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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF ORANGE**

18 OSCAR BENITEZ, LAN LE,
19 SHAQUILLE HOWARD, and MARIO
JORGE ESTRADA-PERALTA
20 as individuals and on behalf of all others
similarly situated,

21 Plaintiffs,

22 v.

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

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

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

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

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

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

FIRST CLASS ACTION FILED: OCTOBER 10, 2019

FIRST PAGA ACTION FILED: MAY 26, 2019

DEMAND FOR JURY TRIAL

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

INTRODUCTION

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

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

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

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

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

26 5. Such actions and policies, as described above and further herein, were and continue
27 to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class
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1 members, brings this action pursuant to the California Labor Code, including sections 201, 202,
2 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
3 1198, applicable IWC California Wage Orders 1-2001 and 7-2001, California Code of Regulations,
4 Title 8, section 11000 *et seq.*, and Business and Professions Code sections 17200-17208.

5 **JURISDICTION AND VENUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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28 d. Typicality: Plaintiffs are qualified to, and will fairly and adequately protect

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

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

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

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

16 FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

24 42. Plaintiffs are informed and believe, and based thereon alleges, that Defendants
25 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
26 employees within the State of California. This scheme involved, inter alia, failing to pay them
27 for all hours worked, missed meal periods, and missed rest breaks in violation of California law.
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1 43. All class members, including Plaintiffs, are similarly situated in that they are all
2 subject to Defendants' uniform policies and systemic practices as specified herein.

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

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

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

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

18 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants
19 knew or should have known that Plaintiffs and the other Class Members were entitled to receive
20 all timely and complete meal periods or payment of one additional hour of pay at Plaintiffs' and
21 the other class members' regular rate of pay when a meal period was missed, late or interrupted,
22 and they did not receive all timely and proper meal periods or payment of one additional hour of
23 pay at Plaintiffs' and the other class members' regular rate of pay when a meal period was missed.
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25 49. Plaintiffs and the Class Members were often required to work shifts in excess of
26 five hours without being provided a lawful meal period and over ten hours in a day without being
27 provided a second lawful meal period as required by law.

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

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

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

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

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

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

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

23 56. In addition, during the relevant time frame, Plaintiffs and the Class Members were
24 systematically not authorized and permitted to take a net ten-minute paid, rest period for every four
25 hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
26 order.
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28 57. For example, Defendants failed to authorize and permit two (2) total rest periods on

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

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

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

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

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

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

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

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

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

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

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

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

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

26 70. Plaintiffs are informed and believe that Defendants' violation of the Labor Code and
27 the IWC wage orders as specified herein was willful and deliberate.
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1 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
2 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
3 and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
4 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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

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

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

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

19
20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

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

23 **1-2001 and 7-2001 and 1198)**

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

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

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

1 employment by Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

24 102. As a pattern and practice during the relevant time period set forth herein,
25 Defendants required Plaintiffs and the other class members to work four (4) or more hours
26 without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
27 worked.
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1 sections, Plaintiffs and the other class members are entitled to recover the unpaid balance of their
2 minimum wage compensation as well as interest, costs, and attorney’s fees, and liquidated
3 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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

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FIFTH CAUSE OF ACTION
FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION
(Violation of California Labor Code §§ 201 and 202)

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

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

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

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

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

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

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

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

14 **(Violation of California Labor Code § 226(a) and IWC Wage Order)**

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

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

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

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

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

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

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

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

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

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

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9 **SEVENTH CAUSE OF ACTION**

10 **UNREIMBURSED BUSINESS EXPENSES**

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

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

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

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

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

25 **EIGHTH CAUSE OF ACTION**

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

27 **(Plaintiffs Against MEDTRONIC, INC., COVIDIEN LP and DOES 1 through 100)**
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1 129. Plaintiffs incorporate by reference and reallege each and every allegation
2 contained above, as though fully set forth herein.

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

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

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

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

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

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

27 136. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs
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1 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
2 during a period that commences four (4) years prior to the filing of this complaint; an award of
3 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
4 costs.

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

10 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

27 146. Accordingly, Plaintiffs have exhausted all administrative procedures required of
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1 him under Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in
2 bringing forward this cause of action.

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

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

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

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

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

- e. Defendants’ failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 1-2001, and 7-2001 to authorize and permit ten (10) minute rest breaks;
- f. Defendants’ failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 1-2001, and 7-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- g. Defendants’ failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 1-2001 and 7-2001;
- h. Defendants’ failure to provide accurate compliant wage statements under Labor Code § 226.

151. Plaintiff Le also sent a timely supplemental notice to the LWDA to assert violations of Labor Code sections 204, 216, 510, 558, 1182.12, 1194, 1197, 1197.1, 1198, 2802 and the applicable wage orders 1-2001 and 7-2001.

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

- a. Under Labor Code § 2699(f), Plaintiffs and the Aggrieved Employees are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code for which no other civil penalty is specifically provided.
- b. Penalties under California Code of Regulations Title 8 § 11040 in the

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amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

- c. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- d. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- e. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

- 1 f. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
2 1174(d), Defendants are subject to a civil penalty of five hundred
3 dollars (\$500).
- 4 g. Penalties under Labor Code § 1197.1 in the amount of a hundred
5 dollars (\$100) for each aggrieved employee per pay period for the
6 initial violation, and two hundred fifty dollars (\$250) for each
7 aggrieved employee per pay period for each subsequent violation;
- 8 h. An amount sufficient to recover unpaid wages under Labor Code
9 §558;
- 10 i. An amount sufficient to recover unpaid wages under Labor Code
11 §1197.1;
- 12 j. Any and all additional penalties as provided by the Labor Code
13 and/or other statutes; and
- 14 k. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and
15 2699, and any other applicable statute.

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

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

22 **PRAYER FOR RELIEF**

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

24 **Class Certification**

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

1 **On the First Cause of Action**

2 **(Failure to Pay Overtime)**

3 1. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all
5 overtime wages due to Plaintiffs and the other class members;

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

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

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

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

13 **On the Second Cause of Action**

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

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

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

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

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

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

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

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

27 **On the Third Cause of Action**

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

10 **On the Eighth Cause of Action**

11 (Violation of the Unfair Competition Law)

- 12 1. That the Court declare, adjudge and decree that Defendants violated California
13 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and other
14 class members all overtime compensation due to them, failing to provide all meal and rest periods
15 to Plaintiffs and the other class members, failing to pay at least minimum wages to Plaintiffs and
16 the other class members, failing to pay Plaintiffs' and other class members' wages timely as
17 required by California Labor Code section 201, 202.
- 18 2. For restitution of unpaid wages to Plaintiffs and the other class members and all
19 pre-judgment interest from the day such amounts were due and payable;
- 20 3. For the appointment of a receiver to receive, manage and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violation of California Business and Professions Code sections 17200, et
23 seq.;
- 24 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure section 1021.5;
- 26 5. For injunctive relief to ensure compliance with this section, pursuant to California
27 Business and Professions Code sections 17200, et seq.; and
28

1 Dated: December 18, 2020

/s/ James R. Hawkins _____

JAMES HAWKINS, APLC

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

Mitchell J. Murray, Esq.

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4 Attorneys for Plaintiff LAN LE and MARIO JORGE
5 ESTRADA-PERALTA, on behalf of themselves and all
6 others similarly situated
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EXHIBIT 1



751 N. Fair Oaks Ave., Ste. 101, Pasadena, California 91103 T: (818) 230-7502 F: (818) 230-7259 www.JusticeLawCorp.com

February 7, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

Mr. Benitez may seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Benitez may seek penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Acara Solutions, Inc., is a New York corporation, which has its principal place of business at 250 International Drive Williamsville, NY 14221.

Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 4115 Blackhawk Plaza Circle, Danville, CA 94506.

Medtronic USA, Inc. is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300 Minneapolis, MN 55432.

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MEDTRONIC employed Mr. Benitez as a non-exempt hourly-paid employee within one year of the date of this letter (until June 2018), in the State of California. MEDTRONIC directly controlled the wages, hours and working conditions of Mr. Benitez' employment. Mr. Benitez worked for MEDTRONIC located in the State of California.

The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

MEDTRONIC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to reimburse necessary business expenses, and unlawfully withheld incentive pay, thus resulting in other Labor Code violations as stated below.

MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Benitez and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. During relevant time period, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked, including for pre-shift and post-shift preparatory work performed off-the-clock. MEDTRONIC also failed to factor incentive pay in employees' regular rate of pay for overtime compensation purposes, resulting in underpayment of overtime. Therefore, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MEDTRONIC regularly required Mr. Benitez and other aggrieved employees to work through, interrupt, or cut short their meal and/or rest breaks to complete their job duties and daily workload, and never compensated them premium wages. Moreover, MEDTRONIC failed to provide the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, to Mr. Benitez and other aggrieved employees when working shifts exceeding 10 hours in length.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, MEDTRONIC failed to pay Mr. Benitez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. MEDTRONIC's failure to timely pay all wages also resulted in non-payment of all wages upon termination or resignation resulting in additional violation of California Labor Code section 203.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MEDTRONIC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Benitez and other aggrieved employees, (2) total hours worked by Mr. Benitez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Benitez and other aggrieved employees, (4) all deductions for Mr. Benitez and other aggrieved employees, (5) net wages earned by Mr. Benitez and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Benitez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Benitez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Benitez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, MEDTRONIC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Benitez and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with the minimum wages to which they were entitled for work performed and not paid.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the course of his employment, Mr. Benitez and other aggrieved employees incurred necessary business-related expenses and costs, including for the use of their personal cellular phones and vehicles for work purposes, that were not fully reimbursed by MEDTRONIC.

We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on her own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within the applicable statutory period, as allowed by law.

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LWDA
February 7, 2019
Page 6 of 6

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified Mail)
Corporation Service Company
c/o Medtronic USA, Inc.
710 Medtronic Parkway, LC300
Minneapolis, MN 55432

Adam Goldberg
c/o Medtronic, Inc.
4115 Blackhawk Plaza Circle
Danville, CA 94506

Corporate Creations Network, Inc.
c/o Medtronic, Inc.
250 International Drive
Williamsville, NY 14221

EXHIBIT 2

May 14, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We hereby amend our February 7, 2019 letter sent to your office in compliance with the reporting requirements of California Labor Code section 2699.3. A true and correct copy of the February 7, 2019 letter is attached to this submission as **Exhibit A** for reference.

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

Mr. Benitez is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis.¹ Therefore, Mr. Benitez may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

¹ The California Supreme Court has explained that "every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee -- the plaintiff bringing the action -- or as to other employees as well, is a representative action on behalf of the state." *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 387; see also *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 647-649 (concluding that the plaintiff's status as an aggrieved employee was not subject to arbitration because a "representative" PAGA claim cannot be split into an arbitrable individual claim and a nonarbitrable representative claim).

Even if Mr. Benitez signed an arbitration agreement as a condition of employment with MEDTRONIC, the arbitration agreement did not encompass his PAGA claim. See *Christman v. Apple Am. Grp. II, LLC*, 2017 Cal.App.Unpub. LEXIS 6866, 10-11 (finding the arbitration agreement executed by the plaintiff did not encompass his PAGA claim because at the time the plaintiff executed the agreement, he had not satisfied the statutory requirements for asserting a PAGA claim, which occurred after executing the agreement.)

Acara Solutions, Inc., is a New York corporation, which has its principal place of business at 250 International Drive, Williamsville, NY 14221.

Medtronic USA, Inc. is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

MEDTRONIC employed Mr. Benitez as a non-exempt hourly-paid employee within one year of the date of this letter (until June 2018), in the State of California. MEDTRONIC directly controlled the wages, hours and working conditions of Mr. Benitez' employment. Mr. Benitez worked for MEDTRONIC located in the State of California.

The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

MEDTRONIC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to reimburse necessary business expenses, and unlawfully withheld incentive pay, thus resulting in other Labor Code violations as stated below.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MEDTRONIC regularly required Mr. Benitez and other aggrieved employees to work through, interrupt, or cut short their meal and/or rest breaks to complete their job duties and daily workload, and never compensated them premium wages. Moreover, MEDTRONIC failed to provide the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, to Mr. Benitez and other aggrieved employees when working shifts exceeding 10 hours in length.

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California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Benitez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with the minimum wages to which they were entitled, including for pre-shift preparatory and post-shift clean-up work performed off-the-clock.

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We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on his own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within one year of the original February 7, 2019 notice, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION



Douglas Han, Esq.

CC (By Certified Mail):

CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833
Agent for Service of Process for Medtronic USA, Inc.

CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833
Agent for Service of Process for Medtronic, Inc.

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LWDA

May 14, 2019

Page 7 of 7

Corporate Creations Network Inc.

4640 Admiralty Way, 5th Floor

Marina del Rey, CA 90292

Agent for Service of Process for Acara Solutions, Inc.

CC (By Electronic Mail):

Katrina W. Forsyth

1925 Century Park East, Suite 500

Los Angeles, California 90067

Attorneys for Acara Solutions, Inc.

EXHIBIT A

February 7, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

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MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Benitez and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. During relevant time period, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked, including for pre-shift and post-shift preparatory work performed off-the-clock. MEDTRONIC also failed to factor incentive pay in employees' regular rate of pay for overtime compensation purposes, resulting in underpayment of overtime. Therefore, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MEDTRONIC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Benitez and other aggrieved employees, (2) total hours worked by Mr. Benitez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Benitez and other aggrieved employees, (4) all deductions for Mr. Benitez and other aggrieved employees, (5) net wages earned by Mr. Benitez and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Benitez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Benitez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Benitez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, MEDTRONIC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Benitez and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with the minimum wages to which they were entitled for work performed and not paid.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the course of his employment, Mr. Benitez and other aggrieved employees incurred necessary business-related expenses and costs, including for the use of their personal cellular phones and vehicles for work purposes, that were not fully reimbursed by MEDTRONIC.

We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on her own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within the applicable statutory period, as allowed by law.

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LWDA
February 7, 2019
Page 6 of 6

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified Mail)
Corporation Service Company
c/o Medtronic USA, Inc.
710 Medtronic Parkway, LC300
Minneapolis, MN 55432

Adam Goldberg
c/o Medtronic, Inc.
4115 Blackhawk Plaza Circle
Danville, CA 94506

Corporate Creations Network, Inc.
c/o Medtronic, Inc.
250 International Drive
Williamsville, NY 14221

EXHIBIT 3

October 11, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., Acara Solutions, Inc. and Covidien LP

Dear Representative:

We hereby amend our first amended May 14, 2019 letter sent to your office in compliance with the reporting requirements of California Labor Code section 2699.3. A true and correct copy of the first amended May 14, 2019 letter and the preceding February 7, 2019 letters are attached to this submission as **Exhibit A** and **Exhibit B**, respectively, for reference.

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., Acara Solutions, Inc. and Covidien LP (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individuals, owners, officers and managing agents, DOES 1-10 as an "Employer" or persons acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws.

Mr. Benitez is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis.¹ Therefore, Mr.

¹ The California Supreme Court has explained that "every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee -- the plaintiff bringing the action -- or as to other employees as well, is a representative action on behalf of the state." *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 387; see also *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 647-649 (concluding that the plaintiff's status as an aggrieved employee was not subject to arbitration because a "representative" PAGA claim cannot be split into an arbitrable individual claim and a nonarbitrable representative claim).

Even if Mr. Benitez signed an arbitration agreement as a condition of employment with MEDTRONIC, the arbitration agreement did not encompass his PAGA claim. See *Christman v. Apple Am. Grp. II, LLC*, 2017 Cal.App.Unpub. LEXIS 6866, 10-11 (finding the arbitration agreement executed by the plaintiff did not encompass his PAGA claim because at the time the plaintiff executed the agreement, he had not satisfied the statutory requirements for asserting a PAGA claim, which occurred after executing the agreement.)

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October 11, 2019

Page 2 of 6

Benitez may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Medtronic USA, Inc. is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

Acara Solutions, Inc., is a New York corporation, which has its principal place of business at 250 International Drive, Williamsville, NY 14221.

Covidien LP is a Delaware limited partnership business entity, which has its principal place of business at 15 Hampshire Street, Mansfield, MA 02048.

MEDTRONIC jointly-employed Mr. Benitez as a non-exempt hourly-paid employee within one year of the date of the initial PAGA letter (until June 2018), in the State of California. MEDTRONIC directly controlled the wages, hours and working conditions of Mr. Benitez' employment. Mr. Benitez worked for MEDTRONIC located in the State of California.

The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

MEDTRONIC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to reimburse necessary business expenses, and unlawfully withheld incentive pay, thus resulting in other Labor Code violations as stated below.

MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

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October 11, 2019

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California Labor Code sections 510, 1194, and 1198 require MEDTRONICs to pay at least minimum wage for all hours worked, pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Benitez and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. During relevant time period, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked, including for pre-shift preparatory and post-shift clean-up work performed off-the-clock. MEDTRONIC also failed to factor incentive pay in employees' regular rate of pay for overtime compensation purposes, resulting in underpayment of overtime. Therefore, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require MEDTRONICs to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MEDTRONIC regularly required Mr. Benitez and other aggrieved employees to work through, interrupt, or cut short their meal and/or rest breaks to complete their job duties and daily workload, and never compensated them premium wages. Moreover, MEDTRONIC failed to provide the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, to Mr. Benitez and other aggrieved employees when working shifts exceeding 10 hours in length.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, MEDTRONIC failed to pay Mr. Benitez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. MEDTRONIC's failure to timely pay all wages also resulted in non-payment of all wages upon termination or resignation resulting in additional violation of California Labor Code section 203.

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October 11, 2019

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California Labor Code section 226 requires MEDTRONICs to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MEDTRONIC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Benitez and other aggrieved employees, (2) total hours worked by Mr. Benitez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Benitez and other aggrieved employees, (4) all deductions for Mr. Benitez and other aggrieved employees, (5) net wages earned by Mr. Benitez and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Benitez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the MEDTRONIC and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Benitez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any MEDTRONIC or other person acting on behalf of an MEDTRONIC who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Benitez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

California Labor Code sections 1174(d) requires an MEDTRONIC to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, MEDTRONIC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Benitez and other aggrieved employees.

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October 11, 2019

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with the minimum wages to which they were entitled, including for pre-shift preparatory and post-shift clean-up work performed off-the-clock.

California Labor Code sections 2800 and 2802 require an MEDTRONIC to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the MEDTRONIC. During the course of his employment, Mr. Benitez and other aggrieved employees incurred necessary business-related expenses and costs, including for the use of their personal cellular phones and vehicles for work purposes, that were not fully reimbursed by MEDTRONIC.

We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the MEDTRONIC in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on his own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within one year of the original February 7, 2019 notice he provided, as allowed by law.

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LWDA
October 11, 2019
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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION



Douglas Han, Esq.

CC (By Certified Mail):

CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833
Agent for Service of Process for Medtronic, Inc., Medtronic USA, Inc., and Covidien LP

Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Agent for Service of Process for Acara Solutions, Inc.

CC (By Electronic Mail):

Jodi A. Landry
jlandry@littler.com
LITTLER MENDELSON, P.C.
501 W. Broadway, Suite 900
San Diego, California 92101
Attorneys for Medtronic, Inc. and Medtronic USA, Inc.

CC (By Electronic Mail):

Katrina W. Forsyth
KForsyth@ebglaw.com
EPSTEIN BECKER & GREEN
1925 Century Park East, Suite 500
Los Angeles, California 90067
Attorneys for Acara Solutions, Inc.

EXHIBIT A

May 14, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We hereby amend our February 7, 2019 letter sent to your office in compliance with the reporting requirements of California Labor Code section 2699.3. A true and correct copy of the February 7, 2019 letter is attached to this submission as **Exhibit A** for reference.

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

Mr. Benitez is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis.¹ Therefore, Mr. Benitez may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

¹ The California Supreme Court has explained that "every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee -- the plaintiff bringing the action -- or as to other employees as well, is a representative action on behalf of the state." *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 387; see also *Williams v. Superior Court* (2015) 237 Cal.App.4th 642, 647-649 (concluding that the plaintiff's status as an aggrieved employee was not subject to arbitration because a "representative" PAGA claim cannot be split into an arbitrable individual claim and a nonarbitrable representative claim).

Even if Mr. Benitez signed an arbitration agreement as a condition of employment with MEDTRONIC, the arbitration agreement did not encompass his PAGA claim. See *Christman v. Apple Am. Grp. II, LLC*, 2017 Cal.App.Unpub. LEXIS 6866, 10-11 (finding the arbitration agreement executed by the plaintiff did not encompass his PAGA claim because at the time the plaintiff executed the agreement, he had not satisfied the statutory requirements for asserting a PAGA claim, which occurred after executing the agreement.)

Acara Solutions, Inc., is a New York corporation, which has its principal place of business at 250 International Drive, Williamsville, NY 14221.

Medtronic USA, Inc. is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300, Minneapolis, MN 55432.

MEDTRONIC employed Mr. Benitez as a non-exempt hourly-paid employee within one year of the date of this letter (until June 2018), in the State of California. MEDTRONIC directly controlled the wages, hours and working conditions of Mr. Benitez' employment. Mr. Benitez worked for MEDTRONIC located in the State of California.

The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

MEDTRONIC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to reimburse necessary business expenses, and unlawfully withheld incentive pay, thus resulting in other Labor Code violations as stated below.

MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

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We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

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The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on his own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within one year of the original February 7, 2019 notice, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION



Douglas Han, Esq.

CC (By Certified Mail):

CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833
Agent for Service of Process for Medtronic USA, Inc.

CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento CA 95833
Agent for Service of Process for Medtronic, Inc.

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LWDA

May 14, 2019

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Corporate Creations Network Inc.

4640 Admiralty Way, 5th Floor

Marina del Rey, CA 90292

Agent for Service of Process for Acara Solutions, Inc.

CC (By Electronic Mail):

Katrina W. Forsyth

1925 Century Park East, Suite 500

Los Angeles, California 90067

Attorneys for Acara Solutions, Inc.

EXHIBIT A

February 7, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

Mr. Benitez may seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Benitez may seek penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

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Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 4115 Blackhawk Plaza Circle, Danville, CA 94506.

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The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

MEDTRONIC failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to reimburse necessary business expenses, and unlawfully withheld incentive pay, thus resulting in other Labor Code violations as stated below.

MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Benitez and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. During relevant time period, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked, including for pre-shift and post-shift preparatory work performed off-the-clock. MEDTRONIC also failed to factor incentive pay in employees' regular rate of pay for overtime compensation purposes, resulting in underpayment of overtime. Therefore, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, MEDTRONIC regularly required Mr. Benitez and other aggrieved employees to work through, interrupt, or cut short their meal and/or rest breaks to complete their job duties and daily workload, and never compensated them premium wages. Moreover, MEDTRONIC failed to provide the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, to Mr. Benitez and other aggrieved employees when working shifts exceeding 10 hours in length.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, MEDTRONIC failed to pay Mr. Benitez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. MEDTRONIC's failure to timely pay all wages also resulted in non-payment of all wages upon termination or resignation resulting in additional violation of California Labor Code section 203.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from MEDTRONIC were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Benitez and other aggrieved employees, (2) total hours worked by Mr. Benitez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Benitez and other aggrieved employees, (4) all deductions for Mr. Benitez and other aggrieved employees, (5) net wages earned by Mr. Benitez and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Benitez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Benitez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Benitez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to their wages and penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, MEDTRONIC failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Benitez and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, MEDTRONIC did not provide Mr. Benitez and other aggrieved employees with the minimum wages to which they were entitled for work performed and not paid.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the course of his employment, Mr. Benitez and other aggrieved employees incurred necessary business-related expenses and costs, including for the use of their personal cellular phones and vehicles for work purposes, that were not fully reimbursed by MEDTRONIC.

We believe that Mr. Benitez and other current and former non-exempt or hourly-paid employees of MEDTRONIC are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of the aforementioned California Labor Code sections.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Benitez will seek these penalties and wages on her own behalf and on behalf of other similarly situated hourly-paid or non-exempt employees of MEDTRONIC within the applicable statutory period, as allowed by law.

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LWDA
February 7, 2019
Page 6 of 6

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified Mail)
Corporation Service Company
c/o Medtronic USA, Inc.
710 Medtronic Parkway, LC300
Minneapolis, MN 55432

Adam Goldberg
c/o Medtronic, Inc.
4115 Blackhawk Plaza Circle
Danville, CA 94506

Corporate Creations Network, Inc.
c/o Medtronic, Inc.
250 International Drive
Williamsville, NY 14221

EXHIBIT B

February 7, 2019

BY ONLINE ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc.

Dear Representative:

We have been retained to represent Oscar Benitez against Medtronic USA, Inc., Medtronic, Inc., and Acara Solutions, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees) and individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1 for violations of California wage-and-hour laws (hereinafter collectively referred to as "MEDTRONIC.").

Mr. Benitez may seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Benitez may seek penalties on behalf of the State of California and aggrieved employees. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Acara Solutions, Inc., is a New York corporation, which has its principal place of business at 250 International Drive Williamsville, NY 14221.

Medtronic, Inc., is a Minnesota corporation, which has its principal place of business at 4115 Blackhawk Plaza Circle, Danville, CA 94506.

Medtronic USA, Inc. is a Minnesota corporation, which has its principal place of business at 710 Medtronic Parkway, LC300 Minneapolis, MN 55432.

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The "aggrieved employees" that Mr. Benitez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees who worked for or provided services (either directly or through a staffing agency or labor contractor) to MEDTRONIC within the State of California.

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MEDTRONIC has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Benitez and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. During relevant time period, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked, including for pre-shift and post-shift preparatory work performed off-the-clock. MEDTRONIC also failed to factor incentive pay in employees' regular rate of pay for overtime compensation purposes, resulting in underpayment of overtime. Therefore, Mr. Benitez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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LWDA
February 7, 2019
Page 6 of 6

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", written over a horizontal line.

Douglas Han, Esq.

CC: (By Certified Mail)
Corporation Service Company
c/o Medtronic USA, Inc.
710 Medtronic Parkway, LC300
Minneapolis, MN 55432

Adam Goldberg
c/o Medtronic, Inc.
4115 Blackhawk Plaza Circle
Danville, CA 94506

Corporate Creations Network, Inc.
c/o Medtronic, Inc.
250 International Drive
Williamsville, NY 14221

EXHIBIT 4

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 20, 2020

Via LWDA Website:

Labor and Workforce Development Agency
PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

MEDTRONIC, INC., a Minnesota Corporation;
Agent for Service of Process: Corporation Service Company dba CSC-Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No: 7018 1130 0001 8270 3497

COVIDIEN, L.P., Delaware Limited Partnership
Agent for Service of Process: Corporation Service Company dba CSC-Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No: 7018 1130 0001 8270 33510

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2699 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Lan Le individually and on behalf of all others similarly situated, gives NOTICE of his intent to commence a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Medtronic, Inc. and Covidien, L.P. (“Defendants”) via their agent for service of process.

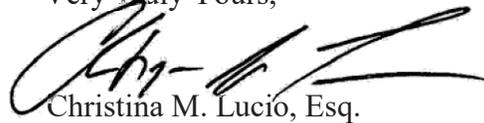
Plaintiff hereby attaches a copy of his complaint, as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges Defendants have violated, including the facts and relevant theories upon which Plaintiff claims such violations.

The group of aggrieved employees that Plaintiff seeks to represent in this action are current and former hourly, non-exempt employees working for Defendants at their facilities in the State of California during the liability period. This includes, without limitation, employees working in manufacturing, production, and/or assembly.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,



Christina M. Lucio, Esq.

Enclosure: Complaint

1 James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
2 **JAMES HAWKINS APLC**
9880 Research Drive, Suite 200
3 Irvine, California 92618
Telephone: (949) 387-7200
4 Facsimile: (949) 387-6676
James@Jameshawkinsapl.com
5 Christina@Jameshawkinsapl.com

6 Attorneys for Plaintiff LAN LE,
on behalf of himself and all others similarly situated

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ORANGE**

9
10 LAN LE, individually and on behalf of
himself and all others similarly situated,

11
12 Plaintiff,

13 v.

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

15
16 Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) **Failure to Provide Lawful Meal Periods;**
- 2) **Failure To Authorize And Permit Rest Periods;**
- 3) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 4) **Failure to Furnish Accurate Itemized Wage Statements;**
- 5) **Violation of the Unfair Competition Law;**

DEMAND FOR JURY TRIAL

1 Plaintiff LAN LE (“Plaintiff”), an individual, on behalf of himself and all others similarly
2 situated, asserts claims against defendant MEDTRONIC, INC., a Minnesota Corporation;
3 COVIDIEN, L.P., a Delaware Limited Partnership; and DOES 1-50, inclusive (collectively
4 “MEDTRONIC” or “Defendant”) as follows:

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-
8 exempt employees, however titled, in the State of California within the four (4) years prior to the
9 filing of the Complaint in this action until the resolution of this lawsuit and whose job duties did
10 not consist of over 50% administrative, executive or professional duties (collectively referred to as
11 the “Class” or “Class Members” or “Non-Exempt Employees”).

12 2. During the “liability period,” as defined as the applicable statute of limitations for
13 each and every cause of action contained herein, Defendants consistently maintained and enforced
14 against its Non-Exempt Employees unlawful practices and policies in violation of California state
15 wage and hour laws, including failing to lawfully provide meal and rest periods; failing to pay one
16 hour of pay at the employee’s regular rate of pay when legally mandated meal or rest periods were
17 not lawfully provided; failing to provide accurate itemized wage statements; failing to timely pay
18 all wages earned during employment and at the time of separation, and failing to keep accurate
19 records.

20 3. Defendants implemented uniform policies and practices that deprived Plaintiff and
21 Class Members of lawful meal and/or rest breaks and premium wages.

22 4. Such actions and policies, as described above and further herein, were and continue
23 to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class
24 members, brings this action pursuant to the California Labor Code, including sections 201, 202,
25 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197,
26 1198, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section
27 11000 *et seq.*, seeking unpaid meal and rest period compensation, penalties, liquidated damages,
28 and reasonable attorneys’ fees and costs.

1 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
2 capacities of the Defendants designated hereinafter as DOES when such identities become known.

3 20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
4 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
5 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
6 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
7 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
8 liability of the Defendants as alleged herein.

9 21. Plaintiff is further informed and believes, and thereon alleges, that at all times
10 material herein, each Defendant was completely dominated and controlled by its co-Defendants
11 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
12 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
13 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
14 Whenever and wherever reference is made to individuals who are not named as Defendants in this
15 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
16 acted on behalf of Defendants named in this complaint within the scope of their respective
17 employments.

18 **FACTUAL ALLEGATIONS**

19 22. During the relevant time frame, Defendants compensated Plaintiff and the Class
20 Members based upon an hourly wage.

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

25 24. Plaintiff was employed as an hourly, non-exempt employee by Defendants from
26 October 2016 through approximately September 2019. Plaintiff performed functions as an
27 assembler for Defendants at their Irvine facility.

28 25. The members of the putative class were non-exempt, hourly employees of

1 Defendants throughout the state of California during the liability period.

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

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
5 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
6 requirements of California's wage and employment laws.

7 28. All Class Members, including Plaintiff, are similarly situated in that they are all
8 subject to Defendants' uniform policies and systemic practices as specified herein.

9 29. Class Members were often required to work shifts in excess of five hours without
10 being provided a lawful meal period and over ten hours in a day without being provided a second
11 lawful meal period as required by law.

12 30. Indeed, during the relevant time, as a consequence of Defendants' staffing
13 practices, scheduling practices, work demands, and Defendants' policies and practices,
14 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
15 uninterrupted 30-minute meal periods on shifts over five hours and second meal periods on shifts
16 over ten hours as required by law.

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

19 32. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
20 periods.

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

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
26 should know, knew, and/or should have known that Plaintiff and the other Class Members were
27 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
28 were not receiving such compensation.

1 35. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
2 Employees were systematically not authorized and permitted to take a net ten-minute paid, rest
3 period for every four hours worked or major fraction thereof, which is a violation of the Labor Code
4 and IWC wage order.

5 36. For example, Defendants failed to authorize and permit two (2) total rest periods on
6 shifts over six hours and three (3) total ten (10) minute rest periods on days on which Plaintiff and
7 the other Class Members work(ed) in excess of ten (10) hours.

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

12 38. Despite the above-mentioned rest period violations, Defendants did not
13 compensate Plaintiff, and on information and belief, did not pay Class Members one additional
14 hour of pay at their regular rate as required by California law, including Labor Code section 226.7
15 and the applicable IWC wage order, for each day on which lawful rest periods were not
16 authorized and permitted.

17 39. Defendants also failed to provide accurate, lawful itemized wage statements to
18 Plaintiff and the Class Members in part because of the above specified violations. In addition,
19 upon information and belief, Defendants failed to specify the name and legal address of the
20 employer.

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

28 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
2 thereof for resignations without prior notice as the case may be) they had a duty to accurately
3 compensate Plaintiffs and Class Members for all wages owed including minimum wages,
4 commissions, overtime, meal and rest period premiums, and that Defendants had the financial
5 ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed
6 to do so in part because of the above-specified violations.

7 42. Plaintiff is informed and believes that Defendants' violation of the Labor Code and
8 the IWC wage orders as specified herein was willful and deliberate.

9 43. Plaintiff and the Class Members are covered by applicable California IWC Wage
10 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
11 section 11000 *et seq.*

12 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 currently employ and during the relevant period have employed hundreds of non-exempt in the
14 State of California.

15 CLASS ACTION ALLEGATIONS

16 45. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
17 other person similarly situated, and thus, seeks class certification under California Code of Civil
18 Procedure §382.

19 46. All claims alleged herein arise under California law for which Plaintiff seeks relief
20 as authorized by California law.

21 47. The **proposed class** is comprised of and defined as: All persons currently or
22 formerly employed by Defendants as non-exempt employees, however titled, working in
23 Defendants' facilities in the State of California within the four (4) years prior to the filing of the
24 Complaint in this action until the resolution of this lawsuit and whose job duties did not consist of
25 over 50% administrative, executive or professional duties.

26 48. Plaintiff also seeks to represent Subclasses included in the Plaintiff's Class, which
27 are composed of Class Members satisfying the following definitions:

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

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

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

8 c. All Class Members who worked more than three and a half hours in a
9 workday and were not authorized and permitted to take a lawful net 10-minute rest period for every
10 four (4) hours or major fraction thereof worked per day and were not paid compensation of one
11 hour premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred
12 to as the “**Rest Period Subclass**”);

13 d. All Class Members who worked more than six (6) hours in a workday and
14 were not authorized and permitted to take a second lawful net 10-minute rest period and were not
15 paid compensation of one hour premium wages at the employee’s regular rate in lieu thereof
16 (hereinafter collectively referred to as the “**Second Rest Period Subclass**”);

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

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

24 g. All Class Members who were not provided with accurate and complete
25 itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement**
26 **Subclass**”);

27 h. All Class Members who were employed by Defendants and subject to
28 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business**

1 **Practices Subclass”).**

2 49. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
3 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
4 or if it should be deemed necessary by the Court or to further divide the Class Members into
5 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
6 Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

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

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

18 b. The proposed class is easily ascertainable. The number and identity of the
19 class members are determinable from Defendants’ payroll records and time records for each class
20 member.

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

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

27

28

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

4 3) Whether Defendants had a policy and practice of complying with Labor
5 Code section 226.7 and IWC Wage Order on each instance that a lawful first or second meal period
6 was not provided;

7 4) Whether Defendants failed to authorize and permit a lawful, net 10-minute
8 rest period to the Class Members for every four (4) hours or major fraction thereof worked;

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

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

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

16 8) Whether Defendants failed to timely pay all wages, including without
17 limitation premium wages, upon separation in accordance with Labor Code sections 201-202;

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

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

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

23 12) Whether Defendants failed to provide accurate itemized wage statements in
24 violation of Labor Code § 226; and

25 13) The appropriate amount of damages, restitution, and/or monetary penalties
26 resulting from Defendants' violations of California law.

27 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
28 interests of each member of the Class and Subclasses with whom he has a well-defined community

1 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
2 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which
3 would be sought by each member of the Class and/or Subclasses in separate actions. All members
4 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
5 meal and rest periods, failure to provide accurate wage statements, failure to timely pay wages at
6 termination, and failure to accurately pay all wages earned including all owed premium and
7 overtime wages, all due to Defendants' policies and practices that affected each member of the
8 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair
9 and/or wrongful acts as to each member of the Class and/or Subclasses.

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

19 f. Superiority: The nature of this action makes the use of class action
20 adjudication superior to other methods. A class action will achieve economies of time, effort,
21 judicial resources, and expense, which would not be achieved with separate lawsuits. The
22 prosecution of separate actions by individual members of the Class and/or Subclasses would create
23 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
24 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
25 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
26 disposition of their interests through actions to which they were not parties. Thus, a class action is
27 superior to other available means for the fair and efficient adjudication of this controversy because
28 individual joinder of all Class Members is not practicable, and questions of law and fact common

1 to the Class predominate over any questions affecting only individual Class Members. Each
2 member of the Class has been damaged and is entitled to recovery by reason of Defendants’
3 unlawful policies and practices, including Defendants’ failure to provide lawful meal and rest
4 periods, failure to provide accurate wage statements, failure to timely pay wages at termination,
5 and failure to accurately pay all wages earned including all owed premium and overtime wages, all
6 due to Defendants’ policies and practices that affected each member of the Class and/or Subclasses
7 similarly. Class action treatment will allow those similarly situated persons to litigate their claims
8 in the manner that is most efficient and economical for both parties and the judicial system. Plaintiff
9 is unaware of any difficulties that are likely to be encountered in the management of this action that
10 would preclude its maintenance as a class action.

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

20 **CLASS ACTION CLAIMS**

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

23 **(By Plaintiff and the Meal Period Subclasses Against All Defendants)**

24 51. Plaintiff incorporates by reference and realleges each and every allegation contained
25 above, as though fully set forth herein.

26 52. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
27 period of more than five (5) hours without providing a meal break of not less than thirty (30)
28 minutes in which the employee is relieved of all of his or her duties, except that when a work period

1 of not more than six (6) hours will complete the day's work the meal period may be waived by
2 mutual consent of the employer and employee.

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

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

11 55. For the four (4) years preceding the filing of this lawsuit, Defendants also failed to
12 provide Plaintiff and Class Members timely and uninterrupted second meal periods of not less than
13 thirty (30) minutes on shifts longer than ten hours.

14 56. Indeed, during the relevant time, as a consequence of Defendants' staffing and
15 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
16 Plaintiff and the Class Members were not provided with legally required meal periods.

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

19 58. Plaintiff 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 59. As a proximate result of the aforementioned violations, Plaintiff and the Class
22 Members have been damaged in an amount according to proof at time of trial.

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

26 61. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to
27 represent have been deprived of premium wages in amounts to be determined at trial, and are
28 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,

1 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code
2 section 3287.

3 **SECOND CAUSE OF ACTION**

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

5 **(By Plaintiff and the Rest Period Subclasses Against All Defendants)**

6 62. Plaintiff incorporates by reference and realleges each and every allegation contained
7 above, as though fully set forth herein.

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

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

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

20 66. Defendants were required to authorize and permit Plaintiff and the Class Members
21 to take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
22 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
23 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class
24 Members work(ed) work a third rest period for shifts in excess of ten (10) hours.

25 67. By their failure to authorize and permit Plaintiff and the Class Members to take a
26 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction
27 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and
28 three (3) total ten (10) minute rest periods on days on which Plaintiff and the other Class Members

1 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide
2 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the
3 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

4 68. Defendants did not pay Plaintiff one additional hour of pay at his regular rate of pay
5 for each day that a rest period violation occurred. On information and belief, the other members of
6 the Class endured similar violations as a result of Defendants' rest period policies and practices and
7 Defendant did not pay said Class Members premium pay as required by law.

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

12 **THIRD CAUSE OF ACTION**

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

14 **(By Plaintiff and the Waiting Time Subclass Against All Defendants)**

15 70. Plaintiff incorporates by reference and realleges each and every allegation contained
16 above, as though fully set forth herein.

17 71. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages
18 due within seventy-two (72) hours of separation of employment.

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

23 73. Plaintiff and Class Members are entitled to compensation for all forms of wages
24 earned, including but not limited to minimum wages, overtime, and premium meal and rest period
25 compensation, but to date have not received such compensation, therefore entitling them to Labor
26 Code § 203 penalties.

27
28

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

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

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

22 82. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
23 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
24 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
25 required information. Specifically, Defendants have also omitted accurate itemizations of total
26 hours worked, the name and address of the legal entity that is the employer, and gross pay from
27 Plaintiff and the Class Members' wage statements. In addition, Defendants have failed to provide
28 accurate itemized wage statements as a consequence of the above-specified violations for failure

1 to accurately pay all wages owed, and failure to pay meal and rest period premiums as required
2 by law.

3 83. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
4 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
5 Class in that the members of the Wage Statement Class were not timely provided written accurate
6 itemized statements showing all requisite information, such that the members of the Wage
7 Statement Class were misled by Defendants as to the correct information regarding various items,
8 including but not limited to the name and address of the employer, total hours worked by the
9 employee, gross pay earned, net wages earned and all applicable hourly rates in effect during the
10 pay period.

11 84. Pursuant to Labor Code section 226, and in light of Defendants' violations
12 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
13 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

14 **FIFTH CAUSE OF ACTION**

15 **VIOLATION OF THE UNFAIR COMPETITION LAW**

16 **By Plaintiff and Class Against All Defendants**

17 85. Plaintiff incorporates by reference and realleges each and every allegation contained
18 above, as though fully set forth herein.

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

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

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

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

1 detailed herein above are the predicate violations for this cause of action. By way of example only,
2 in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with
3 lawful, timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period
4 was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Order 7-
5 2001. Defendants further violated the law through their policies of failing to fully and accurately
6 compensate Plaintiff and the Class Members for all hours worked, including minimum wages and
7 overtime, as well as failing to provide accurate itemized wage statement as specified above.

8 90. Plaintiff and the Class Members have been personally aggrieved by Defendants'
9 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

10 91. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff
11 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants
12 during a period that commences four (4) years prior to the filing of this complaint; an award of
13 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of
14 costs.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

17 **Class Certification**

- 18 1. That this action be certified as a class action;
19 2. That Plaintiff be appointed as the representative of the Class;
20 3. That Plaintiff be appointed as the representative of the Subclasses; and
21 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

22 **On the First Cause of Action**

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

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

28

1 **On the Second Cause of Action**

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

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

7 **On the Third Cause of Action**

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

- 9 1. For unpaid wages;
- 10 2. For penalties pursuant to Labor Code § 203;
- 11 3. For interest;
- 12 4. For reasonable attorneys' fees and costs pursuant to statute; and
- 13 5. For such other and further relief as the Court deems proper.

14 **On the Fourth Cause of Action**

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

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

19 **On the Fifth Cause of Action**

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

- 21 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
22 sums to Plaintiff and Class Members for the Defendants' past failure to pay for premium wages for
23 meal and rest periods that were not provided to Plaintiff and Class Members over the last four (4)
24 years in an amount according to proof;
- 25 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
26 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;
- 27 3. For pre-judgment interest on any unpaid wages due from the day that such amounts
28 were due;

1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2 I am a resident of the State of California, County of Orange. I am over the age of eighteen
3 years and not a party to the within action. My business address is 9880 Research Drive., Suite
200, Irvine, California 92618.

4 On September 18, 2020, I served on the interested parties in this action the following
5 document(s) entitled:

6 - **CONSOLIDATED CLASS ACTION AND REPRESENTATIVE ACTION**
7 **COMPLAINT**
8

9 **[XX] BY ELECTRONIC SERVICE:** Based on a court Order or an agreement by the parties to
10 accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the
11 email address jocelyn@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the
Service List below. I did not receive, within a reasonable time after the transmission, any
12 electronic message or other indication that the transmission was unsuccessful.

13 **SERVICE LIST**

14 Jody A. Landry, Esq.
LITTLER MENDELSON, P.C.
15 501 W. Broadway, Suite 900
San Diego, CA 92101-3577
16 Tel: 619-232-0441
Fax: 619-232-4302
17

Attorney for Defendant
MEDTRONIC, INC., MEDTRONIC USA,
INC. and COVIDIEN LP

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18 Douglas Han, Esq.
19 Shunt Tatavos-Gharajeh, Esq.
Areen Babajanian, Esq.
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21 Pasadena, CA 91103
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23

Attorneys for Plaintiff
OSCAR BENITEZ

dhan@justicelawcorp.com
statavos@justicelawcorp.com
ababajanian@justicelawcorp.com

24 **[X] STATE:** I declare under penalty of perjury, under the laws of the State of California, that the
25 above is true and correct.

26 Executed on September 18, 2020, at Irvine, California.

27 /s/Jocelyn Mateo

28 Jocelyn Mateo

EXHIBIT 5

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 23, 2020

Via LWDA Website:

Labor and Workforce Development Agency
PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

MEDTRONIC, INC., a Minnesota Corporation;
Agent for Service of Process: Corporation Service Company dba CSC-Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No:

COVIDIEN, L.P., Delaware Limited Partnership
Agent for Service of Process: Corporation Service Company dba CSC-Lawyers Incorporating
Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Receipt No:

**Re: SUPPLEMENTAL NOTICE PURSUANT TO LABOR CODE SECTIONS
2699 et seq. –LWDA-CM-783849-20**

To Whom It May Concern:

The purpose of this correspondence is to supplement the notice previously provided by plaintiff Lan Le individually and on behalf of all others similarly situated, regarding his claims pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby provides this supplemental written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Medtronic, Inc. and Covidien, L.P (“Defendants”) via their counsel or agent for service of process.

As previously set forth in the initial notice, the group of aggrieved employees that Plaintiff seeks to represent in this action are current and former hourly, non-exempt employees working for Defendants at their facilities in the State of California during the liability period. This includes, without limitation, employees working in manufacturing, production, and/or assembly.

In addition to the violations previously indicated in Plaintiff's initial notice, Mr. Le provides notice of the following violations:

Plaintiff Le contends that Defendants Medtronic, Inc. and Covidien LP failed to pay overtime wages as required by Labor Code section 510, 1194, 1197, 1198, and IWC Wage Orders 1-2001 and 7-2001. During all relevant periods, Defendants required Plaintiff and the aggrieved group members to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek without proper pay. The California Labor Code sections 1194, 1197, 510, 1198, and the pertinent wage orders 1-2001 and 7-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee. The IWC Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Plaintiff contends that Defendants failed to properly compensate aggrieved employees for overtime wages worked as it failed to include all forms of compensation, including bonuses, incentives, commissions, and other compensation, in calculating the regular rate of pay for overtime purposes.

In addition, Plaintiff contends that Defendants failed to pay aggrieved employees minimum wages, and overtime wages as appropriate, for all hours worked as employees were required to perform certain work off the clock, such as for donning and doffing, and preparatory work. Plaintiff alleges that Defendants knew or should have known that such employees were performing work off the clock and that time spent donning and doffing or for preparatory work was compensable time. Such conduct violated Labor Code §§ 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable wage order 1-2001 and 7-2001.

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due and payable to Plaintiff and the aggrieved group members in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. As a result of Defendants' failure to properly pay overtime and pay at least minimum wage for each hour worked each pay period and within in the time frames prescribed by the Labor Code, Defendants have violated the requirements of Labor Code section 204.

The failure to pay such minimum wages, overtime wages and premium wages for meal and rest breaks that were not lawfully provided at the time of separation from employment within the time frames set forth in Labor Code section 201 and 202 constitute a further violation of these provisions. Defendant has also failed to pay waiting time penalties as required by Labor Code section 203.

Labor Code section 226(a) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee....”. Plaintiff further alleges that Defendants violated Labor Code section 226 by failing to include the accurate total number of hours worked by Plaintiff and the other aggrieved group members, the name and address of the legal entity that is the employer, and gross pay from Plaintiffs and the Class Members’ wage statements.

Plaintiff also contends that Defendants failed to reimburse aggrieved employees for expenses incurred for cellular phone usage and other business related expenses in violation of Labor Code section 2802.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Christina M. Lucio', written in a cursive style.

Christina M. Lucio, Esq.

1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2
3 I am a resident of the State of California, County of Orange. I am over the age of eighteen
4 years and not a party to the within action. My business address is 9880 Research Drive., Suite
200, Irvine, California 92618.

5 On December 18, 2020, I served on the interested parties in this action the following
6 document(s) entitled:

- 7 • **JOINT STIPULATION TO FILE FIRST AMENDED CONSOLIDATED CLASS**
8 **ACTION AND REPRESENTATIVE ACTION COMPLAINT**
9 • **[PROPOSED] ORDER**

10
11 BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to
12 accept service by e-mail or electronic transmission, I caused the document(s) to be sent
13 from the email address Nicole@jameshawkinsapl.com to the persons at the e-mail
14 addresses listed in the Service List below. I did not receive, within a reasonable time after
the transmission, any electronic message or other indication that the transmission was
unsuccessful.

15 **SERVICE LIST**

16 See Attached Service List

17 **STATE:** I declare under penalty of perjury, under the laws of the State of
18 California, that the above is true and correct.

19 Executed on December 18, 2020, at Irvine, California

20
21 */s/ Nicole Miccolis*
22 Nicole Miccolis
23
24
25
26
27
28

1 **SERVICE LIST**

2 Jody A. Landry, Esq.
3 LITTLER MENDELSON, P.C.
4 501 W. Broadway, Suite 900
5 San Diego, CA 92101-3577
6 Tel: 619-232-0441
7 Fax: 619-232-4302

Attorney for Defendant
MEDTRONIC, INC., MEDTRONIC USA, INC.
and COVIDIEN LP

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8 Douglas Han, Esq.
9 Shunt Tatavos-Gharajeh, Esq.
10 Areen Babajanian, Esq.
11 JUSTICE LAW CORPORATION
12 751 N. Fair Oaks Ave, Suite 101
13 Pasadena, CA 91103
14 Tel: 818-230-7502
15 Fax: 818-230-7259

Attorneys for Plaintiff
OSCAR BENITEZ

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statavos@justicelawcorp.com
ababajanian@justicelawcorp.com

1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2 I am a resident of the State of California, County of Orange. I am over the age of
3 eighteen years and not a party to the within action. My business address is 9880 Research
4 Drive., Suite 200, Irvine, California 92618.

5 On January 4, 2021, I served on the interested parties in this action the following
6 document(s) entitled:

- 7 • **FIRST AMENDED CONSOLIDATED CLASS ACTION AND
8 REPRESENTATIVE ACTION COMPLAINT**

9 on the interested parties in this action.

10 [] by placing [] the original [] a true copy thereof enclosed in a sealed envelope addressed as
11 follows:

12 Jody A. Landry, Esq.
13 LITTLER MENDELSON, P.C.
14 501 W. Broadway, Suite 900
15 San Diego, CA 92101-3577
16 Tel: 619-232-0441
17 Fax: 619-232-4302

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USA, INC. AND COVIDIEN LP

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18 Douglas Han, Esq.
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ababajanian@justicelawcorp.com

26 [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to
27 accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the
28 email address sheila@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the
Service List below. I did not receive, within a reasonable time after the transmission, any
electronic message or other indication that the transmission was unsuccessful.

[XX] (State): I declare under penalty of perjury, under the laws of the State of California, that
the above is true and correct.

Executed on January 4, 2021, at Irvine, California.

/s/ Sheila Gonzales
Sheila Gonzales