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on behalf of themselves and all others similarly situated

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

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

12 Plaintiffs,

13 v.

14 MMD, INC., a California Corporation,
CANTODIEM DISPENSING
15 COLLECTIVE, INC., a California
Corporation, CALIFORNIA
16 COMPASSIONATE CARE NETWORK,
INC., a California Corporation, NHS
17 COLLECTIVE, a California Corporation,
and DOES 1-50, inclusive,

18 Defendants.

Case No. 21STCV01413

SECOND AMENDED COMPLAINT

Assigned for All Purposes To:
Hon. Stuart M. Rice
Dept.: 1

COMPLAINT FOR DAMAGES FOR:

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

DEMAND FOR JURY TRIAL

27 Plaintiffs DESHONE BUSBY and STEPHANIE HERRERA ("Plaintiffs"), individuals,
28

1 assert claims against defendants MMD, INC., a California Corporation, CANTODIEM
2 DISPENSING COLLECTIVE, INC., a California Corporation, CALIFORNIA
3 COMPASSIONATE CARE NETWORK, INC., a California Corporation, NHS COLLECTIVE, a
4 California Corporation, and DOES 4-50, inclusive (collectively “MMD” or “Defendants”) as
5 follows:

6 **INTRODUCTION**

7 1. The purpose of this amendment is to add Cantodiem Dispensing Collective Inc.
8 (previously named as DOE 2), California Compassionate Care Network, Inc. (previously named as
9 DOE 3), and NHS Collective (previously named as DOE 1) as named defendants in the above-
10 entitled class action (Los Angeles Superior Court Number 21STCV01413), and to add allegations
11 that, defendants acted as alter egos of the owners, that they acted as joints employers of class
12 members during the class period, and that they form a single business enterprise.

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

20 3. During the “liability period,” as defined as the applicable statute of limitations for
21 each and every cause of action contained herein – i.e. Plaintiffs’ claims under the Unfair
22 Competition Law is four (4) years; Plaintiffs’ claims for either unpaid wages or actual damages is
23 three (3) years; and Plaintiffs’ claims for statutory penalties is one (1) year from the original filing
24 of this action through the present (referred to as “the liability period(s)”) – Defendants consistently
25 maintained and enforced against its Non-Exempt Employees unlawful practices and policies in
26 violation of California state wage and hour laws, including failing to lawfully and accurately pay
27 Plaintiffs and Class Members for all hours worked, including minimum wages and overtime; failing
28 to lawfully provide meal periods and authorize and permit rest periods; failing to pay one hour of

1 pay at the employee's regular rate of pay when legally mandated meal or rest periods were not
2 lawfully provided; failing to pay reporting time pay; failing to accurately pay overtime; failing to
3 timely pay wages during employment; failing to reimburse necessary expenses; failing to provide
4 accurate itemized wage statements; and failing to keep accurate records.

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

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

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

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

28 8. Plaintiffs bring this action pursuant to the PAGA on a representative basis on behalf

1 of: All current and former hourly, non-exempt employees, however titled, working in the State of
2 California are aggrieved employees.

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

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

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

10 **JURISDICTION AND VENUE**

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

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

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

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

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

1 state.

2 17. The California Superior Court also has jurisdiction in this matter because the
3 individual claims of the Class Members described herein are presently believed to be under the
4 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the
5 aggregate potential damages and recovery by all of the claims of the Plaintiffs' Class, including
6 attorneys' fees, placed in controversy by Plaintiffs' class-wide claims, is presently believed to be
7 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.
8 Further, there is no federal question at issue, as the issues herein are based solely on California
9 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil
10 Procedure, the California Civil Code, and the California Business and Professions Code.

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

14 **PARTIES**

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

17 20. Plaintiff Stephanie Herrera is and during the liability period has been, a resident of
18 the County of Los Angeles.

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

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

23 23. Per its website, MMD was founded in 2006, and opened its first medical dispensary
24 in North Hollywood. MMD operates four dispensaries in Southern California, and maintains an
25 extensive cannabis menu online and in-store. MMD sells products in its stores and through delivery
26 operations.

27 24. Per Defendants, these four dispensary locations are purportedly operated by four
28 separate business entities: MMD, Inc., Cantodiem Dispensing Collective, Inc., California

1 Compassionate Care Network, Inc., and NHS Collective. However, Plaintiffs allege that, upon
2 information and belief, as more extensively set forth herein, the Defendants are joint employers of
3 the Class Members, and/or are the alter egos of one another, and/or operate as a single integrated
4 enterprise. This complaint has been amended to name these three additional entities which were
5 previously named as DOE Defendants in this action.

6 25. Cantodiem Dispensing Collective, Inc. is a California corporation in good standing
7 that is authorized to do business throughout the state. Cantodiem Dispensing Collective, Inc.'s
8 registered headquarters are located at 13356 Washington Blvd., Los Angeles, California 90066.

9 26. California Compassionate Care Network, Inc. is a California corporation in good
10 standing that is authorized to do business throughout the state. California Compassionate Care
11 Network, Inc.'s registered headquarters are located at 4720 Vineland Ave., North Hollywood,
12 California 91602.

13 27. NHS Collective is a California corporation in good standing that is authorized to do
14 business throughout the state. NHS Collective's registered headquarters are located at 1901
15 Atlantic Avenue, Long Beach, California 90806.

16 28. Defendants Cantodiem Dispensing Collective, Inc., California Compassionate Care
17 Network, Inc., and NHS Collective have their registered headquarters at the same locations as the
18 MMD Marina Del Rey, North Hollywood, and Long Beach dispensary locations, respectively.

19 29. Plaintiffs are informed and believe, and thereon allege, that Defendants use one
20 another's corporate identities and entities interchangeably and for purposes of avoiding corporate
21 liability (and specifically to avoid complying with Labor Code provisions applicable to mid and
22 larger size employers). With respect to the transactions herein sued upon, Plaintiff alleges on
23 information and belief:

- 24 a. Defendants hold themselves out to the public and to their employees
- 25 as being one and the same;
- 26 b. Defendants share employees;
- 27 c. That the credit of each Defendant is used for the credit of each other
- 28 Defendant;

1 d. That the Defendants share officers and directors

2 i. The Chief Executive Officer for NHS Collective, California
3 Compassionate Care Network, Inc., and Cantodiem
4 Dispensing Collective, Inc. is the same person, Michael
5 Ashbel;

6 ii. The Chief Executive Office, Secretary, Director, and Chief
7 Financial Officer of MMD, Inc. is Steve Ashbel.

8 iii. Steve Ashbel is also the Chief Financial Officer or Secretary
9 of Cantodiem Dispensing Collective, and NHS Collective.

10 e. That the funds and assets of Defendants are comingled;

11 f. Share centralized management and ownership.

12
13 30. Plaintiffs are informed and believe, and thereon allege, that there may be a fifth
14 location which functions as the headquarters for the four dispensary locations and reserve all
15 rights to further amend the complaint to identify any additional entity involved in the joint
16 employer relationship and/or the integrated enterprise.

17 31. Plaintiffs are informed and believe, and thereon allege, that Defendants trained
18 certain employees, including some Class Members, at this fifth location and they were later sent
19 to work at other MMD locations.

20 32. Plaintiffs are informed and believe, and thereon allege, that each of the Defendants
21 is a joint employer of the Class Members.

22 33. x

23 34. Plaintiffs are informed and believe, and thereon allege, that each Defendant acted in
24 all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
25 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendant. Furthermore, defendants in all respects acted as the employer
27 and/or joint employer of Plaintiff and the aggrieved employees.

28 35. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts

1 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 4
2 through 50, acting as the agent or alter ego for the other, with legal authority to act on the other's
3 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
4 policy of Defendants.

5 36. At all relevant times, Defendants, and each of them, acted within the scope of such
6 agency or employment, or ratified each and every act or omission complained of herein. At all
7 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
8 all the other Defendants in proximately causing the damages herein alleged.

9 37. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants
10 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
11 occurrences and transactions alleged herein.

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

16 39. Plaintiffs and the members of the putative class were employed by Defendants as
17 non-exempt employees, however titled, (the "Class Members" or "Non-Exempt Employees")
18 during the liability period.

19 40. Plaintiffs also seek to represent a sub-group of employees that received tips or were
20 supposed to receive tips during their employment.

21 41. Plaintiffs and the members of the aggrieved group were employed by Defendants as
22 non-exempt employees during the liability period.

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

28 43. The true names and capacities of Defendants, whether individual, corporate,

1 associate, or otherwise, sued herein as DOES 4 through 50, inclusive, are currently unknown to
2 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
3 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

5 44. Plaintiffs are informed and believe, and thereon allege, that DOES 4 through 50 are
6 the partners, agents, owners, shareholders, managers or employees of Defendants, at all relevant
7 times.

8 FACTUAL ALLEGATIONS

9 45. During the relevant time frame, Defendants compensated Plaintiffs and the Non-
10 Exempt Employees based upon an hourly wage.

11 46. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been
12 non-exempt employees within the meaning of the California Labor Code, and the implementing
13 rules and regulations of the IWC California Wage Orders. They are subject to the protections of
14 the IWC Wage Orders and the Labor Code.

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

19 48. Plaintiff Busby worked for Defendants from November 2018 through October 2020.

20 49. Plaintiff Herrera worked for Defendants from July 2019 through October 2020.

21 50. Plaintiffs performed customer service duties, sales, and delivery functions for
22 Defendants in Southern California, and worked at or from multiple locations during employment.

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

25 52. Upon information and belief, each of the Defendants shared employees during the
26 relevant time period and jointly exercised control over the terms and conditions of employment for
27 the Class Members.

28 53. Plaintiffs typically worked five to six days a week, and worked approximately 7 to 8

1 hours per day.

2 54. Plaintiffs are informed and believe, and thereon alleges, that Defendants are and
3 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
4 of the requirements of California's wage and employment laws.

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

7 56. Plaintiffs and the Class Members were not properly compensated for all hours
8 worked and were not paid at least minimum wage for each hour worked, in part because they were
9 frequently required to work off the clock. This off the clock work included responding to
10 communications from store management and other personnel, reviewing store and product
11 materials, participating in employee/shop discussions, performing delivery functions, returning
12 equipment, and performing other duties and functions.

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

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

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

25 60. Indeed, during the relevant time, as a consequence of Defendants' staffing and
26 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
27 Defendants frequently failed to provide Plaintiffs and the Class Members timely, legally
28 complaint uninterrupted 30-minute meal periods on shifts over five hours and second meal

1 periods on shifts over ten hours as required by law.

2 61. On information and belief, Plaintiffs and Class Members did not waive their rights
3 to meal periods under the law.

4 62. Plaintiffs and the Class Members were not provided with valid lawful on-duty
5 meal periods.

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

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

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

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

22 67. Moreover, Plaintiffs and the Class Members were required to incur necessary
23 expenses in the discharge of their duties, including without limitation cell phone expenses,
24 application expenses, and mileage, but were not reimbursed for such necessary expenses.

25 68. Despite the above-mentioned rest period violations, Defendants did not
26 compensate Plaintiffs, and on information and belief, did not pay Class Members one additional
27 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
28 and the applicable IWC wage order, for each day on which lawful rest periods were not

1 authorized and permitted.

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

7 70. Defendants have also made it difficult to determine applicable rates of pay and
8 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
9 exempt Employees, including Plaintiffs, during the liability period because they did not
10 implement and preserve a lawful record-keeping method to record all hours worked, meal
11 periods, and non-provided rest and meal periods owed to employees as required for non-exempt
12 employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable
13 California Wage Orders.

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

21 72. Defendants also maintained a mandatory tip pooling scheme which required
22 Plaintiffs and the Class Members to pool their tips and deprived Plaintiffs and Class Members of
23 gratuities left for them.

24 73. In relevant part Labor Code section 351 states, "No employer or agent shall
25 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee
26 by a patron, or deduct any amount from wages due an employee on account of a gratuity, or
27 require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of

28

1 the wages due the employee from the employer. Every gratuity is hereby declared to be the sole
2 property of the employee or employees to whom it was paid, given, or left for.”

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

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

10 76. Defendant’s procedures for tips deprived Plaintiffs and the Tipped Aggrieved
11 Employees of sums that belongs to them.

12 77. In addition, Plaintiffs allege that Defendants systematically withheld their and,
13 upon information and belief, the Class Members’ earned wages during employment.

14 78. Plaintiffs and the Class Members are covered by applicable California IWC Wage
15 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
16 section 11000 *et seq.*

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

22 80. Plaintiffs allege that among other things, Defendants:

- 23 a. Failed to require employees and clients to wear masks;
- 24 b. Failed to require employees and guests to maintain six (6) feet social distancing;
- 25 c. Failed to provide masks and hand sanitizer as appropriate;
- 26 d. Failed to provide sufficient time to ensure that employees could sanitize the
27 environment and safely transition between guests;
- 28 e. Failed to report COVID-19 cases in the workplace;

- 1 f. Failed to provide adequate washing facilities to maintain cleanliness;
- 2 g. Failed to develop an effective illness prevention plan;
- 3 h. Failed to take individual measures and screen employees and guests via temperature
- 4 checks and pre-shift screenings;

5 81. Defendants violated Labor Code §6400 by failing to provide a place of employment
6 that is safe and healthful;

7 82. Defendants further violated Labor Code §6401 by failing to furnish and use safety
8 devices and safeguards, and adopt and use practices, means, methods, operations, and processes
9 which are reasonably adequate to render such employment and place of employment safe and
10 healthful;

11 83. Defendants further violated Labor Code § 6401.7 by failing to implement and
12 maintain an effective written illness prevention program;

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

15 85. Defendants further violated Labor Code § 6403 by failing or neglecting to provide
16 and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate
17 methods and processes, or to do every other thing reasonably necessary to protect the life, safety,
18 and health of employees.

19 **CLASS ACTION ALLEGATIONS**

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

23 87. All claims alleged herein arise under California law for which Plaintiffs seek relief
24 as authorized by California law.

25 88. The **proposed class** is comprised of and defined as: All persons who are or were
26 employed by Defendants as non-exempt employees, however titled, in or from Defendants'
27 dispensaries, shops or retail stores in the State of California within four (4) years prior to the filing
28 of the Complaint in this action until the resolution of this lawsuit (collectively referred to as the

1 “Class” or “Class Members” or “Non-Exempt Employees”).

2 89. Plaintiffs also seek to represent Subclasses included in the Plaintiffs’ Class, which
3 are composed of Class Members satisfying the following definitions:

4 a. All Class Members who were not paid at least minimum wage for every hour
5 worked (**collectively “Minimum Wage Subclass”**)

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

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

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

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

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

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

28 h. All Class Members who did not receive all owed wages at the time of

1 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the
2 “**Waiting Time Subclass**”);

3 i. All Class Members who were not reimbursed for all necessary expenditures
4 (collectively “**Indemnification Subclass**”).

5 j. All Class Members who were required to contribute any tips earned to the
6 tip pool. (collectively “**Tipped Subclass**”)

7 90. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend
8 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
9 or if it should be deemed necessary by the Court or to further divide the Class Members into
10 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
11 Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

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

16 a. Numerosity: The members of the Class and Subclasses are so numerous that
17 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
18 membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the
19 Class is estimated to be hundreds of individuals. Accounting for employee turnover during the
20 relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants’
21 employment records would provide information as to the number and location of all Class
22 Members. Joinder of all members of the proposed Class is not practicable.

23 b. Ascertainability: The proposed class is easily ascertainable. The number and
24 identity of the class members are determinable from Defendants’ payroll records and time records
25 for each class member.

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

8 16) Whether Defendants omitted required information from itemized wage
9 statements;

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

12 18) Whether Defendants engaged in unfair competition in violation of section
13 17200 et seq. of the Business and Professions Code;

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

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

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

19 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect
20 the interests of each member of the Class and Subclasses with whom they have a well-defined
21 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be
22 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief
23 which would be sought by each member of the Class and/or Subclasses in separate actions. All
24 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to
25 provide lawful meal and rest periods, failure to provide accurate wage statements, failure to timely
26 pay wages at termination, failure to pay minimum wages, failure to properly pay overtime, failure
27 to reimburse necessary expenses, failure to timely pay wages during employment, and failure to
28 accurately pay all wages earned including all owed premium and overtime wages, all due to

1 Defendants' policies and practices that affected each member of the Class and/or Subclasses
2 similarly. Further, Defendants benefited from the same type of unfair and/or wrongful acts as to
3 each member of the Class and/or Subclasses.

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

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

1 would preclude its maintenance as a class action.

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

11 **CLASS ACTION CLAIMS**

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 92. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
16 paragraphs as if fully set forth herein.

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

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

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

28 96. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer

1 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
2 IWC Wage Order(s).

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

6 98. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been
7 paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance
8 together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal
9 to the unpaid wages and interest accrued thereon.

10 99. During all relevant periods, the California Labor Code and wage orders required
11 that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due
12 for all hours worked.

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

16 101. At all times relevant, Plaintiffs and Class Members consistently worked hours for
17 which they were not paid because Defendants frequently required Plaintiffs and the Class
18 Members to work off the clock.

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

21 103. Defendant's policy and practice of not paying all minimum wages violates
22 California Labor Code §§ 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the
23 applicable wage order 5-2001 and 7-2001.

24 104. Due to Defendants' violations of the California Labor Code and wage orders,
25 Plaintiffs and the Class members are entitled to recover from Defendant their unpaid wages,
26 statutory penalties, reasonable attorneys' fees and costs in this action, and pre-judgment and post-
27 judgment interest, as well as liquidated damages.

28 **SECOND CAUSE OF ACTION**

1 **FAILURE TO PAY OVERTIME OWED**

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

3 105. Plaintiffs incorporate each and every allegation set forth in all of the foregoing
4 paragraphs as if fully set forth herein.

5 106. During all relevant periods, Defendants required Plaintiffs and the Class members
6 to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40)
7 hours per workweek.

8 107. During all relevant periods, both the California Labor Code section 1194, 1197,
9 510, 1198, and the pertinent wage order 5-2001 and 7-2001 required that all work performed by
10 an employee in excess of eight (8) hours in any workday, on the seventh day of work in any
11 workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half
12 times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is
13 required to be compensated at the rate of no less than twice the regular rate of pay for an
14 employee. In addition, any work in excess of eight hours on any seventh day of a workweek is
15 required to be compensated at the rate of no less than twice the regular rate of pay of an
16 employee.

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

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

26 110. At all times relevant, Plaintiffs and Class Members consistently worked hours for
27 which they were not paid because Plaintiffs and the Class Members were required to work off the
28

1 clock—some of these hours were over eight hours in one workday or in excess of forty hours in a
2 workweek and should have been paid at the overtime rate.

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

5 112. In addition, upon information and belief, Defendants failed to incorporate all forms
6 of compensation, including without limitation bonuses, commissions, and incentives, into the
7 regular rate for overtime purposes.

8 113. As a result, Defendants failed to pay Plaintiffs and the Class members earned
9 overtime wages and such employees suffered damages as a result.

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

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

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

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

28 119. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee

1 for a work period of more than ten (10) hours without providing a second meal break of not less
2 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
3 break may only be waived by mutual consent, and if the employee did not waive his or her first
4 meal period, and the employee's work day will not exceed twelve hours.

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

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

11 122. Indeed, during the relevant time, as a consequence of Defendants' staffing and
12 scheduling practices, labor budgets, lack of coverage, work demands, and Defendants' policies and
13 practices, Plaintiffs and the Class Members were frequently not provided with legally required
14 timely meal periods.

15 123. On information and belief, Plaintiffs and the Class Members did not waive their
16 rights to meal periods under the law.

17 124. Plaintiffs and the Class Members were not provided with valid lawful on-duty meal
18 periods.

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

21 126. Defendants' conduct violates the Labor Code section 512 and the Wage Order.

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

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

27 129. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
28 represent have been deprived of premium wages in amounts to be determined at trial, and are

1 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
2 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
3 section 3287.

4 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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13
14 **SEVENTH CAUSE OF ACTION**

15 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
16 **EMPLOYEE WAGE STATEMENT PROVISIONS**

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

18 151. Plaintiffs repeat and incorporate herein by reference each and every allegation set
19 forth above, as though fully set forth herein.

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

1 pay period and the corresponding number of hours worked at each hourly rate by the
2 employee....”.

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

8 154. Labor Code section 1174 of the California also requires Defendants to maintain
9 and preserve, in a centralized location, among other items, records showing the names and
10 addresses of all employees employed and payroll records showing the hours worked daily by, and
11 the wages paid to, its employees. On information and belief and based thereon, Defendants have
12 knowingly and intentionally failed to comply with Labor Code section 1174, including by
13 implementing the policies and procedures and committing the violations alleged in the preceding
14 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
15 unlawful pursuant to Labor Code section 1175.

16 155. Defendants have failed to record many of the items delineated in applicable
17 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
18 1174, including by virtue of the fact that each wage statement which failed to accurately
19 compensate Plaintiffs and Class Members for all hours worked and for missed and non-provided
20 meal and rest periods, or which failed to include compensation for all minimum wages earned or
21 overtime hours worked, was an inaccurate wage statement.

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

1 the wage statements Defendants provided to them.

2 157. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
3 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
4 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
5 required information. Specifically, Defendants have also omitted accurate itemizations of total
6 hours worked, applicable hourly rates, net pay, and gross pay from Plaintiffs and the Class
7 Members' wage statements. In addition, Defendants have failed to provide accurate itemized
8 wage statements as a consequence of the above-specified violations.

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

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

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

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

6 162. Plaintiffs repeat and incorporate herein by reference each and every allegation set
7 forth above, as though fully set forth herein.

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

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

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

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

21 **NINTH CAUSE OF ACTION**

22 **VIOLATION OF THE UNFAIR COMPETITION LAW**

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

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

26 168. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
27 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the
28 general public. Plaintiffs also seek to enforce important rights affecting the public interest within

1 the meaning of the California Code of Civil Procedure § 1021.5.

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

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

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

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

20 173. As a result of the unlawful acts specified herein, Defendants have reaped and
21 continue to reap unfair benefits and unlawful profits at the expense of the Plaintiffs and the Class
22 Members he seeks to represent. Defendants have been unjustly enriched through Defendants'
23 unlawful, unfair, and fraudulent business practices alleged herein.

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

1 TENTH CAUSE OF ACTION

2 PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE

3 SECTION 2698 ET SEQ.

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

5 175. Plaintiffs incorporate by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

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

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

18 178. 65 days have passed and no response has been received from the LWDA.
19 Accordingly, the LWDA has permitted Plaintiffs to proceed in a representative capacity.

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

23 180. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
24 for which Defendants are liable due to numerous Labor Code violations as set forth in this
25 Complaint.

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

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

4 183. Specifically, Plaintiffs, on behalf of themselves and the Aggrieved Employees,
5 seek penalties under Labor Code § 2699, for without limitation, the claims set forth herein,
6 including:

- 7 a. Defendants' failure to comply with the requirement of Labor Code §§1182.12,
8 1194, 1197, 1198, and Wage Order 5-2001 and 7-2001 to pay at least
9 minimum wage for every hour worked;
- 10 b. Defendants' failure to comply with the requirement of Labor Code §§ 510,
11 1194, 1197, 1198, and Wage Order 5-2001 and 7-2001 to pay all wages earned
12 including overtime wages;
- 13 c. Defendants' failure to comply with the requirement of Labor Code § 216 to
14 pay wages after demand was made;
- 15 d. Defendants' failure to comply with the requirement of Labor Code §§204 and
16 210 to pay, without condition and within the time set by the applicable article,
17 all wages, or parts thereof;
- 18 e. Defendants' failure to comply with the requirement of Labor Code §§201 and
19 202 to pay wages due to former employees;
- 20 f. Defendants' failure to comply with the requirement of Labor Code § 203 to
21 pay waiting time penalties to former employees;
- 22 g. Defendants' failure to pay wages for reporting time in violation of Labor Code
23 §§1194, 1197, 1198, and IWC Wage Order 5-2001 and 7-2001;
- 24 h. Defendants' failure to comply with the requirement of Labor Code § 226.7,
25 1198, and IWC Wage Order 5-2001 and 7-2001 to authorize and permit ten
26 (10) minute rest breaks;
- 27 i. Defendants' failure to comply with the requirement of Labor Code §§226.7,
28 1198, and IWC Wage Order 5-2001 and 7-2001 to pay one hour of premium

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- pay for each statutorily required rest break that was not authorized and permitted;
- j. Defendants’ failure to comply with the requirement of Labor Code §§226.7, 512, 1198, and IWC Wage Order 5-2001 and 7-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- k. Defendants’ failure to comply with the requirement of Labor Code § 226.7, 1198, and IWC Wage Order 5-2001 and 7-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- l. Defendants’ failure to maintain required records in violation of Labor Code §§226, 1174, and IWC Wage Order 5-2001 and 7-2001;
- m. Defendants’ failure to provide accurate compliant wage statements under Labor Code §226;
- n. Defendants’ failure to comply with the requirement of Labor Code § 351 through its mandatory tip pooling policies;
- o. Defendants’ failure to reimburse necessary expenses in violation of Labor Code § 2802.
- p. Defendants failure to take proper steps in compliance with CDC recommendations, OSHA regulations, public health orders (including Los Angeles County Department of Public Health Order), and health and safety mandates to implement measure to keep employees safe and healthy in light of the coronavirus pandemic in violation of Labor Code § 6300 et seq.;
- q. Defendants’ failure to provide a place of employment that is safe and healthful in violation of Labor Code § 6400;
- r. Defendants’ failure to furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful in violation of Labor Code § 6401;

- 1 s. Defendants' failure to implement and maintain an effective written illness
2 prevention program in violation of Labor Code § 6401.7;
- 3 t. Defendants' violation of Labor Code § 6402 by requiring or permitting an
4 employee to go or be in any employment or place of employment which is not
5 safe and healthful;
- 6 u. Defendants' failure or neglect to provide and use reasonably adequate safety
7 devices and safeguards or adopt or use reasonably adequate methods and
8 processes, or to do every other thing reasonably necessary to protect the life,
9 safety, and health of employees in violation of Labor Code § 6403.

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

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

- 18 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are
19 subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial
20 violation for each failure to pay each employee and two hundred (\$200) per
21 employee for violations in subsequent pay periods plus 25% of the amount
22 unlawfully withheld.
- 23 b. Pursuant to Labor Code § 226.3, for violations of Labor Code §226(a), Defendants
24 are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250)
25 per aggrieved employee for the initial pay period where a violation occurs and one
26 thousand dollars (\$1,000) per aggrieved employee for violation in subsequent pay
27 periods.

1 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person on behalf of an
2 employer who violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil
5 penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for
6 initial violations for each underpaid employee for each pay period for which the
7 employee was underpaid and one hundred dollars (\$100) for each subsequent
8 violation for each underpaid employee for each pay period for which the employee
9 was underpaid.

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

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

20 186. Further, as a result of the acts alleged hereinabove, Plaintiffs seek penalties under
21 Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of
22 the California Labor Code and IWC Wage Orders.

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

26 188. Under Labor Code §2699, Plaintiffs and Aggrieved Non-Exempt Employees
27 should be awarded twenty-five percent (25%) of all penalties due under California law, interest,
28 attorneys’ fees and costs.

1 (Failure to Provide Lawful Meal Periods)

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

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8 **On the Fourth Cause of Action**

9 (Failure to Authorize and Permit Lawful Rest Periods)

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

15 **On the Fifth Cause of Action**

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

- 17 1. For unpaid wages;
- 18 2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages
19 unlawfully withheld;
- 20 3. For interest;
- 21 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 22 5. For such other and further relief as the Court deems proper.

23 **On the Sixth Cause of Action**

24 (Failure to Timely Pay Wages At Separation)

- 25 1. For unpaid wages;
- 26 2. For penalties pursuant to Labor Code § 203;
- 27 3. For interest;
- 28 4. For reasonable attorneys' fees and costs pursuant to statute; and

