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on behalf of himself and current and former aggrieved employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

LUIS BENITEZ, on behalf of himself and
current and former aggrieved employees,

PLAINTIFF,

vs.

STAFFPAY, INC. dba EMPLICITY;
STAFFPAY EXECUTIVE STAFFING, INC.,
IMPERIAL CFS, INC.; ITI RESOURCE, INC.;
and DOES 1 to 100, Inclusive,

DEFENDANTS.

Case No.: **21STCV10755**

PAGA ACTION

**PLAINTIFF LUIS BENITEZ’S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

DEMAND FOR JURY TRIAL

COME NOW Plaintiff LUIS BENITEZ ("Plaintiff"), who alleges and complains against
Defendants STAFFPAY, INC. dba EMPLICITY; STAFFPAY EXECUTIVE STAFFING, INC.’
IMPERIAL CFS, INC.; ITI RESOURCE, INC; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

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1 **I. INTRODUCTION**

2 1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
3 ("PAGA"). representative action brought by Plaintiff on behalf of the State of California, himself
4 and other current and former aggrieved employees of Defendants who worked as hourly, non-
5 exempt employees, in California during the relevant time period seeking civil penalties associated
6 with Defendants' violation of the Labor Code based on Defendant's failure to pay wages for all
7 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
8 required and legally compliant meal periods, failure to timely pay earned wages during
9 employment, failure to provide complete and accurate wage statements, and failure to timely pay
10 all unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
11 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
12 attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
13 the State of California, and others aggrieved.

14 **II. JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
16 Plaintiff's lawsuit seeks damages in excess of \$25,000 and Defendants employed class members
17 and injuries occurred in locations in California including but not limited to Los Angeles County at
18 1000 Francisco Street, Torrance, CA 90502.

19 **III. PARTIES**

20 3. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of himself and other current and former employees subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who worked, work, or will
24 work for Defendants as non-exempt hourly employees in California. At all times mentioned
25 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
26 and was employed by Defendants in an hourly position at Defendants' location in Los Angeles
27 from approximately October 1, 2017, until on or about January 20, 2020.

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1 4. Plaintiff is informed and believes and thereon alleges that Defendant STAFFPAY,
2 INC. dba EMPLICITY is authorized to do business within the State of California and is doing
3 business in the State of California and/or that Defendants DOES 1-20 are, and at all times relevant
4 hereto were persons acting on behalf of Defendant STAFFPAY, INC. dba EMPLICITY in the
5 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
6 Defendant STAFFPAY, INC. dba EMPLICITY operates in Los Angeles County and employed
7 Plaintiff and putative class members in Los Angeles County, including but not limited to, at 1000
8 Francisco Street, Torrance, CA 90502.

9 5. Plaintiff is informed and believes and thereon alleges that Defendant STAFFPAY
10 EXECUTIVE STAFFING, INC. is authorized to do business within the State of California and is
11 doing business in the State of California and/or that Defendants DOES 21-40 are, and at all times
12 relevant hereto were persons acting on behalf of Defendant STAFFPAY EXECUTIVE
13 STAFFING, INC. in the establishment of, or ratification of, the aforementioned illegal wage and
14 hour practices or policies. Defendant STAFFPAY EXECUTIVE STAFFING, INC. operates in
15 Los Angeles County and employed Plaintiff and putative class members in Los Angeles County,
16 including but not limited to, at 1000 Francisco Street, Torrance, CA 90502.

17 6. Plaintiff is informed and believes and thereon alleges that Defendant IMPERIAL
18 CFS, INC. is authorized to do business within the State of California and is doing business in the
19 State of California and/or that Defendants DOES 41-60 are, and at all times relevant hereto were
20 persons acting on behalf of Defendant IMPERIAL CFS, INC. in the establishment of, or
21 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
22 IMPERIAL CFS, INC. operates in Los Angeles County and employed Plaintiff and putative class
23 members in Los Angeles County, including but not limited to, at 1000 Francisco Street, Torrance,
24 CA 90502.

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1 7. Plaintiff is informed and believes and thereon alleges that Defendant ITI
2 RESOURCE, INC. is authorized to do business within the State of California and is doing
3 business in the State of California and/or that Defendants DOES 61-80 are, and at all times
4 relevant hereto were persons acting on behalf of Defendant ITI RESOURCE, INC. in the
5 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
6 Defendant ITI RESOURCE, INC. operates in Los Angeles County and employed Plaintiff and
7 putative class members in Los Angeles County, including but not limited to, at 1000 Francisco
8 Street, Torrance, CA 90502.

9 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
10 through 80 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
13 working conditions of employment of Plaintiff and aggrieved employees.

14 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 81
15 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
16 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
17 supervisor, independent contractor and/or employee of each defendant who violated or caused to
18 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
19 the Industrial Welfare Commission's wage orders regulating hours and days of work.

20 10. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names, and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
24 named defendants is in some manner responsible for the events and allegations set forth in this
25 complaint.

26 11. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
28 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

3 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

4 **(Against all Defendants)**

5 12. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 13. During the period beginning one-year period preceding the sending of the initial
7 notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204,
8 226, 226.7, 510, 512, 1194, 1197, 1198, and the applicable Wage Orders.

9 14. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 15. **Failure to pay wages for all hours worked at the legal minimum wage:**
12 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
14 which includes all time that an employee is under control of the employer and all time the
15 employee is suffered and permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services which inure to the benefit of the employer.

17 16. Labor Code sections 1194 and 1197 require an employer to compensate employees
18 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
19 Wage Orders.

20 17. In this case, Plaintiff and other current and former aggrieved California-based
21 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
22 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
24 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
25 not limited to “rounding” down or “shaving” down Plaintiff and other current and former
26 aggrieved California-based hourly non-exempt employees’ daily hours worked at the time of their
27 clock-ins and clock-outs to the nearest quarter of an hour to the benefit of Defendants without
28 paying Plaintiff and other current and former aggrieved California-based hourly non-exempt

1 employees for that time. Therefore, Defendants, suffered, permitted, and required Plaintiff and
2 other current and former aggrieved California-based hourly non-exempt employees to be subject
3 to Defendants' control without paying wages for that time.

4 18. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
5 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
6 control without paying wages for that time. This resulted in Plaintiff and other current and former
7 aggrieved California-based hourly non-exempt employees working time for which they were not
8 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
9 Wage Order.

10 19. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
11 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
12 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
13 which includes all time that an employee is under control of the employer and all time the
14 employee is suffered and permitted to work. This includes the time an employee spends, either
15 directly or indirectly, performing services that inure to the benefit of the employer.'

16 20. Labor Code sections 510 and 1194 require an employer to compensate employees a
17 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
18 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

19 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
20 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
21 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
22 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
23 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
24 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
25 seventh day of a workweek shall be compensated at the rate of no less than twice the
26 regular rate of pay of an employee.

27 Labor Code section 510.

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21. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to "rounding" down or "shaving" down Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' daily hours worked at the time of their clock-ins and clock-outs to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and other current and former aggrieved California-based hourly non-exempt employees for that time. Therefore, Defendants, suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants' control without paying wages for that time. Therefore, Defendants, suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants' control without paying wages for that time.

22. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

23. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

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24. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

25. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

26. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to travel to and from a designated area while they were off the clock during their meal periods. Therefore, Defendants, suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants' control without paying wages for that time.

27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or procedure of failing to compensate Plaintiff and other current and former aggrieved California-based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees did not receive legally required and compliant meal periods, in violation of Labor Code

1 section 226.7.

2 28. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
3 and other current and former aggrieved California-based hourly non-exempt employees not
4 receiving wages to compensate them for workdays during which Defendants did not provide them
5 with meal periods in compliance with California law.

6 29. **Failure to timely pay earned wages during employment:** In California, wages
7 must be paid at least twice during each calendar month on days designated in advance by the
8 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
9 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
10 16th and the 26th day of that month and wages earned between the 16th and the last day,
11 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
12 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
13 paid within seven (7) calendar days following the close of the payroll period in which wages were
14 earned. Labor Code section 204(d).

15 30. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
16 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
17 exempt employees' earned wages (including minimum wages, overtime wages, and/or meal period
18 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
19 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
20 aggrieved California-based hourly non-exempt employees' their earned wages within the
21 applicable time frames outlined in Labor Code section 204.

22 31. **Failure to provide complete and accurate wage statements:** Labor Code section
23 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
24 employee his or her wages, the employer must "furnish each of his or her employees ... an
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
26 employee, except for any employee whose compensation is solely based on a salary and who is
27 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
28 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable

1 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
2 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
3 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
4 name of the employee and his or her social security number, (8) the name and address of the legal
5 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
6 the corresponding number of hours worked at each hourly rate by the employee.”

7 32. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt employees all wages
9 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered
10 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
11 wage statements inaccurate, in violation of Labor Code section 226.

12 33. **Failure to pay employees all wages due at time of termination/resignation:** An
13 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
14 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
15 hours of resignation (Labor Code section 202).

16 34. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
17 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
18 all their earned wages (including minimum wages, overtime wages, and/or meal period premium
19 wages), Defendants failed to pay those employees timely after each employee’s termination and/or
20 resignation, in violation of Labor Code sections 201, 202, and 203.

21 35. Defendants’ violations of Wage Order 9 constituted violations of Labor Code
22 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

23 36. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
24 employee, on behalf of himself or herself and other current or former employees, to bring a civil
25 action to recover civil penalties against all Defendants pursuant to the procedures specified in
26 Labor Code section 2699.3.

27 37. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On January 12, 2021, Plaintiff filed notice with LWDA and provided notice

1 to Defendants by certified mail which provided notice of the specific provisions of the Labor Code
2 alleged to have been violated, including the facts and theories to support the violations alleged.

3 38. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
4 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
5 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
6 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
7 Plaintiff's claims.

8 39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
9 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
10 512, 1194, 1197, 1198 during the Civil Penalty Period in the following amounts:

11 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and
12 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

15 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
16 for each employee for each pay period for the initial violation, and for each subsequent violation,
17 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
18 established by Labor Code section 226.3].

19 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
20 employee for each pay period for the initial violation, and for each subsequent violation, one
21 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
22 established by Labor Code section 558] and any unpaid wages.

23 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
24 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
25 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
26 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

27 40. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
28 reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

**WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS
AS FOLLOWS:**

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: March 19, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: _____



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