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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **YOLO COUNTY**

12 MARIO MERCADO, an individual; on behalf
13 of himself, all others similarly situated, and all
Aggrieved Employees,

14 Plaintiff,

15 vs.

16 BENTEC MEDICAL OPCO, LLC, a
17 California limited liability company;
AMARVIR SINGH aka JG SINGH, an
18 individual; KELLIE HOFFMAN, an
individual; and DOES 1-50, inclusive,

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20 Defendants.
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Case No. CV2023-1394

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

- (1) **FAILURE TO INDEMNIFY OR
REIMBURSE BUSINESS EXPENSES;**
- (2) **FAILURE TO PROVIDE MEAL
PERIODS;**
- (3) **FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS;**
- (4) **FAILURE TO PROVIDE
ACCURATE WAGE STATEMENTS;**
- (5) **FAILURE TO PAY EARNED
WAGES UPON DISCHARGE;**
- (6) **CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (“PAGA”);
AND**
- (7) **UNLAWFUL AND/OR UNFAIR
BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

1 Plaintiff MARIO MERCADO (“Plaintiff”) suing on behalf of himself, all others similarly
2 situated, and all Aggrieved Employees, brings this action against BENTEC MEDICAL OPCO, LLC
3 (“BENTEC MEDICAL”), a California limited liability company; AMARVIR SINGH aka JG
4 SINGH (“SINGH”), an individual; KELLIE HOFFMAN (“HOFFMAN”), an individual; and DOES
5 1-50 (collectively “Defendants”), claiming unfair business practices and violations of the California
6 Labor Code (“Labor Code”). Plaintiff seeks damages, restitution, civil penalties, statutory penalties,
7 declaratory and injunctive relief, attorney’s fees, pre-judgment and post-judgment interest, and costs
8 of suit.

9 **PARTIES**

10 1. Plaintiff is an individual who, at all times relevant, was a resident of the State of
11 California, in the County of Yolo.

12 2. Defendants employed Plaintiff as an hourly non-exempt employee in the position of
13 E-Last Machine Operator, from approximately July 2018 to June 13, 2023.

14 3. BENTEC MEDICAL is a medical device manufacturer with its principal place of
15 business in Woodland, California.

16 4. Plaintiff is informed, believes, and thereon alleges, that BENTEC MEDICAL is a
17 Delaware limited liability company.

18 5. Plaintiff is informed, believes, and thereon alleges that individual Defendant SINGH
19 is, and was at all times relevant, a resident of the State of California. Plaintiff is further informed,
20 believes, and thereon alleges that SINGH is, and was at all times relevant, the CEO of BENTEC
21 MEDICAL.

22 6. Plaintiff is informed, believes, and thereon alleges that individual Defendant
23 HOFFMAN is, and was at all times relevant, a resident of the State of California. Plaintiff is further
24 informed, believes, and thereon alleges that HOFFMAN is, and was at all times relevant, the
25 Director of Finance and HR for BENTEC MEDICAL.

26 7. Defendants are, and at all times relevant were, an employer subject to California’s
wage-and-hour laws.

1 8. Plaintiff is informed, believes, and thereon alleges, that SINGH and HOFFMAN are
2 owners and/or directors and/or officers and/or managing agents of BENTEC MEDICAL and acted
3 on behalf of BENTEC MEDICAL at all times relevant to this Complaint. Accordingly, SINGH and
4 HOFFMAN are individually liable for the damages alleged in this action pursuant to Labor Code §
5 558.1 during all time periods said statute was legally operative.

6 9. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
7 DOES 1-50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will
8 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
9 informed, believes, and thereon alleges that each of the fictitiously named Defendant is responsible
10 in some manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged are
11 proximately caused by such occurrences.

12 10. At all relevant times herein, Defendants were agents of each other and acting within
13 the course and scope of their agency.

14 11. On or about July 7, 2023, pursuant to Labor Code § 2699.3, Plaintiff filed notice with
15 California's Labor and Workforce Development Agency ("LWDA") and posted by certified U.S.
16 mail to Defendants notice of the specific provisions of the Labor Code alleged to have been violated,
17 including the facts and theories to support such violations.

18 12. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
19 claims within sixty-five (65) days.

20 13. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor Code §
21 2699.3(a)(2)(A) and may pursue PAGA civil penalties in a representative capacity as a matter of
22 right.

JURISDICTION AND VENUE

23 14. This Court has jurisdiction over all causes of action asserted herein pursuant to the
24 California Constitution, Article VI, §10, which grants the Superior Court original jurisdiction in all
25 cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount
26 exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over certain

1 causes of action pursuant to Business & Professions Code §§ 17203 and 17204, which provide for
2 exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

3 15. Venue in County of Yolo is proper under Business & Professions Code § 17203 and
4 California Code of Civil Procedure § 395.5 because a substantial part of Defendants' unlawful
5 conduct occurred in this County, Defendants conducted and continues to conduct substantial
6 business in this County, and Defendants' liability arose in this County. The relief requested is within
7 the jurisdiction of this Court.

8 **FACTUAL ALLEGATIONS**

9 16. BENTEC MEDICAL specializes in medical device manufacturing from its
10 manufacturing facility based out of Woodland, California.

11 17. As part of their business, Defendants employed individuals to perform services and to
12 work on projects under their management and control.

13 18. Plaintiff was, at all times relevant herein, employed by Defendants as a non-exempt
14 employee who was paid hourly wages, in a manufacturing industry, as defined by Industrial Welfare
Commission Wage Order 1-2001 ("Wage Order 1").

15 19. California law requires employers to indemnify or reimburse employees for expenses
16 necessarily incurred in the discharge of their work-related duties, as such expenses are for the benefit
17 of the employer and are necessary for the employees to perform their jobs.

18 20. At all times relevant herein, Defendants required Plaintiff and similarly situated
19 employees to bear the expenses of their employment, including expenses for their personal cell
20 phone and data usage. Defendants required Plaintiff and similarly situated employees to install an
21 application on their personal cellphones in order to gain access to Defendants' manufacturing
22 facility. In addition, Defendants required Plaintiff and similarly situated employees to use their
23 personal cellphones and data to communicate with supervisors and management regarding work
24 progress. Moreover, Defendants required Plaintiff and similarly situated employees to take COVID-
25 19 tests and provide Defendants with proof of their negative test results before being allowed to
26 return to work.

1 21. Defendants failed and continue to fail to indemnify or reimburse their employees for
2 such expenses, including costs for the purchase of cell phones, cell phone service, data fees, and the
3 costs of mandatory COVID-19 tests.

4 22. Defendants have also violated California common and statutory law as described with
5 more particularity below.

6 23. At all times relevant, Defendants required Plaintiff and similarly situated employees
7 to work more than 6 hours per day without receiving all mandated off-duty meal periods. Defendants
8 implemented and continue to implement a pattern and practice of failing to provide Plaintiff and
9 similarly situated employees with a 30-minute uninterrupted off-duty meal period prior to the end of
10 the 5th hour of work when working over 6 hours in a workday. In fact, Defendants either (1) allowed
11 Plaintiff and Class Members to take meal periods only after the end of the fifth hour of work; or (2)
12 forced Plaintiff and Class Members to punch meal periods before the fifth hour of work, even though
13 Plaintiff and Class Members had in fact taken meal periods after the end of the fifth hour of work; or
14 (3) did not provide the second meal period when Plaintiff and Class Members worked more than 10
hours in a workday.

15 24. At all times relevant, Defendants required Plaintiff and similarly situated employees
16 to work more than 10 hours in a day. When Defendants required Plaintiff and similarly situated
17 employees to work more than 10 hours, it had a policy and practice of failing to provide them with a
18 second meal period of at least 30 minutes as required by Labor Code §§ 226.7 and 512 and Wage
19 Order 1, § 1 (B). Plaintiff is informed, believes, and thereon alleges, that Defendants did not have in
20 place a valid written meal period waiver agreement at all times relevant.

21 25. When Plaintiff and similarly situated employees did not receive uninterrupted off-
22 duty meal breaks, Defendants did not pay Plaintiff and similarly situated employees with the
23 additional hour of compensation as required by Labor Code §§ 226., 558, 1198 and Wage Order 1, §
24 10(D). As a result, Defendants did not pay Plaintiffs and similarly situated employees with all wages
25 due as required by Labor Code §§ 201-204.
26

1 26. At all times relevant, Defendants required Plaintiff and similarly situated employees
2 to work more than 3.5 hours per day without authorizing and permitting them to take off-duty,
3 uninterrupted rest periods, as required by Labor Code § 226.7 and Wage Order 1, § 12(A). In fact,
4 Plaintiff and Class Members were obliged to miss at least one rest break once or twice a week
5 because (1) they had to fill out documents regarding the orders they were working on; (2) they had
6 problems with either the material and/or the machines and they had to shadow the engineers who
7 were trying to resolve the problems; or (3) they had to attend company meetings.

8 27. In addition, on those occasions when Defendants required Plaintiff and similarly
9 situated employees to work more than 10 hours in a workday, Defendants had a policy and practice
10 of failing to authorize and permit Plaintiff and similarly situated employees to take a third
11 uninterrupted rest period of not less than 10 minutes, as required by Labor Code § 226.7 and Wage
12 Order 1, §12 (A).

13 28. When Defendants failed to authorize and permit Plaintiff and similarly situated
14 employees to take uninterrupted off-duty rest periods, Defendants did not pay Plaintiff and similarly
15 situated employees with the additional hour of compensation as required by Labor Code §§ 226.7,
16 558, 1198 and Wage Order 1, § 12(B). As a result, Defendants did not pay Plaintiff and similarly
17 situated employees all wages due as required by Labor Code §§ 201-204.

18 29. Labor Code § 226 provides that every employer is required, “semimonthly or at the
19 time of each payment of wages,” to give each employee an itemized wage statement, including, inter
20 alia, the total hours worked by the employee (except for salaried employees), and “all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee.” Labor Code § 226 (a).

23 30. At all times relevant, Defendants implemented and continue to implement a policy
24 and practice of failing to provide Plaintiff and similarly situated employees with accurate itemized
25 wage statements with each paycheck in compliance with California law. Specifically, the wage
26 statements provided by Defendants failed to include meal and rest period premium pay when meal
and rest period violations occurred.

1 31. Labor Code § 1174 (d) provides that an employer should keep payroll records
2 “showing the hours worked daily by and the wages paid to [...]”. Because Defendants had a policy
3 and practice of failing to adequately keep records of Plaintiff’s and similarly situated employees’
4 meal periods, as required by Labor Code § 226.7 and 512, Defendants failed to maintain accurate
5 and complete payroll records in compliance with California law. This failure gives rise to civil
6 penalties under Labor Code § 1174.5.

7 32. Defendants failed to compensate Plaintiff’s and similarly situated employees all
8 wages due and owing at the time of discharge or separation from their employment, in violation of
9 Labor Code §§ 201, 201, and 203.

10 **NATURE OF ACTION**

11 33. Plaintiff brings this proposed class action on behalf of himself and a proposed
12 plaintiff Class of all hourly, non-exempt, employees who worked for Defendants at any time during
13 the previous four years in the State of California up through the present and until compliance with
14 the law. Plaintiff seeks recovery of all allowable compensation and other sums for the violations
15 described below, including unreimbursed business expenses, penalties/premium pay for missed meal
16 and rest periods, statutory penalties for wage statement violations, restitution and restoration of sums
17 owed and property unlawfully held, declaratory and injunctive relief, interest, attorney’s fees, and
18 costs.

19 34. Under California Business and Professions Code (“Bus. & Prof. Code”) §§ 17200 et
20 seq., and pursuant to the class action procedures provided for in this statute, Plaintiff, on behalf of
21 himself and the proposed Class, also seeks restitution of all benefits Defendants have received from--
22 including but not limited to-- - their failure to reimburse business expenses, their failure to provide
23 meal periods, their failure to authorize and permit rest periods, their failure to provide accurate
24 itemized wage statements, and their failure to pay all wages due upon separation from their Plaintiff
25 and the proposed Class’s employment.

26 35. The “Class Period” is designated as the time from July 2019, through the trial date,
based upon the allegation that the violations of California’s wage-and-hour laws as described more

1 fully below, have been ongoing for at least the four years prior to the filing of the complaint in this
2 action.

3 36. During the Class Period, Defendants violated and continue to violate California law
4 by implementing and continuing to implement the following policies, practices, and procedures as to
5 Plaintiff and the proposed Class: (1) not reimbursing necessary business expenses incurred in the
6 discharge of work-related duties, (2) not providing meal periods, (3) not authorizing and permitting
7 rest periods, (4) not provided accurate itemized wage statements, and (5) not paying all wages due
8 upon separation from employment.

9 **CLASS ACTION ALLEGATIONS**

10 37. Plaintiffs bring this action individually and as a class action on behalf of a proposed
11 class defined as follows:

12 *All persons who, at any time from July 2019 to the present, worked for*
13 *Defendants, in the State of California as non-exempt hourly employees*
manufacturing or producing medical devices or components.

14 38. This action is brought, and may properly be maintained, as a class action pursuant to
15 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
16 the litigation, and the proposed class is easily ascertainable. This action presents questions of
17 common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and
18 superiority requirements of this provision.

19 39. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b), to amend
20 or modify the class definition with greater specificity or further division into subclasses or
21 limitations as to particular issues.

22 **Numerosity:**

23 40. The Class is so numerous that the individual joinder of all of its members is
24 impracticable. While the exact number and identities of Class Members are unknown to Plaintiff at
25 this time and can only be ascertained through appropriate discovery, Plaintiff is informed and
26 believes that the Class includes more than 70 persons.

1 41. A class action is the only available method for the fair and efficient adjudication of
2 this controversy. The members of the proposed Class are so numerous that joinder of all members is
3 impractical, if not impossible, insofar as the Plaintiff is informed, believes and, on that basis, alleges
4 that the total number of Class Members is more than 70 individuals. The identity of Class Members
5 can be determined upon analysis of, inter alia, employee and payroll records maintained by
6 Defendants.

7 **Commonality:**

8 42. Common questions of fact and law exist as to all members of the Class that
9 predominate over any questions affecting only individual Class Members. These common legal and
10 factual questions, which do not vary from Class Member to Class Member and which may be
11 determined without reference to the individual circumstances of any Class Member include, but are
12 not limited to, the following:

13 (a) whether Defendants, in violation of Labor Code § 2802, failed to indemnify or
14 reimburse Plaintiff and Class Members for necessary expenses incurred in the performance of their
15 work-related duties;

16 (b) whether Defendants had a policy or practice of violating Labor Code §§ 226.7
17 and 512 and Wage Order 1, by failing to provide meal periods to Plaintiff and Class Members;

18 (c) whether Defendants had a policy or practice of failing to pay meal period
19 premium compensation to Plaintiff and Class Members when meal period violations occurred;

20 (d) whether Defendants had a policy or practice of violating Labor Code §§ 226.7,
21 and Wage Order 1, by failing to authorize and permit Plaintiff and Class Members to take rest
22 periods;

23 (e) whether Defendants had a policy or practice of failing to pay rest period
24 premium compensation to Plaintiff and Class Members when rest period violations occurred;

25 (f) whether Defendants had a policy or practice of violating Labor Code § 226
26 and Wage Order 1, by failing to keep and provide timely and accurate itemized wage statements for
Plaintiff and Class Members;

1 (g) whether Defendants had a policy or practice of failing to pay Plaintiff and
2 Class Members all wages due at the time of discharge or separation from their employment, in
3 violation of Labor Code §§ 201-203;

4 (h) what amounts Plaintiff and Class Members are entitled to receive in interest
5 on unpaid compensation due and owing to them; and

6 (i) whether members of the Class are entitled to equitable relief under Bus. &
7 Prof. Code §§ 17200 et seq.

8 **Typicality:**

9 43. Plaintiffs' claims are typical of the claims of the Class. Plaintiff and all Class
10 Members sustained injuries and damages arising out of and caused by Defendants' policies,
11 practices, and common course of conduct in violation of law as alleged herein.

12 **Adequacy of Representation:**

13 44. Plaintiff is an adequate representative of the Class, in that his claims are typical of
14 those of the Class. Plaintiff has the same interests in the litigation of this case as the Class Members;
15 he is committed to the vigorous prosecution of this case and has retained competent counsel
16 experienced in class action and wage-and-hour litigation of this nature. Plaintiff is not subject to any
17 individual defenses unique from those conceivably applicable to the Class as a whole and anticipates
18 no management difficulties in this litigation.

19 **Predominance:**

20 45. Defendants have engaged in a common course of wage-and-hour abuse toward
21 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and
22 Class Members predominate over any individual issues. Adjudication of these common issues in a
23 single action has important and desirable advantages of judicial economy.

24 **Superiority of Class Action:**

25 46. A class action is superior to other available methods for the fair and efficient
26 adjudication of this controversy because individual litigation of the claims of all Class Members is
impracticable. Even if every Class Member could afford individual litigation, the court system could

1 not. It would be unduly burdensome to the courts in which individual litigation of numerous cases
2 would proceed. Individualized litigation would also present the potential for varying, inconsistent, or
3 contradictory judgments and would magnify the delay and expense to all parties and to the court
4 system resulting from multiple trials of the same complex factual issues. Moreover, individual
5 actions by Class Members may establish inconsistent standards of conduct for Defendants. By
6 contrast, the conduct of this action as a class action, with respect to some or all of the issues
7 presented herein, presents fewer management difficulties, conserves the resources of the parties and
8 the court system, and protects the rights of each Class Member.

9 47. Defendants have acted or refused to act in respects generally applicable to the Class,
10 thereby making appropriate relief with regard to the Members of the Class as a whole, as requested
11 herein.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Indemnify or Reimburse Business Expenses** 14 **(brought by Plaintiff on behalf of himself and all Class Members** 15 **against all Defendants)**

16 48. Plaintiff incorporates by reference in this cause of action each allegation of all
17 preceding paragraphs, as though fully set forth herein.

18 49. Defendants have unfairly and unlawfully violated Labor Code §2802 and Wage Order
19 1 by failing to indemnify or reimburse Plaintiff and all other similarly situated employees for all the
20 necessary business expenses they incurred in the discharge of their work-related duties for
21 Defendants, such as the use of their personal cell phone, data plans, COVID-19 tests, and other
22 expenses, in violation of the provisions specified herein.

23 50. Labor Code §2802 provides:

24 “(a) An employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence of
26 the discharge of his or her duties, or of his or her obedience to the
directions of the employer, even though unlawful, unless the employee, at
the time of obeying the directions, believed them to be unlawful.”

51. As a consequence of Defendants’ willful conduct, Plaintiff and members of the
proposed Class have sustained damages for not being reimbursed their business expenses, due in an
amount to be established at trial, plus prejudgment interest pursuant to statute.

1 52. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or
2 managing agent(s) of BENTEC MEDICAL caused said company to violate provisions of California
3 Industrial Welfare Commission Wage Order 1 as well as Labor Code § 2802 with respect to Plaintiff
4 and other similarly situated employees. Therefore, pursuant to Labor Code § 558.1, SINGH and
5 HOFFMAN are jointly and severally liable along with BENTEC MEDICAL for all expense
6 reimbursements, damages, attorney's fees, prejudgment interest and costs, pursuant to Labor Code §
7 2802.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Provide Meal Periods**

10 **(brought by Plaintiff on behalf of himself and all Class Members**
11 **against all Defendants)**

12 53. Plaintiff, individually and on behalf of all employees similarly situated, refers to and
13 hereby incorporates by reference all preceding paragraphs, as though fully set forth herein.

14 54. As alleged in the foregoing paragraphs, throughout the Class Period, Defendants
15 implemented and continue to implement a policy and practice of failing to provide Plaintiff and
16 Class Members with a 30-minute uninterrupted meal period before the end of their 5th hour of work,
17 when they worked more than 6 hours in a workday.

18 55. In addition, when Defendants required Plaintiff and Class Members to work more
19 than 10 hours in a single day, Defendants had a policy and practice of refusing and/or failing to
20 provide Plaintiff and Class Members a second 30-minute uninterrupted meal period as required by
21 Labor Code § 512 (a) and Wage Order 1.

22 56. At all times relevant herein, Labor Code § 226.7 and California Code of Regulations
23 Title 8 § 11160 have applied and continue to apply to Plaintiff's and the Class Members'
24 employment with Defendants. Labor Code § 226.7 states "No employer shall require any employee
25 to work during any meal [...] period mandated by an applicable order of the Industrial Welfare
26 Commission." Labor Code § 226.7(a). In addition, Wage Order 1 provides that an employer may not
employ an employee for a work period of more than ten (10) hours per day without providing the
employee with a second meal period of not less than 30 minutes"

57. Defendants failed to permit Plaintiff and Class Members to take adequate meal periods as required by law. Plaintiff and the Class Members are therefore entitled to payment of additional wages as provided by law.

58. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff and the Class Members have sustained damages, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

59. In addition, Defendants are liable to Plaintiff and the Class Members for reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proven at trial.

60. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or managing agent(s) of BENTEC MEDICAL caused said corporation to violate provisions of Wage Order 1 as well as Labor Code §§ 512 and 226.7 with respect to Plaintiff and the Class Members. Therefore, pursuant to Labor Code § 558.1, SINGH and HOFFMAN are jointly and severally liable along with BENTEC MEDICAL for meal period premium pay pursuant to Labor Code §§ 512 and 226.7, damages, prejudgment interest, attorney's fees, and costs.

THIRD CAUSE OF ACTION

**Failure to Authorize and Permit Rest Periods
(brought by Plaintiff on behalf of himself and all Class Members
against all Defendants)**

61. Plaintiff, individually and on behalf of all employees similarly situated, refers to and hereby incorporates by reference all preceding paragraphs, as though fully set forth herein.

62. As alleged in the foregoing paragraphs, throughout the Class Period, Defendants had a policy and practice of requiring Plaintiff and Class Members to work a full day and did not receive proper rest periods. Plaintiff and Class Members were regularly unable to take a ten-minute rest break for every four hours or major fraction of work each day. Defendants implemented and continue to implement a policy and practice of failing to provide Plaintiff and Class Members with a third rest period when working more than 10 hours.

63. At all times herein relevant, Labor Code § 226.7 and California Code of Regulations Title 8 § 11160 have applied and continue to apply to Plaintiff and the Class Members' employment with Defendants. Labor Code § 226.7 states "No employer shall require any employee to work

1 during any [...] rest period mandated by an applicable order of the Industrial Welfare Commission.”
2 Lab. Code § 226.7(a).

3 64. Section 1 of Wage Order No. 1 provides in relevant part that:

4 (A) Every employer shall authorize and permit all employees to take rest
5 periods, which insofar as practicable shall be in the middle of each work
6 period. The authorized rest period time shall be based on the total hours
7 worked daily at the rate of ten (10) minutes net rest time per four (4)
8 hours or major fraction thereof. However, a rest period need not be
9 authorized for employees whose total daily work time is less than three
10 and one-half (3 ½) hours. Authorized rest period time shall be counted, as
11 hours worked, for which there shall be no deduction from wages.

12 (B) If an employer fails to provide an employee a rest period in accordance
13 with the applicable provisions of this order, the employer shall pay the
14 employee one (1) hour of pay at the employee’s regular rate of
15 compensation for each work day that the rest period is not provided.

16 65. Defendants failed to authorize and permit Plaintiff and Class Members to take rest
17 periods as required by law. Plaintiff and the Class Members are therefore entitled to payment of
18 additional wages as provided by law.

19 66. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein,
20 Plaintiff and the Class Members have sustained damages, in an amount to be established at trial, plus
21 prejudgment interest pursuant to statute.

22 67. In addition, Defendants are liable to Plaintiff and the Class Members for reasonable
23 attorney’s fees and costs, which are hereby demanded, in an amount to be proven at trial.

24 68. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or
25 managing agent(s) of BENTEC MEDICAL caused said company to violate provisions of California
26 Industrial Welfare Commission Wage Order 1 as well as Labor Code § 226.7 with respect to Plaintiff
and the Class Members. Therefore, pursuant to Labor Code § 558.1, SINGH and HOFFMAN are
jointly and severally liable along with BENTEC MEDICAL for rest period premium pay pursuant to
Labor Code §226.7, damages, prejudgment interest, attorney’s fees, and costs.

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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Accurate Itemized Wage Statements**
3 **(brought by Plaintiff on behalf of himself and all Class Members**
4 **against all Defendants)**

5 69. Plaintiffs incorporates by reference in this cause of action each allegation of all
6 preceding paragraphs, as though fully set forth herein.

7 70. Labor Code § 226 (a) provides that, at the time of each payment of wages, an
8 employer shall provide each employee with a wage statement itemizing, among other things, the
9 gross and net wages earned by the employee in the pay period. Such wages include meal and rest
10 period premium pay for meal or rest period violations.

11 71. Labor Code § 226 (e) provides that an employee suffering injury as a result of a
12 knowing and intentional failure by an employer to comply with Labor Code § 226 (a) is entitled to
13 recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in which
14 a violation occurs and \$100 per employee for each violation in a subsequent pay period (up to a
15 maximum of \$4,000), in addition to attorney's fees and costs.

16 72. Defendants failed to pay Plaintiff and Class Members the premium pay to which they
17 were entitled as a result of meal and rest period violations that occurred. As a result, Defendants
18 failed to provide Plaintiff and Class Members with wage statements reflecting Plaintiff's and Class
19 Members' correct gross and net wages earned during the relevant pay period.

20 73. Defendants knowingly and intentionally failed to provide timely, accurate, and
21 itemized wage statements to Plaintiff and Class Members in accordance with Labor Code § 226. The
22 statements provided to Plaintiffs and Class Members have not accurately reflected actual gross and
23 net wages earned. Plaintiff and the Class are therefore entitled to the damages and penalties provided
24 for under Labor Code § 226 (e).

25 74. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or
26 managing agent(s) of BENTEC MEDICAL, caused said company to violate provisions of California
Industrial Welfare Commission Wage Order 1 as well as Labor Code § 226 with respect to Plaintiff
and the Class Members. Therefore, pursuant to Labor Code § 558.1, SINGH and HOFFMAN are

1 jointly and severally liable along with BENTEC MEDICAL for penalties, attorney's fees,
2 prejudgment interest and costs, pursuant to Labor Code § 226.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay Earned Wages Upon Separation (Waiting Time Penalties)**
5 **(Brought by Plaintiff who is longer employed by Defendants on behalf of himself and Class**
6 **Members who are no longer employed by Defendants against all Defendants)**

7 75. Plaintiff incorporates by reference in this cause of action each allegation of all
8 preceding paragraphs, as though fully set forth herein.

9 76. Labor Code § 201 requires Defendants to pay their discharged employees all wages
10 due immediately upon discharge.

11 77. Labor Code § 202 requires that if an employee quits his or her employment, "his or
12 her wages shall become due and payable not later than 72 hours thereafter, unless the employee has
13 given 72-hour previous notice of his or her intention to quit, in which case the employee is entitled to
14 his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee
15 who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or
16 she so requests and designates a mailing address."

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

21 79. Plaintiff and Class Members who have been discharged or who have quit were
22 entitled to receive all unpaid compensation within the time limits proscribed by Labor Code §§ 201
23 and 202, but, as alleged above, have not received such compensation.

24 80. As a consequence of Defendants' willful conduct in not paying compensation for all
25 hours worked, Plaintiff and many members of the proposed Class are entitled to up to 30 days'
26 wages as a penalty under Labor Code § 203, together with interest thereon.

81. In addition, Defendants are liable to Plaintiff and the Class Members for reasonable
attorney's fees and costs, which are hereby demanded, in an amount to be proven at trial.

1 82. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or
2 managing agent(s) of BENTEC MEDICAL caused said company to violate provisions of California
3 Industrial Welfare Commission Wage Order 1 as well as Labor Code §§ 201, 202, and 203 with
4 respect to Plaintiff and many members of the proposed Class. Therefore, pursuant to Labor Code §
5 558.1, SINGH and HOFFMAN are jointly and severally liable along with BENTEC MEDICAL for
6 the continuing wages penalties, attorney’s fees, prejudgment interest and costs, pursuant to §§ 201,
7 202, and 203.

8 **SIXTH CAUSE OF ACTION**

9 **Civil Penalties Pursuant to The Private Attorneys General Act of 2004 (“PAGA”)**
10 **(brought by Plaintiff on behalf of himself and all Aggrieved Employees**
11 **against all Defendants)**

12 83. Plaintiff re-alleges and incorporates into this cause of action each of the preceding
13 paragraphs.

14 84. The Private Attorneys General Act of 2004 (Labor Code §§ 2698, et seq.)
15 (“PAGA”) expressly establishes that any provision of the Labor Code which provides for a civil
16 penalty to be assessed and collected by the California Labor and Workforce Development Agency
17 (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a
18 violation of the Labor Code, may be recovered through a civil action brought by an aggrieved
19 employee on behalf of himself or herself, and other current or former employees.

20 85. On July 7, 2023, pursuant to PAGA, Plaintiff filed a notice with the LWDA alleging
21 the facts and theories supporting his claims. Plaintiff’s PAGA notice defines the “Aggrieved
22 Employees” as “all current and former employees who worked for Defendants in the State of
23 California at any time beginning one year prior to the filing of this notice” (the “PAGA claim
24 period”).

25 86. Plaintiff hereby asserts this cause of action under PAGA on behalf of all such
26 “Aggrieved Employees,” all of whom are current or former employees of Defendants, and all of
whom suffered one or more of the alleged violations by Defendants.

 87. Pursuant to Labor Code § 2699, Plaintiff in a representative capacity on behalf of
all Aggrieved Employees, requests and is entitled to recover from Defendants and each of them,

1 civil penalties according to proof, interest, attorneys' fees, and costs.

2 88. Pursuant to California Labor Code § 2699, subdivision (i), civil penalties recovered
3 by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA
4 for the enforcement of labor laws and education of employers and employees about their rights and
5 responsibilities and twenty-five percent (25%) to the Aggrieved Employees.

6 89. As described in greater detail *supra*, at all times relevant to this action, Defendants
7 devised, formulated, implemented, and enforced, policies and procedures in violation of California
8 Law, including but not limited to the provisions of the California Labor Code and Industrial
9 Welfare Commission ("IWC") Wage Order 1, which give rise to PAGA civil penalties under Lab.
10 Code § 2698, *et seq.*:

11 **Civil Penalties for Failure to Reimburse Business Expenses**

12 90. At all times relevant herein, Defendants required Plaintiff and other Aggrieved
13 Employees to bear the expenses of their employment, including expenses for their personal cell
14 phone and data usage. Defendants required Plaintiff and other Aggrieved Employees to install an
15 application on their personal cellphones in order to gain access to Defendants' manufacturing
16 facility. In addition, Defendants required Plaintiff and other Aggrieved Employees to use their
17 personal cellphones and cellphone data to communicate with supervisors and management
18 regarding work-related duties. Moreover, Defendants mandated that Plaintiff and other Aggrieved
19 Employees undergo COVID-19 tests and required Plaintiff and other Aggrieved Employees to
20 provide Defendants with proof of their negative test results via cellphone before being allowed to
21 return to work.

22 91. Defendants failed and continue to fail to indemnify or reimburse Plaintiff and other
23 Aggrieved Employees for such necessary business expenses, including costs for the purchase of
24 cell phones, cell phone service, data fees, and the costs of mandatory COVID-19 tests.

25 92. Thus, Defendants failed to comply with Labor Code § 2802(a), which requires that
26 employers indemnify employees for "all necessary expenditures or losses incurred in direct
consequence of the discharge of his or her duties."

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1 **Civil Penalties for Failure to Provide Meal Periods**

2 93. Pursuant to Labor Code §§ 512, 226.7, and Wage Order 1, §11(A), Plaintiff and
3 other Aggrieved Employees were, each workday, entitled to one off-duty meal period of no less
4 than 30 minutes in duration for every work period exceeding 5 hours. Plaintiff and other
5 Aggrieved Employees were entitled to a first meal period no later than the end of their 5th hour of
6 work, and a second meal period no later than the end of their 10th hour of work; however,
7 Defendants either (1) failed to provide Plaintiff and other Aggrieved Employees a meal period
8 before the end of the fifth hour of work; or (2) forced Plaintiff and other Aggrieved Employees to
9 punch meal periods before the end of the fifth hour of work, even though Plaintiff and other
10 Aggrieved Employees had in fact taken meal periods after the end of the fifth hour of work; or (3)
11 did not provide the second meal period when Plaintiff and other Aggrieved Employees worked
more than 10 hours in a workday.

12 94. During the PAGA claim period, when working a single shift, Plaintiff and other
13 Aggrieved Employees were generally scheduled to begin their shift at 5:00 a.m. and were
14 scheduled to end their shift at 1:30 p.m. Thus, Plaintiff and other Aggrieved Employees were
15 entitled to receive one off-duty meal period of no less than 30 minutes in duration starting before
16 10:00 a.m., i.e., before the end of their 5th hour of work. Plaintiff and other Aggrieved Employees
17 were not provided meal periods until 10:00 a.m., 10:30 a.m., 11:00 a.m., and 12 p.m. – i.e., not
18 before the end of their 5th hour of work. In addition, on those days that Plaintiff and other
19 Aggrieved Employees had to work double shifts or more than 10 hours, they were not provided
with a second meal period after 10 hours of work.

20 95. Pursuant to Labor Code §§ 512, 226.7, and Wage Order 1, §11(B), Plaintiff and
21 other Aggrieved Employees were, each workday, entitled to a second off-duty meal period of no
22 less than 30 minutes in duration for every work period exceeding 10 hours.

23 96. Thus, Defendants failed to provide Plaintiff and other Aggrieved Employees with
24 legally compliant first meal periods, or any second meal periods at all.

25 97. Plaintiff and other Aggrieved Employees were entitled to receive one extra hour of
26 pay as compensation each day that a meal period violation occurred. However, Defendants did not

1 pay Plaintiff and other Aggrieved Employees the additional hour of compensation as required by
2 Labor Code §§ 226.7 and Wage Order 1, § 11(D) when meal period violations occurred.

3 98. Plaintiff is informed, believes, and thereon alleges, that Defendants did not have in
4 place a valid written meal period waiver agreement during the PAGA claim period, or at all.

5 **Civil Penalties for Failure to Authorize and Permit Rest Periods**

6 99. Defendants required Plaintiff and other Aggrieved Employees to work more than
7 3.5 hours per day without authorizing and permitting them to take off-duty, uninterrupted rest
8 periods, as required by Labor Code § 226.7 and Wage Order 1, § 12(A). Plaintiff and other
9 Aggrieved Employees were not authorized or permitted to take rest breaks as Defendants required
10 them to perform work during their rest breaks, including but not limited to (1) filling out
11 documents regarding the orders they were working on; (2) attending to problems that arose with
12 either the material and/or the machines and shadowing the engineers who were trying to resolve
the problems; or (3) attending company meetings.

13 100. In addition, when Defendants required Plaintiff and other Aggrieved Employees to
14 work more than 10 hours in a workday, Defendants had a policy and practice of failing to authorize
15 and permit Plaintiff and other Aggrieved Employees to take a third uninterrupted rest period of not
16 less than 10 minutes, as required by Labor Code § 226.7 and Wage Order 1, § 12 (A).

17 101. Plaintiff and other Aggrieved Employees were entitled to one extra hour of pay as
18 compensation each day that a rest period violation occurred. When Defendants failed to authorize
19 and permit Plaintiff and other Aggrieved Employees to take uninterrupted off-duty rest periods,
20 Defendants did not Plaintiff and other Aggrieved Employees with the additional hour of
compensation as required by Labor Code §§ 226.7 and Wage Order 1, § 12(B).

21 **Civil Penalties for Failure to Provide Compliant Wage Statements**

22 102. As discussed in greater detail *supra*, Defendants failed to provide Plaintiff and other
23 Aggrieved Employees with meal and rest periods, and failed to pay Plaintiff and other Aggrieved
24 Employees meal and rest period premium pay when meal and rest period violations occurred. As a
25 result, Defendants failed to itemize such meal and rest period premium pay on Plaintiff and other
26

1 Aggrieved Employees' wage statements. As such, Plaintiff and other Aggrieved Employees' wage
2 statements were inaccurate.

3 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

4 103. When Plaintiff and other Aggrieved Employees' employment with Defendants
5 ended, they were entitled to receive all unpaid compensation within the time limits proscribed by
6 Labor Code §§ 201 and 202, but, as alleged above, have not received such compensation. As a
7 consequence of Defendants' willful conduct in not paying Plaintiff and other Aggrieved
8 Employees all wages due and owing upon separation, Defendants violated California Labor Code
sections 201 and 202.

9 104. Further, Defendants owe, but failed to pay, continuing wages to Plaintiff and other
10 Aggrieved Employees in violation of Labor Code section 203.

11 **Civil Penalties for Failure to Timely Pay Wages During Employment**

12 105. Through their policies and practices, Defendants intentionally and willfully failed to
13 pay Plaintiff and other Aggrieved Employees, all wages due to them within the specific pay
14 periods required under Labor Code section 204.

15 106. For example, in violation of Labor Code section 204(b)(1), Defendants did not pay
16 all wages owed "no later than the payday for the next regular payroll period."

17 **Civil Penalties for Failure to Keep Complete and Accurate Payroll Records**

18 107. Through their policies and practices, Defendants failed to keep complete and
19 accurate payroll records in violation of Labor Code section 1174(d). Among other violations,
20 Defendants failed to record pay meal period premium pay to Plaintiff and other Aggrieved
Employees.

21 **Civil Penalties for Requiring Execution of Releases on Account of Wages Due and Owing**

22 108. Section 206.5 of the Labor Code provides, in pertinent part, that an employer shall
23 not require the execution of a release of a claim or right on account of wages due, unless payment
24 of those wages has been made.

25 109. After service of Plaintiff's Summons and Complaint in this action, Defendants - via
26 a campaign of misinformation and coercion - pressured Aggrieved Employees into executing

1 releases of their claims and rights to recover unpaid wages due and owing them by Defendants.
2 Such releases were obtained under false pretenses, duress, and without proper and accurate
3 payment of the wages due, in violation of Labor Code section 206.5.

4 **Civil Penalties for Violations of IWC Wage Order**

5 110. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary fine,
6 for employers that, among other things, violate the provisions of the IWC Wage Orders. As
7 described herein, Defendants violated the Wage Order 1 in many respects, including without
8 limitation, failure to reimburse business expenses, failure to accurately record all work periods,
9 including the beginning and ending of meal periods, and failure to provide duty-free meal and rest
10 periods.

11 **Exhaustion of Administrative Remedies under PAGA**

12 111. On July 7, 2023, pursuant to Labor Code § 2699.3, Plaintiff, through his counsel, on
13 behalf of himself and all Aggrieved Employees, provided the LWDA with written notice of the
14 specific provisions of the Labor Code that are alleged to have been violated, including the facts
15 and theories to support such violations.

16 112. A copy of said notice was also posted to Defendants by certified mail pursuant to
17 the requirements of Labor Code § 2699.3.

18 113. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
19 claims within sixty-five (65) days.

20 114. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor Code §
21 2699.3(a)(2)(A).

22 115. Pursuant to Labor Code Section 2698 *et seq.*, Plaintiff, in a representative capacity,
23 is entitled to recover civil penalties on behalf of himself, the State of California, and each
24 Aggrieved Employee, for each and every pay period in which a Labor Code violation or applicable
25 IWC Wage Order violation occurred, in an amount according to proof at trial.

26 116. SINGH and HOFFMAN, while acting as owner(s), officer(s), director(s) and/or
managing agent(s) of BENTEC MEDICAL caused said company to violate provisions of California
Labor Code and Industrial Welfare Commission Wage Order 1 with respect to Plaintiff and other

1 similarly situated employees. Therefore, pursuant to Labor Code § 558.1, SINGH and HOFFMAN
2 are jointly and severally liable along with BENTEC MEDICAL for the violations alleged herein, and
3 the resulting penalties owed.

4 117. Plaintiff and all Aggrieved Employees are also entitled to reasonable attorney's fees
5 and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are
6 respectfully requested, in an amount according to proof at trial.

7 **SEVENTH CAUSE OF ACTION**
8 **Unlawful Business Practices under California Unfair Competition Act**
9 **(brought by Plaintiff on behalf of himself and all Class Members**
10 **against all Defendants)**

11 118. Plaintiff incorporates in this cause of action each and every allegation of all preceding
12 paragraphs, as though fully set forth herein.

13 119. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
14 statutory relief to stop the misconduct of Defendants, as complained herein, and to compel restitution
15 and disgorgement of all profits obtained by Defendants through the unfair and unlawful business
16 practices described herein.

17 120. Beginning at an exact date unknown to Plaintiffs, but at least since 2019, Defendants
18 have committed unlawful acts as defined by Business & Professions Code § 17200. Defendants have
19 engaged in unlawful, unfair and deceptive business practices including, but not limited to, the
20 following:

- 21 (a) Failure to reimburse for business expenses;
- 22 (b) Failure to provide meal periods;
- 23 (c) Failure to authorize and permit rest periods;
- 24 (d) Failure to provide accurate itemized wage statements; and
- 25 (e) Failure to pay accrued wages at termination or resignation;

26 121. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
forth in Business & Professions Code §§ 17200, et seq. Specifically, Defendants conduct business
activities while failing to comply with California's wage-and-hour laws and the California common
law and statutory law as described herein.

1 D. That Defendants are found to have violated Labor Code §§ 226.7 and 512 by not
2 providing meal periods to Plaintiff and the proposed Class;

3 E. That Defendants are found to have violated Labor Code §§ 226.7 and Wage Order 1
4 by failing to pay premium pay when meal periods violations occurred;

5 F. That Defendants are found to have violated Labor Code § 226.7 by not authorizing
6 and permitting Plaintiff and the proposed Class to take rest periods;

7 G. That Defendants are found to have violated Labor Code §§ 226.7 and Wage Order 1
8 as to Plaintiff and the proposed Class, by failing to pay premium pay when rest periods violations
9 occurred;

10 H. That Defendants are found to have violated Labor Code § 226 for failing to provide
11 accurate itemized wage statements to Plaintiff and the proposed Class;

12 I. That Defendants are found to have violated the record-keeping provisions of Labor
13 Code §§ 1174(d) and 226 as to Plaintiff and the proposed Class;

14 J. That Defendants are found to have violated Labor Code §§ 201, 202, and 203 as to
15 Plaintiff and the proposed Class for willfully failing to pay them all wages due upon separation from
16 their employment;

17 K. That Defendants are found to have violated PAGA (Labor Code Section 2698 *et seq.*),
18 as to Plaintiff and all Aggrieved Employees and that Defendants are liable for civil penalties,
19 attorney's fees, and costs thereunder.

20 L. That Defendants are found to have violated Business and Professions Code § 17200
21 as to Plaintiff and the proposed Class by failing to indemnify or reimburse Plaintiff and the proposed
22 Class for necessary business expenses, failing to provide meal periods, failing to authorize and
23 permit rest periods, failing to provide accurate itemized wage statements, and failing to pay all wages
24 due upon separation from employment;

25 M. That Plaintiff and the proposed Class be awarded damages for the full amount of
26 unpaid compensation, including interest thereon, and penalties subject to proof at trial;

N. That Plaintiff and the proposed Class be awarded reasonable attorney's fees and costs;

1 O. That Plaintiff and the proposed Class be awarded restitution of unpaid wages and all
2 pre-judgment interest from the day such amounts were due and payable;

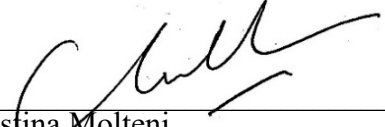
3 P. That a receiver be appointed to receive, manage, and distribute any and all funds
4 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
5 result of their violation of California Business and Professions Code sections 17200, et seq.;

6 Q. That Plaintiff and the proposed Class be awarded injunctive relief and an order
7 enjoining Defendants from engaging in further unfair and unlawful business practices in violation of
8 Business & Professions Code §§ 17200 et seq.; and

9 R. An award of such other and further relief as this Court may deem appropriate.

10 Dated: September 11, 2023

MOLTENI EMPLOYMENT LAW
THE BYRNE LAW GROUP

11
12 By: 

13 Cristina Molteni
14 Adrian C. Byrne
15 Attorneys for Plaintiff MARIO
16 MERCADO, individually, on behalf of
17 himself, all others similarly situated,
18 and all Aggrieved Employees
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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all others similarly situated, and all Aggrieved Employees,
hereby requests a jury trial on all claims so triable.

Dated: September 11, 2023

MOLTENI EMPLOYMENT LAW
THE BYRNE LAW GROUP

By: _____


Cristina Molteni
Adrian C. Byrne
Attorneys for Plaintiff MARIO
MERCADO, individually, on behalf of
himself, all others similarly situated,
and all Aggrieved Employees