020, has been at least \$15.59 per hour. Vuu's hourly rate as reflected on her paystubs has, at all relevant times herein, been \$20 per hour. Trieu's hourly rate, as reflected on her paystubs has, at all relevant times herein, been \$20 per hour. While Employer pays Employees on a bi-weekly basis, Employer only pays commission monthly. Employees have been, and continue to be paid, \$20 per hour during every other pay period and were not overtime exempt during that time. Nonetheless, Employees and other sales employees who were paid in part by commission regularly worked more than eight hours per workday and/or 40 hours per workweek in pay periods in which they were not paid commission, but were not paid any overtime premium pay, in violation of Labor Code section 510.

2. Pay earned commissions in violation of Labor Code §§ 200, 218.

- a. Employer engages in a pattern and practice of underpaying earned employee commissions by, among other things, paying a lower commission margin than was established by Employer's commission agreement with Employees, keeping manufacturer spiffs that by agreement were to have been paid to Employees, and failing to credit commissions to Employees that were earned by Employees. Employer arbitrarily, capriciously, and regularly modifies—seemingly at its whim—the amount of commission they decide they will pay to Employees in violation of their commission agreements. Further, and in violation of California law, Employers have failed to provide Employees with compliant written commission agreements. As a result of Employer's conduct, Employees and Employer's other employees paid in part by commission have not been paid all wages owed them in violation of Labor Code §§ 200, 218.

3. Timely pay wages in violation of Labor Code § 204.

- a. Labor Code section 204 requires that all wages earned by any person in any employment are due and payable twice during each calendar month on paydays designated by the employer. Labor Code section 204 also requires an employer to pay employees for overtime work no later than the payday for the next regular payroll period. Because Employer failed to pay all earned

Labor and Workforce Development Agency
Lerner, Tambor, Black, Inc.
Re: Amy Vuu, Lan Hue Trieu
May 9, 2023
Page 3 of 4

commissions and required overtime pay, Employer has failed to timely pay Employees and its other employees paid in part by commission all wages earned.

4. Furnish accurate itemized wage statements in violation of Labor Code § 226(a).
 - a. Because Employer failed to pay overtime, failed to accurately record employee time worked, and failed to pay all commissions earned in each applicable pay period, Employer failed to furnish wage statements to Employees and other employees paid in part by commission that accurately stated, among other things, gross wages earned, total hours worked by the employee, net wages earned, and all applicable hourly rates in effect during the pay period and the number of hours worked at each rate, in violation of Labor Code §§226(a)(1), (2), (5), and (9).
5. Timely furnish copies of wage statements in violation of Labor Code §§226(c).
 - a. Labor Code section 226(c) requires an employer to respond to an employee or its authorized representative's request for copies of wage statements within 21 days of the date of the request. On March 29, 2023, Employees, through their counsel, sent a written request by certified mail to employer for copies of their itemized wage statements pursuant to Labor Code section 226(b). Employer signed for receipt of this request on April 1, 2023. Employer did not respond to this request until April 28, 2023, more than 30 days after the date of the request and 27 days after receiving the request, in violation of Labor Code section 226(c). Employees are informed and believe that Employer has failed to timely respond to requests to inspect or copy wage statements made by other current and former California employees as well.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

///

///

Labor and Workforce Development Agency
Lerner, Tambor, Black, Inc.
Re: Amy Vuu, Lan Hue Trieu
May 9, 2023
Page 4 of 4

If the LWDA does not intend to investigate these violations, Employees intend to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees of Employers who were employed in California during the relevant period. Thank you for your attention in this matter.

Regards,

MAYALL HURLEY P.C.

By 
VLADIMIR J. KOZINA

cc: Alden J. Parker
William Okamoto
Fisher & Phillips LLP
621 Capitol Mall, Suite 1400
Sacramento, CA 95814
(via U.S. Mail)