

FILED
Superior Court of California
County of Los Angeles

DEC 27 2017

By Sherril R. Carter, Executive Officer/Clerk
Shamya Bolden Deputy

By Fax

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Attorneys for Plaintiff Jane Doe

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL

JANE DOE, an individual,

Plaintiff,

v.

DAVID & CARLTON GEBBIA, individually
and as a marital community; STOCKCROSS
FINANCIAL SERVICES, INC., a
Massachusetts corporation; and DOES 1-100,
inclusive,

Defendants.

CASE NO. **BC 6 8 8 3 3 5**

COMPLAINT FOR DAMAGES FOR:

1. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
2. BATTERY;
3. ASSAULT;
4. CONVERSION;
5. FRAUDULENT INDUCEMENT;
6. NEGLIGENT MISREPRESENTATION;
7. RETALIATION FOR EXERCISING RIGHTS UNDER THE LABOR CODE (CAL. LABOR CODE §98.6);
8. RETALIATION FOR DISCLOSING VIOLATIONS OF LAW (CAL. LABOR CODE §§1101, 1102, 1102.5, 1102.6);
9. WILLFUL MISCLASSIFICATION OF EMPLOYEE AS INDEPENDENT CONTRACTOR (CAL. LABOR CODE 226.8);
10. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194, 1194.2);
11. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE

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§§1182.12, 1194, 1194.2, 1197);

- 12. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);
- 13. FAILURE TO PROVIDE MEAL AND REST BREAKS (CAL. LABOR §§226.7, 512);
- 14. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS LOSSES (CAL. LABOR CODE §2802);
- 15. FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS (CAL. LABOR CODE §§226 ET SEQ.);
- 16. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
- 17. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE §17200 ET SEQ.);
- 18. DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
- 19. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
- 20. RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
- 21. FAILURE TO ACCOMMODATE DISABILITY/FAILURE TO ENGAGE IN AN INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;
- 22. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);
- 23. WRONGFUL TERMINATION VIOLATION OF PUBLIC POLICY LABOR CODE;
- 24. VIOLATION OF THE RALPH CIVIL RIGHTS ACT (CIVIL CODE §51.7);
- 25. VIOLATION OF THE TOM BANE CIVIL RIGHTS ACT (CIVIL CODE §52.1);

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1 26. GENDER VIOLENCE (CIVIL CODE
2 §52.4); AND

3 27. FOR DECLARATORY JUDGMENT

4 [DEMAND FOR JURY TRIAL]

5 COMES NOW PLAINTIFF, JANE DOE, and for causes of action against Defendants
6 and each of them, alleges as follows:

7
8 **JURISDICTION**

9 1. This Court is the proper court, and this action is properly filed in Los Angeles
10 County, because Defendants' obligations and liability arise therein, because Defendants maintain
11 offices and transact business within Los Angeles County, and because the work that is the subject
12 of this action was performed by Plaintiff in Los Angeles County.

13
14 **THE PARTIES**

15 2. Plaintiff, Jane Doe, is and at all times relevant hereto was a Hispanic-American
16 resident of the State of California, County of Los Angeles.

17 3. Defendants employed Plaintiff from October 2011 until her wrongful termination
18 in or about September 2017.

19 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times
20 relevant hereto, Defendants DAVID GEBBIA and CARLTON GEBBIA are and were residents of
21 the State of California, County of Los Angeles.

22 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times
23 relevant hereto, Defendants DAVID GEBBIA and CARLTON GEBBIA are or were husband and
24 wife, a marital community.

25 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
26 relevant hereto, Defendant STOCKCROSS FINANCIAL SERVICES, INC., is and was a
27 Massachusetts corporation with its principal executive office and place of business at [REDACTED]

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1 [REDACTED] in the State of California, County of Los Angeles.
2 Defendant STOCK CROSS FINANCIAL SERVICES, INC. issued pay checks to Plaintiff.

3 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
4 relevant hereto, Plaintiff was intentionally misclassified as an independent contractor, rather than
5 as an employee; and that STOCKCROSS FINANCIAL SERVICES, INC., DAVID GEBBIA, and
6 CARLTON GEBBIA, individually and as a marital community, were Plaintiff's joint employer
7 pursuant to the economic realities test set forth in *S. G. Borello & Sons, Inc. v. Dept. of Industrial*
8 *Relations* (1989) 48 Cal.3d 341 and its progeny.

9 8. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of the Defendants named herein as DOES 1-100, inclusive, are unknown to Plaintiff at
11 this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave
12 to amend this Complaint to insert the true names and capacities of said Defendants when the same
13 become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that
14 each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein, and
15 is therefore liable to Plaintiff as alleged hereinafter.

16 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times
17 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
18 supervisors, coconspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
19 the other Defendants, and each of them, and in doing the things alleged herein, were acting at least
20 in part within the course and scope of said agency, employment, conspiracy, joint employer, alter
21 ego status, and/or joint venture and with the permission and consent of each other Defendant.

22 10. Whenever and wherever reference is made in this Complaint to any act or failure to
23 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
24 the acts and/or failures to act by each Defendant acting individually, jointly and severally.

25
26 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

27 11. Plaintiff is informed and believes, and based thereupon alleges, that there exists
28 such a unity of interest and ownership among DAVID GEBBIA, CARLTON GEBBIA,

1 STOCKCROSS FINANCIAL SERVICES, INC., and DOES 1-100, that the individuality and
2 separateness of defendants have ceased to exist.

3 12. Plaintiff is informed and believes, and based thereon alleges, that despite the
4 formation of purported corporate existence, DAVID GEBBIA, CARLTON GEBBIA, and DOES
5 1-100 are, in reality, one and the same as STOCKCROSS FINANCIAL SERVICES, INC.,
6 including, but not limited to because:

7 a. STOCKCROSS FINANCIAL SERVICES, INC. is completely dominated
8 and controlled by DAVID GEBBIA, CARLTON GEBBIA, and DOES 1-100, who personally
9 committed the frauds and violated the laws as set forth in this complaint, and who have hidden and
10 currently hide behind STOCKCROSS FINANCIAL SERVICES, INC. to perpetrate frauds,
11 circumvent statutes, or accomplish some other wrongful or inequitable purpose.

12 b. DAVID GEBBIA, CARLTON GEBBIA, and DOES 1-100 derive actual
13 and significant monetary benefits by and through STOCKCROSS FINANCIAL SERVICES,
14 INC.'s unlawful conduct, and by using STOCKCROSS FINANCIAL SERVICES, INC. as the
15 funding source for their own personal expenditures.

16 c. Plaintiff is informed and believes that DAVID GEBBIA, CARLTON
17 GEBBIA, STOCKCROSS FINANCIAL SERVICES, INC., and DOES 1-100, while really one
18 and the same, were segregated to appear as though separate and distinct for purposes of
19 perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable
20 purpose.

21 d. Plaintiff is informed and believes, and based thereon alleges, that the
22 business affairs of DAVID GEBBIA, CARLTON GEBBIA, STOCKCROSS FINANCIAL
23 SERVICES, INC., and DOES 1-100 are, and at all times relevant were, so mixed and intermingled
24 that the same cannot reasonably be segregated, and the same are in inextricable confusion.
25 STOCKCROSS FINANCIAL SERVICES, INC. is, and at all times relevant hereto was, used by
26 DAVID GEBBIA, CARLTON GEBBIA, and DOES 1-100 as a mere shell and conduit for the
27 conduct of certain of defendants' affairs, and is, and was, the alter ego of DAVID GEBBIA,
28 CARLTON GEBBIA, and DOES 1-100. The recognition of the separate existence of

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1 STOCKCROSS FINANCIAL SERVICES, INC. would not promote justice, in that it would
2 permit defendants to insulate themselves from liability to Plaintiff for violations of the California
3 Civil Code, Labor Code, Penal Code, Government Code, Business & Professions Code, and other
4 statutory violations. The corporate existence of STOCKCROSS FINANCIAL SERVICES, INC.
5 and DOES 1-100 should be disregarded in equity and for the ends of justice because such
6 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

7 13. Accordingly, STOCKCROSS FINANCIAL SERVICES, INC. constitutes the alter
8 ego of DAVID GEBBIA, CARLTON GEBBIA, and DOES 1-100 and the fiction of their separate
9 existence must be disregarded.

10 14. As a result of the aforementioned facts, Plaintiff is informed and believes, and
11 based thereon alleges that DAVID GEBBIA, CARLTON GEBBIA, STOCKCROSS FINANCIAL
12 SERVICES, INC., and DOES 1-100 were Plaintiff's joint employers by virtue of a joint enterprise
13 and that Plaintiff was an employee of DAVID GEBBIA, CARLTON GEBBIA, STOCKCROSS
14 FINANCIAL SERVICES, INC., and DOES 1-100. Plaintiff performed services for each and
15 every of defendants, and to the mutual benefit of all defendants, and all defendants shared control
16 of Plaintiff as an employee, either directly or indirectly, and the manner in which defendants'
17 business was and is conducted.

18
19 **FACTUAL ALLEGATIONS**

20 15. DAVID GEBBIA, CARLTON GEBBIA, and STOCKCROSS FINANCIAL
21 SERVICES, INC. ("DEFENDANTS") hired Plaintiff as a housekeeper in October 2011. For the
22 ensuing six years, Plaintiff served faithfully not only as housekeeper, but also as a nanny,
23 chauffeur, grocery shopper, assistant, and all-around "go-to" person. For the entire six years,
24 Plaintiff was misclassified as an independent contractor, rather than an employee.

25 16. Over the course of those six years, CARLTON GEBBIA, often under the influence
26 of alcohol, repeatedly physically, verbally, and emotionally abused Plaintiff and thereby caused
27 her physical injuries, extreme emotional distress, and prolonged sleep deprivation, among other
28 things. Then, on August 30, 2017, CARLTON GEBBIA, without provocation and while in a state

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1 of intoxication, physically attacked Plaintiff at the GEBBIAs' [REDACTED] home, causing
2 Plaintiff painful injuries and bruising. Plaintiff complained about the assault and battery and was
3 subsequently given two weeks off, ostensibly to seek and receive medical treatment for the
4 injuries Plaintiff sustained.

5 17. However, on September 9, 2017, DAVID GEBBIA sent a text message to Plaintiff
6 stating that she was "not going to work here anymore."

7 18. Consequently, as of September 9, 2017, Plaintiff's employment was terminated.

8 **Fraudulent Inducement**

9 19. Starting before Plaintiff was hired, DEFENDANTS deceived Plaintiff regarding the
10 duties, wages, hours, terms, and conditions of Plaintiff's employment, including by pretending that
11 Plaintiff's work was not "employment" at all.

12 20. Initially, Plaintiff was led to believe she was applying for a job as a housekeeper.

13 21. In reality, DEFENDANTS intended to use Plaintiff not only as a housekeeper, but
14 also as a nanny, driver, grocery shopper, errand-runner, assistant, go-to person, and cash machine,
15 as well as in other capacities.

16 22. Nothing Plaintiff was told about the position suggested that the work would not be
17 lawfully compensated under the laws of the State of California.

18 23. As it turned out, instead of being paid at the lawful rate for all the hours Plaintiff
19 was assigned to work, as required by the California Labor Code, Plaintiff was paid only what
20 DEFENDANTS thought was "fair."

21 24. Unfortunately, what the GEBBIAs thought was fair bore no relation whatsoever to
22 the applicable laws of the State of California.

23 25. Frequently, Plaintiff was required to work 10 to 12 hours per day, or longer, for
24 which she only paid straight-time, if she was paid at all.

25 26. Plaintiff was never paid overtime or double-time, no matter how many hours she
26 worked in a day or week.

27 27. Plaintiff typically worked four days per week, or more, at the GEBBIA residence in
28 Beverly Hills, California.

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1 28. Plaintiff was never permitted to take meal or rest breaks. Instead, Plaintiff was on
2 duty continuously from the moment she stepped onto the GEBBIAs' property until the time she
3 was allowed to go home at night.

4 29. Plaintiff was even required to use her own money to pay for household expenses.

5 **Misclassification as Independent Contractor**

6 30. In order to justify their unlawful behavior, DAVID GEBBIA, CARLTON
7 GEBBIA, and STOCKCROSS FINANCIAL SERVICES, INC., systematically, intentionally, and
8 wrongfully misclassified Plaintiff as an independent contractor, rather than an employee.

9 31. Plaintiff received her paychecks from STOCKCROSS FINANCIAL SERVICES,
10 INC., even though some of Plaintiff's services were personal services rendered to DAVID and
11 CARLTON GEBBIA and their family.

12 32. However, at all times relevant hereto, DAVID and CARLTON GEBBIA, and not
13 STOCKCROSS FINANCIAL SERVICES, INC., always exercised effective control and always
14 retained the right to control the manner and the means of Plaintiff's work.

15 33. As a practical matter, Plaintiff was always at DAVID and CARLTON GEBBIA's
16 beck and call.

17 34. California law calls such a relationship "employment." Plaintiff was an employee.

18 35. That Plaintiff was an "independent contractor" instead of an employee was false,
19 and DAVID and CARLTON GEBBIA knew it was false at the time the misrepresentations were
20 made.

21 36. Plaintiff's true status was that of an hourly employee covered by Industrial Welfare
22 Commission (IWC) Wage Order No. 15-2001 Regulating Wages, Hours, and Working Conditions
23 in the Household Occupations who was intentionally misclassified as an independent contractor.

24 37. DEFENDANTS intentionally misclassified Plaintiff as an independent contractor,
25 rather than an employee, as part of a systematic and fraudulent effort to evade their obligations as
26 an employer under California law, including their obligation to pay lawful minimum wages,
27 straight-time wages, overtime wages, and double-time wages, among a host of other things.

28

1 38. Consequently, as alleged in Paragraph 7 above, at all times relevant hereto, DAVID
2 GEBBIA, CARLTON GEBBIA, and STOCKCROSS FINANCIAL SERVICES, INC. were, in
3 fact, Plaintiff's joint employers pursuant to the economic realities test set forth in *S. G. Borello &*
4 *Sons, Inc. v. Dept. of Industrial Relations, supra*, and other authorities.

5 39. Because Plaintiff was an employee under the laws of the State of California, her
6 joint employers DAVID GEBBIA, CARLTON GEBBIA, and STOCKCROSS FINANCIAL
7 SERVICES, INC. owed Plaintiff a statutory duty to comply with the applicable requirements of
8 the California Labor Code.

9 40. At all times relevant hereto, applicable requirements of the California Labor Code
10 included paying Plaintiff regular wages for all hours worked; paying at least minimum wages;
11 paying overtime wages for the first 4 hours worked in excess of 8 hours; paying double-time for
12 hours worked in excess of 12 hours in a day; allowing regular meal and rest breaks; indemnifying
13 Plaintiff for expenditures made on Defendants' behalf, including but not limited to grocery bills;
14 providing regular itemized wage statements; and paying on time at least on a regular semi-monthly
15 basis.

16 41. However, from the beginning to the end of Plaintiff's employment, including the
17 four-year period prior to the filing of this action, DAVID GEBBIA, CARLTON GEBBIA, and
18 STOCKCROSS FINANCIAL SERVICES, INC., intentionally violated the foregoing California
19 Labor Code requirements.

20 **Violence in the Workplace**

21 42. As noted, Plaintiff worked for DEFENDANTS from 2011-2017.

22 43. Over that period of time, Plaintiff watched while CARLTON GEBBIA's abuse of
23 alcohol grew steadily more severe.

24 44. CARLTON GEBBIA was also extremely violent, and her violent tendencies were
25 only aggravated by her consumption of alcohol.

26 45. Over the years, CARLTON GEBBIA repeatedly assaulted and battered Plaintiff by
27 hitting and slapping Plaintiff violently.

28 46. Such physical attacks were entirely unprovoked.

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1 47. Whenever CARLTON GEBBIA hit Plaintiff, however, Plaintiff never fought back.
2 because she was afraid of losing her job if she did.

3 48. In addition to the physical attacks, CARLTON GEBBIA verbally and emotionally
4 abused Plaintiff.

5 49. CARLTON GEBBIA's physical, verbal, and emotional attacks took a terrible toll
6 on Plaintiff.

7 50. Over a long period of time, Plaintiff suffered from stress, anxiety, depression, and
8 sleep deprivation, among other things.

9 51. Over the last six years, CARLTON GEBBIA attempted to harm herself and others,
10 including by throwing herself off the second story of the house.

11 52. On countless occasions, Plaintiff left the house with the children in order to protect
12 them, and herself, from their mother.

13 53. At all times relevant hereto, DAVID GEBBIA was aware of the danger CARLTON
14 GEBBIA posed for employees, especially for Plaintiff, but never took effective action to prevent
15 it.

16 54. The GEBBIA household was a truly scary place to work.

17 **Plaintiff's Wrongful Termination**

18 55. On August 30, 2017, Plaintiff texted DAVID GEBBIA to report that CARLTON
19 GEBBIA "broke the TV in the movie room" with a baseball bat and that Plaintiff had hidden it for
20 safety.

21 56. For the sake of the children, Plaintiff implored CARLTON GEBBIA to calm down,
22 but the request only further enraged CARLTON GEBBIA.

23 57. Under the influence of alcohol, CARLTON GEBBIA yelled at Plaintiff to leave her
24 alone, and then she pushed Plaintiff so hard that she fell against the door and sustained painful
25 injuries.

26 58. Plaintiff complained and was temporarily disabled by her injuries.

27 59. Shortly thereafter, DAVID GEBBIA permitted Plaintiff to leave the workplace to
28 receive medical care and treatment.

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