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RUTH HERNANDEZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

RUTH HERNANDEZ,

Plaintiff,

vs.

GRAVITY DEFYER MEDICAL
TECHNOLOGY CORPORATION;
ALEXANDER ELNEKAVEH; and DOES 1 to
25, inclusive,*Defendants.*Case No.: **22STCV37154****COMPLAINT FOR DAMAGES FOR:****1) PRIVATE ATTORNEYS
GENERAL ACT ("PAGA");**

COMES NOW, Plaintiff, RUTH HERNANDEZ (hereafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants GRAVITY DEFYER MEDICAL TECHNOLOGY CORPORATION; ALEXANDER ELNEKAVEH and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant GRAVITY DEFYER MEDICAL TECHNOLOGY CORPORATION is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ALEXANDER ELNEKAVEH is a male resident of the County of Los Angeles, was the owner and managing agent of GRAVITY DEFYER MEDICAL TECHNOLOGY CORPORATION, was personally involved in the day-to-day business operations of the business and thus controlled the wages, hours, and/or working conditions of PLAINTIFF and other similarly situated aggrieved employees. GRAVITY DEFYER MEDICAL TECHNOLOGY CORPORATION, ALEXANDER ELNEKAVEH, and DOES 1 to 25, inclusive, are collectively referred to herein as “GRAVITY DEFYER” or “Defendant(s)”.

5. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for GRAVITY DEFYER at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so

1 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the
2 DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner
3 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
4 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
5 and capacities of these fictitiously named defendants.

6 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis
7 of that information and belief, alleges that at all times herein mentioned, each of the remaining
8 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
9 under the authority of their agency, employment, or representative capacity, with the consent of
10 his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 8. Plaintiff started working for GRAVITY DEFYER on or around July 2, 2014. At
13 all times during her employment with GRAVITY DEFYER, Plaintiff was classified as an
14 hourly, non-exempt employee. Plaintiff's employment with GRAVITY DEFYER ended on or
15 around January 12, 2022, when she was forced to quit her employment. Prior to the covid-19
16 pandemic, Plaintiff's hours were from 6am to 2:30pm, however, since the pandemic, her hours
17 had gotten longer in that she was often made to return to the office on the same day around
18 7pm and worked until 9-10pm (on those days where she wasn't working from home in the
19 evening hours).

20 9. It is Plaintiff's position that GRAVITY DEFYER has violated numerous Labor
21 Code Sections against Plaintiff and other similarly situated aggrieved employees.

22 10. GRAVITY DEFYER has committed the below labor code violations against
23 Plaintiff and other hourly, non-exempt employees. In the case of Huff v. Securitas Sec. Servs.
24 USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for
25 the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider.
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1 After about a year of employment, Huff resigned. Huff then filed suit against Securitas under
2 PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring
3 immediate payment of wages upon termination of employment and weekly payment of wages
4 to temporary employees. The trial court determined Huff was not a temporary employee, and
5 therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for
6 summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the
7 grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue
8 for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that
9 the PAGA statute only allows the PAGA representative to sue for violations that the
10 representative has personally suffered. The PAGA statute states that an “aggrieved employee”
11 is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved
12 employee” is “any person who was employed by the alleged violator and against whom one or
13 more of the alleged violations was committed.” Because at least one of the violations that Huff
14 had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.
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18 11. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves
19 and other employees, it allows for suits broader than the specific violations the named
20 employee experienced. Therefore, even if the employee did not personally experience the
21 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
22 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
23 behalf of all employees, including hourly non-exempt employees who worked for GRAVITY
24 DEFYER at any of their California locations during the PAGA period.
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26 12. GRAVITY DEFYER did not provide Plaintiff and other similarly situated
27 aggrieved employees with the minimum wages to which they were entitled for work performed
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1 “off the clock” and as such did compensate Plaintiff and others for all hours worked, pursuant to
2 California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff would work
3 from home “off the clock” in that she would get phone calls to her personal cell phone regarding
4 work issues and would also effectuate her job duties from home in the evening. Since Plaintiff
5 had her home office set up and was working from home for a while due to the pandemic, she was
6 already equipped to work from work (without reimbursement for office supplies, see below). The
7 company was unequivocally aware of the latter but did not compensate Plaintiff for all hours
8 worked. Furthermore, she would be asked to clock out and go home and then to return back to
9 the office hours later and seemingly “off the clock”, without paying her a split shift premium or
10 compensating her fully for all hours worked. Moreover, there are minimum wage violations due
11 to the fact that Plaintiff and others would have to clock out for meal breaks, but those breaks
12 would at times be interrupted due to work obligations or employees would have to work through
13 them. Moreover, GRAVITY DEFYER had a policy of disproportionately rounding down hours
14 worked to the detriment of employees in that they were not paid for all hours worked, including
15 the minimum wages. As such, GRAVITY DEFYER violated Labor Code § 1194 and 1194.2
16 because it failed to pay Plaintiff and others California’s statutory minimum wage and wages for
17 all hours worked and failed to compensate Plaintiff and other similarly situated aggrieved
18 employees for all hours worked.

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22 13. Since GRAVITY DEFYER failed to pay Plaintiff and others for all hours worked
23 as alleged above, GRAVITY DEFYER also violated Labor Code §510 because it failed to pay
24 Plaintiff and other similarly situated aggrieved employees the correct amount of overtime, even
25 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
26 throughout their employment. Plaintiff’s and others’ actual work hours, including the above
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1 mentioned “off the clock” work entitled them to overtime compensation and to the correct
2 amount of overtime compensation under the law, including all forms of pay that need to be
3 included in the regular rate of pay for purposes of deciphering the correct overtime rate of pay.
4 In addition, any bonus or incentive payments that may have been paid to employees were not
5 factored into the regular rate of pay for purposes of deciphering the correct overtime rate of pay.
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7 14. GRAVITY DEFYER also violated Labor Code § 226.7 and the appropriate
8 Industrial Welfare Commission Wage Order no. 1/7 because it failed to provide Plaintiff and
9 others with 10-minute rest periods for every four hours of work, or majority portion thereof,
10 throughout their employment. GRAVITY DEFYER did not completely relieve Plaintiff and
11 others of all duty during said rest periods. GRAVITY DEFYER did not pay to Plaintiff and
12 others one additional hour of pay at Plaintiff’s regular rate of compensation for each workday
13 that one or more statutory rest periods was not provided. It was not company policy and not part
14 of the company culture for employees such as Plaintiff to take consistent rest breaks. The nature
15 of Plaintiff’s work and the heavy workload as alluded to above did not lend itself to a 10-minute
16 uninterrupted rest break wherein Plaintiff and other similarly situated employees were relieved
17 of all work duties. It was the normal practice and custom of GRAVITY DEFYER not to
18 authorize, permit, and enforce statutory rest periods.
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21 15. GRAVITY DEFYER also violated Labor Code §§ 512 and 226.7 along with
22 Industrial Welfare Commission Wage Order no. 1/7 because it failed to provide Plaintiff and
23 others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
24 throughout their employment. GRAVITY DEFYER did not completely relieve Plaintiff and
25 others of all duty during said meal periods. GRAVITY DEFYER did not pay to Plaintiff and
26 others one additional hour of pay at Plaintiff’s regular rate of compensation for each workday
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1 that one or more statutory meal periods was not provided. Plaintiff and other aggrieved
2 employees would not always receive, timely, uninterrupted meal periods before the 5th hour
3 worked. Additionally, there was no second meal break provided in that the company would force
4 Plaintiff to clock out before the 10th hour to avoid it seeming like she worked past 10 hours
5 without getting a second meal period. As such, and just like for rest breaks, it was company
6 culture and company policy for Plaintiff and others to not always receive a timely thirty-minute
7 uninterrupted meal period wherein they are relieved of all work-related duties.
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9 16. Furthermore, during the relevant time period and due to the above-mentioned
10 violations, GRAVITY DEFYER failed to pay Plaintiff and others all wages due to them within
11 any time period specified by California Labor Code section 204. GRAVITY DEFYER was also
12 in violation of California Labor Code section 226(a), by failing to include pertinent information
13 on the wage statements, including but not limited to, all hours worked (regular and overtime), all
14 applicable hourly rates, gross wages earned, net wages earned, the correct start and end of the
15 pay periods, the correct identifying information for the employee, the correct name and address
16 of the legal employer, business expense reimbursement, and premium pay for the missed meal
17 and rest breaks, among others. As such, GRAVITY DEFYER did not provide Plaintiff and other
18 similarly situated aggrieved employees with complete, accurate itemized wage statements.
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21 17. During the relevant time period, GRAVITY DEFYER also failed to keep accurate
22 and complete payroll records showing the actual hours worked per day and the wages paid to
23 Plaintiff and others pursuant to California Labor Code sections 1174(d).
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25 18. GRAVITY DEFYER also violated Labor Code § 203 because it willfully failed
26 to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon
27 separation of employment, either immediately upon involuntary termination, or within 72 hours
28 of resignation. After Plaintiff's employment with GRAVITY DEFYER ended, GRAVITY

1 DEFYER failed and refused to pay all wages earned and due immediately upon separation. These
2 earned but unpaid wages include minimum wages, overtime, premium pay for missed meal and
3 rest breaks, and business expense reimbursement, among others. GRAVITY DEFYER did not
4 pay Plaintiff a last paycheck because the company argued Plaintiff owed them money due to an
5 issue with social security deductions not being taken from Plaintiff's paycheck. Note that the
6 latter was not Plaintiff's fault and in fact, Plaintiff was the one that brought the issue up to the
7 company. The company did not have a written agreement with Plaintiff regarding subsequent
8 unlawful deductions of her pay due to an error that was not her fault in the least. The latter is a
9 violation of Labor Code section 221 for unlawful deductions. Under California law, a paycheck,
10 and especially a final paycheck, may not be withheld from an employee.

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13 19. Additionally, during the relevant time period, Plaintiff and others incurred
14 necessary, business-related expenses and costs that were not reimbursed by GRAVITY
15 DEFYER. These costs include, but are not limited to, use of personal cell phones for work
16 purposes as well as use of home computers/laptops, desk, and internet for work purposes since
17 Plaintiff and others worked remotely from home for a period of time due to covid-19.
18 Accordingly, GRAVITY DEFYER was in violation of California Labor Code sections 2800 and
19 2802.
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21 **FIRST (AND ONLY) CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Representative Claim for PAGA penalties under California Labor Code sections 203, 204**
24 **and/or 204b, 210, 221, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800,**
2802, 2698, 2699, and the applicable Industrial Welfare Commission Wage Order Nos.
1/7-2001

25 **(Against All Named Defendants and all DOE Defendants)**

26 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.
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1 21. Pursuant to law, Plaintiff provided the required written notice to the California
2 Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of
3 the California Labor Code that Defendants and DOE defendants have violated and continue to
4 violate.

5 22. Pursuant to California Labor code section 2699.3, no response was received from
6 the LWDA within 65 days of the postmark date of the above-alleged letter.

7 23. Plaintiff therefore has exhausted all administrative remedies required of her under
8 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
9 of action and pursue penalties in a representative action for Defendants' violations of the Labor
10 Code.

11 24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
12 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
13 departments, divisions, commissions, boards, agencies, or employees for violation of the code
14 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
15 on behalf of himself or herself and other current or former employees pursuant to the procedures
16 specified in California Labor Code section 2699.3.

17 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
18 alleged violator and had one or more of the alleged violations committed against her, and therefore
19 is properly suited to represent the interests of all current and former non-exempt or hourly paid
20 employees who worked for Defendants at any of their California locations during the relevant
21 PAGA time period.

22 26. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
23 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
24 of numerous provisions of the California Labor Code as alleged in this Complaint.

25 27. Plaintiff therefore has exhausted all administrative remedies required of her under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
27 of action and pursue penalties in a representative action for Defendants' violations of the Labor
28 Code.

1 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
2 Defendants for violating the Labor Code.

3 29. California Labor Code section 558 establishes a civil penalty as follows: Any
4 employer or other person action on behalf of an employer who violates, or causes to be violated,
5 a section of this chapter or any provision regulating hours and days of work in any order of the
6 Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage
7 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each
8 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each
9 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee was underpaid ...;

11 30. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted
12 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
13 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

14 31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
15 for the following:

16 Violations of California Labor Code sections 203, 204 and/or 204b, 210, 221, 226, 226.3,
17 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 2800, 2802, 2698, 2699 via 2698 and
18 2699, and any other Labor Codes and Wage Orders (including no. 1/7) violated on the
19 facts alleged in this Complaint.

20 32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s
21 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
22 Employees as alleged herein in an amount to be shown according to proof at trial and within the
23 jurisdictional limits of this Court.

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:

- 26 1. For the imposition of civil penalties;
- 27 2. For maximum civil penalties available under Labor Code Section 2699 against
28 Defendants in a manner and amount authorized by that statute, as described more

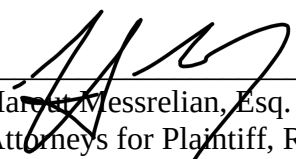
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- particularly in the Complaint and representative PAGA claims;
- 3. For all costs and disbursements incurred in this suit;
 - 4. Reasonable attorney’s fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
 - 5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: November 27, 2022

By 
Harold Messrelian, Esq.
Attorneys for Plaintiff, RUTH HERNANDEZ