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on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

DESHONE BUSBY and STEPHANIE
HERRERA, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

MMD, INC., a California Corporation, and
DOES 1-50, inclusive,

Defendants.

Case No. 21STCV01413

FIRST AMENDED COMPLAINT

Assigned for All Purposes To:
Hon. Daniel J. Buckley
Dept.: 1

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay Minimum Wages;
- 2) Failure to Pay Overtime;
- 3) Failure to Provide Lawful Meal Periods;
- 4) Failure To Authorize And Permit Rest Periods;
- 5) Failure To Timely Pay Wages Due And Payable During Employment;
- 6) Failure to Timely Pay Wages Owed Upon Separation From Employment;
- 7) Failure to Furnish Accurate Itemized Wage Statements;
- 8) Failure to Reimburse Necessary Expenses;
- 9) Violation of the Unfair Competition Law;
- 10) Civil Penalties Under the Private Attorneys' General Act, Labor Code Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

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FILING WINDOW

1 Plaintiffs DESHONE BUSBY and STEPHANIE HERRERA (“Plaintiffs”), individuals,
2 assert claims against defendant MMD, INC., a California Corporation, and DOES 1-50, inclusive
3 (collectively “MMD” or “Defendants”) as follows:

4 **INTRODUCTION**

5 1. The purpose of this amendment is to effectively consolidate the allegations in the
6 class action of Plaintiffs Deshone Busby and Stephanie Herrera currently pending in the above-
7 entitled action (Los Angeles Superior Court Case Number 21STCV01413) and their separately-
8 filed PAGA action (Los Angeles Superior Court Case Number 21STCV10709).

9 2. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
10 on behalf of Plaintiffs and any and all persons who are or were employed by Defendants as non-
11 exempt employees, however titled, in or from Defendants’ dispensaries, shops or retail stores in the
12 State of California within four (4) years prior to the filing of the Complaint in this action until the
13 resolution of this lawsuit (collectively referred to as the “Class” or “Class Members” or “Non-
14 Exempt Employees”). This includes without limitation budtenders, customer service employees,
15 cashiers, and delivery personnel.

16 3. During the “liability period,” as defined as the applicable statute of limitations for
17 each and every cause of action contained herein – i.e. Plaintiffs’ claims under the Unfair
18 Competition Law is four (4) years; Plaintiffs’ claims for either unpaid wages or actual damages is
19 three (3) years; and Plaintiffs’ claims for statutory penalties is one (1) year from the filing of this
20 action through the present (referred to as “the liability period(s)”) – Defendants consistently
21 maintained and enforced against its Non-Exempt Employees unlawful practices and policies in
22 violation of California state wage and hour laws, including failing to lawfully and accurately pay
23 Plaintiffs and Class Members for all hours worked, including minimum wages and overtime; failing
24 to lawfully provide meal periods and authorize and permit rest periods; failing to pay one hour of
25 pay at the employee’s regular rate of pay when legally mandated meal or rest periods were not
26 lawfully provided; failing to pay reporting time pay; failing to accurately pay overtime; failing to
27 timely pay wages during employment; failing to reimburse necessary expenses; failing to provide
28 accurate itemized wage statements; and failing to keep accurate records.

1 4. Defendants implemented uniform policies and practices that deprived Plaintiffs and
2 Class Members of earned wages, including minimum wages; straight time wages; overtime wages;
3 premium wages; and which failed to reimburse necessary expenses; and lawful meal and/or rest
4 breaks.

5 5. Such actions and policies, as described above and further herein, were and continue
6 to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class
7 members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,
8 204, 210, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 246, 351, 510, 512, 516, 558, 1174, 1194,
9 1194.2, 1195, 1197, 1198, 2802, , 6300 et seq, 6400, 6401, 6401.7, 6402, 6403 applicable IWC
10 California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*,
11 applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000
12 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, proper sick pay,
13 liquidated damages, civil penalties, statutory penalties, and reasonable attorneys' fees and costs.

14 6. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to
15 Business and Professions Code sections 17200-17208, also seek injunctive relief and restitution
16 from Defendants for their failure to pay to Plaintiffs and the Class Members all of their wages,
17 including minimum wages, overtime and premium wages, their failure to timely pay wages, failure
18 to provide lawful meal and rest breaks, and their failure to reimburse expenses.

19 7. This is also a representative action for recovery of penalties under the Private
20 Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 *et seq.* PAGA permits
21 "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and all
22 other current and former aggrieved employees, to recover civil penalties and address an employer's
23 violations of the California Labor Code.

24 8. Plaintiffs bring this action pursuant to the PAGA on a representative basis on behalf
25 of: All current and former hourly, non-exempt employees, however titled, working in the State of
26 California are aggrieved employees.

27 9. Plaintiffs also seek to represent a sub-group of Aggrieved Employees that earned or
28 received tips or were supposed to receive tips during their employment.

1 10. Plaintiffs bring this suit on behalf of the Aggrieved Employees to recover civil
2 penalties and address the employer's violations of the California Labor Code

3 11. The Aggrieved Employees are a subset of the Class Members or Non-Exempt
4 Employees in this action. All allegations as to "Class Members" or "Non-Exempt Employees"
5 apply to "Aggrieved Employees" unless otherwise specified.

6 **JURISDICTION AND VENUE**

7 12. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated
8 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary
9 damages and restitution sought by Plaintiffs exceeds the minimum jurisdiction limits of the
10 California Superior Court and will be established according to proof at trial.

11 13. This Court has jurisdiction over this action pursuant to the California Constitution
12 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
13 those given by statute to other courts. The statutes under which this action is brought do not give
14 jurisdiction to any other court.

15 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

17 15. This Court has jurisdiction over Defendants because, upon information and belief,
18 each Defendant is either a resident of California, has sufficient minimum contacts in California, or
19 otherwise intentionally avails itself of the California market so as to render the exercise of
20 jurisdiction over them by the California Courts consistent with traditional notions of fair play and
21 substantial justice. Defendants have done and are doing business throughout California.

22 16. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other
23 similarly situated Non-Exempt Employees within Los Angeles County and it is believed that
24 Defendants have employed hundreds of Class Members as Non-Exempt Employees throughout the
25 state.

26 17. The California Superior Court also has jurisdiction in this matter because the
27 individual claims of the Class Members described herein are presently believed to be under the
28 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the

1 aggregate potential damages and recovery by all of the claims of the Plaintiffs' Class, including
2 attorneys' fees, placed in controversy by Plaintiffs' class-wide claims, is presently believed to be
3 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
4 Further, there is no federal question at issue, as the issues herein are based solely on California
5 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
6 Procedure, the California Civil Code, and the California Business and Professions Code.

7 18. Venue is proper in this Court because one or more of the Defendants reside, transact
8 business, or have offices in this County, and the acts or omissions alleged herein took place in this
9 County.

10 PARTIES

11 19. MMD, Inc. is a California corporation in good standing that is authorized to do
12 business throughout the state. MMD Inc.'s headquarters are located at 1515 N Cahuenga Blvd.,
13 in Los Angeles, California 90028.

14 20. MMD, Inc. operates numerous dispensaries, shops, and stores in California.

15 21. Per its website, MMD was founded in 2006, and opened its first medical dispensary
16 in North Hollywood. MMD operates 4 dispensaries in Southern California, and maintains an
17 extensive cannabis menu online and in-store. MMD sells products in its stores and through delivery
18 operations.

19 22. Plaintiff Deshone Busby is and during the liability period has been, a resident of
20 the County of Los Angeles.

21 23. Plaintiff Stephanie Herrera is and during the liability period has been, a resident of
22 the County of Los Angeles.

23 24. Plaintiffs were employed by Defendants at various times as non-exempt employees
24 in or from Defendants' dispensaries, shops or retail stores in the State of California during the
25 relevant time period. At various times, Plaintiffs were employed as budtenders, customer service
26 employees, cashiers, and delivery personnel.

27 25. Plaintiffs and the members of the putative class were employed by Defendants as
28 non-exempt employees, however titled, (the "Class Members" or "Non-Exempt Employees")

1 during the liability period.

2 26. Plaintiffs also seek to represent a sub-group of employees that received tips or were
3 supposed to receive tips during their employment.

4 27. Plaintiffs and the members of the aggrieved group were employed by Defendants as
5 non-exempt employees during the liability period.

6 28. Whenever in this complaint reference is made to any act, deed, or conduct of
7 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
8 one or more of Defendants' officers, directors, agents, employees, or representatives, who was
9 actively engaged in the management, direction, control, or transaction of the ordinary business and
10 affairs of Defendants.

11 29. The true names and capacities of Defendants, whether individual, corporate,
12 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
13 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
14 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
15 capacities of the Defendants designated hereinafter as DOES when such identities become known.

16 30. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are
17 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
18 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
19 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
20 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
21 liability of the Defendants as alleged herein.

22 31. Plaintiffs are further informed and believe, and thereon allege, that at all times
23 material herein, each Defendant was completely dominated and controlled by its co-Defendants
24 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
25 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
26 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
27 Whenever and wherever reference is made to individuals who are not named as Defendants in this
28 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times

1 acted on behalf of Defendants named in this complaint within the scope of their respective
2 employments.

3 **FACTUAL ALLEGATIONS**

4 32. During the relevant time frame, Defendants compensated Plaintiffs and the Non-
5 Exempt Employees based upon an hourly wage.

6 33. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
7 non-exempt employees within the meaning of the California Labor Code, and the implementing
8 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
9 the IWC Wage Orders and the Labor Code.

10 34. Plaintiffs were employed by Defendants at various times as non-exempt employees
11 in or from Defendants' dispensaries, shops or retail stores in the State of California during the
12 relevant time period. At various times, Plaintiffs were employed as budtenders, customer service
13 employees, cashiers, and delivery personnel.

14 35. Plaintiff Busby worked for Defendants from November 2018 through October 2020.

15 36. Plaintiff Herrera worked for Defendants from July 2019 through October 2020.

16 37. Plaintiffs performed customer service duties, sales, and delivery functions for
17 Defendants in Southern California.

18 38. The members of the putative class and aggrieved group worked as non-exempt
19 employees for Defendants throughout the state of California during the liability period.

20 39. Plaintiffs typically worked five to six days a week, and worked approximately 7 to 8
21 hours per day.

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

25 41. All Class Members, including Plaintiffs, are similarly situated in that they were
26 and are all subject to Defendants' uniform policies and systemic practices as specified herein.

27 42. Plaintiffs and the Class Members were not properly compensated for all hours
28 worked and were not paid at least minimum wage for each hour worked, in part because they were

1 frequently required to work off the clock, including to respond to communications from store
2 management and other personnel while off duty, review store and product materials while off duty,
3 participate in employee/shop discussions while off duty, perform delivery functions, and perform
4 other duties and functions while off the clock.

5 43. In addition, Plaintiffs and the Class Members frequently worked in excess of eight
6 (8) hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such
7 time at a rate of time and one-half the employee's regular rate of pay per hour. Plaintiffs and the
8 Class Members also worked in excess of twelve (12) hours in one day and/or over eight (8) hours
9 on the seventh day of the workweek, but were not properly paid for such time at a rate of two times
10 the employee's regular rate of pay per hour.

11 44. Defendants failed to properly calculate Plaintiffs' and the Class Members' regular
12 rate of pay because Defendants failed to include all forms of compensation in the regular rate
13 including bonuses, incentives, commissions, and other compensation as required by law.

14 45. In addition, Plaintiffs and the Class Members were regularly required to work
15 shifts in excess of five hours without being provided a lawful, timely meal period and over ten
16 hours in a day without being provided a second lawful, timely meal period as required by law.

17 46. Indeed, during the relevant time, as a consequence of Defendants' staffing and
18 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
19 Defendants frequently failed to provide Plaintiffs and the Class Members timely, legally
20 complaint uninterrupted 30-minute meal periods on shifts over five hours and second meal
21 periods on shifts over ten hours as required by law.

22 47. On information and belief, Plaintiffs and Class Members did not waive their rights
23 to meal periods under the law.

24 48. Plaintiffs and the Class Members were not provided with valid lawful on-duty
25 meal periods.

26 49. Despite the above-mentioned meal period violations, Defendants failed to
27 compensate Plaintiffs, and on information and belief, failed to compensate Class Members, one
28 additional hour of pay at their regular rate as required by California law when meal periods were

1 not timely or lawfully provided in a compliant manner.

2 50. Plaintiffs are informed and believe, and thereon allege, that Defendants know,
3 should know, knew, and/or should have known that Plaintiffs and the other Class Members were
4 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
5 were not receiving such compensation.

6 51. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt
7 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
8 period for every four hours worked or major fraction thereof, which is a violation of the Labor
9 Code and IWC wage order.

10 52. Defendants maintained and enforced scheduling practices, policies, and imposed
11 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid
12 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
13 requisite rest periods were not timely authorized and permitted.

14 53. Moreover, Plaintiffs and the Class Members were required to incur necessary
15 expenses in the discharge of their duties, including without limitation cell phone expenses,
16 application expenses, and mileage, but were not reimbursed for such necessary expenses.

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

22 55. Defendants also failed to provide accurate, lawful itemized wage statements to
23 Plaintiffs and the Class Members in part because of the above specified violations. In addition,
24 upon information and belief, Defendants omitted an accurate itemization of gross wages earned
25 (including tips), total hours worked, all applicable rates of pay, gross pay and net pay figures from
26 Plaintiffs and the Class Members' wage statements.

27 56. Defendants have also made it difficult to determine applicable rates of pay and
28 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-

1 exempt Employees, including Plaintiffs, during the liability period because they did not
2 implement and preserve a lawful record-keeping method to record all hours worked, meal
3 periods, and non-provided rest and meal periods owed to employees as required for non-exempt
4 employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable
5 California Wage Orders.

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

13 58. Defendants also maintained a mandatory tip pooling scheme which required
14 Plaintiffs and the Class Members to pool their tips and deprived Plaintiffs and Class Members of
15 gratuities left for them.

16 59. In relevant part Labor Code section 351 states, “No employer or agent shall
17 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee
18 by a patron, or deduct any amount from wages due an employee on account of a gratuity, or
19 require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of
20 the wages due the employee from the employer. Every gratuity is hereby declared to be the sole
21 property of the employee or employees to whom it was paid, given, or left for.”

22 60. There are only two conditions created by Labor Code section 351, “the person
23 must be an employee and the tip must have been ‘paid, given or left for’ the employee.” *Budrow*
24 *v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879

25 61. Plaintiffs allege upon information and belief that there was not a fair and
26 reasonable distribution of tips from the pool to Plaintiffs and Class Members, and that the
27 distribution was not related to the employee’s role in providing service. Also, in violation of the
28 law, Defendants and their agents shared in the tips left for the Class Members.

1 62. Defendant's procedures for tips deprived Plaintiffs and the Tipped Aggrieved
2 Employees of sums that belongs to them.

3 63. In addition, Plaintiffs allege that Defendants systematically withheld their and,
4 upon information and belief, the Class Members' earned wages during employment.

5 64. Plaintiffs and the Class Members are covered by applicable California IWC Wage
6 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
7 section 11000 *et seq.*

8 65. Plaintiffs further allege that Defendants violated California Labor Code § 6300 *et*
9 *seq.* by failing to take proper steps in compliance with CDC recommendations, OSHA regulations,
10 public health orders (including Los Angeles County Department of Public Health Order), and health
11 and safety mandates to implement measure to keep employees safe and healthy in light of the
12 coronavirus pandemic.

13 66. Plaintiffs allege that among other things, Defendants:

- 14 a. Failed to require employees and clients to wear masks;
- 15 b. Failed to require employees and guests to maintain six (6) feet social distancing;
- 16 c. Failed to provide masks and hand sanitizer as appropriate;
- 17 d. Failed to provide sufficient time to ensure that employees could sanitize the
18 environment and safely transition between guests;
- 19 e. Failed to report COVID-19 cases in the workplace;
- 20 f. Failed to provide adequate washing facilities to maintain cleanliness;
- 21 g. Failed to develop an effective illness prevention plan;
- 22 h. Failed to take individual measures and screen employees and guests via temperature
23 checks and pre-shift screenings;

24 67. Defendants violated Labor Code §6400 by failing to provide a place of employment
25 that is safe and healthful;

26 68. Defendants further violated Labor Code §6401 by failing to furnish and use safety
27 devices and safeguards, and adopt and use practices, means, methods, operations, and processes
28

1 which are reasonably adequate to render such employment and place of employment safe and
2 healthful;

3 69. Defendants further violated Labor Code § 6401.7 by failing to implement and
4 maintain an effective written illness prevention program;

5 70. Defendants further violated Labor Code § 6402 by requiring or permitting an
6 employee to go or be in any employment or place of employment which is not safe and healthful;

7 71. Defendants further violated Labor Code § 6403 by failing or neglecting to provide
8 and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate
9 methods and processes, or to do every other thing reasonably necessary to protect the life, safety,
10 and health of employees.

11 **CLASS ACTION ALLEGATIONS**

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

15 73. All claims alleged herein arise under California law for which Plaintiffs seek relief
16 as authorized by California law.

17 74. The **proposed class** is comprised of and defined as: All persons who are or were
18 employed by Defendants as non-exempt employees, however titled, in or from Defendants'
19 dispensaries, shops or retail stores in the State of California within four (4) years prior to the filing
20 of the Complaint in this action until the resolution of this lawsuit (collectively referred to as the
21 "Class" or "Class Members" or "Non-Exempt Employees").

22 75. Plaintiffs also seek to represent Subclasses included in the Plaintiffs' Class, which
23 are composed of Class Members satisfying the following definitions:

24 a. All Class Members who were not paid at least minimum wage for every hour
25 worked (**collectively "Minimum Wage Subclass"**)

26 b. All Class Members who were not accurately paid overtime for hours worked
27 over eight in a day or over forty in a workweek (**collectively "Overtime Subclass"**);

28 c. All Class Members who worked more than five (5) hours in a workday and

1 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
2 were not paid compensation of one hour premium wages at the employee's regular rate in lieu
3 thereof (hereinafter collectively referred to as the "**First Meal Period Subclass**");

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

8 e. All Class Members who worked more than three and a half hours in a
9 workday and were not authorized and permitted to take a lawful net 10-minute rest period and were
10 not paid compensation of one hour premium wages at the employee's regular rate in lieu thereof
11 (hereinafter collectively referred to as the "**First Rest Period Subclass**");

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

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

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

23 i. All Class Members who were not reimbursed for all necessary expenditures
24 (collectively "**Indemnification Subclass**").

25 j. All Class Members who were required to contribute any tips earned to the
26 tip pool. (collectively "**Tipped Subclass**")

27 76. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
28 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,

1 or if it should be deemed necessary by the Court or to further divide the Class Members into
2 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
3 Class Members or the Plaintiffs' Class includes the members of each of the Subclasses.

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

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

15 b. Ascertainability: The proposed class is easily ascertainable. The number and
16 identity of the class members are determinable from Defendants' payroll records and time records
17 for each class member.

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

21 1) Whether Defendants were required to pay Class Members for hours worked
22 off the clock to review learning materials, product marketing materials, and work-related
23 communications;

24 2) Whether Defendants were required to pay Class Members for all hours
25 worked completing deliveries, attending events or customer service functions;

26 3) Whether Defendants were required to pay Class Members for travel time;

27 4) Whether Defendants paid Class Members at least minimum wage for all
28 hours worked;

1 5) Whether Defendants knew or should have known that Class Members were
2 required to perform work off the clock;

3 6) Whether Defendants paid overtime using the proper regular rate;

4 7) Whether Defendants accurately calculated and paid all Class Members
5 overtime premiums for the hours which Plaintiffs and Class Members worked in excess of eight
6 (8) hours per day and/or forty (40) hours per week;

7 8) Whether Defendants had a policy and practice of providing lawful, timely
8 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
9 Commission (“IWC”) wage order;

10 9) Whether Defendants had a policy and practice of complying with Labor
11 Code section 226.7 and IWC Wage Order 5-2001 and 7-2001 on each instance that a lawful meal
12 period was not lawfully provided;

13 10) Whether Defendants authorized and permitted lawful, net 10-minute rest
14 period to the Class Members for every four (4) hours or major fraction thereof worked;

15 11) Whether Defendants had a policy and practice of complying with Labor
16 Code section 226.7 and the IWC Wage Order 5-2001 and 7-2001 on each instance that a lawful rest
17 period was not provided;

18 12) Whether Defendants timely paid wages earned during employment as
19 required by the IWC Wage Order 5-2001 and 7-2001, Labor Code 204, and 210;

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

22 14) Whether Defendants were required to reimburse Plaintiffs and the Class
23 Members for necessary expenses incurred, including without limitation cellular phone usage and
24 mileage;

25 15) Whether Defendants reimbursed employees for necessary expenses in
26 accordance with Labor Code section 2802;

27 16) Whether Defendants omitted required information from itemized wage
28 statements;

1 17) Whether Defendants maintained accurate records of Class Members' earned
2 wages, applicable hourly rates, hours worked, work periods, meal periods and deductions;

3 18) Whether Defendants engaged in unfair competition in violation of section
4 17200 et seq. of the Business and Professions Code;

5 19) Whether Defendants' conduct was willful and/or reckless;

6 20) Whether Defendants provided accurate itemized wage statements in
7 violation of Labor Code § 226; and

8 21) The appropriate amount of damages, restitution, and/or monetary penalties
9 resulting from Defendants' violations of California law.

10 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
11 the interests of each member of the Class and Subclasses with whom they have a well-defined
12 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
13 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
14 which would be sought by each member of the Class and/or Subclasses in separate actions. All
15 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
16 provide lawful meal and rest periods, failure to provide accurate wage statements, failure to timely
17 pay wages at termination, failure to pay minimum wages, failure to properly pay overtime, failure
18 to reimburse necessary expenses, failure to timely pay wages during employment, and failure to
19 accurately pay all wages earned including all owed premium and overtime wages, all due to
20 Defendants' policies and practices that affected each member of the Class and/or Subclasses
21 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
22 each member of the Class and/or Subclasses.

23 e. Adequacy: Plaintiffs are qualified to, and will fairly and adequately protect
24 the interests of each member of the Class and/or Subclasses with whom they have a well-defined
25 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that
26 they have an obligation to make known to the Court any relationships, conflicts, or differences with
27 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
28 known to exist. Plaintiffs' attorneys and the proposed counsel for the Class and Subclasses are

versed in the rules governing class action discovery, certification, litigation, and settlement and experienced in handling such matters. Other former and current employees of Defendants may also serve as representatives of the Class and Subclasses if needed.

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

g. Public Policy Considerations: Employers in the state of California violate employment and labor laws every day. However, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers may damage their future endeavors through negative references and/or other means. The nature of this action allows for the protection of current and former employees' rights without fear of retaliation or damage. Additionally, the citizens of California have a significant interest in ensuring employers comply with California's labor laws

1 and in ensuring those employers who do not are prevented from taking further advantage of their
2 employees.

3 **CLASS ACTION CLAIMS**

4 **FIRST CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(By Plaintiffs and the Class Against Defendants)**

7 78. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
8 paragraphs as if fully set forth herein.

9 79. Labor Code section 204 establishes the fundamental right of all employees in the
10 State of California to be paid wages, including minimum wage, straight time and overtime, in a
11 timely fashion for their work.

12 80. Labor Code section 1194 (a) provides that notwithstanding any agreement to work
13 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
14 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
15 of the full amount of this minimum wage or overtime compensation, including interest thereon,
16 reasonable attorney's fees, and costs of suit.

17 81. Labor Code section 1197 provides: The minimum wage for employees fixed by
18 the commission or by any applicable state or local law, is the minimum wage to be paid to
19 employees, and the payment of a lower wage than the minimum so fixed is unlawful.

20 82. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
21 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
22 IWC Wage Order(s).

23 83. The applicable wage orders and California Labor Code §§ 1197 and 1182.12
24 establish the right of employees to be paid minimum wages for all hours worked, in amounts set
25 by state law.

26 84. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
27 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
28 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal

1 to the unpaid wages and interest accrued thereon.

2 85. During all relevant periods, the California Labor Code and wage orders required
3 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
4 for all hours worked.

5 86. The IWC Wage Orders define “hours worked” as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so.”

8 87. At all times relevant, Plaintiffs and Class Members consistently worked hours for
9 which they were not paid because Defendants frequently required Plaintiffs and the Class
10 Members to work off the clock.

11 88. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and
12 the Class Members were working off the clock and that they should have been paid for this time.

13 89. Defendant’s policy and practice of not paying all minimum wages violates
14 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
15 applicable wage order 5-2001 and 7-2001.

16 90. Due to Defendants’ violations of the California Labor Code and wage orders,
17 Plaintiffs and the Class members are entitled to recover from Defendant their unpaid wages,
18 statutory penalties, reasonable attorneys’ fees and costs in this action, and pre-judgment and post-
19 judgment interest, as well as liquidated damages.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME OWED**

22 **(By Plaintiffs and the Class Against All Defendants)**

23 91. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
24 paragraphs as if fully set forth herein.

25 92. During all relevant periods, Defendants required Plaintiffs and the Class members
26 to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40)
27 hours per workweek.

28 93. During all relevant periods, both the California Labor Code section 1194, 1197,

1 510, 1198, and the pertinent wage order 5-2001 and 7-2001 required that all work performed by
2 an employee in excess of eight (8) hours in any workday, on the seventh day of work in any
3 workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half
4 times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is
5 required to be compensated at the rate of no less than twice the regular rate of pay for an
6 employee. In addition, any work in excess of eight hours on any seventh day of a workweek is
7 required to be compensated at the rate of no less than twice the regular rate of pay of an
8 employee.

9 94. During all relevant periods, Defendants had a uniform policy of requiring
10 Plaintiffs and the Class members to work in excess of eight (8) hours in a workday and/or in
11 excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half
12 times their regular rate of pay. Upon information and belief, Defendants also failed to properly
13 compensate Plaintiffs and the Class Members for hours worked in excess of twelve (12) hours in
14 one day, or eight hours on the seventh day of a workweek.

15 95. The IWC Wage Orders define "hours worked" as "the time during which an
16 employee is subject to the control of an employer, and includes all the time the employee is
17 suffered or permitted to work, whether or not required to do so."

18 96. At all times relevant, Plaintiffs and Class Members consistently worked hours for
19 which they were not paid because Plaintiffs and the Class Members were required to work off the
20 clock—some of these hours were over eight hours in one workday or in excess of forty hours in a
21 workweek and should have been paid at the overtime rate.

22 97. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and
23 the Class Members were working off the clock and that they should have been paid for this time.

24 98. In addition, upon information and belief, Defendants failed to incorporate all forms
25 of compensation, including without limitation bonuses, commissions, and incentives, into the
26 regular rate for overtime purposes.

27 99. As a result, Defendants failed to pay Plaintiffs and the Class members earned
28 overtime wages and such employees suffered damages as a result.

100. Defendants knew or should have known Plaintiffs and the Class Members were undercompensated as a result of these practices.

101. Defendants unlawful conduct violates Labor Code section 1194, 1197, 510, 1198, and the pertinent wage order 5-2001 and 7-2001.

102. Due to Defendant's violations of the California Labor Code, Plaintiffs and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiffs and the Class Against All Defendants)

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

104. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

105. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than ten (10) hours without providing a second meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal break may only be waived by mutual consent, and if the employee did not waive his or her first meal period, and the employee's work day will not exceed twelve hours.

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

107. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to provide Plaintiffs and Class Members timely and uninterrupted second meal periods of not less

1 than thirty (30) minutes on shifts longer than ten hours.

2 108. Indeed, during the relevant time, as a consequence of Defendants' staffing and
3 scheduling practices, labor budgets, lack of coverage, work demands, and Defendants' policies and
4 practices, Plaintiffs and the Class Members were frequently not provided with legally required
5 timely meal periods.

6 109. On information and belief, Plaintiffs and the Class Members did not waive their
7 rights to meal periods under the law.

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

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

12 112. Defendants' conduct violates the Labor Code section 512 and the Wage Order.

13 113. As a proximate result of the aforementioned violations, Plaintiffs and the Class
14 Members have been damaged in an amount according to proof at time of trial.

15 114. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover
16 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also
17 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

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

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

25 **(By Plaintiffs and the Class Against All Defendants)**

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

28

1 117. Pursuant to the IWC wage orders applicable to Plaintiffs' and Class Members'
2 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
3 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
4 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net
5 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall
6 be counted as hours worked, for which there shall be no deduction from wages."

7 118. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
8 during any rest period mandated by an applicable order of the IWC.

9 119. Defendants were required to authorize and permit employees such as Plaintiffs and
10 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours
11 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,
12 with no deduction from wages.

13 120. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and the
14 Class Members' employment with Defendants, Defendants failed and refused to authorize and
15 permit Plaintiffs and the Class Members to take lawful, net ten (10) minute rest periods for every
16 four (4) hours worked, or major fraction thereof.

17 121. Defendants did not pay Plaintiffs one additional hour of pay at their regular rate of
18 pay for each day that a rest period violation occurred. On information and belief, the other members
19 of the Class endured similar violations as a result of Defendants' rest period policies and practices
20 and Defendants did not pay said Class Members premium pay as required by law.

21 122. By their failure to authorize and permit Plaintiffs and the Class Members to take a
22 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
23 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
24 three (3) total ten (10) minute rest periods on days on which Plaintiffs and the other Class Members
25 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
26 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
27 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

28 123. Pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees are entitled to

1 recover one (1) hour of premium pay for each day in which a rest period violation occurred.
2 Defendants' failure to pay this sum constitutes a separate and independent violation of the Labor
3 Code.

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

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING**

10 **EMPLOYMENT**

11 **(By Plaintiffs and the Class Against All Defendants)**

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

14 126. Labor Code section 204 requires that all wages are due and payable twice in each
15 calendar month.

16 127. The wages required by Labor Code §§ 246, 226.7, 510, 1194 and other sections
17 became due and payable to each employee in each month that they were earned. They became due
18 and payable to each employee in each month that he or she was not provided with a meal period or
19 rest period or paid minimum wage, sick pay, tips, straight or overtime wages to which he or she
20 was entitled.

21 128. Defendants violated Labor Code § 204 by systematically failing and refusing to pay
22 wages due under the Labor Code.

23 129. Labor Code section 210 (a) provides that "In addition to, and entirely independent
24 and apart from, any other penalty provided in this article, every person who fails to pay the wages
25 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
26 1197.5, shall be subject to a penalty as follow:

27 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
28 employee.

1 (2) For each subsequent violation, or any willful or intentional violation, two hundred
2 dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
3 unlawfully withheld.

4 103. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
5 represent have been deprived of wages in amounts to be determined at trial, and are entitled to
6 recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to
7 Labor Code § 210, 218.5, 218.6, 510, 1194.

8 **SIXTH CAUSE OF ACTION**

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

10 **(By Plaintiffs and the Class Against All Defendants)**

11 130. Plaintiffs incorporate by reference and reallege each and every allegation contained
12 above, as though fully set forth herein.

13 131. Labor Code § 201 requires an employer, like Defendant to pay all wages earned and
14 unpaid at the time of termination.

15 132. Labor Code § 202 require Defendants to pay their employees all wages due within
16 seventy-two (72) hours of separation of employment.

17 133. Section 203 of the Labor Code provides that if an employer willfully fails to timely
18 pay such wages the employer must, as a penalty, continue to pay the subject employee's wages
19 until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days
20 of wages.

21 134. Plaintiffs and the Class Members are entitled to compensation for all forms of wages
22 earned, including but not limited to minimum wages, sick pay, tips, overtime, and premium meal
23 and rest period compensation, but to date have not received such compensation, therefore entitling
24 them to Labor Code § 203 penalties.

25 135. More than thirty (30) days have passed since affected Waiting Time Subclass
26 Members have left Defendants' employ, and on information and belief, they have not received
27 payment pursuant to Labor Code § 203.

28

1 136. Plaintiffs and the Waiting Time Subclass Members are thus entitled to 30 days'
2 wages as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and
3 costs.

4
5
6
7 **SEVENTH CAUSE OF ACTION**
8 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
9 **EMPLOYEE WAGE STATEMENT PROVISIONS**

10 **By Plaintiffs and the Class Against Defendants**

11 137. Plaintiffs repeat and incorporate herein by reference each and every allegation set
12 forth above, as though fully set forth herein.

13 138. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
14 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
15 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
16 when wages are paid by personal check or cash, an accurate itemized statement in writing
17 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
18 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
19 name of the employee and only the last four digits of his or her social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
22 pay period and the corresponding number of hours worked at each hourly rate by the
23 employee....".

24 139. Further, the IWC Wage Orders require in pertinent part: Every employer shall
25 keep accurate information with respect to each employee including the following: (3) Time
26 records showing when the employee begins and ends each work period. Meal periods, split shift
27 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
28 payroll period and applicable rates of pay...."

1 140. Labor Code section 1174 of the California also requires Defendants to maintain
2 and preserve, in a centralized location, among other items, records showing the names and
3 addresses of all employees employed and payroll records showing the hours worked daily by, and
4 the wages paid to, its employees. On information and belief and based thereon, Defendants have
5 knowingly and intentionally failed to comply with Labor Code section 1174, including by
6 implementing the policies and procedures and committing the violations alleged in the preceding
7 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
8 unlawful pursuant to Labor Code section 1175.

9 141. Defendants have failed to record many of the items delineated in applicable
10 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
11 1174, including by virtue of the fact that each wage statement which failed to accurately
12 compensate Plaintiffs and Class Members for all hours worked and for missed and non-provided
13 meal and rest periods, or which failed to include compensation for all minimum wages earned or
14 overtime hours worked, was an inaccurate wage statement.

15 142. On information and belief, Defendants failed to implement and preserve a lawful
16 record-keeping method to record all hours worked, meal periods, and non-provided meal and rest
17 periods owed to employees, as required for Non-Exempt Employees under California Labor Code
18 section 226 and applicable California Wage Orders. In order to determine if they had been paid
19 the correct amount and rate for all hours worked, Plaintiffs and Class Members have been, would
20 have been, and are compelled to try to discover the required information missing from their wage
21 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
22 the wage statements Defendants provided to them.

23 143. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
24 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
25 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
26 required information. Specifically, Defendants have also omitted accurate itemizations of total
27 hours worked, applicable hourly rates, net pay, and gross pay from Plaintiffs and the Class
28 Members' wage statements. In addition, Defendants have failed to provide accurate itemized

1 wage statements as a consequence of the above-specified violations.

2 144. Moreover, upon information and belief, as a pattern and practice, in violation of
3 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
4 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
5 Statement Class, including but not limited to, beginning and ending of each work period, meal
6 period and split shift interval, the total daily hours worked, and the total hours worked per pay
7 period and applicable rates of pay.

8 145. Plaintiffs and the members of the Class have suffered injury as a result of
9 Defendants' failure to maintain accurate records for the members of the Class in that the members
10 of the Class were not timely provided written accurate itemized statements showing all requisite
11 information, such that the members of the Class were misled by Defendants as to the correct
12 information regarding various items, including but not limited to the total hours worked by the
13 employee, gross pay, net wages earned and all applicable hourly rates in effect during the pay
14 period and the corresponding number of hours worked at each hourly rate. The lack of
15 information hindered Plaintiffs and the Class from determining the amount of wages owed to
16 them and led them to believe they were not entitled to be paid wages for all hours worked, for
17 overtime, missed meal and rest breaks, or for each hour of labor performed and the proper hourly
18 rate, although they were so entitled.

19 146. Pursuant to Labor Code section 226, and in light of Defendants' violations
20 addressed above, Plaintiffs and the Class Members are each entitled to recover up to a maximum
21 of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

24 **By Plaintiffs and Class Against All Defendants**

25 147. Plaintiffs incorporate by reference and reallege each and every allegation contained
26 above, as though fully set forth herein.

27 148. Plaintiffs repeat and incorporate herein by reference each and every allegation set
28 forth above, as though fully set forth herein.

149. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class Members for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

150. Plaintiffs and the Class were required to incur expenses in the performance of their assigned job duties. For example, Plaintiffs and the Class Members were required to incur numerous out of pocket expenses, including without limitation, cellular phones, and mileage , in direct consequence of the discharge of their duties.

151. Upon information and belief, the Defendants did not reimburse Plaintiffs or the Class for such expenses.

152. As a result of the unlawful acts of Defendants, Plaintiffs and the Class Members have been deprived of unreimbursed sums in amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §2802.

NINTH CAUSE OF ACTION

VIOLATION OF THE UNFAIR COMPETITION LAW

By Plaintiffs and Class Against All Defendants

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

154. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the general public. Plaintiffs also seek to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

155. Defendants' policies, activities, and actions as alleged herein are violations of California law and constitute unlawful, unfair, and deceptive business acts and practices in violation of California Business and Professions Code §§ 17200, *et seq.*

156. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

157. The state law violations, including violations of the relevant IWC Wage Order,

1 detailed herein above are the predicate violations for this cause of action. By way of example only,
2 in the instant case Defendants' policy of failing to lawfully provide Plaintiffs and the Class with
3 timely lawful meal and rest periods or pay one (1) hour of premium pay when a meal or rest period
4 was not lawfully provided violates Labor Code § 512, 1198, and § 226.7, and the IWC Wage
5 Orders. Defendants further violated the law through their policies of failing to fully and accurately
6 compensate Plaintiffs and the Class Members for all hours worked, including minimum wages and
7 overtime as well as failing to timely pay wages during employment, failing to keep proper records,
8 failing to pay all wages and compensation due at termination, failing to pay proper sick pay, failing
9 to pay tips, failing to provide accurate wage statements, and failing to reimburse expenses as
10 specified herein

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

13 159. As a result of the unlawful acts specified herein, Defendants have reaped and
14 continue to reap unfair benefits and unlawful profits at the expense of the Plaintiffs and the Class
15 Members he seeks to represent. Defendants have been unjustly enriched through Defendants'
16 unlawful, unfair, and fraudulent business practices alleged herein.

17 160. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
18 and the Class Members are entitled to an injunction and other equitable relief against such unlawful
19 practices and are entitled to restitution of the wages withheld and retained by Defendants during a
20 period that commences four (4) years prior to the filing of this complaint; an award of attorneys'
21 fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

22 TENTH CAUSE OF ACTION

23 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE**

24 **SECTION 2698 ET SEQ.**

25 **By: Plaintiff and the Aggrieved Employees**

26 161. Plaintiffs incorporate by reference each and every paragraph above, and realleges
27 each and every allegation contained above as though fully set forth herein.

28

1 162. On January 12, 2021, Plaintiffs gave written notice by online submission to the
2 LWDA and by certified mail to Defendant of Defendants' violations of numerous provisions of
3 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
4 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
5 hereto as **Exhibit A**.

6 163. Plaintiffs are "aggrieved employees" as defined in Labor Code Section 2699(a), as
7 they were employed by Defendants during the statutory period and suffered one or more of the
8 Labor Code violations set forth herein. They seek to recover on behalf of themselves and all
9 other current and former aggrieved employees (hourly, non-exempt employees in California
10 working in or from Defendants' dispensaries, shops or retail stores in the State of California) of
11 Defendants the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

12 164. 65 days have passed and no response has been received from the LWDA.
13 Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative capacity.

14 165. Plaintiffs have exhausted all administrative procedures required of them under
15 Labor Code §§ 2698, 2699, and 2699.3, and as a result, are justified as a matter of right in
16 bringing forward this cause of action.

17 166. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
18 for which Defendants are liable due to numerous Labor Code violations as set forth in this
19 Complaint.

20 167. Plaintiffs seek to recover the PAGA civil penalties through a representative action
21 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
22 Cal.4th 969. Class certification of the PAGA claims is not required.

23 168. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiffs seek to recover
24 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
25 violations as set forth in this Complaint.

26 169. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees,
27 seek penalties under Labor Code § 2699, for without limitation, the claims set forth herein,
28 including:

- a. Defendants' failure to comply with the requirement of Labor Code §§1182.12, 1194, 1197, 1198, and Wage Order 5-2001 and 7-2001 to pay at least minimum wage for every hour worked;
- b. Defendants' failure to comply with the requirement of Labor Code §§ 510, 1194, 1197, 1198, and Wage Order 5-2001 and 7-2001 to pay all wages earned including overtime wages;
- c. Defendants' failure to comply with the requirement of Labor Code § 216 to pay wages after demand was made;
- d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;
- e. Defendants' failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- f. Defendants' failure to comply with the requirement of Labor Code § 203 to pay waiting time penalties to former employees;
- g. Defendants' failure to pay wages for reporting time in violation of Labor Code §§1194, 1197, 1198, and IWC Wage Order 5-2001 and 7-2001;
- h. Defendants' failure to comply with the requirement of Labor Code § 226.7, 1198, and IWC Wage Order 5-2001 and 7-2001 to authorize and permit ten (10) minute rest breaks;
- i. Defendants' failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Order 5-2001 and 7-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- j. Defendants' failure to comply with the requirement of Labor Code §§226.7, 512, 1198, and IWC Wage Order 5-2001 and 7-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;

- 1 k. Defendants' failure to comply with the requirement of Labor Code § 226.7,
2 1198, and IWC Wage Order 5-2001 and 7-2001 to pay one hour of premium
3 pay for each lawful meal break that was not provided;
- 4 l. Defendants' failure to maintain required records in violation of Labor Code
5 §§226, 1174, and IWC Wage Order 5-2001 and 7-2001;
- 6 m. Defendants' failure to provide accurate compliant wage statements under
7 Labor Code §226;
- 8 n. Defendants' failure to comply with the requirement of Labor Code § 351
9 through its mandatory tip pooling policies;
- 10 o. Defendants' failure to reimburse necessary expenses in violation of Labor
11 Code § 2802.
- 12 p. Defendants failure to take proper steps in compliance with CDC
13 recommendations, OSHA regulations, public health orders (including Los
14 Angeles County Department of Public Health Order), and health and safety
15 mandates to implement measure to keep employees safe and healthy in light of
16 the coronavirus pandemic in violation of Labor Code § 6300 et seq.;
- 17 q. Defendants' failure to provide a place of employment that is safe and healthful
18 in violation of Labor Code § 6400;
- 19 r. Defendants' failure to furnish and use safety devices and safeguards, and adopt
20 and use practices, means, methods, operations, and processes which are
21 reasonably adequate to render such employment and place of employment safe
22 and healthful in violation of Labor Code § 6401;
- 23 s. Defendants' failure to implement and maintain an effective written illness
24 prevention program in violation of Labor Code § 6401.7;
- 25 t. Defendants' violation of Labor Code § 6402 by requiring or permitting an
26 employee to go or be in any employment or place of employment which is not
27 safe and healthful;
- 28

1 u. Defendants' failure or neglect to provide and use reasonably adequate safety
2 devices and safeguards or adopt or use reasonably adequate methods and
3 processes, or to do every other thing reasonably necessary to protect the life,
4 safety, and health of employees in violation of Labor Code § 6403.

5 170. Plaintiffs and the Aggrieved Employees were underpaid wages as a result of the
6 violations of the California Labor Code and Wage Order 5 and 7 as set forth herein. Pursuant to
7 Labor Code section 558, as a direct and proximate result of Defendants' conduct as alleged
8 above, Plaintiff and the aggrieved employees are entitled to a civil penalty of fifty dollars (\$50)
9 for the initial pay period, and one hundred dollars (\$100) for each subsequent pay period for
10 which Defendants violated the California Labor Code and Wage Order 5 and 7 as alleged herein.

11 171. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions
12 for which a civil penalty is specifically provided, including but not limited to the following:

- 13 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are
14 subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial
15 violation for each failure to pay each employee and two hundred (\$200) per
16 employee for violations in subsequent pay periods plus 25% of the amount
17 unlawfully withheld.
- 18 b. Pursuant to Labor Code § 226.3, for violations of Labor Code §226(a), Defendants
19 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
20 per aggrieved employee for the initial pay period where a violation occurs and one
21 thousand dollars (\$1,000) per aggrieved employee for violation in subsequent pay
22 periods.
- 23 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person on behalf of an
24 employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission," including Labor Code §§ 510 and 512, shall be subject to a civil
27 penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for
28 initial violations for each underpaid employee for each pay period for which the

1 employee was underpaid and one hundred dollars (\$100) for each subsequent
2 violation for each underpaid employee for each pay period for which the employee
3 was underpaid.

4 d. Pursuant to Labor Code § 1174.5, for violation of Labor Code § 1174(d),
5 Defendants are subject to a civil penalty of five hundred dollars (\$500).

6 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any
7 employee a wage less than the minimum fixed by an order of the commission, shall
8 be subject to a civil penalty as follows: for any initial violation that is intentionally
9 committed, one hundred dollars (\$100) for each underpaid employee for each pay
10 period for which the employee is underpaid; and for each subsequent violation of
11 the same offense, two hundred fifty dollars (\$250) for each underpaid employee for
12 each pay period for which the employee is underpaid regardless of whether the
13 initial violations was intentionally committed.

14 172. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under
15 Labor Code §§2698 et seq. and 2699 because of Defendants' violation of numerous provisions of
16 the California Labor Code and IWC Wage Orders.

17 173. Under Labor Code § 2699, Plaintiffs and Aggrieved Non-Exempt Employees are
18 entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-
19 mentioned provisions of the California Labor Code.

20 174. Under Labor Code §2699, Plaintiffs and Aggrieved Non-Exempt Employees
21 should be awarded twenty-five percent (25%) of all penalties due under California law, interest,
22 attorneys' fees and costs.

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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray judgment against Defendants, as follows:

27 **Class Certification**

28 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 Minimum Wages)

1. For the unpaid balance of the full amount of any minimum wages and regular wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

On the Second Cause of Action

(Failure to Pay Overtime Owed)

1. For the unpaid balance of the full amount of overtime earned,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest; and
6. For such other and further relief as the Court deems proper.

On the Third Cause of Action

(Failure to Provide Lawful Meal Periods)

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute;
3. For interest; and
4. For such other and further relief as the Court deems proper.

1 **On the Fourth Cause of Action**

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

- 3 1. For one (1) hour of premium pay for each day in which a required rest period was
4 not lawfully authorized and permitted;
- 5 2. For interest; and
- 6 3. For reasonable attorneys' fees and costs pursuant to statute; and
- 7 4. For such other and further relief as the Court deems proper.

8 **On the Fifth Cause of Action**

9 **(Failure to Timely Pay Wages Due and Payable During Employment)**

- 10 1. For unpaid wages;
- 11 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
12 unlawfully withheld;
- 13 3. For interest;
- 14 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 15 5. For such other and further relief as the Court deems proper.

16 **On the Sixth Cause of Action**

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

- 18 1. For unpaid wages;
- 19 2. For penalties pursuant to Labor Code § 203;
- 20 3. For interest;
- 21 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 22 5. For such other and further relief as the Court deems proper.

23 **On the Seventh Cause of Action**

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

- 25 1. For statutory penalties, including penalties pursuant to Labor Code section 226;
- 26 2. For reasonable attorneys' fees and costs; and
- 27 3. For such other and further relief as the Court deems proper;
- 28

1 **On the Eighth Cause of Action**

2 (Failure to Reimburse Necessary Expenses)

- 3 1. For unreimbursed sums;
- 4 2. For reasonable attorneys' fees and costs pursuant to statute;
- 5 3. For interest; and
- 6 4. For such other and further relief as the Court deems proper.

7 **On the Ninth Cause of Action**

8 (Violation of the Unfair Competition Law)

- 9 1. For an order enjoining Defendants from continuing to engage in the aforementioned
- 10 unlawful business practice in violation of California Business & Professions Code §17200; and
- 11 2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
- 12 sums to Plaintiffs and Class Members for the Defendants' past failure to pay minimum wages,
- 13 overtime, tips, sick pay, and regular wages, for Defendants' past failure to reimburse necessary
- 14 expenses, and for premium wages for meal and rest periods that were not provided to Plaintiffs and
- 15 Class Members over the last four (4) years in an amount according to proof;
- 16 3. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to
- 17 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;
- 18 4. For pre-judgment interest on any unpaid minimum wages, straight time wages,
- 19 overtime wages and premium wages due from the day that such amounts were due;
- 20 5. For costs of suit incurred herein that Plaintiffs and Class Members are entitled to
- 21 recover under the Labor Code; and
- 22 6. For such other and further relief as the Court deems proper.

23 **On the Tenth Cause of Action**

24 (Penalties under PAGA, Labor Code section 2698)

- 25 1. For penalties according to proof, pursuant to Labor Code section 2698 et seq. for
- 26 the violations specified above;
- 27 2. For penalties under Labor Code sections 204, 210, 226, 226.3, 558, 1174.5,
- 28 1197.1, and 2699(a) and (f);

3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;

4. For reasonable attorneys' fees and costs under Labor Code §§ 1194, 226, 218.5, 2699, and/or Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

5. 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,

FARNAES & LUCIO, APC

Dated: May 27, 2021

Chas. - 27

Malte L. L. Farnaes, Esq.

Christina M. Lucio, Esq.

Attorneys for Plaintiffs Deshone Busby and Stephanie
Herrera, on behalf of themselves and all others similarly
situated