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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

AMALIA RODRIGUEZ, an individual, on behalf of
herself and on behalf of all persons similarly situated,

Plaintiff,

vs.

COVIDIEN LP, a Limited Partnership;
MEDTRONIC, INC., a Corporation; MEDTRONIC
USA, INC., a Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 30-2024-01394865-CU-OE-CXC

FIRST AMENDED CLASS ACTION COMPLAINT
FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-203, 233, 246;
10. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*]
11. DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA; and
12. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY.

DEMAND FOR A JURY TRIAL

1 Amalia Rodriguez (“PLAINTIFF”), an individual, on behalf of herself and all other
2 similarly situated current and former employees alleges on information and belief, except for her
3 own acts and knowledge which are based on personal knowledge, the following.

4
5 **THE PARTIES**

6 1. Covidien LP is a limited partnership that at all relevant times mentioned herein
7 conducted and continues to conduct substantial business in California.

8 2. Medtronic, Inc. is a corporation that at all relevant times mentioned herein
9 conducted and continues to conduct substantial business in California.

10 3. Medtronic USA, Inc. is a corporation that at all relevant times mentioned herein
11 conducted and continues to conduct substantial business in California.

12 4. Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. were the joint
13 employers of PLAINTIFF as evidenced by paycheck and by the company PLAINTIFF
14 performed work for respectively, and are therefore jointly responsible as employers for the
15 conduct alleged herein, and are therefore collectively referred to herein as (“DEFENDANT”).

16 5. DEFENDANT is an American medical device company.

17 6. PLAINTIFF was employed by DEFENDANT in California from September 30,
18 2019 to January 18, 2024 and was at all times classified by DEFENDANT as a non-exempt
19 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
20 payment of minimum and overtime wages due for all time worked.

21 7. PLAINTIFF brings this Class Action on behalf of herself and a California class,
22 defined as all individuals who are or previously were employed by Covidien LP and/or
23 Medtronic, Inc. and/or Medtronic USA, Inc. in California, including any employees staffed with
24 Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. by a third party, and classified
25 as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period
26 beginning April 18, 2020, and ending on the date as determined by the Court (the
27 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
28 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

1 8. PLAINTIFF brings this Class Action on behalf of herself and a CALIFORNIA
2 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
3 the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed
4 to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was
5 an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and
6 continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.
7 PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining
8 such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other
9 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's
10 past and current unlawful conduct, and all other appropriate legal and equitable relief.

11 9. The true names and capacities, whether individual, corporate, subsidiary,
12 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
13 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
14 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
15 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
16 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
17 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
18 responsible in some manner for one or more of the events and happenings that proximately
19 caused the injuries and damages hereinafter alleged.

20 10. The agents, servants and/or employees of the Defendants and each of them acting
21 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
22 agent, servant and/or employee of the Defendants, and personally participated in the conduct
23 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
24 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
25 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
26 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
27 Defendants' agents, servants and/or employees.
28

1 **THE CONDUCT**

2 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
3 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
4 meaning the time during which an employee is subject to the control of an employer, including
5 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
6 and CALIFORNIA CLASS Members to work without paying them for all the time they are
7 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
8 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
9 PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
10 should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established
11 company policy and procedure, administers a uniform practice of rounding the actual time
12 worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the
13 benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and
14 CALIFORNIA CLASS Members are paid less than they would have been paid had they been
15 paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages
16 in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work
17 off the clock in that DEFENDANT, as a condition of employment, required these employees to
18 submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening
19 prior to clocking into DEFENDANT's timekeeping system for the workday. As a result,
20 PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage
21 compensation, and off-duty meal breaks by working without their time being correctly recorded
22 and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
23 PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by
24 DEFENDANT's business records.

25 12. State and federal law provides that employees must be paid overtime and meal and
26 rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
27 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is
28 tied to specific elements of an employee's performance.

1 13. The second component of PLAINTIFF's and other CALIFORNIA CLASS
2 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
3 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
4 performance for DEFENDANT. The non-discretionary incentive program provided all
5 employees paid on an hourly basis with incentive compensation when the employees met the
6 various performance goals set by DEFENDANT. However, when calculating the regular rate
7 of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and other
8 CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation
9 as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal
10 and rest break premium pay. Management and supervisors described the incentive program to
11 potential and new employees as part of the compensation package. As a matter of law, the
12 incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members
13 must be included in the "regular rate of pay." The failure to do so has resulted in a
14 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and
15 other CALIFORNIA CLASS Members by DEFENDANT.

16 14. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
17 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks
18 and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA
19 CLASS Members were required from time to time to perform work as ordered by DEFENDANT
20 for more than five (5) hours during some shifts without receiving a meal break. Further,
21 DEFENDANT from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period for some workdays in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the
24 practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and other
25 CALIFORNIA CLASS Members. PLAINTIFF and other members of the CALIFORNIA
26 CLASS therefore forfeit meal breaks without additional compensation and in accordance with
27 DEFENDANT's corporate policy and practice.
28

1 15. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
2 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
3 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
4 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
5 (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
6 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
7 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours
8 or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members were also
9 not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage
10 Order requires employers to provide employees with off-duty rest periods, which the California
11 Supreme Court defined as time during which an employee is relieved from all work related
12 duties and free from employer control. In so doing, the Court held that the requirement under
13 California law that employers authorize and permit all employees to take rest period means that
14 employers must relieve employees of all duties and relinquish control over how employees spend
15 their time which includes control over the locations where employees may take their rest period.
16 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
17 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
18 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on
19 DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members
20 cannot leave the work premises during their rest period.

21 16. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
22 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
23 of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
24 DEFENDANT was required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
25 all time worked, meaning the time during which an employee was subject to the control of an
26 employer, including all the time the employee was permitted or suffered to permit this work.
27 DEFENDANT required these employees to work off the clock without paying them for all the
28 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have

1 known that PLAINTIFF and the other members of the CALIFORNIA CLASS were under
2 compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS
3 Members forfeited time worked by working without their time being accurately recorded and
4 without compensation at the applicable minimum wage and overtime wage rates. To the extent
5 that the time worked off the clock does not qualify for overtime premium payment,
6 DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal.
7 Lab. Code §§ 1194, 1197, and 1197.1.

8 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with complete and accurate wage statements which
10 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code §
11 226 provides that every employer shall furnish each of his or her employees with an accurate
12 itemized wage statement in writing showing, among other things, gross wages earned and all
13 applicable hourly rates in effect during the pay period and the corresponding amount of time
14 worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS Members were paid on an
15 hourly basis. As such, the wage statements should reflect all applicable hourly rates during the
16 pay period and the total hours worked, and the applicable pay period in which the wages were
17 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
18 provided to PLAINTIFF and other CALIFORNIA CLASS Members failed to identify such
19 information. More specifically, the wage statements failed to identify the accurate total hours
20 worked each pay period. When the hours shown on the wage statements were added up, they did
21 not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code
22 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to
23 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
24 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and
25 the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab.
26 Code § 226.

27 18. DEFENDANT underpaid sick pay wages to PLAINTIFF and other CALIFORNIA
28 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.

1 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
2 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
3 underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS Members at their base rates
4 of pay.

5 19. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt
6 employees be calculated by dividing the employee's total wages, not including overtime
7 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
8 of employment.

9 20. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
10 the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely earned non-
11 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
12 was paid, it was paid at the base rate of pay for PLAINTIFF and members of the CALIFORNIA
13 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
14 Section 246.

15 21. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
16 other members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting
17 time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
18 believes and based thereon alleges that such failure to pay sick pay at regular rate was willful,
19 such that PLAINTIFF and members of the CALIFORNIA CLASS whose employment has
20 separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

21 22. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
22 collect or receive from an employee any part of wages theretofore paid by said employer to said
23 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
24 CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from compensation
25 payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members, failed to disclose
26 all aspects of the deductions from compensation payable to PLAINTIFF and CALIFORNIA
27 LABOR SUB-CLASS Members, and thereby failed to pay these employees all wages due at each
28 applicable pay period and upon termination. PLAINTIFF and members of the CALIFORNIA

1 LABOR SUB-CLASS seek recovery of all illegal deductions from wages according to proof,
2 related penalties, interest, attorney fees and costs.

3 23. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
4 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
5 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence
6 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
7 2802, employers are required to indemnify employees for all expenses incurred in the course and
8 scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
9 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
10 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
11 directions of the employer, even though unlawful, unless the employee, at the time of obeying
12 the directions, believed them to be unlawful."

13 24. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
14 Members as a business expense, were required by DEFENDANT to use their own personal
15 cellular phones as a result of and in furtherance of their job duties as employees for
16 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
17 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
18 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
19 their personal cellular phones. As a result, in the course of their employment with
20 DEFENDANT, PLAINTIFF and other members of the CALIFORNIA CLASS incurred
21 unreimbursed business expenses which included, but were not limited to, costs related to the use
22 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

23 25. In violation of the applicable sections of the California Labor Code and the
24 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
26 and systematically failed to provide PLAINTIFF and the other Aggrieved Employees suitable
27 seating when the nature of these employees' work reasonably permitted sitting.
28

26. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not allow them to sit when it did not interfere with the performance of their duties.

27. By reason of this conduct applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor Code Section 1198 and California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Wage Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF and other Aggrieved Employees as provided herein. Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder as herein alleged.

28. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000.

JURISDICTION AND VENUE

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

1 This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated
2 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

3 30. Venue is proper in this Court pursuant to California Code of Civil Procedure,
4 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
5 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
6 facilities in this County and/or conducts substantial business in this County, and (ii)
7 committed the wrongful conduct herein alleged in this County against members of the
8 CALIFORNIA CLASS.

9
10 **THE CALIFORNIA CLASS**

11 31. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
12 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
13 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
14 California class, defined as all individuals who are or previously were employed by Covidien
15 LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. in California, including any
16 employees staffed with Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. by a
17 third party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
18 time during the period beginning April 18, 2020, and ending on the date as determined by the
19 Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the
20 aggregate claim of CALIFORNIA CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 32. To the extent equitable tolling operates to toll claims by the CALIFORNIA
23 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
24 accordingly.

25 DEFENDANT, as a matter of company policy, practice and procedure, and in
26 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order
27 requirements, and the applicable provisions of California law, intentionally, knowingly, and
28 wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest

1 breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though
2 DEFENDANT enjoyed the benefit of this work, required employees to perform this work
3 and permits or suffers to permit this work.

4 34. DEFENDANT has the legal burden to establish that each and every
5 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
6 required by California laws. The DEFENDANT, however, as a matter of policy and
7 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to
8 have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
9 Member is paid as required by law. This common business practice is applicable to each and
10 every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,
11 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the
12 “UCL”) as causation, damages, and reliance are not elements of this claim.

13 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
14 CLASS Members is impracticable.

15 36. DEFENDANT violated the rights of the CALIFORNIA CLASS under
16 California law by:

17 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
18 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that failed to record and pay PLAINTIFF and the other members of the
21 CALIFORNIA CLASS for all time worked, including minimum wages
22 owed and overtime wages owed for work performed by these
23 employees; and,

24 (b) Committing an act of unfair competition in violation of the UCL, by
25 failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods.

27 37. This Class Action meets the statutory prerequisites for the maintenance of a
28 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 1 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
2 that the joinder of all such persons is impracticable and the disposition
3 of their claims as a class will benefit the parties and the Court;
- 4 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
5 issues that are raised in this Complaint are common to the
6 CALIFORNIA CLASS will apply to every member of the
7 CALIFORNIA CLASS;
- 8 (c) The claims of the representative PLAINTIFF are typical of the claims of
9 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
10 other members of the CALIFORNIA CLASS, was classified as a non-
11 exempt employee paid on an hourly basis who was subjected to the
12 DEFENDANT's deceptive practice and policy which failed to provide
13 the legally required meal and rest periods to the CALIFORNIA CLASS
14 and thereby underpaid compensation to PLAINTIFF and CALIFORNIA
15 CLASS. PLAINTIFF sustained economic injury as a result of
16 DEFENDANT's employment practices. PLAINTIFF and the members
17 of the CALIFORNIA CLASS were and are similarly or identically
18 harmed by the same unlawful, deceptive and unfair misconduct engaged
19 in by DEFENDANT; and,
- 20 (d) The representative PLAINTIFF will fairly and adequately represent and
21 protect the interest of the CALIFORNIA CLASS, and has retained
22 counsel who are competent and experienced in Class Action litigation.
23 There are no material conflicts between the claims of the representative
24 PLAINTIFF and the members of the CALIFORNIA CLASS that would
25 make class certification inappropriate. Counsel for the CALIFORNIA
26 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
27 Members.
28

1 38. In addition to meeting the statutory prerequisites to a Class Action, this action
2 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

3 (a) Without class certification and determination of declaratory, injunctive,
4 statutory and other legal questions within the class format, prosecution
5 of separate actions by individual members of the CALIFORNIA CLASS
6 will create the risk of:

7 1) Inconsistent or varying adjudications with respect to individual
8 members of the CALIFORNIA CLASS which would establish
9 incompatible standards of conduct for the parties opposing the
10 CALIFORNIA CLASS; and/or,

11 2) Adjudication with respect to individual members of the
12 CALIFORNIA CLASS which would as a practical matter be
13 dispositive of interests of the other members not party to the
14 adjudication or substantially impair or impede their ability to
15 protect their interests.

16 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
17 to act on grounds generally applicable to the CALIFORNIA CLASS,
18 making appropriate class-wide relief with respect to the CALIFORNIA
19 CLASS as a whole in that DEFENDANT failed to pay all wages due to
20 members of the CALIFORNIA CLASS as required by law;

21 1) With respect to the First Cause of Action, the final relief on
22 behalf of the CALIFORNIA CLASS sought does not relate
23 exclusively to restitution because through this claim PLAINTIFF
24 seeks declaratory relief holding that the DEFENDANT's policy
25 and practices constitute unfair competition, along with
26 declaratory relief, injunctive relief, and incidental equitable relief
27 as may be necessary to prevent and remedy the conduct declared
28 to constitute unfair competition;

1 (c) Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question
4 affecting only individual CALIFORNIA CLASS Members, and a Class
5 Action is superior to other available methods for the fair and efficient
6 adjudication of the controversy, including consideration of:

- 7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will
10 be avoided to recover the relatively small amount of economic
11 losses sustained by the individual CALIFORNIA CLASS
12 Members when compared to the substantial expense and burden
13 of individual prosecution of this litigation;
- 14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:
- 16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or,
- 20 B. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not
23 parties to the adjudication or substantially impair or
24 impede their ability to protect their interests;
- 25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT,
28 which may adversely affect an individual's job with

1 DEFENDANT or with a subsequent employer, the Class Action
2 is the only means to assert their claims through a representative;
3 and,

- 4 4) A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because class
6 treatment will obviate the need for unduly and unnecessary
7 duplicative litigation that is likely to result in the absence of
8 certification of this action pursuant to Cal. Code of Civ. Proc. §
9 382.

10 39. This Court should permit this action to be maintained as a Class Action
11 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 12 (a) The questions of law and fact common to the CALIFORNIA CLASS
13 predominate over any question affecting only individual CALIFORNIA
14 CLASS Members because the DEFENDANT's employment practices
15 are applied with respect to the CALIFORNIA CLASS;
- 16 (b) A Class Action is superior to any other available method for the fair and
17 efficient adjudication of the claims of the members of the
18 CALIFORNIA CLASS because in the context of employment litigation
19 a substantial number of individual CALIFORNIA CLASS Members will
20 avoid asserting their rights individually out of fear of retaliation or
21 adverse impact on their employment;
- 22 (c) The members of the CALIFORNIA CLASS are so numerous that it is
23 impractical to bring all members of the CALIFORNIA CLASS before
24 the Court;
- 25 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
26 be able to obtain effective and economic legal redress unless the action
27 is maintained as a Class Action;
- 28

- 1 (e) There is a community of interest in obtaining appropriate legal and
2 equitable relief for the acts of unfair competition, statutory violations
3 and other improprieties, and in obtaining adequate compensation for the
4 damages and injuries which DEFENDANT's actions have inflicted upon
5 the CALIFORNIA CLASS;
- 6 (f) There is a community of interest in ensuring that the combined assets of
7 DEFENDANT are sufficient to adequately compensate the members of
8 the CALIFORNIA CLASS for the injuries sustained;
- 9 (g) DEFENDANT has acted or refused to act on grounds generally
10 applicable to the CALIFORNIA CLASS, thereby making final class-
11 wide relief appropriate with respect to the CALIFORNIA CLASS as a
12 whole;
- 13 (h) The members of the CALIFORNIA CLASS are readily ascertainable
14 from the business records of DEFENDANT; and,
- 15 (i) Class treatment provides manageable judicial treatment calculated to
16 bring a efficient and rapid conclusion to all litigation of all wage and
17 hour related claims arising out of the conduct of DEFENDANT as to the
18 members of the CALIFORNIA CLASS.

19 40. DEFENDANT maintains records from which the Court can ascertain and
20 identify by job title each of DEFENDANT's employees who have been intentionally
21 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
22 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
23 similarly situated employees when they have been identified.

24
25 **THE CALIFORNIA LABOR SUB-CLASS**

26 41. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
27 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
28 of the CALIFORNIA CLASS who are or previously were employed by Covidien LP and/or

1 Medtronic, Inc. and/or Medtronic USA, Inc. in California, including any employees staffed
2 with Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. by a third party, and
3 classified as non-exempt employees (the “CALIFORNIA LABOR SUB-CLASS”) at any
4 time during the period beginning April 18, 2021, and ending on the date as determined by the
5 Court (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Cal. Code of Civ.
6 Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR
7 SUB-CLASS Members is under five million dollars (\$5,000,000.00).

8 42. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
9 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
10 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
11 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
12 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
13 these employees, even though DEFENDANT enjoyed the benefit of this work, required
14 employees to perform this work and permitted or suffered to permit this work.
15 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
16 which these employees are entitled in order to unfairly cheat the competition and unlawfully
17 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
18 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
19 should be adjusted accordingly.

20 43. DEFENDANT maintains records from which the Court can ascertain and
21 identify by name and job title, each of DEFENDANT’s employees who have been
22 intentionally subjected to DEFENDANT’s company policy, practices and procedures as
23 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional
24 job titles of similarly situated employees when they have been identified.

25 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
26 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

27 45. Common questions of law and fact exist as to members of the CALIFORNIA
28 LABOR SUB-CLASS, including, but not limited, to the following:

- 1 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
2 compensation due to members of the CALIFORNIA LABOR SUB-
3 CLASS for missed meal and rest breaks in violation of the California
4 Labor Code and California regulations and the applicable California
5 Wage Order;
- 6 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS with accurate
8 itemized wage statements;
- 9 (c) Whether DEFENDANT has engaged in unfair competition by the
10 above-listed conduct;
- 11 (d) The proper measure of damages and penalties owed to the members of
12 the CALIFORNIA LABOR SUB-CLASS; and,
- 13 (e) Whether DEFENDANT's conduct was willful.

14 46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
15 under California law by:

- 16 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS all wages due for overtime worked, for which DEFENDANT is
19 liable pursuant to Cal. Lab. Code § 1194;
- 20 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
21 accurately pay PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS the correct minimum wage pay for which
23 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 24 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
25 the members of the CALIFORNIA LABOR SUB-CLASS with an
26 accurate itemized statement in writing showing the corresponding
27 correct amount of wages earned by the employee;
- 28

- 1 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
2 PLAINTIFF and the other members of the CALIFORNIA LABOR
3 SUB-CLASS with all legally required off-duty, uninterrupted thirty (30)
4 minute meal breaks and the legally required off-duty rest breaks;
- 5 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
6 when an employee is discharged or quits from employment, the
7 employer must pay the employee all wages due without abatement, by
8 failing to tender full payment and/or restitution of wages owed or in the
9 manner required by California law to the members of the CALIFORNIA
10 LABOR SUB-CLASS who have terminated their employment; and,
- 11 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
12 and the CALIFORNIA LABOR SUB-CLASS members with necessary
13 expenses incurred in the discharge of their job duties.

14 47. This Class Action meets the statutory prerequisites for the maintenance of a
15 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 16 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
17 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
18 CLASS Members is impracticable and the disposition of their claims as
19 a class will benefit the parties and the Court;
- 20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
21 issues that are raised in this Complaint are common to the
22 CALIFORNIA LABOR SUB-CLASS and will apply to every member
23 of the CALIFORNIA LABOR SUB-CLASS;
- 24 (c) The claims of the representative PLAINTIFF are typical of the claims of
25 each member of the CALIFORNIA LABOR SUB-CLASS.
26 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
27 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
28 was subjected to the DEFENDANT's practice and policy which failed to

1 pay the correct amount of wages due to the CALIFORNIA LABOR
2 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
3 DEFENDANT's employment practices. PLAINTIFF and the members
4 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
5 identically harmed by the same unlawful, deceptive, and unfair
6 misconduct engaged in by DEFENDANT; and,

- 7 (d) The representative PLAINTIFF will fairly and adequately represent and
8 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
9 retained counsel who are competent and experienced in Class Action
10 litigation. There are no material conflicts between the claims of the
11 representative PLAINTIFF and the members of the CALIFORNIA
12 LABOR SUB-CLASS that would make class certification inappropriate.
13 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
14 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

15 48. In addition to meeting the statutory prerequisites to a Class Action, this action
16 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 17 (a) Without class certification and determination of declaratory, injunctive,
18 statutory and other legal questions within the class format, prosecution
19 of separate actions by individual members of the CALIFORNIA
20 LABOR SUB-CLASS will create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to individual
22 members of the CALIFORNIA LABOR SUB-CLASS which
23 would establish incompatible standards of conduct for the parties
24 opposing the CALIFORNIA LABOR SUB-CLASS; or,
 - 25 2) Adjudication with respect to individual members of the
26 CALIFORNIA LABOR SUB-CLASS which would as a practical
27 matter be dispositive of interests of the other members not party
28

1 to the adjudication or substantially impair or impede their ability
2 to protect their interests.

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
4 acted or refused to act on grounds generally applicable to the
5 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
6 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
7 whole in that DEFENDANT fails to pay all wages due. Including the
8 correct wages for all time worked by the members of the CALIFORNIA
9 LABOR SUB-CLASS as required by law;

10 (c) Common questions of law and fact predominate as to the members of
11 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
12 and violations of California Law as listed above, and predominate over
13 any question affecting only individual CALIFORNIA LABOR SUB-
14 CLASS Members, and a Class Action is superior to other available
15 methods for the fair and efficient adjudication of the controversy,
16 including consideration of:

- 17 1) The interests of the members of the CALIFORNIA LABOR
18 SUB-CLASS in individually controlling the prosecution or
19 defense of separate actions in that the substantial expense of
20 individual actions will be avoided to recover the relatively small
21 amount of economic losses sustained by the individual
22 CALIFORNIA LABOR SUB-CLASS Members when compared
23 to the substantial expense and burden of individual prosecution of
24 this litigation;
- 25 2) Class certification will obviate the need for unduly duplicative
26 litigation that would create the risk of:

- 27 A. Inconsistent or varying adjudications with respect to
28 individual members of the CALIFORNIA LABOR SUB-

1 CLASS, which would establish incompatible standards of
2 conduct for the DEFENDANT; and/or,

3 B. Adjudications with respect to individual members of the
4 CALIFORNIA LABOR SUB-CLASS would as a practical
5 matter be dispositive of the interests of the other members
6 not parties to the adjudication or substantially impair or
7 impede their ability to protect their interests;

8 3) In the context of wage litigation because a substantial number of
9 individual CALIFORNIA LABOR SUB-CLASS Members will
10 avoid asserting their legal rights out of fear of retaliation by
11 DEFENDANT, which may adversely affect an individual's job
12 with DEFENDANT or with a subsequent employer, the Class
13 Action is the only means to assert their claims through a
14 representative; and,

15 4) A class action is superior to other available methods for the fair
16 and efficient adjudication of this litigation because class
17 treatment will obviate the need for unduly and unnecessary
18 duplicative litigation that is likely to result in the absence of
19 certification of this action pursuant to Cal. Code of Civ. Proc. §
20 382.

21 49. This Court should permit this action to be maintained as a Class Action
22 pursuant to Cal. Code of Civ. Proc. § 382 because:

23 (a) The questions of law and fact common to the CALIFORNIA LABOR
24 SUB-CLASS predominate over any question affecting only individual
25 CALIFORNIA LABOR SUB-CLASS Members;

26 (b) A Class Action is superior to any other available method for the fair and
27 efficient adjudication of the claims of the members of the
28 CALIFORNIA LABOR SUB-CLASS because in the context of

1 employment litigation a substantial number of individual CALIFORNIA
2 LABOR SUB-CLASS Members will avoid asserting their rights
3 individually out of fear of retaliation or adverse impact on their
4 employment;

5 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
6 numerous that it is impractical to bring all members of the
7 CALIFORNIA LABOR SUB-CLASS before the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
9 Members, will not be able to obtain effective and economic legal redress
10 unless the action is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and
12 equitable relief for the acts of unfair competition, statutory violations
13 and other improprieties, and in obtaining adequate compensation for the
14 damages and injuries which DEFENDANT's actions have inflicted upon
15 the CALIFORNIA LABOR SUB-CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of
17 DEFENDANT are sufficient to adequately compensate the members of
18 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally
20 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making
21 final class-wide relief appropriate with respect to the CALIFORNIA
22 LABOR SUB-CLASS as a whole;

23 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
24 ascertainable from the business records of DEFENDANT. The
25 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
26 CLASS Members who worked for DEFENDANT in California at any
27 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
28

- 1 (i) Class treatment provides manageable judicial treatment calculated to
2 bring a efficient and rapid conclusion to all litigation of all wage and
3 hour related claims arising out of the conduct of DEFENDANT as to the
4 members of the CALIFORNIA LABOR SUB-CLASS.
5

6 **FIRST CAUSE OF ACTION**

7 **For Unlawful Business Practices**

8 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

9 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

10 50. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
11 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 51. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
14 Code § 17021.

15 52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
17 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
18 competition as follows:

19 Any person who engages, has engaged, or proposes to engage in unfair
20 competition may be enjoined in any court of competent jurisdiction. The court
21 may make such orders or judgments, including the appointment of a receiver,
22 as may be necessary to prevent the use or employment by any person of any
23 practice which constitutes unfair competition, as defined in this chapter, or as
24 may be necessary to restore to any person in interest any money or property,
25 real or personal, which may have been acquired by means of such unfair
26 competition.

27 Cal. Bus. & Prof. Code § 17203.

28 53. By the conduct alleged herein, DEFENDANT has engaged and continues to
engage in a business practice which violates California law, including but not limited to, the
applicable Industrial Wage Order(s), the California Code of Regulations and the California
Labor Code including Sections 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802

1 and the Fair Labor Standards Act and federal regulations promulgated thereunder, for which
2 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof.
3 Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
4 unfair competition, including restitution of wages wrongfully withheld.

5 54. By the conduct alleged herein, DEFENDANT's practices were unlawful and
6 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
7 unscrupulous or substantially injurious to employees, and were without valid justification or
8 utility for which this Court should issue equitable and injunctive relief pursuant to Section
9 17203 of the California Business & Professions Code, including restitution of wages
10 wrongfully withheld.

11 55. By the conduct alleged herein, DEFENDANT's practices were deceptive and
12 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
13 meal and rest periods, the required amount of compensation for missed meal and rest periods
14 and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse
15 all necessary business expenses incurred, and failed to provide Fair Labor Standards Act
16 overtime wages due for overtime worked as a result of failing to include non-discretionary
17 incentive compensation into their regular rates of pay for purposes of computing the proper
18 overtime pay due to a business practice that cannot be justified, pursuant to the applicable
19 Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus.
20 Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
21 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
22 withheld.

23 56. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
25 the other members of the CALIFORNIA CLASS to be underpaid during their employment
26 with DEFENDANT.

27 57. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
28 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to

1 provide all legally required meal breaks to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

3 58. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
4 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty
5 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
6 pay for each workday in which a second off-duty meal period was not timely provided for
7 each ten (10) hours of work.

8 59. PLAINTIFF further demands on behalf of herself and each member of the
9 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
10 duty paid rest period was not timely provided as required by law.

11 60. By and through the unlawful and unfair business practices described herein,
12 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
13 other members of the CALIFORNIA CLASS, including earned wages for all time worked,
14 and has deprived them of valuable rights and benefits guaranteed by law and contract, all to
15 the detriment of these employees and to the benefit of DEFENDANT so as to allow
16 DEFENDANT to unfairly compete against competitors who comply with the law.

17 61. All the acts described herein as violations of, among other things, the Industrial
18 Welfare Commission Wage Orders, the California Code of Regulations, and the California
19 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
20 oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
21 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

22 62. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
23 to, and do, seek such relief as may be necessary to restore to them the money and property
24 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
25 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
26 unfair business practices, including earned but unpaid wages for all time worked.

27 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
28 entitled to, and do, seek a declaration that the described business practices are unlawful,

1 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
2 from engaging in any unlawful and unfair business practices in the future.

3 64. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
4 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business
5 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
6 unabated. As a result of the unlawful and unfair business practices described herein,
7 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will
8 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained
9 from continuing to engage in these unlawful and unfair business practices.

10
11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Minimum Wages**

13 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

14 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
15 **and Against All Defendants)**

16 65. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
18 paragraphs of this Complaint.

19 66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
21 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
22 to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS
23 Members.

24 67. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a less wage
26 than the minimum so fixed is unlawful.

1 68. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage compensation and interest thereon, together with the costs
3 of suit.

4 69. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other
5 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount
6 of time they work. As set forth herein, DEFENDANT's policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
8 members of the CALIFORNIA LABOR SUB-CLASS.

9 70. DEFENDANT's unlawful wage and hour practices manifested, without
10 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
11 implementing a policy and practice that denies accurate compensation to PLAINTIFF and the
12 other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage
13 pay.

14 71. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately calculated the correct time worked and consequently underpaid the actual time
16 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
17 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other
18 benefits in violation of the California Labor Code, the Industrial Welfare Commission
19 requirements and other applicable laws and regulations.

20 72. As a direct result of DEFENDANT's unlawful wage practices as alleged
21 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
22 not receive the correct minimum wage compensation for their time worked for
23 DEFENDANT.

24 73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
2 that they were entitled to, constituting a failure to pay all earned wages.

3 74. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS for the true time they worked, PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
7 injury in amounts which are presently unknown to them and which will be ascertained
8 according to proof at trial.

9 75. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
11 time worked. DEFENDANT elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
13 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and
14 the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages
15 for their time worked.

16 76. In performing the acts and practices herein alleged in violation of California
17 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
18 CLASS for all time worked and provide them with the requisite compensation,
19 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward
20 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a
21 conscious and utter disregard for their legal rights, or the consequences to them, and with the
22 despicable intent of depriving them of their property and legal rights, and otherwise causing
23 them injury in order to increase company profits at the expense of these employees.

24 77. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory
26 costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as
27 provided by the California Labor Code and/or other applicable statutes. To the extent
28 minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-

1 CLASS Members who have terminated their employment, DEFENDANT's conduct also
2 violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
3 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on
4 behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
5 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other
6 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory
7 costs.

8
9 **THIRD CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

11 **[Cal. Lab. Code § 510]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
13 **Defendants)**

14 78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
16 paragraphs of this Complaint.

17 79. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
18 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
19 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
20 to pay these employees for all overtime worked, including, work performed in excess of eight
21 (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
22 workweek.

23 80. Cal. Lab. Code § 510 further provides that employees in California shall not be
24 employed more than eight (8) hours per workday and more than forty (40) hours per
25 workweek unless they receive additional compensation beyond their regular wages in
26 amounts specified by law.

27 81. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
28 wages, including minimum wage and overtime compensation and interest thereon, together

1 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
2 employee for longer hours than those fixed by the Industrial Welfare Commission is
3 unlawful.

4 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
7 including overtime work.

8 83. DEFENDANT's unlawful wage and hour practices manifested, without
9 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
10 implementing a policy and practice that failed to accurately record overtime worked by
11 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
12 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
14 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
15 workweek.

16 84. In committing these violations of the California Labor Code, DEFENDANT
17 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
18 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
19 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
20 violation of the California Labor Code, the Industrial Welfare Commission requirements and
21 other applicable laws and regulations. As a direct result of DEFENDANT's unlawful wage
22 practices as alleged herein, the PLAINTIFF and the other members of the CALIFORNIA
23 LABOR SUB-CLASS did not receive full compensation for overtime worked.

24 85. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
25 from the overtime requirements of the law. None of these exemptions are applicable to the
26 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
27 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
28 subject to a valid collective bargaining agreement that would preclude the causes of action

1 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of herself
2 and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-
3 negotiable, non-waiveable rights provided by the State of California.

4 86. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
5 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
6 overtime worked that they are entitled to, constituting a failure to pay all earned wages.

7 87. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
8 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which
9 was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§
10 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA
11 LABOR SUB-CLASS were required to work, and did in fact work, overtime as to which
12 DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business
13 records and witnessed by employees.

14 88. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
15 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
16 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
17 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic
18 injury in amounts which are presently unknown to them and which will be ascertained
19 according to proof at trial.

20 89. DEFENDANT knew or should have known that PLAINTIFF and the other
21 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
22 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
23 nonfeasance, to not pay employees for their labor as a matter of company policy, practice and
24 procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and
25 the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

26 90. In performing the acts and practices herein alleged in violation of California
27 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
28 CLASS for all overtime worked and provide them with the requisite overtime compensation,

1 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a
3 conscious of and utter disregard for their legal rights, or the consequences to them, and with
4 the despicable intent of depriving them of their property and legal rights, and otherwise
5 causing them injury in order to increase company profits at the expense of these employees.

6 91. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
7 CLASS therefore request recovery of all overtime wages, according to proof, interest,
8 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in
9 a sum as provided by the California Labor Code and/or other applicable statutes. To the
10 extent minimum and/or overtime compensation is determined to be owed to the
11 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
12 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
13 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
14 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
15 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
16 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
17 are entitled to seek and recover statutory costs.

18
19 **FOURTH CAUSE OF ACTION**

20 **For Failure to Provide Required Meal Periods**

21 **[Cal. Lab. Code §§ 226.7 & 512]**

22 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
23 **Defendants)**

24 92. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
25 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
26 paragraphs of this Complaint.

27 93. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
28 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other

1 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
2 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
3 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
4 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
5 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
6 from time to time not fully relieved of duty by DEFENDANT for their meal periods.
7 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
8 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
9 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
10 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
11 second off-duty meal period in some workdays in which these employees were required by
12 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
13 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
14 breaks without additional compensation and in accordance with DEFENDANT's strict
15 corporate policy and practice.

16 94. DEFENDANT further violates California Labor Code §§ 226.7 and the
17 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
18 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
19 the applicable Wage Order, one additional hour of compensation at each employee's regular
20 rate of pay for each workday that a meal period was not provided.

21 95. As a proximate result of the aforementioned violations, PLAINTIFF and
22 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
23 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
24 suit.

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Provide Required Rest Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 97. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
10 from time to time required to work in excess of four (4) hours without being provided ten
11 (10) minute rest periods. Further, these employees from time to time were denied their first
12 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
14 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
15 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

16 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
17 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
18 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
19 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

20 98. DEFENDANT further violated California Labor Code §§ 226.7 and the
21 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
22 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the
23 applicable Wage Order, one additional hour of compensation at each employee's regular rate
24 of pay for each workday that rest period was not provided.

25 99. As a proximate result of the aforementioned violations, PLAINTIFF and
26 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
27 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
28 suit.

1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 101. Cal. Labor Code § 226 provides that an employer must furnish employees with
10 an “accurate itemized” statement in writing showing:

- 11 (1) gross wages earned,
12 (2) total hours worked by the employee, except for any employee whose compensation
13 is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
15 Commission,
16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item,
20 (5) net wages earned,
21 (6) the inclusive dates of the period for which the employee is paid,
22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,
26 (8) the name and address of the legal entity that is the employer, and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28 number of hours worked at each hourly rate by the employee.

102. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
wage statements which failed to show, among other things, the correct gross and net wages
earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
employees with an accurate itemized wage statement in writing showing, among other things,
gross wages earned and all applicable hourly rates in effect during the pay period and the
corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA
LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements

1 should reflect all applicable hourly rates during the pay period and the total hours worked,
2 and the applicable pay period in which the wages were earned pursuant to California Labor
3 Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and
4 other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information.
5 More specifically, the wage statements failed to identify the accurate total hours worked each
6 pay period. When the hours shown on the wage statements were added up, they did not equal
7 the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2).
8 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
9 PLAINTIFF an itemized wage statement that lists all the requirements under California
10 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
11 and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements
12 which violated Cal. Lab. Code § 226.

13 103. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
14 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
16 expended calculating the correct wages for all missed meal and rest breaks and the amount of
17 employment taxes which were not properly paid to state and federal tax authorities. These
18 damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the
19 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
20 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred
21 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
22 226, in an amount according to proof at the time of trial (but in no event more than four
23 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
24 CALIFORNIA LABOR SUB-CLASS herein).

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1 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
2 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as
3 an employer is required to do under the laws and regulations of California.

4 107. PLAINTIFF therefore demands reimbursement for expenditures or losses
5 incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
6 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
7 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

8
9 **EIGHTH CAUSE OF ACTION**

10 **For Failure to Pay Wages When Due**

11 **[Cal. Lab. Code §§ 201, 202, 203]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
13 **and Against All Defendants)**

14 108. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
16 paragraphs of this Complaint.

17 109. Cal. Lab. Code § 200 provides, in relevant part, that:

18 As used in this article:

19 (a) "Wages" includes all amounts for labor performed by employees of
20 every description, whether the amount is fixed or ascertained by the
21 standard of time, task, piece, Commission basis, or other method of calculation.

22 (b) "Labor" includes labor, work, or service whether rendered or performed
23 under contract, subcontract, partnership, station plan, or other agreement if
24 the labor to be paid for is performed personally by the person demanding
25 payment.

26 110. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges
27 an employee, the wages earned and unpaid at the time of discharge are due and payable
28 immediately."

29 111. Cal. Lab. Code § 202 provides, in relevant part, that:

30 If an employee not having a written contract for a definite period quits his
31 or her employment, his or her wages shall become due and payable not
32 later than 72 hours thereafter, unless the employee has given 72 hours
33 previous notice of his or her intention to quit, in which case the employee
34 is entitled to his or her wages at the time of quitting. Notwithstanding any
35 other provision of law, an employee who quits without providing a 72-hour

1 notice shall be entitled to receive payment by mail if he or she so requests
2 and designates a mailing address. The date of the mailing shall constitute
3 the date of payment for purposes of the requirement to provide payment
4 within 72 hours of the notice of quitting.

5 112. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR
6 SUB-CLASS Members' employment contract.

7 113. Cal. Lab. Code § 203 provides, in relevant part, that:

8 If an employer willfully fails to pay, without abatement or reduction, in
9 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
10 employee who is discharged or who quits, the wages of the employee shall
11 continue as a penalty from the due date thereof at the same rate until paid
12 or until an action therefor is commenced; but the wages shall not continue
13 for more than 30 days.

14 114. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
15 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
16 owed as required by law. Additionally, at all times during the term of PLAINTIFF's
17 employment with DEFENDANT, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
18 Members earned and accrued vested vacation and holiday time on the date of their
19 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
20 law. The amount of vacation pay PLAINTIFF and the other CALIFORNIA LABOR SUB-
21 CLASS Members earned and accumulated is evidenced by DEFENDANT's business
22 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS MEMBERS by failing to pay
24 such wages at the regular rate of pay and more specifically the final rate of pay that included
25 all non-discretionary incentive compensation. Rather than pay vacation wages at the regular
26 rate of pay, DEFENDANT underpaid vacation wages to PLAINTIFF and other
27 CALIFORNIA LABOR SUB-CLASS Members at their base rates of pay, instead of
28 including all of PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
discretionary incentive compensation into the vacation wage payment calculations.
DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be paid vacation
upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful

1 practice, policy and procedure to deny paying the PLAINTIFF and the other members of the
2 CALIFORNIA LABOR SUB-CLASS all of their vested vacation and holiday time,
3 DEFENDANT failed to pay the PLAINTIFF and the members of the CALIFORNIA
4 LABOR SUB-CLASS all vested vacation time as wages due upon employment termination,
5 in violation of the California Labor Code, Sections 201, 202, 203 and 227.3. Similarly,
6 DEFENDANT underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA
7 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
8 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-discretionary
9 compensation into the waiting time penalty calculations. This failure by DEFENDANT is
10 believed to be the result of DEFENDANT's unlawful, unfair and deceptive refusal to provide
11 compensation for earned, accrued and vested vacation and holiday time, as well as the
12 corresponding waiting time penalties that were paid. DEFENDANT perpetrated this
13 unlawful, unfair and deceptive practice to the detriment of the PLAINTIFF and the members
14 of the CALIFORNIA LABOR SUB-CLASS . DEFENDANT's uniform practice and policy
15 of failing to pay the LABOR SUB-CLASS Members for all vested vacation and holiday time
16 accumulated at employment termination violated and continues to violate Section 227.3 of
17 the California Labor Code.

18 115. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the
19 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
20 and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
21 of pay as penalty for not paying all wages due at time of termination for all employees who
22 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
23 demands an accounting and payment of all wages due, plus interest and statutory costs as
24 allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

3 **[Cal. Lab. Code §§ 201-203, 233, 246]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 116. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 117. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick
12 pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically,
13 once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay
14 wages, which an employer must calculate and compensate based on one of two calculations:
15 (i) "Paid sick time for nonexempt employees shall be calculated in the same manner as the
16 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
17 not the employee actually works overtime in that workweek," or (ii) "Paid sick time for
18 nonexempt employees shall be calculated by dividing the employee's total wages, not
19 including overtime premium pay, by the employee's total hours worked in the full pay
20 periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233,
21 employees may sue to recover underpaid sick pay wages as damages.

22 118. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn non-
26 hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay wages
27 to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS at the
28 base hourly pay, as opposed to the regular rate of pay, which would consider all non-hourly

1 remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 119. Cal. Lab. Code § 246 specifically requires that, upon use of accrued sick leave,
7 vested sick pay wages are due and to be paid no later than the payday for the next regular
8 payroll period after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code §
9 201 provides that if an employer discharges an employee, wages earned and unpaid at the
10 time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an
11 employee is entitled to receive all unpaid wages no later than 72 hours after an employee
12 quits his or her employment, unless the employee has given 72-hour notice of his or her
13 intention to quit, in which case the employee is entitled to his or her wages at the time of
14 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
15 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab.
16 Code §§ 201-202, then the wages of the employee shall continue as a penalty from the due
17 date, and at the same rate until paid, but the wages shall not continue for more than thirty
18 (30) days. Under Cal. Lab. Code §§ 203 and 218, employees may sue to recover applicable
19 penalties.

20 120. As alleged herein and as a matter of policy and practice, DEFENDANT
21 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
22 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
23 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-203, 233, and 246, among
24 other Labor Code provisions. PLAINTIFF is informed and believes that DEFENDANT was
25 advised by skilled lawyers and knew, or should have known, of the mandates of the Labor
26 Code as it relates to PLAINTIFF's allegations, especially since the California Supreme Court
27 has explained that "[c]ourts have recognized that 'wages' also include those benefits to
28 which an employee is entitled as a part of his or her compensation, including money, room,

1 board, clothing, vacation pay, *and sick pay.*" *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th
2 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely pay
3 PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay
4 wages due, DEFENDANT is subject to applicable penalties.

5 121. Such a pattern, practice, and uniform administration of corporate policy is
6 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
7 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
8 attorney's fees, and costs of suit.

9
10 **TENTH CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

12 **[Cal. Lab. Code §§ 2698, et seq.]**

13 **(By PLAINTIFF and Against All Defendants)**

14 122. PLAINTIFF realleges and incorporates by this reference, as though fully set
15 forth herein, the prior paragraphs of this Complaint.

16 123. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
18 the state's labor law enforcement agencies. An action to recover civil penalties under PAGA
19 is fundamentally a law enforcement action designed to protect the public and not to benefit
20 private parties. The purpose of the PAGA is not to recover damages or restitution, but to
21 create a means of "deputizing" citizens as private attorneys general to enforce the Labor
22 Code. In enacting PAGA, the California Legislature specified that "it was ... in the public
23 interest to allow aggrieved employees, acting as private attorneys general to recover civil
24 penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims
25 cannot be subject to arbitration.

26 124. PLAINTIFF, and such persons that may be added from time to time who satisfy
27 the requirements and exhaust the administrative procedures under the Private Attorney
28 General Act, brings this Representative Action on behalf of the State of California with

1 respect to herself and all individuals who are or previously were employed by Covidien LP
2 and/or Medtronic, Inc. and/or Medtronic USA in California, including any employees staffed
3 with Covidien LP and/or Medtronic, Inc. and/or Medtronic USA by a third party, and
4 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
5 of March 27, 2023 until a date as determined by the Court (the "PAGA PERIOD").

6 125. On March 27, 2024, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
10 herein (PAGA Notice only without draft complaint). The statutory waiting period for
11 PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to
12 Section 2699.3, PLAINTIFF may pursue a representative civil action under PAGA pursuant
13 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
14 EMPLOYEES as herein defined.

15 126. The policies, acts and practices heretofore described were and are an unlawful
16 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
17 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
18 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
19 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
20 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
21 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
22 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194,
23 1197, 1197.1, 1198, 2100, 2802, California Code of Regulations, Title 8, Section 11040,
24 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to
25 Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil penalties
26 as a result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as
27 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
28

1 the State of California for the illegal conduct perpetrated on PLAINTIFF and the
2 AGGRIEVED EMPLOYEES.

3 127. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
6 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
7 2018 AJDAR 12157 (Certified for Publication 12/19/18).

8
9 **ELEVENTH CAUSE OF ACTION**

10 **[Disability and/or Leave Discrimination and Retaliation For the Exercise of Rights**
11 **Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing**
12 **DEFENDANT's Failure to Provide Such Rights]**
13 **Violation of FEHA Government Section 12900, *et. seq.***
14 **(By PLAINTIFF Against All Defendants)**

15 128. PLAINTIFF realleges and incorporates by reference, as though fully set forth
16 herein, the prior paragraphs of this Complaint.

17 129. Starting in February of 2023 and continuing throughout the rest of
18 PLAINTIFF's employment PLAINTIFF consulted with a doctor regarding health issues
19 PLAINTIFF had been experiencing. PLAINTIFF's doctor diagnosed PLAINTIFF as having
20 shoulder injuries, and advised PLAINTIFF to take medication and undergo an MRI and other
21 testing. PLAINTIFF adhered to the doctor's orders and notified her manager and
22 DEFENDANT's employee Sandee Campania throughout 2023 regarding her injuries.
23 PLAINTIFF during through process was ridiculed and retaliated against for needing time off
24 and/or having DEFENDANT accommodate her requests for light work and/or time off due to
25 her injury. PLAINTIFF also advised DEFENDANT during this time of her anxiety and
26 stress caused by the situation and what she felt was DEFENDANT's retaliation. On or
27 around January 18, 2024, DEFENDANT terminated PLAINTIFF's employment in violation
28 of various fundamental public policies underlying both state and federal laws. Specifically,

1 PLAINTIFF's employment was terminated in part because of PLAINTIFF's protected status
2 (i.e., disability, medical leave, and/or good faith complaints). These actions were in violation
3 of FEHA, the California Constitution, and California Labor Code Section 1102.5.

4 DEFENDANT's termination letter further informed PLAINTIFF that in addition to being out
5 of a job, PLAINTIFF's health coverage under DEFENDANT's plan was also terminated.

6 Prior to filing this action PLAINTIFF exhausted her administrative remedies by filing a
7 timely administrative complaint with the Department of Fair Employment and Housing
8 ("DFEH") and received a DFEH Right to Sue letter on April 2, 2024.

9 130. DEFENDANT's conduct, as alleged, violated FEHA, Government Code
10 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
11 including the following bases for liability:

12 a. Taking adverse employment actions against PLAINTIFF, including
13 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or otherwise
14 discriminating against PLAINTIFF, in whole or in part on the basis of PLAINTIFF's
15 disability, medical leave, and/or good faith complaints;

16 b. Retaliating against PLAINTIFF for seeking to exercise rights
17 guaranteed under FEHA, participating in protected activities, and/or opposing
18 DEFENDANT's failure to provide such rights.

19 131. As a proximate result of DEFENDANT's willful, knowing, and intentional
20 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
21 substantial losses of earnings and other employment benefits.

22 132. As a proximate result of DEFENDANT's willful, knowing, and intentional
23 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
24 humiliation, emotional distress, and physical and mental pain and anguish, all to
25 PLAINTIFF's damage in a sum according to proof.

26 133. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
27 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
28 reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

134. DEFENDANT's misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against DEFENDANT.

TWELFTH CAUSE OF ACTION

[Wrongful Termination of Employment in Violation of Public Policy]

(By PLAINTIFF Against All Defendants)

135. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

136. Starting in February of 2023 and continuing throughout the rest of PLAINTIFF's employment PLAINTIFF consulted with a doctor regarding health issues PLAINTIFF had been experiencing. PLAINTIFF's doctor diagnosed PLAINTIFF as having shoulder injuries, and advised PLAINTIFF to take medication and undergo an MRI and other testing. PLAINTIFF adhered to the doctor's orders and notified her manager and DEFENDANT's employee Sandee Campania throughout 2023 regarding her injuries. PLAINTIFF during through process was ridiculed and retaliated against for needing time off and/or having DEFENDANT accommodate her requests for light work and/or time off due to her injury. PLAINTIFF also advised DEFENDANT during this time of her anxiety and stress caused by the situation and what she felt was DEFENDANT's retaliation. On or around January 18, 2024, DEFENDANT terminated PLAINTIFF's employment in violation of various fundamental public policies underlying both state and federal laws. Specifically, PLAINTIFF's employment was terminated in part because of PLAINTIFF's protected status (i.e., disability, medical leave, and/or good faith complaints). These actions were in violation of FEHA, the California Constitution, and California Labor Code Section 1102.5. DEFENDANT's termination letter further informed PLAINTIFF that in addition to being out of a job, PLAINTIFF's health coverage under DEFENDANT's plan was also terminated.

137. As a proximate result of DEFENDANT's wrongful termination of PLAINTIFF's employment violation of fundamental public policies, PLAINTIFF has

1 suffered and continues to suffer humiliation, emotional distress, and physical and mental pain
2 and anguish, all to PLAINTIFF's damage in a sum according to proof.

3 138. As a result of DEFENDANT's wrongful termination of PLAINTIFF's
4 employment, PLAINTIFF has suffered general and special damages in sums according to
5 proof.

6 139. DEFENDANT's wrongful termination of PLAINTIFF's employment was done
7 intentionally, in a malicious, fraudulent, oppressive manner entitling PLAINTIFF to punitive
8 damages.

9 140. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
10 fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
13 severally, as follows:

14 1. On behalf of the CALIFORNIA CLASS:

- 15 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
16 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
17 B) An order temporarily, preliminarily and permanently enjoining and restraining
18 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
19 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
20 withheld from compensation due to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS; and,
22 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
23 for restitution of the sums incidental to DEFENDANT's violations due to
24 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

25 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
26
27
28

- 1 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and
2 Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as
3 a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 4 B) Compensatory damages, according to proof at trial, including compensatory
5 damages for minimum and overtime compensation due PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
7 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
8 statutory rate;
- 9 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
10 which a violation occurs and one hundred dollars (\$100) per each member of the
11 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
12 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
13 an award of costs for violation of Cal. Lab. Code § 226;
- 14 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
15 the applicable IWC Wage Order;
- 16 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
17 1197;
- 18 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
19 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
20 costs of suit.; and,
- 21 G) The wages of all terminated employees in the CALIFORNIA LABOR
22 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
23 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 24 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
- 25 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
26 General Act of 2004.
- 27 4. On behalf of the Tenth and Eleventh Causes of Action:
- 28

1 A) For all general and special damages which were sustained as a result of
2 DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost
3 compensation and job benefits that Plaintiff Guevara would have received but for
4 the retaliatory practices of DEFENDANT; and,

5 B) For all exemplary damages, according to proof, which were sustained as a result
6 of DEFENDANT's conduct.

7 4. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
11 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or
12 §2802.

13
14 Dated: October 23, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

15
16 By: /s/ Nicholas J. De Blouw

17 Norman B. Blumenthal
Nicholas J. De Blouw

18 **CENTURION TRIAL ATTORNEYS**

19 Ryan Stygar (State Bar #332764)
8880 Rio San Diego Drive, Suite 800
20 San Diego, CA 92108

21 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: October 23, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

CENTURION TRIAL ATTORNEYS
Ryan Stygar (State Bar #332764)
8880 Rio San Diego Drive, Suite 800
San Diego, CA 92108

Attorneys for Plaintiff

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
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**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

March 27, 2024
CA3231

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Medtronic, Inc.
Certified Mail #9589071052700408543137
CSC - LAWYERS INCORPORATING
SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2100 *et seq.*, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. in California, including any employees staffed with Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. by a third party, and classified as non-exempt employees during the time period of March 27, 2023 until a date as determined by the Court. Our offices represent Plaintiff Amalia Rodriguez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Covidien LP and/or Medtronic, Inc. and/or Medtronic USA, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from September of 2019 to January 18, 2024. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendants required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees

for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendants provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendants failed to comply with Industrial Wage Order 7(A)(3) in that Defendants failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees performed tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendants failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.

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Nicholas J. De Blouw, Esq.

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Nicholas J. De Blouw, Esq.