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 DAETRICE STALLWORTH, individually and on behalf of other aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – POMONA COURTHOUSE SOUTH

DAETRICE STALLWORTH, individually
 and on behalf of other aggrieved employees,

Plaintiffs,

vs.

DEVOTED HOMECARE, INC.; IMPERIAL
 HOSPICE, INC.; MANISH PATEL;
 JOHNATHAN THOMAS; and DOES 1
 through 100, inclusive,

Defendants.

CASE NO. **22PSCV00418**
 [Unlimited Civil Jurisdiction]

COMPLAINT FOR DAMAGES:

1. Failure to Pay Minimum Wages (Lab. C. §§ 1182.12, 1194, 1194.2, 1197 and 1197.1);
2. Failure to Pay Overtime Wages (Lab. C. §§ 510, *et seq.*);
3. Failure to Timely Pay Wages During Employment (Cal. Lab. C. §§ 204);
4. Failure to Timely Pay Wages Upon Termination (Lab. C. §§ 201 – 203);
5. Failure to Provide Meal Periods (Lab. C. §§ 226.7, 512);
6. Failure to Provide Rest Periods (Lab. C. §§ 226.7, 512);
7. Failure to Provide Accurate Wage Statements (Lab. C. § 226);
8. Failure to Indemnify for Business Expenses (Cal. Lab. C. §§ 2802);
9. Unfair Competition (Bus. & Prof. C. §17200, *et seq.*);
10. Misclassification of Employee as “Independent Contractor” (Lab. C. §§ 226.8, *et seq.*);
11. Private Attorney General Act (Lab. C. §2698, *et seq.*).

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, DAETRICE STALLWORTH, individually and on behalf of other aggrieved employees for causes of action against Defendants, DEVOTED HOMECARE, INC.; IMPERIAL HOSPICE, INC.; MANISH PATEL; JOHNATHAN THOMAS and DOES 1 through 100, inclusive and complains and alleges upon information and belief as follows:

PARTIES

1. Plaintiff DAETRICE STALLWORTH ("Plaintiff") at all times relevant to this action, resided in Riverside County, California.

2. Plaintiff is informed and believes, and thereon alleges that Defendant DEVOTED HOMECARE, INC. ("Devoted") is a California corporation with its principal place of business in Los Angeles County, California.

3. Plaintiff is informed and believes, and thereon alleges that Defendant IMPERIAL HOSPICE, INC ("Imperial") is a California corporation with its principal place of business in Los Angeles County, California.

4. Plaintiff is informed and believes, and thereon alleges that Defendant MANISH PATEL ("Patel") is an owner, director, officer, or managing agent of Devoted, Imperial and/or DOES 25-50 and is liable to the Plaintiff under Cal. Lab. C. Sec. 558.1 for the wage and hour causes of action asserted herein.

5. Plaintiff is informed and believes, and thereon alleges that Defendant JOHNATHAN THOMAS ("Thomas") is an owner, director, officer, or managing agent of Devoted, Imperial and/or DOES 25-50 and is liable to the Plaintiff under Cal. Lab. C. Sec. 558.1 for the wage and hour causes of action asserted herein.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,

1 associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100,
2 inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names.
3 Plaintiff is informed, believes, and thereupon alleges that each of the Defendants Does 1 through 100,
4 inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and
5 things of which Plaintiff complains herein, and in some fashion has legal responsibility, therefore.
6 When Plaintiff ascertains the names and capacities of the fictitiously named Defendants Does 1
7 through 100, inclusive, Plaintiff will seek leave to amend this Complaint to set forth such facts.

8 7. Plaintiff is informed, believes, and there upon alleges that each Defendants is, and at
9 all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the acts
10 alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the
11 knowledge, permission, and consent of his, her, or its co-Defendants.

12 8. Defendants, jointly and severally, employed Plaintiff and other Aggrieved Employees
13 as an hourly-paid, nonexempt employees in the State of California. Defendants had the authority to
14 hire and terminate Plaintiff and other Aggrieved Employees, to set work rules and conditions
15 governing Plaintiff's and other Aggrieved Employees' employment, and to supervise Plaintiff's and
16 other Aggrieved Employees' daily employment activities. Defendants directly hired and paid wages
17 and benefits to Plaintiff and other Aggrieved Employees. Defendants exercised sufficient authority
18 over the terms and conditions of Plaintiff's and other Aggrieved Employees' employment for them to
19 be a joint employer.

20 9. Defendant and DOES 1 through 100, shall collectively be referred to in this Complaint
21 as "Defendants" when applicable.

22 **JURISDICTION & VENUE**

23 10. This action is brought pursuant to the California Private Attorneys General Act
24 ("PAGA"), California *Labor Code* sections 2698, *et seq.* The penalties and other remedies sought by
25 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established
26 according to proof at trial. It is believed that the total sum owed to Plaintiff and other Aggrieved
27 Employees ("Aggrieved Employees" is defined for all purposes herein as all current and/or former
28 hourly paid or non-exempt employees of Defendant DEVOTED HOMECARE, INC.; IMPERIAL

1 HOSPICE, INC.; MANISH PATEL; JOHNATHAN THOMAS and DOES 1 through 100, inclusive)
2 alleged herein is less than \$5,000,000.00, based upon the anticipated number of Aggrieved Employees
3 and the amount in controversy for each member of the Aggrieved Employees.

4 11. This Court has jurisdiction over this action and the matters alleged herein pursuant to
5 the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution. The
6 statutes under which this action is brought do not specify any other basis for jurisdiction.

7 12. Additionally, this Court has jurisdiction over Defendants because, upon information
8 and belief, Defendants are either citizens of California, have sufficient minimum contacts in
9 California, or otherwise intentionally avail themselves of the California market so as to render the
10 exercise of jurisdiction over them by this Court consistent with traditional notions of fair play and
11 substantial justice.

12 13. Venue is proper in this Court because, upon information and belief, the named
13 Defendants reside, transact business, and/or have offices in this county, and/or the acts or omissions
14 alleged herein took place in this county.

15 **GENERAL ALLEGATIONS**

16 14. Plaintiff is informed and believes, and thereon alleges, that Defendants operates
17 assisting living facilities and are engaged in the business of in-home nursing. Beginning in November
18 2020 and until May 13, 2021, Defendants employed Plaintiff as a Caregiver in California.

19 15. At all times relevant to this action, Defendants failed to properly compile, account for,
20 and pay Plaintiff and other aggrieved employees for the hours he worked due to the following uniform
21 practices:

22 a. **Misclassification as Independent Contractor:** Defendants knowingly and
23 intentionally misclassified Plaintiff and other aggrieved employees as “Independent Contractors.”
24 Plaintiff and other aggrieved employees were subject to the type and degree of control a business
25 typically exercises over employees. For example, Plaintiff and other aggrieved employees performed
26 work within the usual course of Defendant’s business, Defendants assigned Plaintiff and other
27 aggrieved employees to work specific days and hours, Defendants paid Plaintiff and other aggrieved
28 employees by the shift rather than by the job, and Defendants provided Plaintiff and other aggrieved

1 employees tools and equipment and instructions to follow about how to perform their work.

2 b. **Failure to Pay Minimum and Overtime:** Defendant failed to pay all wages
3 (including minimum and overtime wages) to Plaintiff and other aggrieved employees in violation of
4 Labor Code Sections 246, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the applicable IWC Wage
5 Order. Plaintiffs regularly worked in excess of nine (9) hours in a day, forty (40) hours in a week and
6 on the seventh consecutive day of the week without receiving mandatory overtime pay. Defendants'
7 timekeeping practices resulted in under-compensation for all productive and unproductive time.
8 Defendants' managers and supervisors failed and refused to record time for time spent performing
9 tasks for the benefit of Defendants. Defendant's unlawful practices and failure to account for time
10 spent on work related tasks resulted in failure to pay minimum and overtime wages. Defendant did
11 not pay double time.

12 c. **Failure to Provide Meal and Rest Breaks:** Defendants' routinely auto-
13 deducted for meal periods and auto-recorded rest periods regardless of whether Plaintiff and other
14 aggrieved employees were afforded breaks. Defendant failed to pay premium wages to Plaintiff and
15 other aggrieved employees who were denied proper meal periods, in violation of Labor Code Sections
16 226.7, 512, 558, and the applicable IWC Wage Order. Plaintiff and other aggrieved employees were
17 routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period
18 for every shift worked that exceeded 5 hours, or a second, proper, timely, uninterrupted, 30-minute
19 meal period for every shift worked that exceeded 10 hours but were not paid premium wages of one-
20 hour at their regular rate of pay for each missed, short, or interrupted meal period. When Defendant
21 did pay premiums, the premiums were paid at the regular hourly rate instead of at the regular rate.

22 Defendant failed to pay premium wages to Plaintiff and other aggrieved employees who were
23 denied proper rest periods, in violation of Labor Code Sections 226.7, 558, and the applicable IWC
24 Wage Order. Plaintiff and other aggrieved employees were routinely unable, and not authorized, to
25 take 10-minute uninterrupted rest periods for every 4 hours worked or major fraction thereof but were
26 not paid premium wages of one-hour at their regular rate of pay for each missed, short, or interrupted
27 rest period. When Defendant did pay premiums, the premiums were paid at the regular hourly rate
28 instead of at the regular rate.

1 d. **Failure to Provide Paid Sick Time:** Pursuant to Labor Code § 246, *et seq.*,
2 “[a]n employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours
3 worked, beginning at the commencement of employment or the operative date of this article,
4 whichever is later, subject to the use and accrual limitations set forth in this section.” Defendant failed
5 to provide Plaintiffs with any sick time in violation of Labor Code § 246, *et seq.*

6 e. **Failure to Timely Pay All Wages During Employment:** Plaintiffs allege that
7 Defendant did not pay Plaintiff twice during each calendar month or on regular pay days. Defendants’
8 failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in
9 accordance with Labor Code section 204 constitutes unlawful and/or unfair activity prohibited by
10 California Labor Code section 204.

11 f. **Failure to Timely Pay All Wages Upon Termination:** Plaintiffs allege that
12 Defendant still owe Plaintiff wages. Defendants’ failure to timely pay all wages to Plaintiff and the
13 other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202
14 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

15 g. **Wage Statements:** Defendants did not provide wage statements to Plaintiff and
16 the other aggrieved employees. Defendant’s unlawful failure to pay regular, minimum, and/or
17 overtime wages has also resulted in its non-exempt employees receiving inaccurate wage statements.
18 Defendants’ failure to keep complete and accurate payroll records relating to Plaintiff and the other
19 aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful
20 and/or unfair activity prohibited by California Labor Code section 1174(d).

21 h. **Waiting Time:** Defendant did not cure its failures to pay minimum, regular,
22 overtime or double-time wages at the time of separation. Accordingly, Plaintiffs and the aggrieved
23 employees are entitled to recovery of “waiting time” penalties.

24 i. **Failure to Reimburse Necessary Business-Related Expenses and Costs:**
25 Plaintiff and other aggrieved employees were required to purchase and use tools and equipment
26 necessary to the performance of the work. Plaintiff and other aggrieved employees were also required
27 to use their personal cell phones for work related communications with Defendants. Plaintiff and other
28 aggrieved employees were never reimbursed for the use of these devices. Defendants’ failure to

1 reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and
2 costs constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800
3 and 2802.

4 j. **Failure to Procure Any or Sufficient Workers' Compensation Insurance:**

5 Section 3700.5 of the California Labor Code makes it a misdemeanor punishable by either a fine of
6 not less than \$10,000 or imprisonment in the county jail for up to one year, or both. Plaintiffs were not
7 afforded workers' compensation insurance. Further, Defendants failed and refused to disclose the
8 existence of or notify Plaintiffs of any worker's compensation insurance in violation of Labor Code
9 §§ 3550 – 3553.

10 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
11 should have known that Plaintiff and the other Aggrieved Employees were entitled to receive certain
12 wages for overtime compensation and that they were not receiving wages for overtime compensation.

13 17. Defendants' conduct described herein was undertaken, authorized, and/or ratified
14 Defendants' officers, directors and/or managing agents who were authorized and empowered to make
15 decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
16 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
17 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
18 ratified, authorized, and approved by managing agents whose precise identities are unknown to
19 Plaintiff at this time and are therefore identified and designated herein as DOES 1 through 20,
20 inclusive.

21 18. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer
22 general and special damages, including severe and profound pain and emotional distress, anxiety,
23 depression, headaches, tension, and other physical ailments, as well as medical expenses, expenses for
24 psychological counseling and treatment, and past and future lost wages and benefits.

25 19. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
26 commissions, benefits and loss or diminution of earning capacity.

27 20. Plaintiff claims general damages for emotional and mental distress and aggravation in a
28 sum in excess of the jurisdictional minimum of this Court.

21. Because the acts taken toward Plaintiff were carried out by officers, directors and/or managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and in order to injure and damage Plaintiff.

PAGA ALLEGATIONS

22. At all times herein set forth, PAGA was applicable to Plaintiff's employment with Defendants.

23. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the California Labor & Workforce Development Agency (“LWDA”) for Labor Code violations may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California *Labor Code* section 2699.3.

24. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved employee,” who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

25. Plaintiff was employed by Defendants, and the alleged violation was committed against him during his time of employment, and he is therefore an aggrieved employee. Plaintiff and other employees of Defendants are “aggrieved employees” as defined by California *Labor Code* section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

26. Pursuant to California *Labor Code* sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

a. The aggrieved employee shall give written notice by online submission (hereinafter “Employee’s Notice”) to the Labor & Workforce Development Agency (hereinafter “LWDA”) and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California *Labor Code* section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

27. On February 17, 2022, Plaintiff provided written notice by online submission to the LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

28. Therefore, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201–204, 210, 226, 226.7, 226.8, 246, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 2800, 2802, 3550 – 3553, 3700.5, IWC Wage Orders 5-2001 and 15-2001.

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

Cal. Lab. C. §§ 1182.12, 1194, 1194.2, 1197 and 1197.1

(Against all Defendants)

29. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

30. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, or the applicable Industrial Welfare Commission (“IWC”) Wage Order.

31. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the

1 minimum so fixed is unlawful.

2 32. During the relevant time period, Defendants paid Plaintiff less than minimum wages
3 when they failed to pay proper compensation for all hours worked. To the extent these hours do not
4 qualify for the payment of overtime, Plaintiff were not being paid at least the lawful minimum wage
5 for their work.

6 33. Defendants' failure to pay Plaintiff the required minimum wage violates Labor Code §§
7 1194 and 1197. Pursuant to these sections, Plaintiff is entitled to recover the unpaid balance of their
8 minimum wage compensation as well as interest, costs, and attorneys' fees.

9 34. Pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover liquidated damages in
10 an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

11 35. Labor Code § 1194 establishes an employee's right to recover unpaid wages, including
12 overtime compensation and interest, and the cost of suit. California Labor Code § 1198 further
13 provides that the employment of an employee for longer than those fixed by the IWC Wage Orders is
14 unlawful.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay Overtime Wages**

17 **Cal. Lab. C. §§ 510, 1194, 1198, Violation of IWC Wage Order**

18 **(Against all Defendants)**

19 36. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 37. Labor Code § 1198 and the applicable IWC Wage Order Provide that it is unlawful to
22 employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2)
23 times the person's regular rate of pay, depending on the number of hours or days worked by the person
24 on a daily or weekly basis.

25 38. Specifically, the applicable IWC Wage Orders provide that Defendants are and were
26 required to pay overtime compensation to Plaintiff at the rate of one and one-half times (1½) their
27 regular rate of pay when working and for all hours worked in excess of nine (9) hours in a day er more
28 than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of

1 work in a workweek.

2 39. California Labor Code § 510 codifies the right to overtime compensation at one and
3 one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
4 forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of
5 work.

6 40. Both Labor Code § 510 and the applicable IWC Wage Order provides that employment
7 of more than six days in a workweek is only permissible if the employer pays proper overtime
8 compensation as set forth herein.

9 41. Plaintiff were non-exempt employees entitled to the protections of California Labor
10 Code §§ 510 and 1194.

11 42. During the relevant time period, Defendants required Plaintiff to work in excess of
12 eight (8) hours in a day, forty (40) hours in a week, and/or for a seventh consecutive day in a workweek
13 without paying Plaintiff overtime wages for his work.

14 43. During the relevant time period, Defendants knowingly and willfully failed to pay
15 Plaintiff overtime wages for all overtime hours worked when Plaintiff worked in excess of eight (8)
16 hours in a day, forty (40) hours in a week and/or for a seventh consecutive day of work in a workweek,
17 or when Plaintiff worked in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on
18 the seventh day of work in a work week.

19 44. Defendants' failure to pay Plaintiff the unpaid balance of overtime and double time
20 compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198,
21 and is therefore unlawful.

22 45. Pursuant to Labor Code § 1194, Plaintiff are entitled to recover unpaid overtime and
23 double time compensation as well as interest, costs, and attorneys' fees.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Timely Pay Wages During Employment**

26 **Cal. Lab. C. §§ 204, 210**

27 **(Against All Defendants)**

28 46. Plaintiff refers to and incorporates herein by reference the previous paragraphs as

1 though fully set forth herein.

2 47. Pursuant to California Labor Code §§ 204, Defendants are required to pay all earned
3 and unpaid wages to non-exempt employees twice during each calendar month, on days designated in
4 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
5 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
6 during which the labor was performed, and labor performed between the 16th and the last day,
7 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
8 month.

9 48. Employers who fail to timely pay the wages of each employee are subject to penalties
10 of one hundred dollars (\$100) for each failure for an initial violation and two hundred dollars (\$200)
11 for each subsequent violation.

12 49. Labor Code section 210(b) provides a private right of action to enforce penalties for
13 violations of Labor Code § 204, *et seq.*

14 50. As set forth above, Defendants have willfully failed to pay accrued wages and other
15 compensation to Plaintiff during her employment in accordance with California Labor Code § 204.

16 51. As a result, Plaintiff is entitled to all available statutory or civil penalties, together with
17 interest thereon, as well as other available remedies.

18 **FOURTH CAUSE OF ACTION**

19 **Failure to Timely Pay Wages Upon Termination**

20 **Cal. Lab. C. §§201 – 203, Violation of IWC Wage Order**

21 **(Against all Defendants)**

22 52. Plaintiff re-alleges and incorporates herein by this reference each and every allegation
23 set forth in all previous paragraphs of the Complaint as if fully set forth herein.

24 53. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the
25 wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
26 employee voluntarily leaves his employment, his or her wages shall become due and payable not later
27 than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
28 notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of

1 quitting.

2 54. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
3 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the
4 wages of the employee shall continue as a penalty from the due date at the same rate until paid or until
5 an action is commenced; but the wages shall not continue for more than thirty (30) days.

6 55. During the course of employment, Defendants failed to immediately pay accrued wages
7 and other compensation due to Plaintiff, who was terminated, and failed to pay accrued wages,
8 including overtime wages and other compensation due, at the time of Plaintiff's initial separation and
9 subsequent termination.

10 56. As a result, Plaintiff is entitled to back wages, prejudgment interest, reasonable
11 attorneys' fees and costs, civil penalties pursuant to California Labor Code §§ 203, 1194, 1197, and
12 related statutes, the exact amounts of such damages will be proven at trial.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Provide Meal Periods**

15 **Cal. Lab. C. §§ 226.7, 512, *et seq.***

16 **(Against all Defendants)**

17 57. Plaintiff alleges and incorporates herein by this reference each and every allegation set
18 forth in all previous paragraphs of the Complaint.

19 58. California Labor Code §§ 512 and 226.7(a) prohibit an employer from requiring an
20 employee to work more than five hours per day without providing the employee with a meal period of
21 not less than 30 minutes; and after ten hours, without providing the employee with a second meal
22 period of not less than 30 minutes.

23 59. Defendants intentionally and consistently required Plaintiff to work for extended
24 periods of time, well over five hours, without providing the meal periods required by law, thus
25 violating California Labor Code §§ 512 and 226.7.

26 60. Pursuant to Labor Code § 226.7, Plaintiff has sustained economic damages, including,
27 but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and are
28 entitled to recover one-hour of premium pay for each day in which a lawful meal period was not

provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor Code and the applicable IWC Wage Order

SIXTH CAUSE OF ACTION

Failure to Provide Rest Periods

Cal. Lab. C. §§ 226.7, 512, *et seq.*

(Against all Defendants)

61. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

62. California Labor Code §§ 512 and 226.7(a) prohibit an employer from requiring an employee to work more than four hours per day without providing the employee with a 10-minute rest period.

63. Defendants intentionally and consistently required Plaintiff to work for extended periods of time, well over four hours, without providing the rest periods required by law, thus violating California Labor Code §§ 512 and 226.7.

64. Pursuant to Labor Code § 226.7, Plaintiff has sustained economic damages, including, but not limited to, unpaid wages and lost interest, in an amount according to proof at trial, and are entitled to recover one-hour of premium pay for each day in which a lawful meal period was not provided. Plaintiff is further entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5, and pursuant to Labor Code section 2699(g)(1), Plaintiff is entitled to an award of reasonable attorneys' fees and costs relating to their claims for civil penalties due to Defendants' violation of the California Labor Code and the applicable IWC Wage Order.

SEVENTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

Cal. Lab. C. §§ 226, *et seq.*

(Against all Defendants)

65. Plaintiff alleges and incorporates herein by this reference each and every allegation set

forth in all previous paragraphs of the Complaint.

66. During Plaintiff's employment with Defendants, it intentionally and knowingly failed to provide Plaintiff with timely and accurate wage and hour statements showing gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

67. Defendants systemically failed to provide such wage statements with accurate information and engaged in a policy of under-reporting and failing to pay for all hours actually worked in violation of California Labor Code §226 and related statutes.

68. As a result of Defendants' violation of California Labor Code §226 and related statutes, Plaintiff has suffered injuries and damages, including, but not limited to: Plaintiff was not paid overtime he was entitled to; Plaintiff was not provided meal and rest breaks; Plaintiff was not paid wages due; and the absence of actual hours worked makes it difficult for Plaintiff to collect overtime wages due.

69. As a result of Defendants intentional failure to provide Plaintiff with accurate and itemized wage statements, Plaintiff is entitled to all available statutory penalties, costs, and attorneys' fees, including those provided in California Labor Code §226(e), as well as all other available remedies.

EIGHTH CAUSE OF ACTION

Failure to Indemnify for Business Expenses

Cal. Lab. C. §§ 2802

(Against all Defendants)

70. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of the Complaint.

71. California Labor Code § 2802(a) requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

72. During the course of Plaintiff's employment, Defendants failed to reimburse Plaintiff expenses that incurred for work-related activities, including tools, equipment and cell phone expenses.

1 73. As a result, Plaintiff is entitled to civil penalties pursuant to California Labor Code §§
2 203, 1194, 1197, 2802, 2804 and related statutes, the exact amounts of such damages will be proven
3 at trial.

4 **NINTH CAUSE OF ACTION**

5 **Unfair Competition**

6 **Cal. Bus. & Prof. C. §17200, *et seq.***

7 **(Against all Defendants)**

8 74. Plaintiff alleges and incorporates herein by this reference each and every allegation set
9 forth in all previous paragraphs of the Complaint.

10 75. California Business and Professions Code §17200 provides: “As used in this chapter,
11 unfair competition shall mean and include any unlawful or fraudulent business act or practice and
12 unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing
13 with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

14 76. Wage and hour laws express fundamental public policies. Providing employees with
15 wages for all hours worked, rest breaks, and providing accurate itemized records are fundamental
16 public policies of this State. Labor Code § 90.5(a) articulates the public policies of this State to enforce
17 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
18 under substandard and unlawful conditions, and to protect employers who comply with the law from
19 those who attempt to gain a competitive advantage by failing to comply with minimum labor standards.

20 77. Through the conduct alleged herein, Defendants have acted contrary to these public
21 policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and
22 unfair business practices in violation of California Business and Professions Code §17200, *et seq.*,
23 depriving Plaintiff of rights, benefits, and privileges guaranteed to all employees in California.

24 78. During the course of Plaintiff’s employment, Defendants engaged in multiple
25 violations of the California Labor Code by failing to pay wages due to Plaintiff, failing to provide
26 Plaintiff meal and rest periods and by failing to provide accurate and itemized statements of Plaintiff’s
27 wage and hours.

79. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of §17200 *et seq.*, of the California Business and Professions Code.

80. The acts of Defendants, as previously described above, were unfair, unlawful, and fraudulent as defined in California Business and Professions Code §17200, Such acts constitute an unfair business practice and unfair competition, thus violating California Business and Professions Code §17200 *et seq.* As a result, Defendants obtained valuable property, money and services from Plaintiff, including earned wages for all hours worked and have deprived him of valuable rights and benefits guaranteed by law, all to the detriment of Plaintiff and to the benefit of Defendants so as to allow Defendants to unfairly compete against competitors who comply with the law.

81. As a result of the foregoing conduct, Plaintiff is entitled to recover restitution damages in the form of payment of unlawfully withheld wages. Plaintiff is also entitled to recover reasonable attorneys' fees pursuant to Code of Civil Procedure §1021.5, the substantial benefit doctrine.

TENTH CAUSE OF ACTION

Misclassification of Employee as “Independent Contractor”

Lab. C. §§ 226.8, *et seq.*

(Against all Defendants)

82. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

83. Pursuant to Labor Code §226.8(a)(1), it is unlawful for any person or employer to engage in willful misclassification of an individual as an independent contractor. Pursuant to Labor code §226.8(b), if a court issues a determination that a person or employer has violated subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Pursuant to Labor code §226.8(c), if a court issues a determination that a person or employer has violated subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

1 84. During the period of Plaintiff's employment with defendants, Plaintiff was an employee
2 of Defendants, and each of them based upon their alter ego relationship, as defined by California Labor
3 Code §350(b). However, Defendants purposefully misclassified Plaintiff and all of their other
4 employees as an "Independent Contractor" because, by so doing, defendants lowered their cost of
5 doing business by means of, but not limited to, the following:

- 6 a. Defendants did not report or pay the employer's share of federal or state payroll
7 taxes with respect to any of the funds paid to Plaintiff or their employees, as
8 required by required by federal and state law;
- 9 b. Defendants did not provide or pay for Workers Compensation insurance for
10 Plaintiff or their employees;
- 11 c. Defendants did not provide or pay for State Disability insurance for Plaintiff or
12 their employees; and
- 13 d. Defendants did not provide or pay for benefits to Plaintiff employees should
14 receive, such as paid sick leave and other benefits.

15 85. As a direct and proximate result of the aforementioned violations of California law
16 committed by defendants, Plaintiff has suffered, and continues to suffer, substantial losses related to
17 the loss of the employer's share of payroll taxes, the use and enjoyment of such employee benefits,
18 and expenses and attorneys' fees in seeking to compel defendants to fully perform their obligation
19 under state law, all to their damage in amounts according to proof at time of trial, but in amounts in
20 excess of the minimum jurisdiction of this Court. Plaintiff is thus entitled to recover nominal, actual
21 and compensatory damages in amounts according to proof at time of trial, but in amounts in excess of
22 the minimum jurisdiction of this Court.

23 86. Defendants' failure to classify Plaintiff as an employee, in violation of California law,
24 was knowing and intentional. Defendants have refused to classify Plaintiff as an employee for false
25 and fraudulent reasons. The decision to misclassify Plaintiff as an "independent contractor" was made,
26 maintained, and enforced by Defendants, by and through their offices, directors and/or managing
27 agents, and was done willfully, maliciously, oppressively, and fraudulently, with the wrongful and
28 deliberate intention of injuring Plaintiff, and with a conscious disregard for Plaintiff's rights and

1 defendants' obligations under California laws, all of which has deprived Plaintiff of Plaintiff's property
2 and legal rights.

3 87. Pursuant to Labor Code §226.8(b)-(c), Plaintiff seeks a determination that Defendants
4 have violated subdivision (a) and have engaged in or are engaging in a pattern or practice of these
5 violations, and seeks penalties of \$25,000 for each violation, in addition to any other penalties or fines
6 permitted by law.

7 **ELEVENTH CAUSE OF ACTION**

8 **California Private Attorneys General Act, Labor Code § 2699, *et seq.***

9 **(Against Defendant)**

10 88. Plaintiff refers to and incorporates herein by reference all of the above paragraphs as
11 though fully set forth herein.

12 89. Under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698-2699.5, an
13 aggrieved employee, on behalf of himself or herself and other current or former employees, may
14 recover penalties under any provision of the Cal. Labor Code that provides for civil penalties. These
15 penalties are in addition to any other relief available under the Cal. Labor Code.

16 90. As set forth above, Defendant has committed numerous violations for which the Labor
17 Code provides for penalties, including violations of Cal. Labor Code §§ 201– 204, 210, 226, 226.7,
18 226.8, 246, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 2800, 2802, 3550 – 3553, 3700.5,
19 IWC Wage Orders 5-2001 and 15-2001.

20 91. Plaintiff and the other hourly-paid or non-exempt employees are “Aggrieved
21 Employees” as defined by California Labor Code section 2699(c) in that they are all current or former
22 employees of Defendants, and one or more of the alleged violations was committed against them.

23 26. The Plaintiff has provided written notice by certified mail to the LWDA and to
24 Defendant of the legal claims and theories of this case. Sixty-five days have passed since the postmark
25 date of the written notice to the LWDA, and Plaintiff has not received notification from the LWDA
26 that it intends to investigate the alleged violations. Accordingly, Plaintiff has exhausted administrative
27 remedies as required by Cal. Labor Code § 2699.3.

28 27. As a direct result of Defendant's conduct as described, Plaintiff is entitled to recover,

1 on her own behalf and on behalf of others similarly situated, the maximum civil penalties permitted
2 by the Private Attorneys General Act from Defendants for all violations of Labor Code §§ 201– 204,
3 210, 226, 226.7, 226.8, 246, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 2800, 2802, 3550 –
4 3553, 3700.5, IWC Wage Orders 5-2001 and 15-2001 as well as reasonable attorney’s fees and costs.

5 28. Defendant’s conduct of violating the California Labor Code constitutes violations of
6 the PAGA. Therefore, Plaintiff requests penalties against Defendant under the provisions of PAGA
7 section 2699(f).

8 29. The proper measure of damages and penalties under the PAGA is all Aggrieved
9 Employees, whether a party to this action or not. Further, this claim needs no certification to proceed
10 with class-wide recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

11 30. Further, as a direct and proximate result of the conduct of Defendant, as set forth above,
12 Plaintiffs were forced to incur substantial attorney’s fees and costs which are recoverable under
13 California Labor Code Section 2699(g)(1).

14 **PRAYER**

15 WHEREFORE, Plaintiff, individually, and on behalf of aggrieved employees, pray for an
16 award and judgment against Defendants, jointly and severally, as follows:

17 1. For such general, special, and liquidated damages in amounts to be proven at the time of
18 trial;

19 2. For restitution of all monies due to Plaintiff, as well as disgorged profits from defendants’
20 unfair and unlawful business practices;

21 3. For payment of unpaid overtime compensation pursuant to Labor Code §§ 201, 510, 1194,
22 the applicable industrial Welfare Commission Order, and the applicable 8 Code of Regulation sections;

23 4. For damages pursuant to Labor Code § 226;

24 5. For waiting time penalties pursuant to Labor Code §§ 201-203;

25 6. For interest on the unpaid wages at 10% per annum pursuant to California Labor Code §§
26 218.6, 1194, and 2802, California Civil Code §§ 3287 and 3288, and/or any other applicable provision
27 providing for pre-judgment interest;

28 7. For declaratory relief;

8. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code § 2699;

9. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and IWC Wage Order No. 5-2001 and 15-2001 and from engaging in the unlawful business practices complained of herein;

10. For an award of interest, including prejudgment interest, at the legal rate;

11. For an award of reasonable attorneys' fees and costs on the applicable causes of action pursuant to California Labor Code §§ 226, 1194, 2699, and 2802, California Civil Code 1021.5, and any other applicable provisions providing for attorneys' fees and costs;

12. For costs of suit incurred; and

13. For such other and further relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: April 25, 2021

STARPOINT, LC

By:

AIDIN GHAVIMI, ESQ.

JOHN VAFA, ESQ.

ILANA FINE, ESQ.

Attorneys for Plaintiff,

DAETRICE STALLWORTH, individually and on behalf of other aggrieved employees.