

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SAMUEL TOLEDANO PEREZ, )  
JORGE GUZMAN, )  
ROLANDO GOMEZ, and )  
JOSE MANUEL GUZMAN, )  
on behalf of themselves and )  
all others similarly situated, )

Plaintiffs, )

v. )

ELYMIR INC. )  
d/b/a YANNI DESIGN STUDIO, )  
YANNI ELYASH and )  
MARINA ELYASH )

Defendants. )

Case No.:

**CLASS AND COLLECTIVE ACTION COMPLAINT**

NOW COMES Plaintiffs Samuel Toledano Perez (“Perez”), Jorge Guzman (“Guzman”), Rolando Gomez (“Gomez”), and Jose Manuel Guzman (collectively, the “Plaintiffs”), on behalf of themselves and all other plaintiffs similarly situated, by and through their attorneys, and for his Class and Collective Action Complaint against Defendants Elymir Inc. d/b/a Yanni Design Studio (“Yanni Design Studio”), Yanni Elyash, and Marina Elyash (collectively, the “Defendants”), state as follows:

**Nature of the Action**

1. This is a class and collective action brought on behalf of a group of individuals who worked for Defendants in their warehouse and in setting up and taking down decorations at weddings and other events. These individuals work or worked substantial amounts of overtime for Defendants but were not paid time-and-a-half as legally required.

2. Defendants engaged in a widespread, longstanding scheme to misclassify these workers as independent contractors in order to deny them the protection of federal and state wage and hour and other employment laws, including by failing to pay these workers time-and-a-half their regular rate of pay for hours worked in excess of 40 each workweek.

3. Additionally, Defendant Yanni Design Studio collected, used and stored Plaintiffs' and the Class' biometric data without: properly informing Plaintiff and Class members in writing of the specific purpose and length of time for which their biometric data were being collected, stored and used; providing a publicly available retention schedule and guidelines for permanently destroying this data; receiving a written release from Plaintiff and Class members to collect, capture, or otherwise obtain their biometric data.

4. This civil action is brought by the above-named Plaintiffs who brings this class and collective action claim for overtime wages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* pursuant to 29 U.S.C. § 216(b) and under the Illinois Minimum Wage Law ("IMWL"), 820 ILCS § 105/1 *et seq.* pursuant to Fed. R. Civ. P. 23. Furthermore, Plaintiff also brings this class action under the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* Plaintiffs Samuel Toledano Perez, Rolando Gomez, and Jose Manuel Guzman also bring claims for unpaid wages and unlawful deductions under the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115/9.

### **Jurisdiction And Venue**

5. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this judicial district as the facts and events giving rise to

Plaintiffs' claims occurred in this judicial district.

**Parties**

7. During the relevant period of time, Plaintiffs performed work for Defendants inside the State of Illinois.

8. Defendant Yanni Design Studio is an Illinois corporation with its principal place of business in Wheeling, Illinois. Defendant is an event decor, production and floral studio servicing weddings and special events at various venues in Chicago, Wisconsin and Indiana. Defendant is a “full production decorator” providing services for weddings, corporate events, bar/bat mitzvahs, anniversaries, baby showers, bridal showers, engagement parties, graduations, holiday parties and proms.<sup>1</sup>

9. Upon information and belief, Defendant Yanni Elyash is a resident of Illinois. During all relevant periods, Elyash has been the owner of Yanni Design Studio.

10. Upon information and belief, Defendant Marina Elyash is a resident of Illinois. During all relevant periods, Elyash has been the President of Yanni Design Studio.

11. At all material times hereto, Plaintiffs were employed by Defendants as “employees” as defined by the FLSA, and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/1, *et seq.* within this judicial district.

12. At all material times hereto, Plaintiffs were not exempt from the overtime provisions of the FLSA, 29 U.S.C. § 207 and the IMWL, 820 ILCS § 105/4a.

13. At all material times hereto, Defendants were Plaintiffs’ “employer” as defined in the FLSA, 29 U.S.C. § 203(3)(d); and the IMWL, 820 ILCS § 105/3(c).

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<sup>1</sup> <https://yannidesignstudio.com/blog/>

**Factual Allegations**

14. Defendant Yanni Design Studio hires individuals to perform work in its warehouse, and as cleaners, and in setting up and taking down decorations at weddings and other events.

15. As the owner of Yanni Design Studio, Defendant Yanni Elyash has at all relevant times had the final decision-making authority with respect to all hiring, firing, compensation and wage record-keeping decisions for Plaintiff and similarly situated workers.

16. As President of Yanni Design Studio, Defendant Marina Elyash has at all relevant times had the final decision-making authority with respect to all hiring, firing, compensation and wage record-keeping decisions for Plaintiff and similarly situated workers.

17. Plaintiff Samuel Toledano Perez was hired by Defendants in or around May 2021 and worked until he was discharged in around May 2023.

18. Plaintiff Jorge Guzman worked for Defendants from approximately 2021 to 2023.

19. Plaintiff Rolando Gomez worked for Defendants from in or around June 2022 to in or around October 2023.

20. Plaintiff Jose Manuel Guzman worked for Defendants from 2022 to in or around December 2023.

21. During their time working for Defendants, Plaintiffs were required to clock in and out for work using a fingerprint scanner or a biometric facial scanner.

22. Although Plaintiffs were purportedly hired as independent contractors, their job duties and the manner in which he was required to perform those duties make it clear that they were actually Defendants' employees and were economically dependent on Defendants for their livelihood.

23. Defendants regularly scheduled and required Plaintiffs to work sixty to eighty hours

per week, and sometimes more.

24. Defendants controlled all aspects of Plaintiffs' work.

25. Defendants regularly required Plaintiffs to work on weekends and to work seven days per week. Therefore, while employed by Defendants, Plaintiffs would not have been able to perform their own work or work for others.

26. Defendants organized Plaintiffs' daily schedule of work and Plaintiffs' could not deviate from that schedule without notice to and permission from Defendants. During the workday, Defendants monitored the Plaintiffs and supervised the manner in which they performed their tasks.

27. Defendants provided Plaintiffs with all materials for them to perform their jobs.

28. Plaintiffs were required to wear uniforms bearing the name of Defendant Yanni Design Studio.

29. Plaintiffs were held out as employees of Defendants.

30. Moreover, Plaintiffs' work — warehousing decoration supplies, setting up event decorations and cleaning decorations after events — is an integral part of Defendants' event decoration services business.

31. Accordingly, Plaintiffs were employees of Defendants under federal and state law, and were entitled to the same protections and benefits provided to Defendants' employees.

32. Based on Defendants' misclassification of Plaintiffs as "independent contractors," Defendants did not provide unemployment or workers' compensation insurance or other state-mandated employee benefits, nor did they make Federal Insurance Compensation Act ("FICA") contributions or provide other benefits to them.

33. Defendant Yanni Design Studio is an enterprise engaged in commerce or in the production of goods for commerce within 203(s)(1)(A) of the FLSA.

34. During the last three years, Yanni Design Studio's annual gross volume of sales made, or business done, has exceeded \$500,000, exclusive of excise tax.

35. Plaintiffs worked for Defendants within the past three years.

36. Plaintiffs performed their job responsibilities for Defendants in the State of Illinois.

37. Plaintiffs regularly worked around 60 to 80 hours per week.

38. Defendants did not pay Plaintiffs proper overtime wages of one-and-one-half times their regular rate of pay for all hours worked above forty hours in a workweek.

39. Defendants paid Plaintiffs straight time for hours worked in excess of 40 hours per workweek.

40. For one example: During the pay period of 7/17/23 through 7/30/2023 Plaintiff Jorge Guzman worked a total of 119.22 hours. Of this, 39.22 hours should have been paid at the overtime rate of one and one-half times his regular rate of pay. However, instead, he was not paid any overtime premium.

41. Other similarly situated employees have been employed by Defendants and have not been paid the required overtime wages of one-and-one-half times their regular rate of pay.

42. The named Plaintiffs, and similarly situated employees, were not exempt from the overtime provisions of the FLSA.

43. Defendants failed to compensate Plaintiffs Samuel Toledano Perez and Rolando Gomez at all for several weeks of work.

44. Perez did not receive any compensation from Defendants for his work for Defendants from on or about April 10, 2023 to on or about May 10, 2023.

45. Gomez did not receive any compensation from Defendants for his final two weeks of work for Defendants in or around October 2023.

46. Defendants Yanni Elyash and Marina Elyash were aware of and approved this failure to pay Perez and Gomez their wages.

47. Defendants took unauthorized deductions from the compensation of Plaintiff Jose Manuel Guzman.

48. From in or around May 2023 to in or around October 2023, Defendants deducted approximately \$600 every two weeks from Jose Manuel Guzman's compensation.

49. The deductions that Defendants made from Jose Manuel Guzman's wages were not: (1) required by law; (2) for the benefit of the Jose Manuel Guzman; (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of Jose Manuel Guzman, given freely at the time the deductions were made.

50. Defendants Yanni Elyash and Marina Elyash were aware of and approved these illegal deductions from Jose Manuel Guzman's wages.

### **Class and Collective Action Allegations**

51. Plaintiffs seek to maintain this suit as a collective action pursuant to 29 U.S.C. §216(b) and as a Class pursuant to Fed. R. Civ. Pro. 23 on behalf of themselves and all other non-exempt employees who worked overtime and were not fully compensated for overtime hours because they were not paid one-and-one-half times their regular rate of pay.

52. Plaintiffs and other similarly situated current and former employees in the asserted class were subject to Defendants' policies and regularly worked over 40 hours per week but were not fully paid their overtime hours at one-and-one-half their regular rate of pay.

53. Plaintiffs and asserted members of the Collective and Class are similarly situated because, *inter alia*, they were all were not paid the required overtime rate of one-and-one-half times their regular rate of pay for all work in excess of 40 hours per week and/or were not properly compensated due to Defendants' policies and had such rights undermined and neglected by Defendants' unlawful practices and policies.

54. Defendants have encouraged, permitted, and required the Class and Collective to work without required overtime compensation of one-and-one-half times the regular rate of pay.

55. Defendants have known that Plaintiffs and other members of the Class and Collective have been deprived of required overtime compensation. Nonetheless, Defendants have operated under a scheme to deny Plaintiffs and the Class and Collective the required compensation of one-and-one-half times their regular rate for all work in excess of 40 hours per workweek.

56. Defendants' conduct, as alleged herein, was willful and has caused significant damage to Plaintiffs and other members of the Class and Collective.

57. There are estimated to be over 30 current and former employees within the asserted Class for this collective action during the material time who are similarly situated to Plaintiffs. With such numbers of similar claims for unpaid compensation, a collective action is a superior procedure for adjudicating such claims. Plaintiffs request that the Court authorize and supervise notice to the members of the asserted classes so that all claims may be resolved efficiently in a single proceeding.

58. The records, if any, should be in the custody or control of Defendants concerning the members of the asserted collective, the number of hours actually worked by Plaintiffs and all other similarly situated employees, and the compensation actually paid, or not paid, to such employees.



59. Plaintiffs will fairly and adequately protect the interests of each proposed class member and have retained counsel that is experienced in class/collective actions and employment litigation. Plaintiffs have no interest that is contrary to, or in conflict with, members of the collective.

60. In addition, Plaintiffs bring this suit as a class action on behalf of themselves and a Class of similarly situated individuals, defined as: all residents of the State of Illinois who had their facial scans or handprints collected, captured, received, otherwise obtained, or disclosed to Defendant Yanni Design Studio while residing in Illinois.

61. The following people are excluded from the Class: (1) any Judge presiding over this action and members of their families; (2) Defendant Yanni Design Studio's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant Yanni Design Studio's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

62. **Numerosity:** The exact number of Class members is unknown to Plaintiffs at this time, but it is clear that individual joinder is impracticable. There are dozens of employees similarly situated employees to Plaintiffs for purposes of the wage claims. And Defendant Yanni Design Studio has collected, captured, received, or otherwise obtained biometric identifiers or biometric information from at least dozens of individuals who fall into the definition of the Class. Ultimately, the Class members will be easily identified through Yanni Design Studio's records.

63. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a. whether Defendants' misclassified Plaintiffs and the Class as independent contractors;
- b. whether Plaintiffs and the Class worked overtime hours without required overtime compensation;
- c. whether Defendants' conduct was willful;
- d. whether Defendant Yanni Design Studio collected, captured, or otherwise obtained Plaintiffs' and the Class' biometric identifiers or biometric information;
- e. whether Yanni Design Studio properly informed Plaintiffs and the Class of its purposes for collecting, using, and storing their biometric identifiers or biometric information;
- f. whether Yanni Design Studio obtained a written release (as defined in 740 14/10) to collect, use, and store Plaintiffs' and the Class' biometric identifiers or biometric information;
- g. whether Yanni Design Studio has sold, leased, traded, or otherwise profited from Plaintiffs' and the Class's biometric identifiers or biometric information;
- h. whether Yanni Design Studio developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction, whichever occurs first;
- i. whether Yanni Design Studio complies with any such written policy (if one exists); and
- j. whether Yanni Design Studio used Plaintiffs' and the Class' fingerprints to identify them.

64. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and have retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiffs. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interest adverse to those of the other members of the Class.

65. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all others available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendants' misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in their Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

66. Plaintiffs and counsel will fairly and adequately protect the interests of the Class.

67. Plaintiffs retained counsel experienced in complex class action litigation.

**COUNT I**  
**VIOLATION OF THE FAIR LABOR STANDARDS ACT**  
**OVERTIME WAGES**

(Plaintiffs Individually and on Behalf of All Similarly Situated Employees  
Against All Defendants Pursuant to 29 U.S.C. §216)

68. Plaintiffs re-allege and incorporate Paragraphs 1 through 67 by reference as if re-pled herein in Count I.

69. This Count arises from Defendants' violation of the FLSA, 29 U.S.C. § 201 et seq., for their failure to pay overtime wages to Plaintiffs and similarly situated workers at a rate of one-and-one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual workweeks.

70. The overtime rate is computed by multiplying 1.5 times an employee's regular hourly rate, which includes all non-discretionary compensation paid to employees.

71. During the course of their employment by Defendants, Plaintiffs and similarly situated workers were not exempt from the overtime wage provisions of the FLSA, 29 U.S.C. § 207.

72. During the course of employment, Plaintiffs and similarly situated workers were directed by Defendants to work, and did work, over 40 hours in one or more individual workweeks in the last three years.

73. Plaintiffs generally worked around 60 to 80 hours per week.

74. Defendants failed to compensate Plaintiffs and the Class and Collective at the overtime rate for all work performed in excess of 40 hours per week in violation of the FLSA.

75. Defendants violated the FLSA by failing to pay overtime to Plaintiffs and others similarly situated at one and a half times his regular rate of pay when she worked over 40 hours in one or more individual workweeks.

76. Defendants' failure to pay Plaintiffs and the Class and Collective one and-one-half times their regular rates for all time worked over 40 hours in a workweek was willful.

77. Upon information and belief, Defendants' practices were not based upon Defendants' review of any policy or publication of the United States Department of Labor and therefore was willful and deliberate.

78. Yanni and Marina Elyash oversaw and implemented the unlawful practices described herein.

79. Plaintiffs and similarly situated workers are entitled to recover unpaid wages for up to three (3) years prior to the filing of this Complaint because Defendants' failure to pay overtime wages for hours worked in excess of forty (40) hours per week was a willful violation of the FLSA, 29 U.S.C. § 207.

80. Plaintiffs brings this action on their own behalf and on behalf of others similarly situated, including all individuals who performed work for Defendants and were denied overtime compensation within the last three (3) years who choose to opt into this matter pursuant to the FLSA, 29 U.S.C. §216(b).

**WHEREFORE**, Plaintiffs pray for a judgment against Defendants as follows:

- A. That all individuals who performed work for Defendants in the State of Illinois and were denied overtime compensation be granted leave to opt into this matter in accordance with 29 U.S.C. §216(b);
- B. A judgment in the amount of one-and-one-half times Plaintiffs' and the opt-in Plaintiffs' regular rate for all time they worked in excess of forty (40) hours per week and all other damages available to them under the law;
- C. Liquidated damages in an amount equal to the amount of unpaid wages for which Plaintiffs and the opt-in Plaintiffs are found to be due and owing;
- D. Reasonable attorneys' fees and costs of this action as provided by the FLSA; and
- E. Such other relief as this Court deems just and equitable.

**COUNT II**  
**VIOLATION OF THE ILLINOIS MINIMUM WAGE LAW**  
**OVERTIME WAGES**

(Plaintiffs Individually and on Behalf of All Similarly Situated Employees  
Against All Defendants Pursuant to Fed R. Civ. Pro. 23)

81. Plaintiffs re-allege and incorporate Paragraphs 1 through 80 by reference as if re-pled herein in Count II.

82. This Count arises from Defendants' violations of the overtime compensation provisions of the IMWL, 820 ILCS § 105/1 *et. seq.*

83. Under the IMWL, Defendants were and remain obligated to compensate Plaintiffs, and similarly situated employees, for all hours worked in excess of 40 hours in any individual workweek. Overtime compensation must be paid at a rate of not less than one-and-one-half times the regular rate of pay.

84. During the course of their employment by Defendants, Plaintiffs and similarly situated workers were not exempt from the overtime wage provisions of the IMWL

85. During the course of their employment by Defendants, Plaintiffs and similarly situated workers were directed by Defendants to work, and did so work, in excess of forty (40) hours in individual workweeks.

86. Pursuant to 820 ILCS 105/4(a), Plaintiffs and similarly situated workers were entitled to be compensated at a rate of one-and-one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual workweeks.

87. Defendants did not compensate Plaintiffs or similarly situated workers at a rate of one-and-one-half times their regular hourly rate of pay for all times worked in excess of forty (40) hours in individual workweeks.

88. Defendants' failure to pay Plaintiff and similarly situated workers overtime wages at a rate of one-and-one-half times their regular hourly rate of pay for all time worked in excess of forty (40) hours in individual workweeks violates the overtime pay provisions of the IMWL, 820 ILCS 105/4(a).

89. Pursuant to 820 ILCS 105/12(a), Plaintiffs and similarly situated workers are entitled to recover unpaid wages and overtime plus damages in the amount of 5% per month of the amount of underpayment.

**WHEREFORE**, Plaintiffs pray for a judgment against Defendants as follows:

- A. Enter a judgment in their favor against Defendants for lost pay and benefits;
- B. Additional penalties in the amount allowed under the IMWL;
- C. Attorney's fees and costs; and
- D. Such other relief as this Court deems just and equitable.

**COUNT III**  
**VIOLATION OF THE BIOMETRIC INFORMATION PRIVACY ACT**  
(Plaintiffs Individually and on Behalf of All Similarly Situated Employees  
Against Defendant Yanni Design Studio Pursuant to Fed R. Civ. Pro. 23)

90. Plaintiffs re-allege and incorporate Paragraphs 1 through 89 by reference as if re-pled herein in Count III.

91. Defendant Yanni Design Studio is a "private entity" under the Biometric Information Privacy Act. 740 ILCS 14/10.

92. Plaintiffs' fingerprints and facial scans qualify as "biometric identifier[s]" as defined by the Biometric Information Privacy Act. 740 ILCS 14/10.

93. Defendant collected "biometric information" from Plaintiffs through its acquisition of personal identifying information based on Plaintiffs' fingerprint(s) and facial scans.

94. Plaintiffs were enrolled in Defendant's biometric timekeeping device when they first started working for Defendant.

95. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' fingerprint(s) and/or facial scans, and personal identifying information based on Plaintiffs' fingerprint(s) and/or facial scans without first informing Plaintiffs in writing that Defendant was doing so.

96. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' fingerprint(s) and/or facial scans, and personal identifying information based on Plaintiffs' fingerprint(s) and/or facial scans without first informing Plaintiffs in writing of the purpose of Defendant doing so and the length of time Defendant would store and use Plaintiffs' biometric identifiers and/or biometric information.

97. Defendant violated the Biometric Information Privacy Act by capturing or collecting Plaintiffs' fingerprint(s) and/or facial scans and personal identifying information based on Plaintiffs' fingerprint(s) and/or facial scans without first obtaining Plaintiffs' written consent or other release authorizing Defendant to capture or collect Plaintiffs' biometric identifiers and/or biometric information.

98. Unlike other Illinois companies, Defendant failed to take notice and follow the requirements of the Biometric Information Privacy Act even though the law was enacted in 2008 and numerous articles and court filings about the law's requirements were published before Defendant committed the legal violations alleged in this Complaint.

**WHEREFORE**, Plaintiffs pray for a judgment against Defendant Yanni Design Studio as follows:



- A. Awarding liquidated or actual monetary damages, whichever is higher, to Plaintiffs for each violation of the Biometric Information Privacy Act as provided by 740 ILCS 14/20(1)-(2);
- B. Awarding Plaintiffs' reasonable attorneys' fees and costs in filing and prosecuting this matter as provided by 740 ILCS 14/20(3); and
- C. Such other and further relief as this Court deems appropriate and just as provided by 740 ILCS 14/20(4).

**COUNT IV**  
**VIOLATION OF THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT**  
(Plaintiffs Samuel Toledano Perez, Rolando Gomez, and Jose Manuel Guzman  
Against All Defendants)

99. Plaintiffs re-allege and incorporate Paragraphs 1 through 98 by reference as if re-pled herein in Count IV.

100. Plaintiffs Samuel Toledano Perez, Rolando Gomez, and Jose Manuel Guzman were Defendants' "employees" as that is defined under 820 ILCS 115/2.

101. Defendant Yanni Design Studio was the "employer" of Plaintiffs' Perez, Gomez and Guzman as that is defined under 820 ILCS 115/

102. At all times relevant to this action, Defendant Yanni Elyash was an "employer" of Plaintiffs Perez, Gomez and Guzman, as the term "employer" is defined by the IWPCA, 820 ILCS 115/2 and 820 ILCS 115/13, as he was acting "in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed," he had the ability to authorize Yanni Design Studio to pay the wages it owed to Plaintiffs Perez, Gomez and Guzman, he had knowledge of Yanni Design Studio's failure to pay said wages and/or taking of deductions from

said wages, and he refused to authorize the payments and/or approved of deductions taken from such wages.

103. At all times relevant to this action, Defendant Marina Elyash was an “employer” of Plaintiffs Perez, Gomez and Guzman, as the term “employer” is defined by the IWPCA, 820 ILCS 115/2 and 820 ILCS 115/13, as she was acting “in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed,” she had the ability to authorize Yanni Design Studio to pay the wages it owed to Plaintiffs Perez, Gomez and Guzman, she had knowledge of Yanni Design Studio’s failure to pay said wages and/or taking of deductions from said wages, and she refused to authorize the payments and/or approved of deductions taken from such wages.

104. Section 2 of the IWPCA provides, in relevant part, that “[for all employees, other than separated employees, ‘wages’ shall be defined as any compensation owed an employee by an employer pursuant to an employment contract or agreement between the two parties, whether the amount is determined on a time, task, piece, or any other basis of calculation. Payments to separated employees shall be termed ‘final compensation’ and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the two parties.”

105. Under the terms of the commission agreement with Yanni Design Studio, Plaintiffs earned a salary or hourly bases wages. The weekly salary or hourly wages of Plaintiffs Perez, Gomez and Guzman constitute “wages” under Section 2 of the Act.

106. Section 4 of the IWPCA provides, in relevant part, that “[a]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later

than 13 days after the end of the pay period in which such wages were earned. All wages earned by any employee during a weekly pay period shall be paid not later than 7 days after the end of the weekly pay period in which the wages were earned. All wages paid on a daily basis shall be paid insofar as possible on the same day as the wages were earned, or not later in any event than 24 hours after the day on which the wages were earned.”

107. Section 9 of the IWPCA prohibits deductions by employers from wages or final compensation unless such deductions are (1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made.

108. Plaintiffs Samuel Toledano Perez and Rolando Gomez each worked several pay periods for Defendants for which they received no compensation. Perez did not receive any compensation from Defendants for his work for Defendants from on or about April 10, 2023 to on or about May 10, 2023. Gomez did not receive any compensation from Defendants for his final two weeks of work for Defendants in or around October 2023.

109. Defendants Yanni Elyash and Marina Elyash were aware of and approved of this failure to pay Perez and Gomez their wages.

110. Defendants took unauthorized deductions from the compensation of Plaintiff Jose Manuel Guzman. From in or around May 2023 to in or around October 2023, Defendants deducted approximately \$600 every two weeks from Jose Manuel Guzman’s compensation.

111. The deductions that Defendants made from Jose Manuel Guzman’s wages were not: (1) required by law; (2) for the benefit of the Jose Manuel Guzman; (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of Jose Manuel Guzman, given freely at the time the deductions were made.

112. Defendants Yanni Elyash and Marina Elyash were aware of and approved these illegal deductions from Jose Manuel Guzman's wages.

113. Defendants failed to pay Plaintiffs Samuel Toledano Perez, Rolando Gomez, and Jose Manuel Guzman their earned wages as required by the IWPCA and/or took unauthorized deductions from their earned wages.

114. In undertaking the wrongful acts alleged, Defendants violated the IWPCA, to the detriment and loss of Plaintiffs Perez, Gomez, and Guzman.

115. As a direct and proximate result of Defendants' violation of the IWPCA as alleged herein, Plaintiffs Perez, Gomez, and Guzman were underpaid and have been damaged in an amount to be determined at trial. Moreover, Plaintiffs Perez, Gomez, and Guzman are entitled to statutory damages of five percent (5%) of the amount of the underpayment for each month that payment remains unpaid, or that were paid late, pursuant to 820 ILCS 115/14(a).

**WHEREFORE**, Plaintiffs Samuel Toledano Perez, Rolando Gomez, and Jose Manuel Guzman pray for a judgment against Defendants as follows:

- A. Declare that Defendants violated the Illinois Wage Payment and Collections Act.
- B. Unpaid Salary and deductions;
- C. 5% monthly penalty under the IWPCA; and
- D. Legal fees and costs under the IWPCA and such other legal and other relief as may be required.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint, including the FLSA claims.

Dated: March 25, 2024

Respectfully submitted,

By: /s/ John Kunze  
One of Plaintiffs' Attorneys

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