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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

OSCAR BENITEZ, and LAN LE,
as individuals and on behalf of all others
similarly situated,

Plaintiffs,

v.

MEDTRONIC, INC., a Minnesota
Corporation; MEDTRONIC USA INC., a
Minnesota Corporation; COVIDIEN, L.P.,
a Delaware Limited Partnership; and
DOES 1-50, inclusive,

Defendants.

Case No.: 30-2019-01069185-CU-OE-CXC
Consolidated with: 30-2019-01106385-CU-
OE-CXC; 30-2020-01140338-CU-OE-CXC;
30-2020-01144725-CU-OE-CXC; 30-2020-
01159995-CU-OE-CXC

Assigned for All Purposes To:
Hon. Peter Wilson, CX102

**FIRST AMENDED CONSOLIDATED
CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Violation of California Labor Code §§ 510
and 1198 (Unpaid Overtime);
2. Violation of California Labor Code §§

- 226.7, 512, 1198, IWC Wage Order (Failure to Provide Meal Periods and Unpaid Meal Period Premiums);
3. Violation of California Labor Code § 226.7, 1198, IWC Wage Order (Failure to Authorize and Permit Rest Periods and Unpaid Rest Period Premiums);
 4. Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
 5. Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
 6. Violation of California Labor Code § 226(a) and IWC Wage Orders (Failure to Provide Accurate Itemized Wage Statements);
 7. Violation of Labor Code §§2800 and 2802 (Unreimbursed Business Expenses)
 8. Violation of California Business and Professions Code § 17200, *et seq.*
 9. Civil Penalties Under the Private Attorneys' General Act, Labor Code Section 2698 *et seq.*

FIRST CLASS ACTION FILED: OCTOBER 10, 2019

FIRST PAGA ACTION FILED: MAY 26, 2019

DEMAND FOR JURY TRIAL

Plaintiffs OSCAR BENITEZ ("Plaintiff Benitez"), LAN LE ("Plaintiff Le"), SHAQUILLE HOWARD ("Plaintiff Howard") and MARIO JORGE ESTRADA-PERALTA ("Plaintiff Estrada") (collectively Plaintiffs"), on behalf of themselves, all others similarly situated and the general public (collectively "Plaintiffs"), assert claims against Defendants MEDTRONIC, INC., a Minnesota Corporation; MEDTRONIC USA INC., a Minnesota Corporation; COVIDIEN, L.P., a Delaware Limited Partnership; and DOES 1-50, inclusive (collectively "MEDTRONIC" or "Defendant") as follows:

INTRODUCTION

1. The purpose of this Consolidated Complaint is to combine herein the allegations, violations, and causes of action set forth in the operative complaints in the civil actions pending in the Superior Court of the State of California, County of Orange, titled *Oscar Benitez v. Medtronic*,

1 *Inc. and Covidien LP*, Case No. 30-2019-01106385-CU-OE-CXC (“Benitez I”); *Oscar Benitez v.*
2 *Medtronic USA, Inc. and Medtronic, Inc.*, Case No. 30-2019-01069185-CU-OE-CXC (“Benitez
3 II”); *Lan Le v. Medtronic, Inc. and Covidien LP*, Case No. 30-2020-01144725-CU-OE-CXC (“Le
4 I”); *Lan Le v. Medtronic, Inc. and Covidien LP*, Case No. 30-2020-01140338-CU-OE-CXC (“Le
5 II”); and *Shaquille Howard v. Medtronic, Inc. et al.*, Case No. 30-2020-01159995-CU-OE-CXC.

6 2. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiffs and any and all persons who are or were employed by Defendants as hourly
8 paid or non-exempt employees (both directly or through a staffing agency or labor contractor),
9 however titled, in the State of California at any time from October 10, 2015 until the resolution of
10 this lawsuit (collectively referred to as the “Class” or “Class Members” or “Non-Exempt
11 Employees”).

12 3. This is also a representative action for recovery of penalties under the Private
13 Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 et seq. on behalf of all of
14 Non-Exempt Employees during the statutory time frame. PAGA permits “aggrieved employees” to
15 bring a lawsuit as a representative action on behalf of themselves and all other current and former
16 aggrieved employees, to recover civil penalties and address an employer’s violations of the
17 California Labor Code.

18 4. Plaintiffs bring this action pursuant to PAGA on a representative basis. The
19 “Aggrieved Employees” are current and former hourly paid or non-exempt employees (whether
20 hired directly or through a staffing agency or labor contractor) of Defendants in the State of
21 California. Plaintiffs and the other Aggrieved Employees are “aggrieved employees” as defined
22 by California Labor Code § 2699(c) in that they are all current or former employees of Defendants
23 who worked for Defendants at any time during the liability period, and one or more of the alleged
24 violations was committed against them. Plaintiff Benitez seeks penalties from February 7, 2018
25 to the present. Plaintiff Le seeks penalties from April 19, 2019 to the present..

26 5. Such actions and policies, as described above and further herein, were and continue
27 to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class
28

1 members, brings this action pursuant to the California Labor Code, including sections 201, 202,
2 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
3 1198, applicable IWC California Wage Orders 1-2001 and 7-2001, California Code of Regulations,
4 Title 8, section 11000 *et seq.*, and Business and Professions Code sections 17200-17208.

5 **JURISDICTION AND VENUE**

6 6. This class action is brought pursuant to the California Code of Civil Procedure
7 section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal
8 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
9 “amount in controversy” for the named Plaintiffs, including claims for compensatory damages,
10 restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than
11 seventy-five thousand dollars (\$75,000).

12 7. This Court has jurisdiction over this action pursuant to the California
13 Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all
14 other causes” except those given by statute to other courts. The statutes under which this action
15 is brought do not specify any other basis for jurisdiction.

16 8. This Court has jurisdiction over Defendants because, upon information and
17 belief, Defendants are citizens of California, have sufficient minimum contacts in California,
18 and/or otherwise intentionally avail themselves of the California market so as to render the
19 exercise of jurisdiction over them by the California courts consistent with traditional notions of
20 fair play and substantial justice.

21 9. Venue is proper in this Court because, upon information and belief, Defendants
22 maintain offices, have agents, and/or transact business in the State of California, including the
23 County of Orange. The majority of the acts and omissions alleged herein relating to Plaintiffs
24 took place in the State of California. Defendants employed Plaintiffs within the State of
25 California.
26

27 **PARTIES**

28 10. Defendant Medtronic USA Inc. and Medtronic, Inc. are Minnesota corporations in

1 good standing that are authorized to do business throughout the state. Medtronic USA Inc. and
2 Medtronic, Inc.'s headquarters are located at 710 Medtronic Parkway, Minneapolis, Minnesota
3 55432.

4 11. Defendant Covidien LP is a Delaware limited partnership in good standing that is
5 authorized to business throughout the state. Covidien LP's headquarters are located at 15
6 Hampshire St., Mansfield, Massachusetts 02048.

7 12. Defendants are employers whose employees are engaged in business throughout
8 the State of California, including the County of Orange.

9 13. Plaintiff Oscar Benitez is an individual residing in the State of California.

10 14. Plaintiff Shaquille Howard is an individual residing in the State of California.

11 15. Plaintiff Lan Le is and during the liability period has been, a resident of Orange
12 County, California.

13 16. Plaintiff Le was employed by Defendants during the liability period as a non-exempt
14 employee working in Defendants' facility in Irvine, California. Plaintiff Le's title was as an
15 "assembler" for Defendants.

16 17. Plaintiff Estrada is and during the liability period has been, a resident of California.

17 18. Plaintiff Estrada was employed by Defendants during the liability period as a non-
18 exempt employee working in Defendants' facility in Irvine, California.

19
20 19. Whenever in this complaint reference is made to any act, deed, or conduct of
21 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
22 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
23 actively engaged in the management, direction, control, or transaction of the ordinary business and
24 affairs of Defendants.

25
26 20. At all times herein relevant, Defendants MEDTRONIC, INC., MEDTRONIC USA,
27 INC., and COVIDIEN LP and DOES 1 through 100, and each of them, were the agents, partners,
28 joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-

1 conspirators and assigns, each of the other, and at all times relevant hereto were acting within the
2 course and scope of their authority as such agents, partners, joint venturers, joint employers,
3 representatives, servants, employees, successors, co-conspirators and assigns, and all acts or
4 omissions alleged herein were duly committed with the ratification, knowledge, permission,
5 encouragement, authorization, and consent of each defendant designated herein.

6 21. The true names and capacities, whether corporate, associate, individual or
7 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who sues said
8 defendants by such fictitious names. Plaintiffs is informed and believes, and based on that
9 information and belief alleges, that each of the Defendants designated as a DOE is legally
10 responsible for the events and happenings referred to in this Complaint, and unlawfully caused the
11 injuries and damages to Plaintiffs and the other class members as alleged in this Complaint.
12 Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities
13 when the same have been ascertained.

14 22. Defendants MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100 will
15 hereinafter collectively be referred to as "Defendants."

16 23. Plaintiffs further alleges that Defendants directly or indirectly controlled or affected
17 the working conditions, wages, working hours, and conditions of employment of Plaintiffs and the
18 other class members so as to make each of said Defendants employers and employers liable under
19 the statutory provisions set forth herein.
20

21 CLASS ACTION ALLEGATIONS

22 24. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
23 every other person similarly situated, and thus, seeks class certification under California Code of
24 Civil Procedure §382.

25 25. All claims alleged herein arise under California law for which Plaintiffs seek relief
26 as authorized by California law.

27 26. The **proposed class** is comprised of and defined as:

28 All current and former hourly-paid or non-exempt employees (either directly or through

1 a staffing agency or labor contractor) employed by Defendants within the State of
2 California at any time during the period of October 10, 2015 to final judgment.

3 27. Plaintiffs also seek to represent Subclasses included in the Plaintiffs' Proposed
4 Class, which are composed of Class Members satisfying the following definitions:

5 a. All Class Member who were not paid at least minimum wage for each hour
6 worked. (hereinafter referred to as the "**Minimum Wage Subclass**");

7 b. All Class Members who worked more than eight (8) hours in a workday or
8 over forty hours in a workweek. (hereinafter referred to as the "**Overtime Subclass**");

9 c. All Class Members who worked more than five (5) hours in a workday and
10 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
11 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
12 thereof (hereinafter referred to as the "**First Meal Period Subclass**");

13 d. All Class Members who worked more than ten (10) hours in a workday and
14 were not provided with a timely, uninterrupted lawful second meal period of net thirty (30) minutes,
15 and were not paid compensation of one hour premium wages at the employee's regular rate in lieu
16 thereof (hereinafter collectively referred to as the "**Second Meal Period Subclass**");

17 e. All Class Members who worked more than three and a half hours in a
18 workday and were not authorized and permitted to take a lawful net 10-minute rest period for every
19 four (4) hours or major fraction thereof worked per day and were not paid compensation of one
20 hour premium wages at the employee's regular rate in lieu thereof (hereinafter collectively referred
21 to as the "**Rest Period Subclass**");

22 f. All Class Members who worked more than six (6) hours in a workday and
23 were not authorized and permitted to take a second lawful net 10-minute rest period and were not
24 paid compensation of one hour premium wages at the employee's regular rate in lieu thereof
25 (hereinafter collectively referred to as the "**Second Rest Period Subclass**");

26 g. All Class Members who worked more than ten (10) hours in a workday and
27 were not authorized and permitted to take a third lawful net 10-minute rest period and were not
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1 paid compensation of one hour premium wages at the employee's regular rate in lieu thereof
2 (hereinafter collectively referred to as the "**Third Rest Period Subclass**");

3 h. All Class Members who did not receive all owed wages at the time of
4 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the
5 "**Waiting Time Subclass**");

6 i. All Class Members who were not provided with accurate and complete
7 itemized wage statements (hereinafter collectively referred to as the "**Inaccurate Wage Statement**
8 **Subclass**");

9 j. All Class Members who were not reimbursed for all necessary expenditures
10 (collectively "**Indemnification Subclass**").

11 k. All Class Members who were employed by Defendants and subject to
12 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "**Unfair Business**
13 **Practices Subclass**").

14 28. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
15 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
16 or if it should be deemed necessary by the Court or to further divide the Class Members into
17 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
18 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

19 29. As set forth in further detail below, this action has been brought and may properly
20 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
21 because there is a well-defined community of interest in the litigation, and the proposed Class and
22 Subclasses are easily ascertainable through Defendants' records.

23 a. Numerosity: The members of the Class and Subclasses are so numerous that
24 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
25 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the
26 Class is estimated to included hundreds of individuals. Accounting for employee turnover during
27 the relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants'
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1 employment records would provide information as to the number and location of all Class
2 Members. Joinder of all members of the proposed Class is not practicable.

3 b. The proposed class is easily ascertainable. The number and identity of the
4 class members are determinable from Defendants' payroll records and time records for each class
5 member.

6 c. Commonality: There are common questions of law and fact as to the Class
7 and Subclasses that predominate over questions affecting only individual Class Members. These
8 common questions of law and fact include, without limitation:

9 1) Whether Defendants' failure to pay wages, without abatement or reduction,
10 in accordance with the California Labor Code, was willful;

11 2) Whether Defendants failed to pay their hourly-paid or non-exempt
12 employees within the State of California for all hours worked, missed meal periods and rest
13 breaks in violation of California law;

14 3) Whether Defendants required Plaintiffs and other class members to work
15 over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally
16 required overtime compensation to Plaintiffs and the other class members;

17 4) Whether Defendants failed to pay minimum wages to Plaintiffs and other
18 class members for all hours worked;

19 5) Whether Defendants had a policy and practice of providing lawful, timely
20 first meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
21 Commission ("IWC") wage order;

22 6) Whether Defendants had a policy and practice of providing lawful, timely
23 second meal periods in accordance with Labor Code § 512, as well as the applicable Industrial
24 Welfare Commission wage order;

25 7) Whether Defendants had a policy and practice of complying with Labor
26 Code section 226.7 and IWC Wage Order on each instance that a lawful first or second meal period
27 was not provided;
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1 8) Whether Defendants failed to authorize and permit a lawful, net 10-minute
2 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

3 9) Whether Defendants failed to authorize and permit a second lawful, net 10-
4 minute rest period to the Class Members on shifts over six (6) hours;

5 10) Whether Defendants failed to authorize and permit a third lawful, net 10-
6 minute rest period to the Class Members on shifts over ten (10) hours;

7 11) Whether Defendants had a policy and practice of complying with Labor
8 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not
9 authorized and permitted;

10 12) Whether Defendants failed to timely pay all wages due to Plaintiffs and other
11 class members during their employment in accordance with Labor Code section 204;

12 13) Whether Defendants failed to timely pay all wages upon separation in
13 accordance with Labor Code sections 201-202;

14 14) Whether Defendants complied with wage reporting as required by the
15 California Labor Code, including, inter alia, section 226;

16 15) Whether Defendants failed to provide accurate itemized wage statements in
17 violation of Labor Code § 226;

18 16) Whether Defendants failed to maintain accurate records of Class Members'
19 earned wages, work periods, meal periods and deductions;

20 17) Whether Defendants engaged in unfair competition in violation of section
21 17200 et seq. of the Business and Professions Code;

22 18) Whether Defendants' conduct was willful and/or reckless;

23 19) The appropriate amount of damages, restitution, and/or monetary penalties
24 resulting from Defendants' violation of California law; and

25 20) Whether Plaintiffs and other class members are entitled to compensatory
26 damages pursuant to the California Labor Code.

27 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
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1 the interests of each member of the Class and Subclasses with whom they have a well-defined
2 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
3 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
4 which would be sought by each member of the Class and/or Subclasses in separate actions. All
5 members of the Class and/or Subclasses have been similarly harmed by Defendants' policies and
6 practices that affected each member of the Class and/or Subclasses similarly. Further, Defendants
7 benefited from the same type of unfair and/or wrongful acts as to each member of the Class and/or
8 Subclasses.

9 e. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect
10 the interests of each member of the Class and/or Subclasses with whom he has a well-defined
11 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that
12 they have an obligation to make known to the Court any relationships, conflicts, or differences with
13 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
14 known to exist. Plaintiffs' attorneys and the proposed counsel for the Class and Subclasses are
15 versed in the rules governing class action discovery, certification, litigation, and settlement and
16 experienced in handling such matters. Other former and current employees of Defendants may also
17 serve as representatives of the Class and Subclasses if needed.

18 f. Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve economies of time, effort,
20 judicial resources, and expense, which would not be achieved with separate lawsuits. The
21 prosecution of separate actions by individual members of the Class and/or Subclasses would create
22 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
23 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
24 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
25 disposition of their interests through actions to which they were not parties. Thus, a class action is
26 superior to other available means for the fair and efficient adjudication of this controversy because
27 individual joinder of all Class Members is not practicable, and questions of law and fact common
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1 to the Class predominate over any questions affecting only individual Class Members. Each
2 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
3 unlawful policies and practices. Class action treatment will allow those similarly situated persons
4 to litigate their claims in the manner that is most efficient and economical for both parties and the
5 judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
6 management of this action that would preclude its maintenance as a class action.

7 g. Public Policy Considerations: Employers in the state of California violate
8 employment and labor laws every day. However, current employees are often afraid to assert their
9 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
10 because they believe their former employers may damage their future endeavors through negative
11 references and/or other means. The nature of this action allows for the protection of current and
12 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
13 California have a significant interest in ensuring employers comply with California's labor laws
14 and in ensuring those employers who do not are prevented from taking further advantage of their
15 employees.

16 FACTUAL ALLEGATIONS

17 30. During the relevant time period set forth herein, Defendants employed Plaintiffs
18 and other persons as hourly-paid or non-exempt employees within the State of California,
19 including the County of Orange.

20 31. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
21 non-exempt employees within the meaning of the California Labor Code, and the implementing
22 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
23 the IWC Wage Orders and the Labor Code.

24 32. Defendants, jointly and severally, employed Plaintiff Benitez through Superior
25 Talent Resources, Inc. as an hourly-paid, non-exempt employee from approximately October of
26 2017 to July of 2018, in the State of California.

27 33. Defendants, jointly and severally, employed Plaintiff Le as an hourly, non-exempt
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1 employee from October 2016 through approximately September 2019. Plaintiff Le performed
2 functions as an assembler for Defendants at their Irvine facility.

3 34. Plaintiff Le typically worked five to six days a week, averaging eight to ten hours
4 per shift. On occasion, Plaintiff worked in excess of twelve hours in a shift.

5 35. Defendants, jointly and severally, employed Plaintiff Estrada as an hourly, non-
6 exempt employee in the State of California through December 2019.

7
8 36. Defendants, jointly and severally, employed Plaintiff Howard through Superior
9 Talent Resources, Inc. as an hourly-paid, non-exempt employee from approximately October 2019
10 until approximately December 2019, in the State of California.

11 37. Defendants had the authority to hire and terminate Plaintiffs and the other class
12 members; to set work rules and conditions governing Plaintiffs and the other class members'
13 employment; and to supervise their daily employment activities.

14 38. Defendants exercised sufficient authority over the terms and conditions of Plaintiffs
15 and the other class members' employment for them to be joint employers of Plaintiffs and the other
16 class members.

17 39. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
18 class members.

19 40. Defendants continue to employ hourly-paid or non-exempt employees within the
20 State of California.

21 41. Plaintiffs are informed and believes, and thereon alleges, that Defendants are and
22 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
23 of the requirements of California's wage and employment laws.

24 42. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
25 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
26 employees within the State of California. This scheme involved, inter alia, failing to pay them
27 for all hours worked, missed meal periods, and missed rest breaks in violation of California law.
28

1 43. All class members, including Plaintiffs, are similarly situated in that they are all
2 subject to Defendants' uniform policies and systemic practices as specified herein.

3 44. As a pattern and practice, during the relevant time period set forth herein,
4 Defendants failed to pay overtime wages to Plaintiffs and the other class members for all hours
5 worked. Plaintiffs and other class members were required to work more than eight (8) hours
6 per day and/or forty (40) hours per week without overtime compensation.

7 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Plaintiffs and the other class members were entitled to receive
9 certain wages for overtime compensation and that they were not receiving wages for overtime
10 compensation.

11 46. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 failed to provide Plaintiffs and the other class members the required rest and meal periods during
13 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
14 thus they are entitled to any and all applicable penalties.

15 47. As a pattern and practice, during the relevant time period set forth herein,
16 Defendants failed to provide the requisite uninterrupted and timely meal and rest periods to
17 Plaintiffs and other class members.

18 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiffs and the other Class Members were entitled to receive
20 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
21 the other class members' regular rate of pay when a meal period was missed, late or interrupted,
22 and they did not receive all timely and proper meal periods or payment of one additional hour of
23 pay at Plaintiffs' and the other class members' regular rate of pay when a meal period was missed.
24

25 49. Plaintiffs and the Class Members were often required to work shifts in excess of
26 five hours without being provided a lawful meal period and over ten hours in a day without being
27 provided a second lawful meal period as required by law.

28 50. Indeed, during the relevant time, as a matter of pattern and practice including

1 Defendants' staffing practices, scheduling practices, work demands, and Defendants' policies and
2 procedures, Defendants frequently failed to provide Plaintiffs and the Class Members timely,
3 legally complaint uninterrupted 30-minute meal periods on shifts over five hours and second meal
4 periods on shifts over ten hours as required by law.

5 51. On information and belief, Plaintiffs and Class Members did not waive their rights
6 to first or second meal periods under the law.

7 52. Plaintiffs and the Class Members were not provided with valid lawful on-duty
8 meal periods.

9 53. Despite the above-mentioned meal period violations, Defendants often failed to
10 compensate Plaintiffs, and on information and belief, often failed to compensate Class Members,
11 one additional hour of pay at their regular rate as required by California law when first or second
12 meal periods were not timely or lawfully provided in a compliant manner.

13 54. Plaintiffs are informed and believe, and thereon alleges, that Defendants know,
14 should know, knew, and/or should have known that Plaintiffs and the other Class Members were
15 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
16 were not receiving such compensation.

17 55. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
18 or should have known that Plaintiffs and the other class members were entitled to receive all timely
19 rest periods without interruption or payment of one additional hour of pay at Plaintiffs and the other
20 class members' regular rate of pay when a rest period was missed, late or interrupted, and they did
21 not receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class
22 members' regular rate of pay when a rest period was missed.

23 56. In addition, during the relevant time frame, Plaintiffs and the Class Members were
24 systematically not authorized and permitted to take a net ten-minute paid, rest period for every four
25 hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
26 order.
27

28 57. For example, Defendants failed to authorize and permit two (2) total rest periods on

1 shifts over six hours and three (3) total ten (10) minute rest periods on days on which Plaintiffs
2 and the other Class Members work(ed) in excess of ten (10) hours.

3 58. Defendants maintained and enforced scheduling practices, staffing practices,
4 policies, procedures, and imposed work demands that required Plaintiffs and Class Members to
5 forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major
6 fraction thereof. Such requisite rest periods were not timely authorized and permitted.

7 59. Despite the above-mentioned rest period violations, Defendants did not
8 compensate Plaintiffs, and on information and belief, did not pay Class Members one additional
9 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
10 and the applicable IWC wage order, for each day on which lawful rest periods were not
11 authorized and permitted.

12 60. As a pattern and practice, during the relevant time period set forth herein,
13 Defendants failed to pay Plaintiffs and the other class members at least minimum wages for all
14 hours worked.

15 61. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
16 or should have known that Plaintiffs and the other class members were entitled to receive at least
17 minimum wages for compensation and that they were not receiving at least minimum wages for all
18 hours worked.

19 62. As a pattern and practice, during the relevant time period set forth herein,
20 Defendants failed to provide complete or accurate wage statements to Plaintiffs and the other class
21 members.

22 63. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
23 or should have known that Plaintiffs and the other class members were entitled to receive complete
24 and accurate wage statements in accordance with California law, but, in fact, they did not receive
25 complete and accurate wage statements from Defendants. The deficiencies included, inter alia, the
26 failure to include the total number of hours worked by Plaintiffs and other class members, the failure
27 to specify the name and legal address of the employer, and gross pay on Plaintiffs and the Class
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1 Members' wage statements.

2 64. Plaintiffs are informed and believe, and based thereon allege, that Defendants knew
3 or should have known that Plaintiffs and the other class members were entitled to receive the wages
4 owed to them upon discharge or resignation, including overtime and minimum wages and meal and
5 rest period premiums, and they did not, in fact, receive such wages owed to them at the time of
6 their discharge or resignation.

7 65. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
8 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
9 thereof for resignations without prior notice as the case may be) they had a duty to accurately
10 compensate Plaintiffs and Class Members for all wages owed including minimum wages,
11 commissions, overtime, meal and rest period premiums, and that Defendants had the financial
12 ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed
13 to do so in part because of the above-specified violations.

14 66. As a pattern and practice, during the relevant time period set forth herein,
15 Defendants failed to pay Plaintiffs and the other class members the wages owed to them upon
16 discharge or resignation.

17 67. As a pattern and practice, during the relevant time period set forth herein,
18 Defendants failed to keep complete or accurate payroll records for Plaintiffs and the other class
19 members.

20 68. As a pattern and practice, during the relevant time period set forth herein,
21 Defendants failed to properly compensate Plaintiffs and the other class members pursuant to
22 California law in order to increase Defendants' profits.

23 69. California Labor Code section 218 states that nothing in Article 1 of the Labor Code
24 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him
25 [or her] under this article."

26 70. Plaintiffs are informed and believe that Defendants' violation of the Labor Code and
27 the IWC wage orders as specified herein was willful and deliberate.
28

1 71. Plaintiffs and the Class Members are covered by applicable California IWC Wage
2 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
3 section 11000 *et seq.*

4 **CLASS ACTION CLAIMS**

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME WAGES**

7 **(Violation of California Labor Code §§ 510 and 1198)**

8 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP,**

9 **and DOES 1 through 100)**

10 72. Plaintiffs incorporate by reference and realleges each and every allegation contained
11 above, as though fully set forth herein.¹

12 73. California Labor Code section 1198 and the applicable Industrial Welfare
13 Commission ("IWC") Wage Order 1-2001 and 7-2001 provide that it is unlawful to employ persons
14 without compensating them at a rate of pay either time-and-one-half or two-times that person's
15 regular rate of pay, depending on the number of hours worked by the person on a daily or weekly
16 basis.

17 74. Specifically, the applicable IWC Wage Order provides that Defendants are and were
18 required to pay Plaintiffs and the other class members employed by Defendants, who work(ed)
19 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-
20 and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours
21 in a workweek.

22 75. The applicable IWC Wage Order further provides that Defendants are and were
23 required to pay Plaintiffs and the other class members overtime compensation at a rate of two times
24 their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

25 76. California Labor Code section 510 codifies the right to overtime compensation at
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27 ¹ Plaintiff Le seeks to be a named representative as to Causes of Action 1, 4 and 7 as set forth herein (and believes the
28 claims have been already asserted on his behalf as a member of the putative class); however, the parties were unable
to reach a stipulation for the assertion of these claims prior to this filing. Le reserves all rights.

one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

77. During the relevant time period set forth herein, Plaintiffs and the other class members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

78. As a pattern and practice, during the relevant time period set forth herein, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiffs and the other class members for overtime hours worked. Moreover, Defendants failed to pay overtime wages at the proper regular rate by failing to include all applicable forms of compensation in calculating the regular rate.

79. Defendants' failure to pay Plaintiffs and the other class members the unpaid balance of overtime compensation, as required by California laws, violates the provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

80. Pursuant to California Labor Code section 1194, Plaintiffs and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of California Labor Code §§ 226.7, 512(a), IWC Wage Order

1-2001 and 7-2001 and 1198)

(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)

81. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

82. During the relevant time period set forth herein, the IWC Order and California Labor Code sections 226.7 and 512(a) were applicable to Plaintiffs' and other class members'

1 employment by Defendants.

2 83. During the relevant time period set forth herein, California Labor Code section
3 226.7 provides that no employer shall require an employee to work during any meal or rest
4 period mandated by an applicable order of the California IWC.

5 84. During the relevant time period set forth herein, the applicable IWC Wage Order
6 and California Labor Code section 512(a) provide that an employer may not require, cause or
7 permit an employee to work for a work period of more than five (5) hours per day without
8 providing the employee with a meal period of not less than thirty (30) minutes, except that if
9 the total work period per day of the employee is no more than six (6) hours, the meal period
10 may be waived by mutual consent of both the employer and employee.

11 85. During the relevant time period set forth herein, the applicable IWC Wage Order
12 and California Labor Code section 512(a) further provide that an employer may not require,
13 cause, or permit an employee to work for a work period of more than ten (10) hours per day
14 without providing the employee with a second uninterrupted meal period of not less than thirty
15 (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the
16 second meal period may be waived by mutual consent of the employer and the employee only if
17 the first meal period was not waived.

18 86. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
19 provide Plaintiffs and Class Members timely and uninterrupted first meal periods of not less than
20 thirty (30) minutes within the first five hours of a shift.

21 87. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to
22 provide Plaintiffs and Class Members timely and uninterrupted second meal periods of not less
23 than thirty (30) minutes on shifts longer than ten hours.

24 88. Further, as a pattern and practice during the relevant time period set forth herein,
25 Plaintiffs and the other class members who were scheduled to work for a period of time no
26 longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual
27 consent, were required to work for periods longer than five (5) hours without an uninterrupted
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1 meal period of not less than thirty (30) minutes and/or without a rest period.

2 89. As a pattern and practice during the relevant time period set forth herein,
3 Plaintiffs and the other class members who were scheduled to work for a period of time in
4 excess of six (6) hours were required to work for periods longer than five (5) hours without an
5 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest period.

6 90. As a pattern and practice during the relevant time period set forth herein,
7 Defendants intentionally and willfully required Plaintiffs and the other class members to work
8 during meal periods and failed to compensate Plaintiffs and the other class members the full
9 meal period premium for work performed during meal periods.

10 91. As a pattern and practice during the relevant time period set forth herein,
11 Defendants failed to pay Plaintiffs and the other class members the full meal period premium
12 due pursuant to California Labor Code section 226.7.

13 92. During the relevant time, as a consequence of Defendants' staffing and scheduling
14 practices, lack of coverage, work demands, and Defendants' policies and practices, Plaintiffs and
15 the Class Members were not provided with legally required uninterrupted meal periods of at least
16 thirty minutes.

17 93. On information and belief, Plaintiffs and Class Members did not waive their rights
18 to first and second meal periods under the law.

19 94. Plaintiffs and the Class Members were not paid one hour of pay at their regular rate
20 for each day that a first or second meal period was not lawfully provided.

21 95. Defendants' conduct violates applicable IWC Wage Order and California Labor
22 Code sections 226.7 and 512(a).

23 96. Pursuant to the applicable IWC Wage Order and California Labor Code section
24 226.7(b), Plaintiffs and other class members are entitled to recover from Defendants one
25 additional hour of pay at the employee's regular rate of compensation for each work day that
26 the meal or rest period is not provided.

27 97. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
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1 represent have been deprived of premium wages in amounts to be determined at trial, and are
2 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
3 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
4 section 3287.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

7 **(Violation of California Labor Code § 226.7, 1198, IWC WAGE ORDER**

8 **1-2001 and 7-2001)**

9 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**

10 98. Plaintiffs incorporate by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 99. During the relevant time period set forth herein, the applicable IWC Wage Order
13 and California Labor Code section 226.7 were applicable to Plaintiffs' and the other class
14 members' employment by Defendants.

15 100. During the relevant time period set forth herein, California Labor Code section
16 226.7 provides that no employer shall require an employee to work during any rest period
17 mandated by an applicable order of the California IWC.

18 101. During the relevant time period set forth herein, the applicable IWC Wage Order
19 provides that "[e]very employer shall authorize and permit all employees to take rest periods,
20 which insofar as practicable shall be in the middle of each work period" and that the "rest period
21 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
22 four (4) hours or major fraction thereof" unless the total daily work time is less than three and
23 one-half (3 ½) hours.

24 102. As a pattern and practice during the relevant time period set forth herein,
25 Defendants required Plaintiffs and the other class members to work four (4) or more hours
26 without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
27 worked.
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1 103. As a pattern and practice during the relevant time period set forth herein,
2 Defendants willfully required Plaintiffs and the other class members to work during rest periods
3 and failed to pay Plaintiffs and the other class members the full rest period premium for work
4 performed during rest periods.

5 104. As a pattern and practice during the relevant time period set forth herein,
6 Defendants failed to pay Plaintiffs and the other class members the full rest period premium due
7 pursuant to California Labor Code section 226.7.

8 105. Defendants' conduct violates applicable IWC Wage Orders and California Labor
9 Code section 226.7.

10 106. Pursuant to the applicable IWC Wage Orders and California Labor Code section
11 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
12 additional hour of pay at the employees' regular hourly rate of compensation for each work day
13 that the rest period was not provided.

14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY MINIMUM WAGES**

16 **(Violation of California Labor Code §§ 1194 and 1197)**

17 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**

18 107. Plaintiffs incorporate by reference and reallege each and every allegation
19 contained above, as though fully set forth herein.

20 108. During the relevant time period set forth herein, California Labor Code sections
21 1194 and 1197 provide that the minimum wage to be paid to employees, and the payment of a
22 lesser wage than the minimum so fixed, is unlawful.

23 109. As a pattern and practice during the relevant time period set forth herein,
24 Defendants failed to pay minimum wages to Plaintiffs and the other class members as required,
25 pursuant to California Labor Code sections 1194 and 1197.

26 110. Defendants' failure to pay Plaintiffs and the other class members the minimum
27 wage as required violates California Labor Code sections 1194 and 1197. Pursuant to those
28

1 sections, Plaintiffs and the other class members are entitled to recover the unpaid balance of their
2 minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated
3 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

4 111. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
5 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
6 unpaid and interest thereon.

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12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

14 **(Violation of California Labor Code §§ 201 and 202)**

15 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**

16 112. Plaintiffs incorporate by reference and reallege each and every allegation
17 contained above, as though fully set forth herein.

18 113. During the relevant time period set forth herein, California Labor Code sections
19 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at
20 the time of discharge are due and payable immediately, and if an employee quits his or her
21 employment, his or her wages shall become due and payable not later than seventy-two (72)
22 hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her
23 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

24 114. As a pattern and practice during the relevant time period set forth herein,
25 Defendants intentionally and willfully failed to pay Plaintiffs and the other class members who
26 are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72)
27 hours of their leaving Defendants' employ.
28

1 115. Defendants' pattern and practice of failing to pay Plaintiffs and the other class
2 members who are no longer employed by Defendants their wages, earned and unpaid, within
3 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
4 Code sections 201 and 202.

5 116. California Labor Code section 203 provides that if an employer willfully fails to
6 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
7 continue as a penalty from the due date thereof at the same rate until paid or until an action is
8 commenced; but the wages shall not continue for more than thirty (30) days.

9 117. Plaintiffs and the other class members are entitled to recover from Defendants the
10 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
11 pursuant to California Labor Code section 203.

12 **SIXTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

14 **(Violation of California Labor Code § 226(a) and IWC Wage Order)**
15 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**

16 118. Plaintiffs incorporate by reference and reallege each and every allegation
17 contained above, as though fully set forth herein.

18 119. During the relevant time period set forth herein, California Labor Code section
19 226(a) provides that every employer shall furnish each of his or her employees an accurate
20 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
21 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
22 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
23 orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
24 inclusive dates of the period for which the employee is paid, (7) the name of the employee and his
25 or her social security number, (8) the name and address of the legal entity that is the employer,
26 and (9) all applicable hourly rates in effect during the pay period and the corresponding number
27 of hours worked at each hourly rate by the employee. The deductions made from payments of
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1 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day,
2 and year, and a copy of the statement or a record of the deductions shall be kept on file by the
3 employer for at least three years at the place of employment or at a central location within the
4 State of California.

5 120. Further, IWC Wage Order 1-2001 requires in pertinent part: Every employer shall
6 keep accurate information with respect to each employee including the following: (3) Time
7 records showing when the employee begins and ends each work period. Meal periods, split shift
8 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
9 payroll period and applicable rates of pay....”

10 121. As a pattern and practice, Defendants have intentionally and willfully failed to
11 provide Plaintiffs and the other class members with complete and accurate wage statements. The
12 deficiencies include but are not limited to: the failure to include the total number of hours worked
13 by Plaintiffs and the other class members, the name and address of the legal entity that is the
14 employer, and gross pay from Plaintiffs and the Class Members’ wage statements.

15 122. As a result of Defendants’ violation of California Labor Code section 226(a),
16 Plaintiffs and the other class members have suffered injury and damage to their statutorily
17 protected rights. Such injury, includes without limitation, Plaintiffs and the Class Members were
18 misled by Defendants as to the correct information regarding various items, including but not
19 limited to the name and address of the employer, total hours worked by the employee, gross pay
20 earned, net wages earned and all applicable hourly rates in effect during the pay period. In
21 addition, in order to determine if they had been paid the correct amount and rate for all hours
22 worked, Plaintiffs and the Class Members have been, would have been, and are compelled to try
23 to discover the required information missing from their wage statements and to perform complex
24 calculations in light of the inaccuracies and incompleteness of the wage statements Defendants
25 provided to them.

26
27 123. More specifically, Plaintiffs and the other class members have been injured by
28 Defendants’ intentional and willful violation of California Labor Code section 226(a) because

1 they were denied both their legal right to receive, and their protected interest in receiving,
2 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

3 124. Plaintiffs and the other class members are entitled to recover from Defendants the
4 greater of their actual damages caused by Defendants' failure to comply with California Labor
5 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

6 125. Plaintiffs and the other class members are also entitled to injunctive relief to
7 ensure compliance with this section, pursuant to California Labor Code section 226(g).

8
9 **SEVENTH CAUSE OF ACTION**

10 **UNREIMBURSED BUSINESS EXPENSES**

11 **(Violation of California Labor Code §§ 2800 and 2802)**

12 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**

13 126. Plaintiffs incorporate by reference and reallege each and every allegation
14 contained above, as though fully set forth herein.

15 127. Pursuant to California Labor Code sections 2800 and 2802, an employer must
16 reimburse its employee for all necessary expenditures incurred by the employee in direct
17 consequence of the discharge of his or her job duties or in direct consequence of his or her
18 obedience to the directions of the employer.

19 128. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other
20 class members for all necessary business-related expenses and costs. Plaintiffs and other class
21 members are entitled to recover from Defendants their business-related expenses and costs
22 incurred during the course and scope of their employment, plus interest accrued from the date on
23 which the employee incurred the necessary expenditures at the same rate as judgments in civil
24 actions in the State of California.

25 **EIGHTH CAUSE OF ACTION**

26 **(Violation of California Business & Professions Code §§ 17200, et seq.)**

27 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**
28

1 129. Plaintiffs incorporate by reference and reallege each and every allegation
2 contained above, as though fully set forth herein.

3 130. Defendants' conduct, as alleged herein, has been, and continues to be unfair,
4 unlawful and harmful to Plaintiffs, the other class members, to the general public, and
5 Defendants' competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the
6 public interest within the meaning of Code of Civil Procedure section 1021.5.

7 131. Defendants' activities as alleged herein are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business & Professions
9 Code section 17200, *et seq.*

10 132. A violation of California Business & Professions Code section 17200, *et seq.* may
11 be predicated on the violation of any state or federal law. In this instant case, Defendants' pattern
12 and practice of requiring Plaintiffs and the other class members work overtime hours without
13 paying them proper compensation violate California Labor Code sections 510 and 1198.
14 Additionally, Defendants' pattern and practice of requiring Plaintiffs and other class members, to
15 work through their meal and rest periods without paying them proper compensation violate
16 California Labor Code sections 226.7 and 512(a). Moreover, Defendants' pattern and practice of
17 failing to timely pay wages to Plaintiffs and the other class members violate California Labor
18 Code sections 201 and 202. Defendants also violated California Labor Code sections 226(a),
19 1194, 1197, 2800 and 2802.

20 133. As a result of the herein described violations of California law, Defendants
21 unlawfully gained an unfair advantage over other businesses.

22 134. Plaintiffs and the other class members have been injured by Defendants' unlawful
23 business acts and practices as alleged herein, including but not necessarily limited to the loss of
24 money and/or property.

25 135. Plaintiffs and the Class Members have been personally aggrieved by Defendants'
26 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

27 136. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
28

1 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
2 during a period that commences four (4) years prior to the filing of this complaint; an award of
3 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
4 costs.

5 137. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
6 Plaintiffs and the other class members are entitled to restitution of the wages withheld and
7 retained by Defendants during a period that commences four years prior to the filing of this
8 Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section
9 1021.5 and other applicable laws; and an award of costs.

10 NINTH CAUSE OF ACTION

11 THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, *et. seq.*

12 (By Plaintiffs and the Aggrieved Group Against All Defendants)

13 138. Plaintiffs incorporate by reference and realleges each and every allegation contained
14 above, as though fully set forth herein.

15 139. Plaintiffs and the other non-exempt employees are "aggrieved employees" as
16 defined by California Labor Code § 2699(c) in that they are all current or former employees of
17 Defendants who worked for Defendants during the liability period, and one or more of the alleged
18 violations was committed against them (the "Aggrieved Employees").

19 140. On February 7, 2019, Plaintiff Benitez provided written notice to the LWDA and
20 the Medtronic Defendants of the specific provisions of the Labor Code he contends were violated,
21 and the theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by
22 reference is a copy of the written notice to the LWDA. Plaintiff believes that on or about April 13,
23 2019, the sixty-five (65) days notice period expired and the LWDA did not take any action to
24 investigate or prosecute this matter. On May 14, 2019, Plaintiff Benitez provided an amended
25 written notice to the LWDA and the Medtronic Defendants of the specific provisions of the Labor
26 Code he contends were violated, and the theories supporting his contentions. Attached hereto as
27 **Exhibit 2** and incorporated by reference is a copy of the amended written notice to the LWDA.
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1 Plaintiff believes that on or about July 18, 2019, the sixty-five (65) days' notice period for the
2 amended notice expired and the LWDA did not take any action to investigate or prosecute this
3 matter. On October 11, 2019, Plaintiff provided a second amended written notice to the LWDA and
4 Defendants of the specific provisions of the Labor Code he contends were violated, and the theories
5 supporting his contentions. Attached hereto as **Exhibit 3** and incorporated by reference is a copy
6 of the second amended written notice to the LWDA. Plaintiff believes that on or about December
7 16, 2019, the sixty-five (65) days' notice period for the second amended notice expired and the
8 LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff has
9 exhausted the statutory time period to bring this action.

10 141. Within the statutory period, Plaintiff Le provided written notice by online filing to
11 the Labor and Workforce Development Agency ("LWDA") and certified mail to the Defendants of
12 the specific violations of the California Labor Code that Defendants have violated and continue to
13 violate, including the facts and theories that supported each alleged violation. All fees were paid
14 as required by statute. A copy of the letter sent to the LWDA with enclosure is attached hereto as
15 **Exhibit 4..**

16 142. The LWDA did not provide notice of intention to investigate Plaintiffs allegations
17 within 65 calendar days of the notice. Labor Code section 2699.3(a)(2)(A). The actions were
18 timely commenced.

19 143. Plaintiff Benitez was deputized to pursue violations on behalf of the LWDA, and
20 did so by filing a complaint on May 10, 2019 against Defendant Medtronic, Inc. and Medtronic
21 USA, Inc.

22 144. Plaintiff Benitez subsequently filed a supplemental PAGA notice with the LWDA,
23 and added claims against Defendant Covidien L.P. in an amended complaint filed on January 29,
24 2020.

25 145. Plaintiff Le was deputized to pursue violations on behalf of the LWDA, and did so
26 by filing a complaint on June 24, 2020 against Defendants Medtronic, Inc. and Covidien, L.P.

27 146. Accordingly, Plaintiffs have exhausted all administrative procedures required of
28

1 him under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in
2 bringing forward this cause of action.

3 147. Plaintiffs are aggrieved employees as defined in Labor Code Section 2699(a). They
4 bring this cause of action on their own behalf and on behalf of all current and former hourly, non-
5 exempt employees working for Defendants in the State of California during the liability period.
6 This includes, without limitation, employees working in manufacturing, production, and/or
7 assembly.

8 148. Pursuant to Labor Code section 2698 et seq and 2699(a) Plaintiffs seek to recover
9 civil penalties on behalf of the Aggrieved Employees for which Defendants are liable due to
10 numerous Labor Code and Wage Order violations as set forth in this Complaint.

11 149. Specifically, Plaintiff Benitez seeks penalties under Labor Code §2699 against
12 Defendant Medtronic, Inc., for the period of February 7, 2018 to present for violation of the
13 following statutes: Labor Code 226(a), 510, , 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and
14 2802.

15 150. Plaintiff Le also seeks penalties under Labor Code §2699, for the period of April 19,
16 2019 against Medtronic, Inc. and Covidien L.P. to present for violation of the following statutes:

- 17 a. Defendants' failure to comply with the requirement of Labor Code
18 §§201 and 202 to pay wages due to former employees;
- 19 b. Defendants' failure to comply with the requirement of Labor Code
20 §203 to pay waiting time penalties to former employees for violating
21 Labor Code §§201-202.
- 22 c. Defendants' failure to comply with the requirement of Labor Code
23 §226.7, 512, 1198, and IWC Wage Order 1-2001 and 7-2001 to
24 provide uninterrupted 30 minute off-duty meal periods;
- 25 d. Defendants' failure to comply with the requirement of Labor Code
26 §226.7, 1198, and IWC Wage Order 1-2001 and 7-2001 to pay one
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1 hour of premium pay for each statutorily required meal break that
2 was not provided;

3 e. Defendants' failure to comply with the requirement of Labor Code
4 §226.7, 1198, and IWC Wage Order 1-2001, and 7-2001 to authorize
5 and permit ten (10) minute rest breaks;

6 f. Defendants' failure to comply with the requirement of Labor Code
7 §226.7, 1198, and IWC Wage Order 1-2001, and 7-2001 to pay one
8 hour of premium pay for each statutorily required rest break that was
9 not authorized and permitted;

10 g. Defendants' failure to maintain required records in violation of Labor
11 Code § 226, 1174, and Wage Order 1-2001 and 7-2001;

12 h. Defendants' failure to provide accurate compliant wage statements
13 under Labor Code § 226.

14 151. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
15 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor
16 Code and IWC Wage Orders. Plaintiffs seek civil penalties for Defendants' violation of Labor
17 Code provisions for which a civil penalty is specifically provided, including but not limited to the
18 following:

19 a. Under Labor Code § 2699(f), Plaintiffs and the Aggrieved
20 Employees are entitled to \$100 for any initial violation and \$200 for
21 all subsequent violations of the above-mentioned provisions of the
22 California Labor Code for which no other civil penalty is specifically
23 provided.

24 b. Penalties under California Code of Regulations Title 8 § 11040 in the
25 amount of fifty dollars (\$50) for each aggrieved employee per pay
26 period for the initial violation, and one hundred dollars (\$100) for
27 each aggrieved employee per pay period for each subsequent
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- violation;
- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
 - d. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
 - e. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting 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 Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.
 - f. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).

- g. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;
- h. An amount sufficient to recover unpaid wages under Labor Code §558;
- i. An amount sufficient to recover unpaid wages under Labor Code §1197.1;
- j. Any and all additional penalties as provided by the Labor Code and/or other statutes; and
- k. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

152. Under Labor Code §2699, Plaintiffs and the Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees and costs.

153. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representatives of the Class;
3. That Plaintiffs be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiffs be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to Pay Overtime)

1. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
2 overtime wages due to Plaintiffs and the other class members;

3 2. For general unpaid wages at overtime wage rates and such general and special
4 damages as may be appropriate;

5 3. For pre-judgment interest on any unpaid overtime compensation commencing from
6 the date such amounts were due;

7 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Labor Code section 1194; and

9 5. For such other and further relief as the court may deem just and proper.

10 **On the Second Cause of Action**

11 **(Failure to Provide Lawful Meal Periods)**

12 1. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
14 all meal periods (including second meal periods) to Plaintiffs and the other class members;

15 2. That the Court make an award to Plaintiffs and the other class members of one (1)
16 hour of pay at each employee's regular rate of compensation for each workday that a meal period
17 was not provided;

18 3. For all actual, consequential, and incidental losses and damages, according to proof;

19 4. For premium wages pursuant to California Labor Code section 226.7(b);

20 5. For pre-judgment interest on any unpaid wages from the date such amounts were
21 due;

22 6. For reasonable attorneys' fees and costs pursuant to statute; and

23 7. For such other and further relief as the Court deems proper.

24 **On the Third Cause of Action**

25 **(Failure to Authorize and Permit Lawful Rest Periods)**

1 1. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest
3 periods to Plaintiffs and the other class members;

4 2. That the Court make an award to Plaintiffs and the other class members of one (1)
5 hour of pay at each employee's regular rate of compensation for each workday that a rest period
6 was not provided;

7 3. For all actual, consequential, and incidental losses and damages, according to proof;

8 4. For premium wages pursuant to California Labor Code section 226.7(b);

9 5. For pre-judgment interest on any unpaid wages from the date such amounts were
10 due; and

11 6. For reasonable attorneys' fees and costs pursuant to statute; and

12 7. For such other and further relief as the Court deems proper.

13 **On the Fourth Cause of Action**

14 **(Failure to Pay Minimum Wages)**

15 1. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiffs and
17 the other class members;

18 2. For general unpaid wages and such general and special damages as may be
19 appropriate;

20 3. For pre-judgment interest on any unpaid compensation from the date such amounts
21 were due;

22 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
23 California Labor Code section 1194(a);

24 5. For liquidated damages pursuant to California Labor Code section 1194.2; and

25 6. For such other and further relief as the court may deem just and proper.

26 **On the Fifth Cause of Action**

27 **(Failure to Timely Pay Wages At Separation)**

- 1 1. That the Court declare, adjudge and decree that Defendants violated California
- 2 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
- 3 time of termination of the employment of the other class members no longer employed by
- 4 Defendants;
- 5 2. For all actual, consequential, and incidental losses and damages, according to
- 6 proof;
- 7 3. For statutory wage penalties pursuant to California Labor Code section 203 for the
- 8 other class members who have left Defendants' employ;
- 9 4. For pre-judgment interest on any unpaid compensation from the date such amounts
- 10 were due; and
- 11 5. For reasonable attorneys' fees and costs pursuant to statute; and
- 12 6. For such other and further relief as the Court deems proper.

13 **On the Sixth Cause of Action**

14 **(Failure to Provide Accurate Itemized Wage Statements)**

- 15 1. That the Court declare, adjudge and decree that Defendants violated the record
- 16 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as
- 17 to Plaintiffs and other class members, and willfully failed to provide accurate itemized wage
- 18 statements thereto;
- 19 2. For actual, consequential and incidental losses and damages, according to proof;
- 20 3. For statutory penalties pursuant to California Labor Code section 226(e);
- 21 4. For injunctive relief to ensure compliance with this section, pursuant to California
- 22 Labor Code section 226(g);
- 23 5. For reasonable attorneys' fees and costs; and
- 24 6. For such other and further relief as the Court deems proper;

25 **On the Seventh Cause of Action**

26 **(Failure to Reimburse Business Expenses)**

- 1 1. That the Court declare, adjudge and decree that Defendants violated California Labor
- 2 Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and other class
- 3 members for all necessary business-related expenses as required by California Labor Code
- 4 sections 2800 and 2802;
- 5 2. For actual, consequential and incidental losses and damages, according to proof;
- 6 3. For the imposition of civil penalties and/or statutory penalties;
- 7 4. For punitive damages and/or exemplary damages according to proof at trial;
- 8 5. For reasonable attorneys' fees and costs of suit incurred herein; and
- 9 6. For such other and further relief as the court may deem just and proper.

10 **On the Eighth Cause of Action**

11 **(Violation of the Unfair Competition Law)**

12 1. That the Court declare, adjudge and decree that Defendants violated California

13 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and other

14 class members all overtime compensation due to them, failing to provide all meal and rest periods

15 to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and

16 the other class members, failing to pay Plaintiffs' and other class members' wages timely as

17 required by California Labor Code section 201, 202.

18 2. For restitution of unpaid wages to Plaintiffs and the other class members and all

19 pre-judgment interest from the day such amounts were due and payable;

20 3. For the appointment of a receiver to receive, manage and distribute any and all

21 funds disgorged from Defendants and determined to have been wrongfully acquired by

22 Defendants as a result of violation of California Business and Professions Code sections 17200, et

23 seq.;

24 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

25 California Code of Civil Procedure section 1021.5;

26 5. For injunctive relief to ensure compliance with this section, pursuant to California

27 Business and Professions Code sections 17200, et seq.; and

28

6. For such other and further relief as the court may deem just and proper.

On the Ninth Cause of Action

(PAGA Violations)

1. For civil penalties pursuant to statute as set forth in Labor Code § 2698 et seq., for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802;

2. For costs and attorneys' fees pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute; and

3. For such other and further relief the court may deem just and proper.

4. For interest at the legal rate pursuant to Labor Code §§ 218.6, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

5. For reasonable attorneys' fees, expenses and costs under Labor Code §§226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

6. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of the Class and Subclasses, respectfully demand a jury trial in this matter.

Respectfully submitted,

Dated: December 10, 2020

JUSTICE LAW CORPORATION

Douglas Han
Shunt Tatavos-Gharajeh
Areen Babajanian

Attorneys for Plaintiff Oscar Benitez and Shaquille Howard, on behalf of themselves and all others similarly situated

1
2 Dated: December 10, 2020

JAMES HAWKINS, APLC

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

Mitchell J. Murray, Esq.

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6 Attorneys for Plaintiff LAN LE and MARIO JORGE
7 ESTRADA-PERALTA, on behalf of themselves and all
8 others similarly situated
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