

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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EMILY BEGGS, CLARE PFEIFFER, and
WEI HO, Individually and on behalf of class
of similarly-situated persons,

Plaintiffs,

Court of Claims No. 20 - -MT

Honorable O'Brien

v.

THE STATE OF MICHIGAN AND THE
MICHIGAN DEPARTMENT OF
TREASURY,

Defendants.

Schiff Hardin LLP
Joanne B. Faycurry (P40993)
Elise H. Yu (P79344)
J. Michael Showalter (P-pending)
Attorneys for Plaintiff
350 S. Main Street, Ste. 210
Ann Arbor, MI 48104
734-222-1500 (Phone)
734-222-1501 (Fax)
jfaycurry@schiffhardin.com

PERIOD EQUITY (a non-profit organization)
Laura Strausfeld
18 Claremont Ave., #81
New York, NY 10027
(917)-622-0498
laura@periodequity.org
(Pro Hac Vice Application to be submitted)

WILMER CUTLER PICKERING HALE and
DORR LLP
Brian Mahanna
Joanna Howard
Co-Counsel for Plaintiffs
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 295-6269
brian.mahanna@wilmerhale.com
(Pro Hac Vice Applications to be submitted)

Megan Barriger
Co-Counsel for Plaintiffs
60 State Street
Boston, Massachusetts 02109
(617) 526-6697
megan.barriger@wilmerhale.com
(Pro Hac Vice Application to be submitted)

**VERIFIED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF AND
REFUND OF SALES/USE TAXES**

There is no other pending or resolved civil action arising out of the
transaction or occurrence alleged in the complaint.

This class action is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (U.S. Const., Amend XIV, §1), the Equal Protection Clause of the Michigan Constitution (Const. 1963, art. 1, § 2), Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8), the Michigan General Sales Tax Act (MCL 205.51 *et seq.*), and the Michigan Use Tax Act (MCL 205.91 *et seq.*) against the State of Michigan and its Department of Treasury.

**INTRODUCTION: THE STATE OF MICHIGAN’S IMPOSITION OF AND
REFUSAL TO PROVIDE AN EXEMPTION FOR ITS SALES AND USE TAX ON
MENSTRUAL PRODUCTS DISCRIMINATES AGAINST WOMEN IN
VIOLATION OF THE U.S. AND MICHIGAN CONSTITUTIONS**

1. This class action law suit seeks a declaration that the sales and use taxes on menstrual products (the “Tampon Tax”), as administered and enforced by the Michigan Department of Treasury (the “Department”), are unlawful and invalid, and seeks a refund of sales and use taxes paid by individual Plaintiffs Emily Beggs, Clare Pfeiffer, and Wei Ho, and all other similarly-situated persons¹ (estimated to number approximately 2,400,000), with interest. The Tampon Tax violates the Equal Protection Clauses of the United States and Michigan Constitutions, discriminates on the basis of sex, serves no important government interest, and is irrational and arbitrary.

2. Through the unconstitutional levy of a 6% sales or use tax on the sale or consumption of these goods, Michigan collects approximately \$6.9 million annually in taxes on menstrual products. While this amounts to less than 0.01% of total state revenue, the Tampon Tax represents a significant financial burden on women: Above and beyond the estimated \$114

¹ Persons who menstruate, a bodily function associated with women, and who paid sales and/or use tax on menstrual products purchased and/or consumed in Michigan during the last four years, as set out at paragraph 65 *infra*.

million Michigan women must pay each year for medical necessities such as tampons, pads and liners, they are forced to pay an additional \$6.9 million in sales and use taxes to the state.

3. The economic devastation wrought by the coronavirus pandemic has only amplified the impact of this unfair and regressive tax. Michigan women were already disadvantaged economically compared to men, with 15.2% of working age women in Michigan having incomes below the poverty line in 2018, compared to 11.9% of working age men.² Michigan women earn, on average, just \$0.77 for every dollar earned by Michigan men.³ The current economic crisis has hit women harder across the country, compounding the problem in Michigan at the height of the current crisis. Nationally, women made up 49% of the overall workforce, but accounted for 55% of job losses in April 2020.⁴ Michigan's 22.7% April unemployment rate was the second highest in the nation.⁵ Women also carry a greater burden than men through their role in the front-line workforce during the current pandemic, with women making up the vast majority of workers risking their lives to provide health care, childcare, and other essential services.⁶

4. The Tampon Tax is an additional economic burden borne by women, one that the State unconstitutionally imposes on Michigan women because it treats individuals differently

² Michigan, Talk Poverty, <https://talkpoverty.org/state-year-report/michigan-2019-report/>.

³ The State of the Gender Pay Gap 2020, Payscale, <https://www.payscale.com/data/gender-pay-gap>.

⁴ Claire Ewing-Nelson, After a Full Month of Business Closures, Women Were Hit Hardest by April's Job Losses, National Women's Law Center (May 2020), <https://nwlc-ciaw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/05/Jobs-Day-April-Factsheet.pdf>.

⁵ U.S. Bureau of Labor Statistics, Economic News Release: State Employment and Unemployment Summary, May 22, 2020, https://www.bls.gov/news.release/archives/laus_05222020.htm.

⁶ See Campbell Robertson & Robert Gebeloff, How Millions of Women Became the Most Essential Workers in America, N.Y. Times (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/us/coronavirus-women-essential-workers.html>.

based solely on their sex. Menstrual products are medical necessities for women.⁷ To purchase necessary menstrual products in Michigan, women must pay sales or use tax on those items.

5. Many other necessities are exempted by Michigan from sales and use taxation. But the Department maintains a double standard when applying these statutory exemptions. Menstrual products, associated with women's bodily functions, are taxed. In sharp contrast, products also used by men, such as food and food ingredients, durable medical equipment, prescription drugs, and over the counter drugs dispensed by prescription, are not. Since 2016, when bills to amend the Michigan Sales Tax Act (MCL 205.51, *et seq.*) ("STA") and Michigan Use Tax Act (MCL 205.91 *et seq.*) ("UTA") to explicitly eliminate imposition of Michigan's Tampon Tax were first introduced, the state legislature has proposed and passed sales and use tax exemptions for products also used by men despite becoming increasingly aware of the discriminatory impact of its failure to exempt menstrual products.⁸

6. The State cannot make sex a determining factor in the application of Michigan's sales and use tax acts. In administering and enforcing the Tampon Tax, the Department maintains a tax on women.

7. Menstrual products are as necessary to the preservation of health as prescription drugs, glasses, dental prosthesis, or many other products exempted from taxation under

⁷ American Medical Association, AMA Adopts New Policies at 2018 Annual Meeting (June 13, 2018), <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-final-day-annual-meeting> (noting that "[f]eminine hygiene products are essential for women's health" and "encourag[ing] the Internal Revenue Service to classify feminine hygiene products as medical necessities").

⁸ George Isaacson, "The 'Tampon Tax': Hidden Gender Bias in Medical Products Exemptions," Tax Notes (September 16, 2019), <https://www.taxnotes.com/tax-notes-state/sales-and-use-taxation/tampon-tax-hidden-gender-bias-medical-products-exemptions/2019/09/16/29wtq>.

Michigan’s STA (MCL 205.51 *et seq.*) and UTA (MCL 205.91 *et seq.*).⁹ The essential nature of menstrual products has been highlighted during the current economic crisis, with the need for affordable products greater than ever.¹⁰ Consistent with this need, the U.S. Congress recently amended the tax code to explicitly categorize menstrual products as “qualified medical expenses” eligible for purchase from Federal tax-free Health Savings Accounts, like prescription drugs and other essential goods.¹¹ Similarly, the Michigan Attorney General’s Office “definitely consider[s] feminine hygiene products essential.”¹²

8. During her gubernatorial campaign, Michigan Governor Whitmer rightly described menstrual products as a “basic medical necessity”¹³ and—recognizing the discriminatory nature of the Tampon Tax—said Michigan must “[s]top taxing women for being women.”¹⁴ Yet the Department of Treasury continues to levy it, though it has the administrative authority, indeed duty, to cease doing so.

9. Further, the unjust nature of the Tampon Tax has been brought into stark perspective in recent times. It is undisputed that women in Michigan bear higher levels of

⁹ See, e.g., MCL 205.54a(k) (exempting from sales tax “prosthetic device, durable medical equipment, or mobility enhancing equipment”); MCL 205.54a(r) (exempting from sales tax “dental prosthesis”); MCL 205.54g(1)(a) (exempting from sales tax “[s]ales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption”); MCL 205.94(o) (exempting from use tax “the sale of a prosthetic device, durable medical equipment, or mobility enhancing equipment”); MCL 205.94(aa) (exempting from use tax “sale of a dental prosthesis”); MCL 205.94d (exempting from use tax “[s]ales of drugs for human use that can only be legally dispensed by prescription, over-the-counter drugs for human use that are legally dispensed by prescription, or food or food ingredients, except prepared food intended for immediate human consumption”); Michigan Department of Treasury, Tax Compliance Bureau Audit Division, Other Deductions Manual, at 39 (August 2018), available at

https://www.michigan.gov/documents/treasury/Other_Deductions_Manual_634176_7.pdf (explaining that eyeglasses are exempt from sales and use tax when sold pursuant to a prescription).

¹⁰ Sarah Lehr, “Periods Don’t Stop for a Pandemic:” Advocates find new ways to get pads, tampons to those in need, Lansing State Journal (May 1, 2020), <https://www.lansingstatejournal.com/story/news/2020/05/01/advocates-find-new-ways-distribute-menstrual-supplies-amid-outbreak/3048244001/>.

¹¹ CARES Act section 3702 (amending section 223(d)(2) of the Internal Revenue Code).

¹² Lehr, *supra* note 10.

¹³ Gretchen Whitmer, Whitmer Action Moment: Helping Women. Period, Medium (Feb. 23, 2017), https://medium.com/@gretchenwhitmer_12225/whitmer-action-moment-helping-women-period-276dc1e840e.

¹⁴ @GovWhitmer (Governor Gretchen Whitmer). “MI Dems introduce bill to end sales & use taxes on feminine hygiene products. Stop taxing women for being women,” Twitter, Feb. 8, 2017, 5:30 p.m., <https://twitter.com/govwhitmer/status/829457283620933632>.

poverty, earn lower salaries, and are employed in more front-line essential services than men. Yet the Department continues to collect this unconstitutional tax on women.

10. The Department's continued imposition of the Tampon Tax violates the Michigan and U.S. Constitutions. The Department has the explicit authority, indeed duty, to cease imposition of the Tampon Tax under Michigan Constitution art. 9, §8 and the Michigan UTA (MCL 205.91 *et seq.*), both which preclude the imposition of sales or use tax, respectively, if such is exempt by law. The Department must end its unlawful practice of imposing the Tampon Tax and issue the sales and/or use tax refunds requested by Plaintiffs, with interest.

THE PLAINTIFF CLASS AND DEFENDANTS

11. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

12. This class action is brought by Plaintiffs Emily Beggs, Clare Pfeiffer and Wei Ho individually and on behalf of a class of similarly situated persons who have paid sales and/or use taxes on their purchase and/or consumption of menstrual products in Michigan.

13. Plaintiff Emily Beggs is a woman who currently resides in Michigan. Ms. Beggs is not currently employed, and she volunteers with "I Support the Girls," a national not for profit organization with affiliates in Detroit and Grand Rapids, which collects and distributes essential items including menstrual products to women experiencing homelessness, impoverishment, or distress. Ms. Beggs has paid sales tax on her purchases of tampons and pads in Michigan, including on January 30, 2020, in Kent County.

14. Plaintiff Clare Pfeiffer is a woman who currently resides in Michigan. Ms. Pfeiffer works for Edsel & Eleanor Ford House, a nonprofit historic home museum in Grosse Pointe Shores, MI. Ms. Pfeiffer also volunteers with "I Support the Girls." Ms. Pfeiffer has paid

use tax in Michigan on her purchases of tampons and pads from an out-of-state seller, Lola, including on January 22, 2020, in Wayne County.

15. Plaintiff Wei Ho is a woman who currently resides in Michigan. Ms. Ho is a professor of mathematics at the University of Michigan. Ms. Ho has paid use tax in Michigan on her purchases of tampons and pads from an out-of-state seller, Lola, including on February 12, 2020, in Washtenaw County.

16. Plaintiff Emily Beggs spends approximately \$180 annually on menstrual products, paying approximately \$10.80 annually in sales and/or use taxes.

17. Plaintiff Clare Pfeiffer spends approximately \$300 annually on menstrual products, paying approximately \$18.00 annually in sales and/or use taxes.

18. Plaintiff Wei Ho spends approximately \$80 annually on menstrual products, paying approximately \$4.80 annually in sales and/or use taxes.

19. All Plaintiffs paid sales and/or use tax under compulsion on their purchases and/or consumption of menstrual products in the State of Michigan for the past four years.

20. The named Plaintiffs have paid sales or use taxes under compulsion in the aggregate amount of approximately \$134.40 for the past four years.

21. The class of similarly-situated persons paid sales and/or use taxes for menstrual products under compulsion to the State of Michigan of approximately \$6.9 million annually, which amounts to approximately \$27.6 million for the past four years.

22. Defendant, the Michigan Department of Treasury, is a duly constituted principal department of the executive branch of the State of Michigan under the Constitution and laws of the State of Michigan (Const. 1963, art. 5, §2). Defendant is authorized to collect sales and use taxes due and to refund overpayments of said taxes (MCL 205.1 *et seq.* and MCL 205.91 *et seq.*).

Michigan Sales and Use Tax (referred to herein individually as “sales tax” and “use tax” or collectively as “sales and/or use tax”) is at issue in this matter, imposed pursuant to the STA, 1933 PA 167, MCL 205.51 *et seq.*, and the UTA, 1937 PA 94, MCL 205.91 *et seq.* The period for which Plaintiffs and similarly-situated persons seek a refund of sales and/or use taxes paid on menstrual products is four years. MCL 205.27a(2) (“Refund Period”).

JURISDICTION AND VENUE

23. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

24. Plaintiffs Emily Beggs, Clare Pfeiffer, and Wei Ho (“Plaintiffs”) are individual Michigan residents.

25. On February 10, 2020, Plaintiff Beggs made a sales tax refund request to the Defendant for the refunds that are the subject of this Verified Complaint. (See Refund Request Letter and Statement of Grounds attached as **Appendix A.**)

26. On February 11, 2020, Plaintiff Pfeiffer made a use tax refund request to the Defendant for the refunds that are the subject of this Verified Complaint. (See Refund Request Letter and Statement of Grounds attached as **Appendix B.**)

27. On February 13, 2020, Plaintiff Ho made a use tax refund request to the Defendant for the refunds that are the subject of this Verified Complaint. (See Refund Request Letter and Statement of Grounds attached as **Appendix C.**)

28. On February 24, 2020, Defendant issued a denial to all three Plaintiffs. (See Beggs, Pfeiffer, and Ho Refund Denial Letters attached as **Appendix D.**)

29. On April 23, 2020, Plaintiffs timely submitted Requests for Informal Conference to the Michigan Department of Treasury Hearings Division pursuant to MCL 205. 21a. (See Beggs, Pfeiffer, and Ho Requests attached as **Appendix E**.)

30. On July 15, 2020, the Hearings Division held a telephonic joint Informal Conference for Plaintiffs. Plaintiffs were represented by attorneys Joanne Faycurry and Elise Yu of Schiff Hardin. Defendant Department of Treasury was represented by Auditor Nick Arcaro.

31. To support their refund requests, Plaintiffs submitted their written documentation to the hearing referee on July 8, 2020 (attached as **Appendix F**). On information and belief, Defendant the Department of Treasury provided only the following written statement: “Currently, there are no provisions in the Sales or Use Tax Act which exempts menstrual products. The Department of Treasury is unable to approve the taxpayers request for a refund on taxes paid for these particular products.”

32. At the conclusion of the hearing, the hearing referee indicated that a written decision would be issued in the following weeks. On August 11, 2020, prior to any decision being issued, Plaintiffs withdrew their Requests for Informal Conference (written requests to withdraw requests for informal conference, attached as **Appendix G**) and proceeded with the filing of this Verified Complaint instead.

33. Plaintiffs’ timely requests for informal conference with the Hearings Division tolled the running of the ninety (90) day period of limitations. MCL 205.27a(3).

34. The running of the ninety (90) day period of limitations was tolled as of April 23, 2020, the date when Plaintiffs timely submitted their requests for informal conference. MCL 205.27a(3).

35. At the time that Plaintiffs submitted their requests for informal conference, 59 days out of the 90-day period of limitations had run, leaving open 31 days of the 90 day period of limitations.

36. The 90-day period of limitations began to run again as of August 11, 2020, the date when Plaintiffs withdrew their requests for informal conference.

37. Plaintiffs are appealing within 31 days of August 11, 2020, which was the time remaining of the ninety (90) day period of limitations before that 90-day period was suspended by Plaintiffs' timely requests for informal conference.

38. Plaintiffs' appeal to this Court of the Department's decisions to deny their refund requests, as set forth in the February 24, 2020 Refund Denials, is therefore timely as it is made within 90 days of those decisions, MCL 205.22(1), the period of limitations having been tolled during the pendency of the informal conferences. MCL 205.27a(3).

39. By filing this Verified Complaint while the requests for informal conference are pending within the Hearings Division, Plaintiffs have properly and timely invoked the jurisdiction of the Michigan Court of Claims pursuant to the applicable statutory requirements in the Revenue Act (MCL 205.22) and the Court of Claims Act (MCL 600.6401 *et seq.*).

40. The four-year period of limitations under MCL 205.27a(2), applicable to the Refund Period, is open.

41. The Michigan Court of Claims has jurisdiction over all claims and issues raised by Plaintiffs in this Verified Complaint. MCL 600.6419(1)(a).

42. The named Plaintiffs claim herein that they are entitled to a refund of approximately \$134.40, in the aggregate, plus interest, for the Refund Period for sales and use tax erroneously paid on menstrual products which are exempt from imposition of sales and/or

use taxes under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (U.S. Const., Amend XIV, §1), the Equal Protection Clause of the Michigan Constitution (Const. 1963, art. 1, § 2), Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8), the Michigan STA (MCL 205.51 *et seq.*), and the Michigan UTA (MCL 205.91 *et seq.*).

43. The class of similarly situated persons who have paid sales and/or use taxes on purchases and/or consumption of menstrual products in Michigan is also entitled to a refund of approximately \$27.6 million, in the aggregate, plus interest, for the Refund Period for sales and/or use tax erroneously paid on menstrual products which are exempt from imposition of Michigan sales and/or use taxes under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (U.S. Const., Amend XIV, §1), the Equal Protection Clause of the Michigan Constitution (Const. 1963, art. 1, § 2), Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8), the Michigan STA (MCL 205.51 *et seq.*), and the Michigan UTA (MCL 205.91 *et seq.*).

CERTIFICATE OF COMPLIANCE WITH MCL 600.6434(2)

44. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

45. Plaintiffs certify that this complaint is verified by Plaintiffs pursuant to MCL 600.6434(2) and MCR 1.109(D)(3).

GENERAL ALLEGATIONS RELATING TO CLAIMS UNDER U.S. AND MICHIGAN CONSTITUTIONS, THE MICHIGAN GENERAL SALES TAX ACT AND THE MICHIGAN USE TAX ACT

46. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

47. Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8) provides, in pertinent part, that the Legislature shall not impose a [combined] sales tax rate on retailers of more than 6% “of their gross taxable sales of tangible personal property *not exempt by law* . . .”

48. The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (U.S. Const., Amend XIV, §1), provides, in pertinent part, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

49. The Equal Protection Clause of the Michigan Constitution (Const. 1963, art. 1, § 2), provides, in pertinent part, “No person shall be denied the equal protection of the laws; . . .”

50. MCL 205.94(1)(b) specifically exempts from the imposition of use tax on property “which this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state.”

51. Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8) exempts the imposition of sales tax on the sales of tangible personal property that is “*exempt by law*” from such taxation.

52. The Equal Protection Clauses of the U.S. and Michigan Constitutions prohibit the State and the Department from imposing a sales and/or use tax on the sale or consumption of menstrual products in Michigan because such imposition is sex-based discrimination in violation of the Equal Protection Clauses of the Michigan and U.S. Constitutions.

53. While the Michigan sales tax is levied upon and collected from “all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration . . .” (MCL 205.52(1)), the STA specifically permits retailers to pass on the sales tax imposed on the retail transaction to their customers. MCL 205.73(1).

54. The Michigan and U.S. Constitutions prohibit the imposition of a sales and/or use tax on the sale or consumption of menstrual products in Michigan on equal protection grounds, and the UTA (MCL 205.94(1)(b)) goes further to specifically enumerate an exemption when not doing so would violate the Michigan or U.S. Constitutions.

55. Plaintiffs and similarly-situated persons cannot purchase menstrual products in Michigan without first paying sales tax on those products. No retailer will sell menstrual products without first collecting a sales tax on said products. At the Informal Conference, the Department stated that Plaintiffs' refund requests were denied because, "Currently, there are no provisions in the Sales or Use Tax Act which exempts menstrual products. The Department of Treasury is unable to approve the taxpayers request for a refund on taxes paid for these particular products."

56. The Department's stated reason for denying the refund requests and its administration and enforcement of the Michigan STA is unconstitutional as it fails to recognize that the U.S. and Michigan Constitutions exempt from imposition of sales tax on retail sales of menstrual products in Michigan because said imposition denies women in Michigan the equal protection of the laws guaranteed under the Michigan and U.S. Constitutions.

57. The exemption from imposition of sales tax on menstrual products is required by the equal protection of the laws guaranteed under the Michigan and U.S. Constitutions notwithstanding the lack of a statutory provision specifically exempting menstrual products in the STA.

58. In administering and enforcing the STA and UTA, the Department must recognize an exemption from sales and use taxes in the absence of a specific statutory exemption in the STA or UTA where the exemption is required by the U.S. or Michigan Constitutions. For

example, the Department of Treasury issued Revenue Administrative Bulletin 2015-13 (**Appendix H**) to explain that purchases made by foreign diplomatic personnel are exempt from, among other things, imposition of Michigan sales and use taxes because the exemptions were required by U.S. Constitution, article VI, §2. Although section 94(1)(b) of the UTA (MCL 205.94(1)(b)) statutorily exempted such transactions, the Department acknowledged there was no specific statutory exemption in the STA and correctly exercised its executive authority under the laws and constitution of Michigan to administer the tax in the manner required by the U.S. Constitution.

59. By failing to permit retailers to exclude from their gross proceeds on which the sales tax is levied sales of menstrual products to women in Michigan, the State and its Department of Treasury deny women in Michigan the equal protection of the laws guaranteed them by the Michigan and U.S. Constitutions.

60. The State of Michigan's imposition of a sales and/or use tax on menstrual products is sex-based discrimination in violation of the Equal Protection Clauses of the Michigan and U.S. Constitutions.

61. Because the Equal Protection Clauses of the Michigan and U.S. Constitutions exempt and/or otherwise prohibit the imposition of the Michigan sales tax on menstrual products purchased and/or consumed in Michigan, the State's imposition of a sales tax on said menstrual products also violates Article 9, §8 of the Michigan Constitution (Const. 1963, art. 9, § 8), which prohibits the imposition of sales tax on the sales of tangible personal property that is "*exempt by law.*"

62. Because the Equal Protection Clauses of the Michigan and Federal Constitutions prohibit the imposition of the Michigan use tax on menstrual products purchased and/or

consumed in Michigan, the State's imposition of a use tax on said menstrual products also violates MCL 205.94(1)(b), which specifically exempts from the imposition of use tax on property "which this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state."

CLASS ACTION ALLEGATIONS

63. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

64. This action is properly brought as a class action pursuant to MCR 3.501. This action is brought by the named Plaintiffs on behalf of all other similarly situated individuals who were compelled to pay sales and/or use taxes on menstrual products purchased and/or consumed in Michigan during the Refund Period because the Defendants unlawfully administered and enforced the sales and use tax acts by imposing and/or failing to recognize the U.S. and Michigan Constitutions' exemption of said purchases and/or consumption from the imposition of sales and/or use taxes as required by the Equal Protection Clause of the Michigan Constitution (Const. 1963, art. 1, § 2), the Equal Protection Clause of the U.S. Constitution (U.S. Const., Amend XIV, §1), Article 9, § 8 of the Michigan Constitution (Const. 1963, art. 9, § 8) and §94(1)(b) of the UTA (MCL 205.94(1)(b)).

65. The class is estimated to include approximately 2,400,000 individuals who menstruate, a bodily function associated with women, and have paid sales and/or use taxes on menstrual products purchased and/or consumed in Michigan during the Refund Period, and is therefore so numerous that joinder of all members is impracticable.

66. The number of individuals who have suffered these common deprivations of equal protection of the laws under the Michigan and U.S. Constitutions is sufficiently numerous

to make class action status the most practical method for plaintiffs to challenge the actions of the Defendants that are the cause of their deprivation of equal protection of the laws.

67. There are questions of law or fact common to the members of the class such that common questions predominate over questions, if any, affecting only individual members.

68. The central question of law common to all class members is whether the Defendants' actions in administering and enforcing sales and use taxes on menstrual products are unlawful, invalid, and unenforceable under the Michigan and Federal constitutional guarantees of equal protection of the laws, Article 9, §8 of Michigan's Constitution, the General STA (MCL 205.51 *et seq.*), and the UTA (MCL 205.91 *et seq.*).

69. The claims of the class representatives, including the violations of law and resulting harms alleged, are typical of the claims, violations of law and resulting harms suffered by all class members.

70. The Plaintiffs as proposed class representatives will fairly and adequately assert and protect the interests of the class. Plaintiffs' counsel know of no conflicts of interest between the Plaintiffs as proposed class representatives and absent class members with respect to the matters at issue in this litigation; the Plaintiffs will vigorously prosecute the suit on behalf of the Class; and the Plaintiffs are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving issues of civil rights and Michigan sales and use tax laws. Plaintiffs' attorneys have identified and investigated the claims in this action and have committed sufficient resources to represent the class.

71. The maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

72. The prosecution of separate actions by individual members of the class could result in inconsistent or varying adjudications with respect to individual members of the class.

73. Defendants' actions in administering and enforcing sales and use taxes on menstrual products in violation of the Michigan and Federal Constitutions and Michigan's General Sales Tax Act and Use Tax Act are generally applicable to all class members.

74. The filing of this Complaint fulfills the notice requirements of MCL 600.6452 as to all class members because the actions of the Defendants are similar to all claimants who have paid sales and/or use taxes on menstrual products purchased and/or consumed in Michigan during the Refund Period, as described in the description of the plaintiff class, and the claims of the class representatives and all class members arise out of a common factual and legal nexus.

FIRST CAUSE OF ACTION

Declaratory Judgment Violation of the U.S. Constitution's Fourteenth Amendment

75. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

76. Pursuant to MCR 2.605(A)(1), Plaintiffs seek a declaration from this Court that Defendants' actions in administering and enforcing sales and use taxes on menstrual products are unlawful, invalid, and unenforceable. The Department's actions violate the U.S. Constitution's Equal Protection Clause.

77. Defendants' actions in administering and enforcing sales and use taxes on menstrual products purchased and/or consumed in Michigan violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution because those actions constitute the disparate treatment of women.

78. Defendants' actions in administering and enforcing sales and use taxes on women's medical products (menstrual products), but not medical products also used by men (prescription drugs, dental prosthesis, etc.) discriminates on the basis of sex, are not substantially related to any important state interest, are not rationally related to any legitimate state purpose, and constitutes disparate treatment on the basis of sex.

79. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women in Michigan who buy and/or consume menstrual products in Michigan are harmed by the Defendants' taxation of these products, because they are forced to pay sales and/or use tax on products necessary and vital to their health, while men who purchase products far less or equally necessary to their health are not.

SECOND CAUSE OF ACTION

Declaratory Judgment Violation of the Michigan Constitution's Equal Protection Clause

80. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

81. Pursuant to MCR 2.605(A)(1), Plaintiffs seek a declaration from this Court that Defendants' actions in administering and enforcing sales and use taxes on menstrual products are unlawful, invalid, and unenforceable. Defendants' actions violate the Michigan Constitution's Equal Protection Clause.

82. Defendants' actions in administering and enforcing sales and use taxes on menstrual products violate the Equal Protection Clause, Article I, § 2, of the Michigan Constitution because the Department's actions constitute disparate treatment of women.

83. Defendants' actions in administering and enforcing sales and use taxes on women's medical products (menstrual products), but not medical products also used by men

(prescription drugs, dental prosthesis, etc.) discriminate on the basis of sex, are not substantially related to any important state interest, are not rationally related to any legitimate state purpose, and constitutes disparate treatment on the basis of sex.

84. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women in Michigan who buy and/or consume menstrual products in Michigan are harmed by the Defendants' taxation of these products, because they are forced to pay a sales or use tax on products necessary and vital to their health, while men who purchase products far less or equally necessary to their health are not.

THIRD CAUSE OF ACTION

Declaratory Judgment Violation of Article 9, §8 of Michigan Constitution

85. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

86. Pursuant to MCR 2.605(A)(1), Plaintiffs seek a declaration from this Court that Defendants' actions in administering and enforcing sales and use taxes on menstrual products are unlawful, invalid, and unenforceable. Because the Equal Protection Clauses of the Michigan and U.S. Constitutions exempt and/or otherwise prohibit the imposition of the Michigan sales and/or use tax on menstrual products purchased and/or consumed in Michigan, the State's imposition of a sales and/or use tax on said menstrual products also violates Article 9, §8 of the Michigan Constitution (Const. 1963, art. 9, § 8), which exempts and/or otherwise prohibits the imposition of sales tax on the sales of tangible personal property that is "*exempt by law.*"

87. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women in Michigan who buy and/or consume menstrual products in Michigan are harmed by the Defendants' taxation of these products, because they are

forced to pay a sales or use tax on products necessary and vital to their health, while men who purchase products far less or equally necessary to their health are not.

FOURTH CAUSE OF ACTION

Declaratory Judgment Violation of §94(1)(b) of Michigan Use Tax Act

88. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

89. Pursuant to MCR 2.605(A)(1), Plaintiffs seek a declaration from this Court that Defendants' actions in administering and enforcing use tax on menstrual products purchased and/or consumed in Michigan violates MCL 205.94(1)(b), which specifically exempts from the imposition of use tax on property "which this state is prohibited from taxing under the constitution or laws of the United States, or under the constitution of this state."

90. Because the Equal Protection Clauses of the Michigan and Federal Constitutions exempt and/or otherwise prohibit the imposition of the Michigan use tax on menstrual products purchased and/or consumed in Michigan, Defendants' actions in imposing a use tax on said menstrual products violates MCL 205.94(1)(b).

91. Defendants' actions are unlawful, invalid, and unenforceable under MCL 205.94(1)(b).

92. As a direct and proximate result of the above-mentioned acts, Plaintiffs have suffered injuries and damages. Women who buy and/or consume menstrual products in Michigan are harmed by the Defendants' taxation of these products, because they are forced to pay a sales or use tax on products necessary and vital to their health, while men who purchase products far less or equally necessary to their health are not.

FIFTH CAUSE OF ACTION

**Plaintiffs And All Other Similarly-Situated Persons Are Entitled To A Refund Of Sales
And/Or Use Taxes Unlawfully Paid On Menstrual Products Purchased And/Or Consumed
In Michigan For The Four (4) Year Refund Period**

93. Plaintiffs hereby repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

94. MCL 205.27a(2) provides, in relevant part, “The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for filing of the original return.”

95. The Refund Period for which the individual Plaintiffs and all other similarly-situated persons seek a refund of sales and/or use taxes paid on menstrual products purchased and/or consumed in Michigan is four years. MCL 205.27a(2).

96. On February 10, 2020, Plaintiff Beggs made a sales tax refund request to the Defendant in the amount of \$1.74, which amount reflects the amount of sales tax paid under compulsion to Family Dollar and Walgreens by Plaintiff Beggs on the purchase referenced in the Refund Request Letter and Statement of Grounds stated in **Appendix A**. Plaintiff Beggs is entitled to a refund of the sales tax paid, plus interest.

97. On February 11, 2020, Plaintiff Pfeiffer made a sales/use tax refund request to the Defendant in the amount of \$0.86, which amount reflects the amount of use tax paid under compulsion to remote seller Lola by Plaintiff Pfeiffer on the purchase referenced in the Refund Request Letter and Statement of Grounds stated in **Appendix B**. Plaintiff Pfeiffer is entitled to a refund of the use tax paid, plus interest.

98. On February 13, 2020, Plaintiff Ho made a sales/use tax refund request to the Defendant in the amount of \$1.14, which amount reflects the amount of use tax paid under compulsion to remote seller Lola by Plaintiff Ho on the purchase referenced in the Refund

Request Letter and Statement of Grounds stated in **Appendix C**. Plaintiff Ho is entitled to a refund of the use tax paid, plus interest.

99. On February 24, 2020, Defendant issued a denial of the requested refunds to all three Plaintiffs. (See Beggs, Pfeiffer, and Ho Refund Denial Letters attached as **Appendix D**.)

100. All Plaintiffs paid sales and/or use taxes on their purchases and/or consumption of menstrual products in the State of Michigan for the past four year Refund Period.

101. Plaintiff Emily Beggs spends approximately \$180 annually on menstrual products, paying approximately \$10.80 annually in sales and/or use taxes. For the Refund Period, Plaintiff Beggs paid approximately \$43.20 in Michigan sales and/or use taxes.

102. Plaintiff Beggs is accordingly entitled to a refund of sales/use taxes for the Refund Period in the approximate amount of \$43.20, plus statutory interest.

103. Plaintiff Clare Pfeiffer spends approximately \$300 annually on menstrual products, paying approximately \$18.00 annually in sales and/or use taxes. For the Refund Period, Plaintiff Pfeiffer paid approximately \$72.00 in Michigan sales and/or use taxes.

104. Plaintiff Pfeiffer is accordingly entitled to a refund of sales/use taxes for the Refund Period in the approximate amount of \$72.00, plus statutory interest.

105. Plaintiff Wei Ho spends approximately \$80 annually on menstrual products, paying approximately \$4.80 annually in sales and/or use taxes. For the Refund Period, Plaintiff Ho paid approximately \$19.20 in Michigan sales and/or use taxes.

106. Plaintiff Ho is accordingly entitled to a refund of sales/use taxes for the Refund Period in the approximate amount of \$19.20, plus statutory interest.

107. Through the unconstitutional levy of a 6% sales and/or use tax on the sale and/or consumption of menstrual products, Michigan collects approximately \$6.9 million annually in sales and/or use taxes on menstrual products.

108. The class of other similarly-situated persons is entitled to a refund of approximately \$27.6 million dollars, plus interest, said amount reflecting the amount of sales/use taxes unlawfully collected by Defendants for the Refund Period.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, the Department's continued imposition, administration, collection, and enforcement of the Tampon Tax is unlawful—the Tampon Tax is a tax on women, which violates the Equal Protection provisions of both the Michigan and U.S. Constitutions. The Department has the constitutional and statutory authority and duty to cease imposition, administration, collection, and enforcement of the Tampon Tax but has failed to do so. The Department must not only end its unlawful practice, but it must issue the sales and/or use tax refunds requested by Plaintiffs herein, with interest.

The Plaintiffs and class of similarly-situated persons who paid sales or use tax on menstrual products during the Refund Period respectfully request that this Court enter judgment in their favor as follows:

1. declare that the Tampon Tax is a tax on women, which violates the Equal Protection provisions of both the Michigan and U.S. Constitutions;
2. declare that the U.S. and Michigan Constitutions exempt the imposition of sales or use tax on menstrual products;
3. declare that the Department has the constitutional and statutory authority and duty to cease imposition of the Tampon Tax;

4. order the Department to issue a Revenue Administrative Bulletin notifying retailers and the public that the U.S. and Michigan Constitutions prohibit the imposition of sales or use taxes on menstrual products;
5. order the Department to refund sales and/or use taxes paid by the Plaintiffs for the Refund Period, plus interest;
6. order the Department to refund sales and/or use taxes paid by the class of similarly-situated persons that paid sales and/or use taxes for the Refund Period, plus interest;
7. order the Department to pay Plaintiffs' attorneys' fees and costs; and
8. order such other relief as it deems just and appropriate.

Respectfully submitted,

WILMER CUTLER PICKERING HALE
and DORR LLP

SCHIFF HARDIN, LLP

By: /s/ Brian Mahanna (with permission)
Brian Mahanna
Joanna Howard
Co-Counsel for Plaintiffs
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 295-6269
Brian.mahanna@wilmerhale.com
(Pro Hac Vice Applications to be submitted)

By: /s/ Joanne B. Faycurry
Joanne B. Faycurry (P40993)
Elise H. Yu (P79344)
J. Michael Showalter (P- pending)
Attorneys for Plaintiffs
350 S. Main Street, Suite 210
Ann Arbor, MI 48104
(734) 222-1500
jfaycurry@schiffhardin.com

PERIOD EQUITY (a non-profit organization)

Megan Barriger
Co-Counsel for Plaintiffs
60 State Street
Boston, Massachusetts 02109
(617) 526-6697
megan.barriger@wilmerhale.com
(Pro Hac Vice Application to be submitted)

By: /s/ Laura Strausfeld (with permission)
Laura Strausfeld
18 Claremont Ave., #81
New York, NY 10027
(917)-622-0498
laura@periodequity.org
(Pro Hac Vice Application to be submitted)

[VERIFICATION PAGES TO FOLLOW]