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by Superior Court of California, County of San Mateo
ON
By /s/ Jennifer Torres
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

RONAL ROMERO,

Plaintiff,

vs.

GRAVITASSE, INC.; MATTHEW LEVIN;
MELANIE ROTH; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: 23-CIV-00917

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) FAILURE TO GIVE REST BREAKS;**
- 8) FAILURE TO GIVE MEAL BREAKS;**
- 9) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 10) UNLAWFUL TIP COLLECTION;**
- 11) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 12) DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF FEHA;**
- 13) FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF FEHA;**
- 14) FAILURE TO ENGAGE IN**

) INTERACTIVE PROCESS TO
) DETERMINE REASONABLE
) ACCOMMODATION IN
) VIOLATION OF FEHA;
) 15) RETALIATION IN VIOLATION OF
) FEHA;
) 16) FAILURE TO PREVENT
) DISCRIMINATION AND
) RETALIATION IN VIOLATION OF
) FEHA;
) 17) WRONGFUL TERMINATION IN
) VIOLATION OF PUBLIC POLICY;
) 18) VIOLATION OF CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE SECTION 17200.
)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, RONAL ROMERO (hereinafter "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 San Mateo in this judicial district because Defendants GRAVITASSE, INC., MATTHEW LEVIN, MELANIE ROTH, and DOES 1 to 25, inclusive, do business in the County of San Mateo and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Mateo is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant GRAVITASSE, INC. is and was a California corporation, doing business in San Mateo County, California, and which employed Plaintiff.

4. Defendant MATTHEW LEVIN is a citizen of California based on Plaintiff's information and belief.

5. Defendant MELANIE ROTH is a citizen of California based on Plaintiff's information and belief.

6. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who

violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

7. Plaintiff is informed and believes and thereon alleges that MATTHEW LEVIN is a natural person and an owner, director, officer, and/or managing agent of Defendant GRAVITASSE, INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff. Therefore, he is liable to Plaintiff for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802 and the Wage Order (no. 5) pursuant to Labor Code section 558.1.

8. Plaintiff is informed and believes and thereon alleges that MELANIE ROTH is a natural person and an owner, director, officer, and/or managing agent of Defendant GRAVITASSE, INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff. Therefore, he is liable to Plaintiff for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802 and the Wage Order (no. 5) pursuant to Labor Code section 558.1. GRAVITASSE, INC., MATTHEW LEVIN, and MELANIE ROTH are hereinafter collectively referred to as “Defendants” or “GRAVITASSE”.

9. The “aggrieved employees” are all current and former hourly non-exempt or hourly paid employees who worked for GRAVITASSE at any and all 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”).

10. 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 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
2 for the conduct alleged herein. Upon discovering the true names and capacities of these
3 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
4 capacities of these fictitiously named defendants.

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

10 **GENERAL ALLEGATIONS**

11 12. Plaintiff started working for GRAVITASSE, INC. at the Refuge San Mateo restaurant,
12 located at 66 31st Street, San Mateo, CA 94403, in or around November 2021 as dishwasher.
13 Plaintiff was wrongfully terminated from his employment in or around June/July 2022. Plaintiff
14 was classified as an hourly, non-exempt employee and his latest rate of pay was \$18.00 per hour.
15 Plaintiff and others were compensated on a bi-weekly basis.

16 13. GRAVITASSE has committed numerous labor code violations against Plaintiff and other
17 hourly, non-exempt employees who worked for GRAVITASSE at any of their California
18 locations during the relevant PAGA period.

19 14. GRAVITASSE did not provide Plaintiff and other similarly situated aggrieved
20 employees with the minimum wages to which they were entitled for all work performed and did
21 not compensate him and others for all hours worked pursuant to California Labor Code sections
22 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
23 worked “off the clock”. This is so because GRAVITASSE had a policy and practice of rounding
24 down hours worked and “time shaving”, which led to Plaintiff and others not being paid for all
25 hours worked, which would include the minimum wage. Moreover, to the extent employees such
26 as Plaintiff and others worked through their meal periods and those meal periods were
27 interrupted, they were not compensated for that time, which would be akin to a minimum wage
28 violation. Furthermore, on days that Plaintiff worked over 6 hours, GRAVITASSE would deduct
30 minutes for a meal period, even though Plaintiff did not in fact take a meal break.

1 15. Additionally, GRAVITASSE violated Labor Code Section 351 and 353 by taking some
2 of the tips meant for employees and also deducting the tips from Plaintiff's and others' earned
3 wages. GRAVITASSE also deducted the credit card fee from Plaintiff's and others' tips and did
4 not timely provide the credit card and even cash tips to Plaintiff and other similarly situated
5 aggrieved employees. As such, Plaintiff and the other similarly situated employees were not
6 given accurate tips to which they were entitled.

7 16. Due to the above "off the clock" violations and as a matter of company policy,
8 GRAVITASSE violated Labor Code §510 because it failed to pay Plaintiff and other similarly
9 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
10 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others'
11 actual work hours, which included the "off the clock" work as described above, entitled them to
12 overtime, however, it was not company policy to keep accurate track of all hours worked and to
13 pay employees all due overtime. In addition, GRAVITASSE did not include bonuses and/or
14 incentive payments in calculating employees' true regular rate of pay for purposes of deciphering
15 their correct overtime rate of pay.

16 17. GRAVITASSE violated Labor Code § 226.7 along with Industrial Welfare Commission
17 Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved
18 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
19 throughout their employment. GRAVITASSE did not completely relieve Plaintiff of all duty
20 during said rest periods. GRAVITASSE did not pay to Plaintiff one additional hour of pay at
21 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
22 was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was
23 not part of GRAVITASSE's culture for employees such as Plaintiff and others to take at least
24 one 10-minute rest break every day wherein they are relieved of all work duties. The latter was
25 due to understaffing of employees. As such, Plaintiff and others were too busy to be able to take
26 rest breaks. As such, rest breaks were not enforced and not a policy or practice of the restaurant.

27 18. GRAVITASSE also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
28 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours

1 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
2 GRAVITASSE did not completely relieve Plaintiff of all duties during said meal periods.
3 GRAVITASSE did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
4 compensation for each workday that one or more statutory meal periods was not provided. If
5 GRAVITASSE had Plaintiff sign a meal period waiver, it would not be valid and enforceable
6 since Plaintiff and others generally worked more than a 6-hour shift. If GRAVITASSE had
7 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through his
8 meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job as a
9 dishwasher does not prevent him from taking a meal period. As such, Plaintiff and others never
10 received statutory, timely meal periods during their employment. In other words, there was
11 rarely an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was
12 taken before the 5th hour worked. As was the case with rest periods, meal breaks were
13 definitively not part of the GRAVITASSE's culture, especially in a fast-paced restaurant
14 environment. The meal periods were not authorized and were not enforced. Furthermore, even
15 if GRAVITASSE did in fact provide meal period penalties to Plaintiff and others for late, short,
16 interrupted, or no meal periods, that does not absolve GRAVITASSE of PAGA penalties. In
17 *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, the Court stated that
18 "section 226.7 does not give employers a lawful choice between providing either meal and rest
19 breaks or an additional hour of pay" (emphasis in original). Thus, the extra hour of pay does not
20 excuse the violation; the employer has still committed a violation even if the remedy for the
21 violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL
1110302 at *4).

22 19. Furthermore, during the relevant time period and due to the above-mentioned labor code
23 violations, GRAVITASSE failed to pay Plaintiff and other similarly situated aggrieved
24 employees all wages due to them within any time period specified by California Labor Code
25 section 204, including the minimum wages and overtime as described above as well as meal/rest
26 break premiums. GRAVITASSE was also in violation of California Labor Code section 226(a)
27 by not providing access to paystubs and failing to include pertinent information on the wage
28 statements, including but not limited to, all hours worked, tips earned, gross wages earned, net

1 wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name
2 and address of the employer, the correct beginning and end of the pay period, all applicable
3 hourly rates, and all identifying employee information, among other items. As such,
4 GRAVITASSE did not provide Plaintiff and other similarly situated aggrieved employees with
5 complete, accurate itemized wage statements.

6 20. GRAVITASSE violated Labor Code § 203 because it willfully failed to pay Plaintiff and
7 other similarly situated aggrieved employees earned and due wages upon separation of
8 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
9 These earned but unpaid wages include compensation for all hours worked including minimum
10 wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

11 21. During the relevant time period, GRAVITASSE also failed to keep accurate and
12 complete payroll records showing the actual hours worked per day (including the time for meal
13 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
14 Labor Code sections 1174(d).

15 22. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
16 business-related expenses and costs that were not reimbursed by GRAVITASSE. These costs
17 include, but are not limited to, use of personal cell phone for work purposes. Management,
18 including Javier, would call Plaintiff on his personal cell phone to discuss his work shifts and
19 work related issues. Accordingly, GRAVITASSE was in violation of California Labor Code
20 sections 2800 and 2802.

21 23. In addition, Plaintiff was terminated on or around June 2022, because management “was
22 not happy with his work”. In fact, GRAVITASSE terminated Plaintiff due to his physical
23 disabilities. Plaintiff had become very ill and was off work for about six days. Plaintiff provided
24 the doctor’s note to manager Luciano. Not surprisingly, Plaintiff was terminated after presenting
25 the doctor’s note and after missing work due to health issues. The company failed to engage in
26 the interactive process, failed to provide reasonable accommodations for Plaintiff, and retaliated
27 against Plaintiff due to his physical disabilities and his need to take off time from work (through
28 sick leave or other medical leave). In addition, it is important to note that GRAVITASSE

1 unequivocally knew about Plaintiff's physical disabilities, including the fact that he received
2 dialysis as part of his treatments, and terminated him after his physical disabilities caused him to
3 miss work.

4 24. Plaintiff has exhausted his administrative remedies. Prior to the filing of this lawsuit,
5 Plaintiff filed a complaint with the Department of Fair Employment and Housing ("DFEH"),
6 alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

9 **(California Industrial Welfare Commission Order 5-2001, California Code of
10 Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 25. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
13 alleged herein.

14 26. At all times relevant herein, Defendants were required to compensate their employees for
15 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
16 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
17 11050.

18 27. For the three (3) years preceding filing of this action, Defendants failed to compensate
19 Plaintiff for all hours worked.

20 28. Under the aforementioned wage order and regulations, Plaintiff is to recover
21 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
22 the filing of this Complaint.

23 29. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
24 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
25 this Court.

26 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
27 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
28 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
attorney's fees and costs of suit.

1 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
3 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(California Labor Code Sections 1194, 1194.2, 1197)**

7 **(Plaintiff against all named defendants and all DOE defendants)**

8 32. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
9 fully alleged herein.

10 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
11 to suffer or permit a California employee to work without paying wages at the minimum wage
12 rate for all hours worked as required by the applicable Industrial Welfare Commission
13 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
14 8, Section 11050, subdivision 4.

15 34. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours
16 worked" included "the time during which an employee is subject to the control of an employer,
17 and includes all the time the employee is suffered or permitted to work, whether or not required
18 to do so..."

19 35. During his employment, Plaintiff was regularly required as a matter of uniform policy
20 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
21 less than the minimum wage rate by Defendants for hours worked in violation of California
22 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
23 order(s).

24 36. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
25 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
26 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
27 to believe that their acts or omissions were not contrary to California law.

28 37. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate

1 by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate
2 and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid
3 minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also
4 entitled to attorney's fees, costs and interests according to proof.

5 38. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

10 **(California Industrial Welfare Commission Order 5-2001, California Code of
11 Regulations Title 8 Section 11050; California Labor Code Section 510)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 39. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
14 fully alleged herein.

15 40. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
16 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
17 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
18 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
19 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
20 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

21 41. Plaintiff was a non-exempt employee entitled to the protections of the California
22 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
23 Section 11050.

24 42. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in
25 a single workweek on numerous occasions.

26 43. Plaintiff was entitled to the above overtime premiums.

27 44. Defendants did not pay Plaintiff premium wages of at least one and one-half times
28 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

45. Defendants did not pay Plaintiff premium wages of at least one and one-half times

1 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

2 46. Plaintiff worked at least one pay period in which he was not properly paid overtime
3 within the three (3) years prior to the initiation of this lawsuit.

4 47. Defendants know or should know the actual dates of overtime worked, the amount of
5 overtime worked, and the amount of unpaid overtime due.

6 48. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
7 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
8 Court.

9 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
10 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
11 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
12 reasonable attorney's fees and costs of suit.

13 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

18 **(California Labor Code Section 226)**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 51. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
21 fully alleged herein.

22 52. Pursuant to California Labor Code Section 226, every employer must furnish each
23 employee an itemized statement of wages and deductions at the time of payment of wages.

24 53. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
25 accurately reflected all information required by Labor Code Section 226, including but not
26 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
27 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
28 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed to

1 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
2 California Labor Code Section 226(a).

3 54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
4 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
5 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
6 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
7 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
8 the 3-year period immediately preceding the date this lawsuit was filed.

9 55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained
10 damages, including loss of earnings, in an amount to be established at trial. As a further direct
11 and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to
12 recover penalties, in an amount to be established at trial, as well as costs and attorney's fees
13 pursuant to statute.

14 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

19 **(California Labor Code Sections 201, 203)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 57. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
22 fully alleged herein.

23 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an
24 employee must immediately pay for all compensation due and owing.

25 59. Pursuant to California Labor Code Section 202, when an employee resigns, the employer
26 must pay all compensation due and owing within 72 hours of resignation, or on the employee's
27 last day of work, if the employee gives more than 72 hours notice of resignation.

28 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
without abatement or reduction, any wages of an employee whose employment ends, the wages

1 of the employee shall continue as a penalty from the due date at the same rate until paid or until
2 an action is commenced; however, the wages shall not continue for more than 30 days for failure
3 to pay an employee owed wages.

4 61. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
5 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
6 wages as required by Labor Code Section 203.

7 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.
9 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
10 preceding the filing of this lawsuit.

11 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
12 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
13 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

14 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

19 **(California Labor Code Section 204)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 65. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
22 alleged herein.

23 66. California Labor Code Section 204 establishes the fundamental right of all employees
24 in the State of California to be paid wages in a timely fashion for their work.

25 67. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full
26 amount of all owed wages when due as required by California Labor Code Section 204.

27 68. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed,
28

believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

69. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent he was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

71. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

1 d. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any rest period mandated by an applicable order of the
3 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
4 a rest period in accordance with an applicable order of the Industrial Welfare
5 Commission, the employer shall pay the employee one (1) additional hour of pay at
6 employee's regular rate of compensation for each work day that the rest period is not
7 provided.

8 73. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
9 break after every four (4) hours of work or major fraction thereof, as required by California law.

10 74. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
11 regulations, and wage orders alleged in this cause of action along with any allowable
12 interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff
13 prays for the foregoing moneys calculated from 3 years immediately preceding the filing
14 of this lawsuit.

15 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
16 fees as well as interest under Labor Code section 218.6.

17 76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
19 trial.

20 **EIGHTH CAUSE OF ACTION**

21 **FAILURE TO GIVE MEAL BREAKS**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 77. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
24 fully alleged herein.

25 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
28 uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require

1 any employee to work during any meal period mandated by an applicable order of
2 the Industrial Welfare Commission, and (b) if any employer fails to provide an
3 employee a meal period in accordance with an applicable order of the Industrial
4 Welfare Commission, the employer shall pay the employee one (1) additional hour
5 of pay at the employee's regular rate of compensation for each workday that the meal
6 period is not provided;

- 7 c. California Industrial Welfare Commission Order No. 5 section 11(A), as codified
8 under Title 8 of the California Code of Regulations Section 11050, which states that
9 an employer may not employ an employee for a work period of more than five (5)
10 hours without providing the employee with a meal period of not less than 30 minutes,
11 except that when a work period of not more than six (6) hours will complete the day's
12 work the meal period may be waived by mutual consent of employer and employee.
13 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
14 codified under Title 8 of the California Code of Regulations Section 11050, which
15 requires an employer to maintain records documenting its employees' meal periods;
16 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
17 codified under California Code of Regulations Section 11050, which penalizes the
18 employer \$50.00 for each initial violation, per employee, of any provision of the
19 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
20 f. California Labor Code section 1171 and 1173, which have given the California Labor
21 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
22 enforceable law.

23 79. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
24 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
25 take a second relieved meal break after ten (10) hours of work, as required by California law.
26 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
27 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
28 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.

1 California Labor Code section 226.7 provides that employers may not require their employees
2 to work through their meal periods. California Labor Code section 226.7 and California Code of
3 Regulations section 11050 requires that if the employer fails to provide the employee with an
4 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
5 work day that the meal period is not given.

6 80. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
7 regulations, and wage orders alleged in this cause of action along with any allowable interest,
8 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
9 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

10 81. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
11 fees as well as interest under Labor Code section 218.6.

12 82. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
14 trial.

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

17 **(Plaintiff against all named Defendants and all DOE defendants)**

18 83. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
19 alleged herein.

20 84. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties."

23 85. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
24 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
25 completing his job duties, which were not reimbursed by Defendants. These costs include, but
26 are not limited to, having to purchase uniforms for the job. Plaintiff is entitled to reimbursement
27 for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code
28 section 2802.

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1 **TENTH CAUSE OF ACTION**

2 **UNLAWFUL TIP COLLECTION**

3 **(Lab. Code §§ 351 and 353)**

4 **(Plaintiffs against all named Defendants and DOE Defendants)**

5 86. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
6 alleged herein.

7 87. During all times relevant herein, Defendants unlawfully collected tips meant for
8 employees and also deducting the tips from Plaintiffs' and others' earned wages. GRAVITASSE
9 also deducted the credit card fee from Plaintiffs' and others' tips and did not timely provide the
10 credit card and even cash tips to Plaintiffs and other similarly situated aggrieved employees.

11 88. Labor Code section 351 makes it illegal for an employer to collect tips paid or left for the
12 employee and mandates that such tips are the employees' property.

13 89. Labor Code section 353 requires every employer to keep accurate records of all
14 gratuities received, whether received directly from the employee or indirectly by means of
15 deductions from the wages of the employee or otherwise.

16 90. By Defendants unlawfully collecting tips from Plaintiffs, Defendants violated
17 California Labor Code Section 351 and 353. Therefore, Plaintiffs demand return of all tips
18 unlawfully collected from them within three years of the filing of this complaint.

19 **ELEVENTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
22 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174,**
23 **1174.5, 1194, 1197, 1198, 2802)**

24 **(Plaintiff against all named defendants and all DOE defendants)**

25 91. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
26 alleged herein.

27 92. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
28 Defendants of the specific violations of the California Labor Code that Defendants and DOE
defendants have violated and continue to violate.

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

3 94. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

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

13 96. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
14 violator and had one or more of the alleged violations committed against him, and therefore is
15 properly suited to represent the interests of other current and former hourly, non-exempt
16 employees who worked for GRAVITASSE, INC. at any of their California locations during the
17 relevant PAGA Period.

18 97. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties
19 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
20 numerous provisions of the California Labor Code as alleged in this Complaint.

21 98. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 99. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
26 for violating the Labor Code.

27 100. California Labor Code section 558 establishes a civil penalty as follows: Any
28 employer or other person action on behalf of an employer who violates, or causes to be violated,
a section of this chapter or any provision regulating hours and days of work in any order of the

1 Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage
2 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for
3 each underpaid employee for each pay period for which the employee was underpaid ...; (2) for
4 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
5 period for which the employee was underpaid ...;

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

10 102. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted
11 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
12 the following:

13 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
14 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698
15 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Orders (No.
16 5) violated based on the facts alleged in this Complaint.

17 103. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s
18 fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
19 employees as alleged herein in an amount to be shown according to proof at trial and within the
20 jurisdictional limits of this Court.

21 **TWELFTH CAUSE OF ACTION**

22 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**

23 **IN VIOLATION OF FEHA**

24 **(Plaintiff against GRAVITASSE, INC. and all DOE Defendants)**

25 104. Plaintiff incorporates by reference each and every paragraph of this Complaint as
26 if fully alleged herein.

27 105. Defendants and DOES 1 to 25, inclusive, are covered employers under
28 California’s Fair Employment and Housing Act.

106. California Government Code section 12926(m) has established a “broad

1 definition” of physical disability: disability protections under the Fair Employment and Housing
2 Act (“FEHA”) even extend to “perceived” physical disabilities. Id. Under the law of this state,
3 “working” is a major life activity. See section 12926.1(c).

4 107. Plaintiff’s physical disability (illness/kidney disease) which was debilitating, and
5 which limited a major life activity, qualifies as a disability under FEHA, and Plaintiff was
6 entitled to its protection.

7 108. Defendants knew of Plaintiff’s disability and violated California Government
8 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

9 109. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.

14 110. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
15 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
16 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
17 their workers’ right to work in an environment in which personnel decisions and company
18 policies are made without regard to physical disability, so as to justify the imposition of punitive
19 damages to punish and set an example of said Defendants.

20 111. As a proximate result of the foregoing conduct, which violated the provisions of
21 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
22 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

23 **THIRTEENTH CAUSE OF ACTION**

24 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF** 25 **FEHA**

26 **(Plaintiff against GRAVITASSE, INC. and all DOE Defendants)**

27 112. Plaintiff incorporates by reference each and every paragraph of this Complaint as
28 if fully alleged herein

113. California Government Code section 12940(p) provides that it is unlawful for an

1 employer to fail to make reasonable accommodation for the known physical disability of an
2 employee.

3 114. Defendants failed to make reasonable accommodation of Plaintiff's physical
4 disability of which Defendants were unequivocally aware.

5 115. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
7 loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at trial.

10 116. The foregoing conduct engaged in by Defendants and each of their directors,
11 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
12 ratified, and carried on with a conscious and willful disregard of their workers' right to receive
13 reasonable accommodations, so as to justify the imposition of punitive damages to punish and
14 set an example of said Defendants.

15 117. As a proximate result of the foregoing conduct, which violated the provisions of
16 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
17 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

18 **FOURTEENTH CAUSE OF ACTION**

19 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

20 **(Plaintiff against GRAVITASSE, INC. and all DOE Defendants)**

21 118. Plaintiff incorporates by reference each and every paragraph of this Complaint as
22 if fully alleged herein.

23 119. California Government Code section 12940(n) provides that it is unlawful for an
24 employer to fail to engage in a timely, good faith, interactive process with an employee to
25 determine effective accommodations for that employee's physical disability.

26 120. Defendants failed to engage in a timely, good faith, interactive process with
27 Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical
28 disability.

121. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 122. The foregoing conduct engaged in by Defendants and each of their directors,
6 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
7 ratified, and carried on with a conscious and willful disregard of their workers' right to engage
8 in the interactive process and receive reasonable accommodations, so as to justify the imposition
9 of punitive damages to punish and set an example of said Defendants.

10 123. As a proximate result of the foregoing conduct, which violated the provisions of
11 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
12 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

13 **FIFTEENTH CAUSE OF ACTION**

14 **RETALIATION IN VIOLATION OF FEHA**

15 **(Plaintiff against GRAVITASSE, INC. and all DOE Defendants)**

16 124. Plaintiff incorporates by reference each and every paragraph of this Complaint as
17 if fully alleged herein.

18 125. At all times herein mentioned, Government Code section 12940 et. seq. was in
19 full force and effect and was binding upon Defendants and each of them. Said statute imposes
20 certain duties upon Defendants concerning discrimination and retaliation against persons, such
21 as Plaintiff, on the basis of physical disability. Said statutes were intended to prevent the type of
22 injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the
23 class of persons intended to be protected by said statutes. As alleged above, Plaintiff reported his
24 physical disability (illness/kidney disease) to management and was retaliated against and was
25 terminated from his employment as a result of his physical disability.

26 126. As a direct and proximate result of Defendants' conduct, Plaintiff has been
27 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things.
28 As a result, Plaintiff has suffered such damages in an amount according to proof.

127. As a further direct and proximate result of the conduct of Defendants, and each

1 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
2 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
3 such damages in an amount according to proof.

4 128. In committing the foregoing acts, Defendants have been guilty of oppression,
5 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
6 punitive damages in a sum appropriate to punish and make an example out of the foregoing
7 Defendants.

8 129. The acts of oppression, fraud, and/or malice, were engaged in by employees of
9 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
10 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
11 wrongful conduct for which an award of punitive damages is sought, and/or was personally
12 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
13 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
14 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
15 to punitive and exemplary damages against each of the Defendants in accordance with California
16 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

17 130. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
18 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
19 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
21 award of attorneys' fees and costs.

22 **SIXTEENTH CAUSE OF ACTION**

23 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION** 24 **OF FEHA**

25 **(Plaintiff against GRAVITASSE, INC. and all DOE Defendants)**

26 131. Plaintiff incorporates by reference each and every paragraph of this Complaint as
27 if fully alleged herein.

28 132. At all times herein mentioned, FEHA, California Government Code section
12940(k), was in full force and effect and was binding on Defendants. This statute states that it

1 is an unlawful employment practice in California for an employer to “fail to take all reasonable
2 steps necessary to prevent discrimination and harassment from occurring.”

3 133. During the course of Plaintiff’s employment, Defendants failed to prevent their
4 employees, including management, from engaging in intentional actions that resulted in Plaintiff
5 being treated less favorably and eventually being terminated because of Plaintiff’s protected
6 status (i.e. his disability). During the course of Plaintiff’s employment, Defendants failed to
7 prevent their employees from engaging in unjustified employment practices against employees
8 in such protected classes. During the course of Plaintiff’s employment, Defendants failed to
9 prevent a pattern and practice by its employees of intentional discrimination and retaliation on
10 the basis of disability, and/or other protected status and/or protected activity.

11 134. Plaintiff believes and, on that basis, alleges that his physical disability, and other
12 protected status and/or protected activity in informing his employer about his physical disability
13 was a substantial motivating factor in Defendants’ employees’ discriminating against him and
14 retaliating against him by terminating his employment.

15 135. As a direct and proximate result of the aforementioned acts and omissions of
16 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
17 loss of income (past and future), loss of employment benefits (past and future), general and
18 compensatory damages (past and future), mental pain and anguish and emotional distress (past
19 and future), and will continue to suffer in the future, in an amount to be proved at trial.

20 136. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
21 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
22 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
23 their workers’ right to work in an environment in which personnel decisions and company
24 policies are made without regard to physical disability, so as to justify the imposition of punitive
25 damages to punish and set an example of said Defendants.

26 137. As a proximate result of the foregoing conduct, which violated the provisions of
27 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
28 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

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1 **SEVENTEENTH CAUSE OF ACTION**

2 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

3 **(Plaintiff against GRAVITASSE, INC. and all DOE defendants)**

4 138. Plaintiff incorporates by reference each and every paragraph of this Complaint
5 as if fully alleged herein.

6 139. At all times during his employment with Defendants, Plaintiff performed his
7 duties with the utmost diligence and competence.

8 140. Plaintiff is informed and believes and thereon alleges that Defendants' decision
9 to discriminate and retaliate against him and terminate his employment, as alleged herein, was
10 motivated by Plaintiff's disability and Plaintiff having to miss work due to his disability.

11 141. Plaintiff's employment was wrongfully terminated in or around June 2022 in
12 violation of the fundamental public policy of the State of California with respect to
13 discriminating and retaliating against an employee on account of his physical disability.

14 142. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
15 activities.

16 143. Said conduct violated statutory and constitutional expressions of public policy
17 including, but not limited to, the FEHA, California Labor Code, and the California Constitution,
18 Article 1 section 8.

19 144. As set forth above, said actions by Defendants were wrongful and in violation of
20 the fundamental principles of the public policy of the State of California as reflected in its laws,
21 objectives and policies. Said statutes and constitutional expressions of public policy include,
22 but are not limited to, the FEHA, California Labor Code, and the California Constitution, Article
23 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests
24 of the employers and employees whom they govern or protect.

25 145. As a direct and proximate result of the aforementioned acts and omissions of
26 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
27 loss of income (past and future), loss of employment benefits (past and future), general and
28

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 146. The foregoing conduct engaged in by Defendants and each of their directors,
4 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
5 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
6 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
7 and set an example of said Defendants.

8 **EIGHTEENTH CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

10 **(California Business and Professions Code Section 17200)**

11 **(Plaintiff against all named Defendants and all DOE defendants)**

12 147. Plaintiff incorporates by reference each and every paragraph of this Complaint
13 as if fully alleged herein.

14 148. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
15 constitute unfair and unlawful business practices under California Business and Professions
16 Code Section 17200, et seq.

17 149. Defendants' violations of the FEHA, California labor laws and the Labor Code
18 constitutes a business practice because it was done repeatedly over a significant period of time
19 in a systematic manner that was detrimental to Plaintiff.

20 150. For the four years preceding the filing of this action, Plaintiff has suffered
21 damages and request damages and/or restitution of all monies and profits to be disgorged from
22 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
23 this Court.

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

- 26 1. For compensatory damages including lost past and future wages, regular wages,
27 overtime, and all other sums of money, including employment benefits, together
28 with interest on said amounts, and any other economic injury to Plaintiff, according to

- 1 proof;
- 2 2. For general damages according to proof;
- 3 3. For special and consequential damages to the extent allowed by law;
- 4 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
- 5 at trial;
- 6 5. For an award of punitive damages against Defendant GRAVITASSE, INC. according
- 7 to proof;
- 8 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
- 9 subject to proof at trial;
- 10 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 11 proof at trial;
- 12 8. For restitution and disgorgement for all unfair business practices by Defendant
- 13 GRAVITASSE, INC. against Plaintiff in an amount subject to proof at trial;
- 14 9. For an order enjoining Defendant GRAVITASSE, INC. from further unfair and unlawful
- 15 business practices in violation of Business and Professions Code Sections 17200, et seq.;
- 16 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 18 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 19 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 20 12. For maximum civil penalties available under the Labor Code and applicable Wage
- 21 Order against Defendants as described more particularly in the Complaint and
- 22 representative PAGA claim;
- 23 13. For all remedies available to Plaintiff under the applicable Wage Order and the
- 24 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 25 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 26 to the extent permitted by law;
- 27 14. For the imposition of civil penalties and/or statutory penalties;
- 28 15. For all interest as allowed by law;
16. For all costs and disbursements incurred in this suit;

1 17. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to the FEHA, the California Labor Code and/or other applicable laws; and
3 18. For such other and further relief as this Court may deem proper.

4 DATED: February 28, 2023

MESSRELIAN LAW INC.

6 By Maralle Messrelian
7 Harout Messrelian, Esq.
8 Maralle Messrelian, Esq., Of Counsel
9 Attorneys for Plaintiff Ronal Romero

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

12 DATED: February 28, 2023

MESSRELIAN LAW INC.

14 By Maralle Messrelian
15 Harout Messrelian, Esq.
16 Maralle Messrelian, Esq., Of Counsel
17 Attorneys for Plaintiff Ronal Romero
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