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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOE C VALADEZ, an individual, on
behalf of himself and all persons similarly
situated,

Plaintiff,

vs.

MERCK SHARP & DOHME CORP.,
solely and exclusively as successor in
interest to SCHERING-PLOUGH
CORPORATION,

Defendants.

CASE No. **'10CV2595 WQHWVG**

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200 et seq.;
2. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 510, 515.5, 551,
552, 1194 AND 1198, et seq.;
3. FAILURE TO PROVIDE
ACCURATE ITEMIZED STATEMENTS
IN VIOLATION OF CAL. LAB. CODE §
226; and,
4. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
29 U.S.C. §§ 201 et seq.

DEMAND FOR A JURY TRIAL

1 Plaintiff Joe C Valadez ("PLAINTIFF"), on behalf of himself and all other similarly
2 situated current and former employees, allege on information and belief, except for his own acts
3 and knowledge, the following:

4
5 **THE PARTIES**

6 1. Schering-Plough Corporation is a corporation founded in 1969 and organized
7 under the laws of New Jersey with its principal place of business in Kenilworth, New Jersey.
8 As of November 3, 2009, Schering-Plough Corporation was acquired by Merck Sharp &
9 Dohme Corp. Merck Sharp & Dohme Corp. is a Defendant solely and exclusively in its
10 capacity as the successor in interest to Schering-Plough Corporation with respect to the liability
11 alleged in this Action. Merck Sharp & Dohme Corp. and Schering-Plough Corporation are
12 therefore jointly responsible as employers for the conduct alleged herein, and are collectively
13 referred to in this Complaint as "SCHERING-PLOUGH" or "DEFENDANT." SCHERING-
14 PLOUGH is engaged in the research, development, manufacture and sale of pharmaceuticals
15 worldwide operating in three segments: Prescription Pharmaceuticals, Consumer Health Care,
16 and Animal Health.

17 2. SCHERING-PLOUGH maintains its headquarters in Kenilworth, New Jersey
18 and also serves regional markets throughout the United States providing healthcare products and
19 solutions through hospitals, pharmacies, government agencies, and wholesale and retail, drug,
20 food chain, and mass merchandiser outlets. The marketing function at SCHERING-PLOUGH
21 is responsible in relevant part, for promoting SCHERING-PLOUGH's products and ensuring
22 that the products are marketed according to specified SCHERING-PLOUGH standards.

23 3. As part of SCHERING-PLOUGH's business, DEFENDANT employs individuals
24 whose primary job duty is promoting DEFENDANT's pharmaceutical healthcare products.
25 These employees distribute free samples of DEFENDANT's products to physicians and
26 encourage physicians to prescribe DEFENDANT's products to patients in order to stimulate the
27 sales of these products. These employees have the job titles of "Pharmaceutical Sales
28 Representative" and "Sales Representative." Collectively, all employees in these positions, with

1 or without a "I, II or III" descriptor, and who perform this job duty are referred to herein as
2 "Sales Representatives." This Action is brought on behalf of the PLAINTIFF and all those
3 employees of DEFENDANT in California who worked for DEFENDANT as a Sales
4 Representative during the CLASS PERIOD ("CLASS" or "Class Members").

5 4. Plaintiff Joe Valadez ("PLAINTIFF") was employed by DEFENDANT
6 in California as a "Pharmaceutical Sales Representative" from March 2004 to June 2009.

7 5. The position of "Pharmaceutical Sales Representative" was represented by
8 DEFENDANT to the PLAINTIFF and the other Sales Representatives as an exempt and a
9 salaried position.

10 6. For DEFENDANT's business, the Class Members functioned as working
11 members on DEFENDANT's marketing and sales staff. As defined by DEFENDANT's
12 comprehensive corporate policies and procedures, the primary job duty of the Class
13 Members employed by SCHERING-PLOUGH was and is to promote DEFENDANT's
14 pharmaceutical healthcare products in accordance with DEFENDANT's established specific
15 procedures and protocols which govern and control every aspect of the work performed by
16 the Sales Representatives. The primary job duty of these Class Members was not and is not
17 to make sales and/or obtain orders or contracts for products. SCHERING-PLOUGH's
18 standardized procedures mirror the realities of the workplace evidencing a uniformity of
19 work among the Sales Representatives and negate any exercise of independent judgment and
20 discretion as to any matter of significance and any customary and regular engagement in
21 sales-related activity.

22 7. The work schedule for Sales Representatives was set by DEFENDANT.
23 Generally, the Class Members work ten (10) to fourteen (14) hours each workday and ten
24 (10) to twenty (20) hours of overtime each workweek.

25 8. DEFENDANT has not established an alternative workweek election for Sales
26 Representatives for ten (10) to fourteen (14) hour workdays.

27 9. PLAINTIFF and the other Sales Representatives were not provided with
28 overtime compensation and other benefits required by law as a result of being classified as

1 "exempt" by DEFENDANT.

2 10. PLAINTIFF brings this Class Action on behalf of himself and a California
3 Class consisting of all individuals who are or previously were employed by Defendant
4 Schering-Plough Corporation promoting pharmaceutical healthcare products in California
5 (the "CALIFORNIA CLASS") during the period beginning on the date four years before the
6 filing of this action and ending on the date as determined by the Court (the "CALIFORNIA
7 CLASS PERIOD").

8 11. As a matter of company policy, practice, and procedure, DEFENDANT
9 has unlawfully, unfairly and/or deceptively classified every Sales Representative as exempt
10 based on job title alone, failed to pay the required overtime compensation, and otherwise
11 failed to comply with all applicable labor laws with respect to these Sales Representatives.

12 12. The agents, servants, and/or employees of DEFENDANT and each of them
13 acting on behalf of DEFENDANT acted within the course and scope of his, her or its
14 authority as the agent, servant, and/or employee of DEFENDANT, and personally
15 participated in the conduct alleged herein on behalf of DEFENDANT with respect to the
16 conduct alleged herein. Consequently, DEFENDANT is jointly and severally liable to the
17 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as
18 a proximate result of the conduct of DEFENDANT's agents, servants, and/or employees.

19
20 **THE CONDUCT**

21 13. The primary job duty required of the Sales Representatives is promoting
22 DEFENDANT's pharmaceutical healthcare products to physicians in order to stimulate the
23 sales of these products in accordance with established protocol and performing tasks as
24 directed or assigned by DEFENDANT. This primary job duty of the sales representatives is
25 a non-exempt task.

26 14. PLAINTIFF and the Sales Representatives performed the non-exempt labor
27 described herein in accordance with DEFENDANT's uniform corporate policies, procedures
28 and protocols. In accordance with DEFENDANT's uniform corporate policies, procedures

1 and protocols, DEFENDANT instituted a blanket classification policy, practice and
2 procedure by which all of these Sales Representatives were classified as exempt from
3 overtime compensation, rest breaks and meal breaks. By reason of this uniform exemption
4 practice, policy and procedure applicable to the PLAINTIFF and all other Sales
5 Representatives who performed this non-exempt labor, DEFENDANT committed acts of
6 unfair competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof.
7 Code § 17200 (the “UCL”), by engaging in a uniform company-wide policy, practice and
8 procedure which failed to properly classify the PLAINTIFF and the other Sales
9 Representatives and thereby failed to pay them overtime wages for overtime hours worked
10 and provide them with meal and rest breaks. The proper classification of these employees is
11 DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of the
12 obligation to meet this burden, DEFENDANT failed to pay all required overtime
13 compensation for work performed by the members of the CALIFORNIA CLASS and
14 violated the California Labor Code and regulations promulgated thereunder as herein
15 alleged. In addition, DEFENDANT failed to provide all of the legally required off-duty
16 meal and rest breaks to the PLAINTIFF and other Sales Representatives as required by the
17 applicable Wage Order and Labor Code.

18 15. DEFENDANT, as a matter of law, has the burden of proving that (a)
19 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies
20 with applicable laws. Other than the initial classification of the PLAINTIFF and the other
21 Sales Representatives as exempt from being paid overtime based on job title alone,
22 DEFENDANT had no business policy, practice, or procedure to ensure that the PLAINTIFF
23 and the other Sales Representatives were properly classified as exempt, and in fact, as a
24 matter of corporate policy erroneously, unilaterally and uniformly classified all the Class
25 Members as exempt based on job title alone.

26 16. During their employment with DEFENDANT, the PLAINTIFF and the
27 other Sales Representatives, primarily performed non-exempt job duties, but were
28 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more

1 than eight (8) hours a day, forty (40) hours a week, and/or on the seventh (7th) consecutive
2 day of a workweek.

3 17. PLAINTIFF and the other Sales Representatives employed by DEFENDANT
4 were not primarily engaged in work of a type that was or now is directly related to the
5 making of sales, management or general business operations of the employer's customers,
6 when giving these words a fair but narrow construction. PLAINTIFF and the other Sales
7 Representatives employed by DEFENDANT were also not primarily engaged in work of a
8 type that was or now is performed for the purpose of obtaining orders or contracts for
9 products for DEFENDANT. PLAINTIFF and the other Sales Representatives employed by
10 DEFENDANT were also not primarily engaged in work of a type that was or now is
11 performed more than half the time actually selling, including sales-related activities.
12 PLAINTIFF and the other Sales Representatives employed by DEFENDANT were also not
13 primarily engaged in work of a type that was or now is performed at the level of the policy
14 or management of DEFENDANT. PLAINTIFF and the other Sales Representatives
15 employed by DEFENDANT were also not primarily engaged in work requiring knowledge
16 of an advanced type in a field or science or learning customarily acquired by a prolonged
17 course of specialized intellectual instruction and study, but rather their work primarily
18 involves the performance of routine mental, manual, and/or physical processes. PLAINTIFF
19 and the other Sales Representatives employed by DEFENDANT were also not primarily
20 engaged in work that is predominantly intellectual and varied in character, but rather is
21 routine mental, manual, mechanical, and/or physical work that is of such character that the
22 output produced or the result accomplished can be standardized in relation to a given period
23 of time. The work of a Sales Representative of DEFENDANT was work wherein the
24 PLAINTIFF and members of the CALIFORNIA CLASS were primarily engaged in the day-
25 to-day operations of promoting DEFENDANT's pharmaceutical healthcare products in strict
26 accordance with the uniform protocols, policies and operations established by
27 DEFENDANT.

28 18. The primary job duty of the PLAINTIFF and other Sales Representatives

1 employed by DEFENDANT was and is promoting DEFENDANT's pharmaceutical
2 healthcare products for DEFENDANT's benefit. As a result, the PLAINTIFF and other
3 Sales Representatives employed by DEFENDANT were primarily engaged in work that falls
4 outside the scope of the "outside salesperson" exemption and should have been properly
5 classified as non-exempt employees.

6 19. PLAINTIFF and all members of the CALIFORNIA CLASS are and were
7 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
8 thereafter, DEFENDANT failed to take the proper steps to determine whether the
9 PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified under
10 the applicable Industrial Welfare Commission Wage Order (Wage Order 1-2001 and/or
11 Wage Order 4-2001) and Cal. Lab. Code §§ 510 et seq. as exempt from applicable federal
12 and state labor laws. Since DEFENDANT affirmatively and wilfully misclassified the
13 PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with California
14 Labor Laws, DEFENDANT's practices violated and continue to violate the law. In addition,
15 DEFENDANT acted deceptively by falsely and fraudulently telling the PLAINTIFF and
16 each member of the CALIFORNIA CLASS that they were exempt from overtime pay when
17 DEFENDANT knew or should have known that this statement was false and not based on
18 known facts. DEFENDANT also acted unfairly by violating the labor laws of California,
19 and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing
20 so, DEFENDANT cheated the competition by paying the CALIFORNIA CLASS less than
21 the amount competitors paid who complied with the law and cheated the CALIFORNIA
22 CLASS by not paying them in accordance with California law.

23 20. DEFENDANT failed to provide and still fails to provide the PLAINTIFF and
24 the other Sales Representatives with a wage statement in writing that accurately sets forth
25 gross wages earned, all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the PLAINTIFF and the other
27 Sales Representatives. This conduct violates California Labor Code § 226. The pay stub
28 also does not accurately display anywhere the PLAINTIFF's and the other Sales

1 Representatives' overtime hours and applicable rates of overtime pay for the pay period.

2 21. By reason of this uniform conduct applicable to the PLAINTIFF and all
3 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
4 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the
5 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
6 classify the PLAINTIFF and the CALIFORNIA CLASS of Sales Representatives as non-
7 exempt. The proper classification of these employees is DEFENDANT's burden. As a
8 result of DEFENDANT's intentional disregard of the obligation to meet this burden,
9 DEFENDANT failed to properly calculate and/or pay all required overtime compensation
10 for work performed by the members of the CALIFORNIA CLASS and violated the
11 applicable Wage Order, the California Labor Code and the regulations promulgated
12 thereunder as herein alleged.

13 14 THE UCL REMEDIES

15 22. As a result of DEFENDANT's UCL violation, the PLAINTIFF, on behalf
16 of himself and the CALIFORNIA CLASS, seeks restitutionary disgorgement of
17 DEFENDANT's ill-gotten gains into a fluid fund in order to provide restitution of all the
18 money that DEFENDANT was required by law to pay, but failed to pay, to the PLAINTIFF
19 and all the other CALIFORNIA CLASS members. PLAINTIFF also seeks all other relief
20 available to him and the other Sales Representatives located in California under California
21 law. PLAINTIFF also seeks declaratory relief finding that the employment practices and
22 policies of DEFENDANT violate California law.

23 24 THE CALIFORNIA CLASS

25 23. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
26 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, et seq. (the
27 "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a
28 California Class, defined as all individuals who are or previously were employed by

1 Defendant Schering-Plough Corporation as a Sales Representative as hereinabove defined in
2 California during the period beginning on the date four years before the filing of this Action
3 and ending on the date as determined by the Court (the "CALIFORNIA CLASS").

4 24. To the extent equitable tolling operates to toll claims by the CALIFORNIA
5 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
6 accordingly.

7 25. DEFENDANT, as a matter of corporate policy, practice and procedure,
8 and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC")
9 Wage Order Requirements, and the applicable provisions of California law, intentionally,
10 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,
11 and deceptively instituted a practice to ensure that the employees employed in a Sales
12 Representative position were not properly classified as non-exempt from the requirements of
13 California Labor Code §§ 510, et seq.

14 26. DEFENDANT has the burden of proof that each and every employee is
15 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, et seq.
16 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in
17 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice
18 that misclassifies the CALIFORNIA CLASS members as exempt. DEFENDANT's uniform
19 policy and practice in place at all times during the CALIFORNIA CLASS PERIOD and
20 currently in place is to systematically classify each and every CALIFORNIA CLASS
21 member as exempt from the requirements of the California Labor Code §§ 510, et seq. This
22 common business practice applicable to each and every CALIFORNIA CLASS member can
23 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
24 Business & Professions Code §17200, et seq. (the "UCL") as causation, damages, and
25 reliance are not elements of this claim.

26 27. At no time before, during or after the PLAINTIFF's employment with
27 DEFENDANT was any Sales Representative reclassified as non-exempt from the applicable
28 requirements of California Labor Code §§ 510, et seq. after each CALIFORNIA CLASS

1 member was initially, uniformly, and systematically classified as exempt upon being hired.

2 28. Any individual declarations of any employees offered at this time purporting
3 to indicate that one or more Sales Representative may have been properly classified is of no
4 force or affect absent contemporaneous evidence that DEFENDANT's uniform system did
5 not misclassify the PLAINTIFF and the other Sales Representatives as exempt pursuant to
6 Cal. Lab. Code §§ 510, et seq. Absent proof of such a contemporaneous system,
7 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the
8 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,
9 the PLAINTIFF and the CALIFORNIA CLASS members are entitled to compel
10 DEFENDANT to provide restitutionary disgorgement of their ill-gotten gains into a fluid
11 fund in order to restitute these funds to the PLAINTIFF and the members of the
12 CALIFORNIA CLASS according to proof.

13 29. The CALIFORNIA CLASS is so numerous that joinder of all Sales
14 Representatives, is impracticable.

15 30. Common questions of law and fact exist as to members of the CALIFORNIA
16 CLASS, including, but not limited, to the following:

- 17 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
18 Code § 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or
19 deceptively having in place company policies, practices and procedures
20 that uniformly misclassified the PLAINTIFF and the members of the
21 CALIFORNIA CLASS as exempt;
- 22 (b) Committing an act of unfair competition in violation of the UCL, by
23 unlawfully, unfairly, and/or deceptively failing to have in place a
24 company policy, practice and procedure that accurately determined the
25 amount of working time spent by the PLAINTIFF and the members of
26 the CALIFORNIA CLASS performing non-exempt labor;
- 27 (c) Committing an act of unfair competition in violation of the UCL, by
28 having in place a company policy, practice and procedure that failed to

1 reclassify as non-exempt those members of the CALIFORNIA CLASS
2 whose actual job duties are primarily comprised of non-exempt job
3 functions;

4 (d) Committing an act of unfair competition in violation of the UCL, by
5 violating Cal. Lab. Code §§510, *et seq.* by failing to pay the correct
6 overtime pay to the PLAINTIFF and members of the CALIFORNIA
7 CLASS who were improperly classified as exempt, and retaining the
8 unpaid overtime to the benefit of DEFENDANT;

9 (e) Committing an act of unfair competition in violation of the UCL, by
10 failing to provide mandatory meal and/or rest periods to the
11 PLAINTIFF and the Class Members; and,

12 (f) Committing an act of unfair competition in violation of the UCL, by
13 violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF
14 and the members of the CALIFORNIA CLASS with an accurate
15 itemized statement in writing showing the gross wages earned, the net
16 wages earned, all applicable hourly rates in effect during the pay period
17 and the corresponding number of hours worked at each hourly rate by
18 the employee.

19 31. This Class Action meets the statutory prerequisites for the maintenance
20 of a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

21 (a) The persons who comprise the CALIFORNIA CLASS exceed 100
22 persons and are therefore so numerous that the joinder of all such
23 persons is impracticable and the disposition of their claims as a class
24 will benefit the parties and the Court;

25 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
26 raised in this Complaint are common to the CALIFORNIA CLASS will
27 apply uniformly to every member of the CALIFORNIA CLASS;

28 (c) The claims of the representative PLAINTIFF are typical of the claims

1 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
2 other members of the CALIFORNIA CLASS, was initially classified as
3 exempt upon hiring based on the defined corporate policies and
4 practices and labored under DEFENDANT's systematic procedure that
5 failed to properly classify the PLAINTIFF and the members of the
6 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
7 result of DEFENDANT's employment practices. PLAINTIFF and the
8 members of the CALIFORNIA CLASS were and are similarly or
9 identically harmed by the same unlawful, deceptive, unfair and
10 pervasive pattern of misconduct engaged in by DEFENDANT by
11 deceptively advising all Sales Representatives that they were exempt
12 from overtime wages based on the defined corporate policies and
13 practices, and unfairly failing to pay overtime to these employees who
14 were improperly classified as exempt.

15 (d) The representative PLAINTIFF will fairly and adequately represent and
16 protect the interest of the CALIFORNIA CLASS, and has retained
17 counsel who are competent and experienced in Class Action litigation.
18 There are no material conflicts between the claims of the representative
19 PLAINTIFF and the members of the CALIFORNIA CLASS that would
20 make class certification inappropriate. Counsel for the CALIFORNIA
21 CLASS will vigorously assert the claims of all employees in the
22 CALIFORNIA CLASS.

23 32. In addition to meeting the statutory prerequisites to a Class Action, this action
24 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
25 in that:

26 (a) Without class certification and determination of declaratory, statutory
27 and other legal questions within the class format, prosecution of
28 separate actions by individual members of the CALIFORNIA CLASS

will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
- 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the Sales Representatives as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Sales Representatives were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

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

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of

1 California Law as listed above, and predominate over any question
2 affecting only individual members, and a Class Action is superior to
3 other available methods for the fair and efficient adjudication of the
4 controversy, including consideration of:

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

representative; and,

- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

33. This Court should permit this Action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members because DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual Class Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS exceed 100 persons and are therefore so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the Action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the

injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

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

(g) DEFENDANT had acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all DEFENDANT's Sales Representatives employed in California during the CALIFORNIA CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

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

THE CALIFORNIA LABOR SUB-CLASS

35. PLAINTIFF further brings the Second and Third Causes of Action on behalf of a sub-class which consists of all members of the CALIFORNIA CLASS who were employed by DEFENDANT during the period beginning on the date three (3) years prior to

1 the filing of this Action and ending on the date as determined by the Court (CALIFORNIA
2 LABOR SUB-CLASS PERIOD), who performed work in excess of eight (8) hours in one
3 day and/or forty (40) hours in one workweek and/or hours on the seventh (7th) consecutive
4 day of a workweek and did not receive overtime compensation (the "CALIFORNIA
5 LABOR SUB-CLASS") pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

6 36. DEFENDANT, as a matter of corporate policy, practice and procedure,
7 and in violation of the applicable California Labor Code ("Labor Code"), and Industrial
8 Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,
9 and systematically misclassified the PLAINTIFF and the other members of the
10 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from
11 overtime wages and other labor laws based on DEFENDANT's comprehensive policies and
12 procedures in order to avoid the payment of overtime wages by misclassifying their
13 positions as exempt from overtime wages and other labor laws. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against
15 DEFENDANT, the class period should be adjusted accordingly.

16 37. DEFENDANT has intentionally and deliberately created a number of job
17 job titles such as "Pharmaceutical Sales Representative" and "Customer Representative"
18 which were distributed in order to create the superficial appearance of a number of unique
19 jobs, when in fact, these jobs are substantially similar and can be easily grouped together for
20 the purpose of determining whether they were all misclassified. One of DEFENDANT's
21 purposes in creating and maintaining this multi-title and multi-level job classification
22 scheme is to create an artificial barrier to discovery and class certification for all employees
23 similarly misclassified as exempt. DEFENDANT has uniformly misclassified these
24 CALIFORNIA LABOR SUB-CLASS members as exempt and denied them overtime wages
25 and other benefits to which non-exempt employees are entitled in order to unfairly cheat the
26 competition and unlawfully profit.

27 38. DEFENDANT maintains records from which the Court can ascertain and
28 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR

1 SUB-CLASS members have been systematically, intentionally and uniformly misclassified
2 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.
3 PLAINTIFF will seek leave to amend the Complaint to include these additional job titles
4 when they have been identified.

5 39. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
6 members, which number over 100 Sales Representatives, is impracticable.

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

- 9 (a) Whether DEFENDANT unlawfully failed to pay overtime
10 compensation to members of the CALIFORNIA LABOR SUB-CLASS
11 in violation of the California Labor Code and California regulations and
12 the applicable California Wage Order;
- 13 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
14 non-exempt employees entitled to overtime compensation for overtime
15 hours worked under the overtime pay requirements of California Law;
- 16 (c) Whether DEFENDANT's policy and practice of classifying the
17 CALIFORNIA LABOR SUB-CLASS members as exempt from
18 overtime compensation and failing to pay the CALIFORNIA LABOR
19 SUB-CLASS members overtime violate applicable provisions of
20 California law;
- 21 (d) Whether DEFENDANT unlawfully failed to keep and furnish
22 CALIFORNIA LABOR SUB-CLASS members with accurate records
23 of overtime hours worked;
- 24 (e) Whether DEFENDANT's policy and practice of failing to pay members
25 of the CALIFORNIA LABOR SUB-CLASS all wages when due within
26 the time required by law after their employment ended violates
27 California law; and,
- 28 (f) The proper measure of damages and penalties owed to the members of

1 the CALIFORNIA LABOR SUB-CLASS.

2 41. DEFENDANT, as a matter of corporate policy, practice and procedure,
3 erroneously classified all Sales Representatives as exempt from overtime wages and other
4 labor laws. All Sales Representatives, including the PLAINTIFF, performed the same
5 primary functions and were paid by DEFENDANT according to uniform and systematic
6 company procedures, which, as alleged herein above, failed to correctly pay overtime
7 compensation. This business practice was uniformly applied to each and every member of
8 the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can
9 be adjudicated on a class-wide basis.

10 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
11 under California law by:

- 12 (a) Violating Cal. Lab. Code §§ 510, et seq. by misclassifying and thereby
13 failing to pay the PLAINTIFF and the members of the CALIFORNIA
14 LABOR SUB-CLASS the correct overtime pay for a workday longer
15 than eight (8) hours, a workweek longer than forty (40) hours, and/or all
16 hours worked on the seventh (7th) consecutive day of a workweek for
17 which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 18 (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
19 when an employee is discharged or quits from employment, the
20 employer must pay the employee all wages due without abatement, by
21 failing to tender full payment and/or restitution of wages owed or in the
22 manner required by California law to the members of the
23 CALIFORNIA LABOR SUB-CLASS who have terminated their
24 employment;
- 25 (c) Violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF
26 and the members of the CALIFORNIA LABOR SUB-CLASS who
27 were improperly classified as exempt with an accurate itemized
28 statement in writing showing the gross wages earned, the net wages

1 earned, all applicable hourly rates in effect during the pay period and
2 the corresponding number of hours worked at each hourly rate by the
3 employee.

4 43. This Class Action meets the statutory prerequisites for the maintenance of a
5 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 6 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
7 exceed 100 persons and are therefore so numerous that the joinder of all
8 such persons is impracticable and the disposition of their claims as a
9 class will benefit the parties and the Court;
- 10 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
11 raised in this Complaint are common to the CALIFORNIA LABOR
12 SUB-CLASS and will apply uniformly to every member of the
13 CALIFORNIA LABOR SUB-CLASS;
- 14 (c) The claims of the representative PLAINTIFF are typical of the claims
15 of each member of the CALIFORNIA LABOR SUB-CLASS.
16 PLAINTIFF, like all other members of the CALIFORNIA LABOR
17 SUB-CLASS, was improperly classified as exempt and denied overtime
18 pay as a result of DEFENDANT's systematic classification practices.
19 PLAINTIFF and all other members of the CALIFORNIA LABOR
20 SUB-CLASS sustained economic injuries arising from DEFENDANT's
21 violations of California law; and,
- 22 (d) The representative PLAINTIFF will fairly and adequately represent and
23 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
24 has retained counsel who are competent and experienced in Class
25 Action litigation. There are no material conflicts between the claims of
26 the representative PLAINTIFF and the members of the CALIFORNIA
27 LABOR SUB-CLASS that would make class certification
28 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS

1 will vigorously assert the claims of all Class Members.

2 44. In addition to meeting the statutory prerequisites to a Class Action, this Action
3 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
4 in that:

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

9 1) Inconsistent or varying adjudications with respect to individual
10 members of the CALIFORNIA LABOR SUB-CLASS which
11 would establish incompatible standards of conduct for the parties
12 opposing the CALIFORNIA LABOR SUB-CLASS; or,

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

18 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
19 acted or refused to act on grounds generally applicable to the
20 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
21 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
22 whole in that DEFENDANT uniformly classified and treated the Sales
23 Representatives as exempt and, thereafter, uniformly failed to take
24 proper steps to determine whether the Sales Representatives were
25 properly classified as exempt, and thereby denied these employees
26 overtime wages as required by law;

27 (c) Common questions of law and fact predominate as to the members of
28 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices

1 and violations of California Law as listed above, and predominate over
2 any question affecting only individual members, and a Class Action is
3 superior to other available methods for the fair and efficient
4 adjudication of the controversy, including consideration of:

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

1 assert their claims through a representative; and,

- 2 4) A Class Action is superior to other available methods for the fair
3 and efficient adjudication of this litigation because class
4 treatment will obviate the need for unduly and unnecessary
5 duplicative litigation that is likely to result in the absence of
6 certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(2)
7 and/or (3).

8 45. This Court should permit this Action to be maintained as a Class Action
9 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 10 (a) The questions of law and fact common to the CALIFORNIA LABOR
11 SUB-CLASS predominate over any question affecting only individual
12 members;
- 13 (b) A Class Action is superior to any other available method for the fair
14 and efficient adjudication of the claims of the members of the
15 CALIFORNIA LABOR SUB-CLASS because in the context of
16 employment litigation a substantial number of individual Class
17 Members will avoid asserting their rights individually out of fear of
18 retaliation or adverse impact on their employment;
- 19 (c) The members of the CALIFORNIA LABOR SUB-CLASS exceed 100
20 persons and are therefore so numerous that it is impractical to bring all
21 members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- 22 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
23 members, will not be able to obtain effective and economic legal
24 redress unless the action is maintained as a Class Action;
- 25 (e) There is a community of interest in obtaining appropriate legal and
26 equitable relief for the acts of unfair competition, statutory violations
27 and other improprieties, and in obtaining adequate compensation for the
28 damages and injuries which DEFENDANT's actions have inflicted

upon the CALIFORNIA LABOR SUB-CLASS;

- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of those Sales Representatives who worked overtime hours and who were not paid overtime; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT.

JURISDICTION AND VENUE

46. This Court has jurisdiction over the PLAINTIFF's federal claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's state law claims pursuant to 28 U.S.C. § 1367.

47. Further, with respect to the state law class claims, these state law class claims are brought as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that exceeds 100 persons, that involves more than \$5,000,000 in controversy, and where the citizenship of at least one member of the class is diverse from that of DEFENDANT. As a result, this Court also has original jurisdiction over the state law class claims under 28 U.S.C. § 1332 (CAFA Jurisdiction).

48. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i) DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this

1 District; (ii) DEFENDANT maintains offices or facilities in this District; and, (iii)
2 DEFENDANT committed the wrongful conduct against members of the CALIFORNIA
3 CLASS in this District.

4
5 **FIRST CAUSE OF ACTION**

6 **For Unlawful, Unfair and Deceptive Business Practices**

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

8 **(By PLAINTIFF and the CALIFORNIA CLASS and against ALL DEFENDANTS)**

9 49. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
10 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 48
11 of this Complaint.

12 50. DEFENDANT is a "persons" as that term is defined under Cal. Bus. and Prof.
13 Code § 17021.

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

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

26 California Business & Professions Code § 17203.

27 52. By the conduct alleged herein, DEFENDANT has engaged and continues to
28 engage in a business practice which violates California law, including but not limited to
provisions of the Wage Orders, the California Labor Code, the regulations of the
Department of Labor, and the opinions of the Department of Labor Standards Enforcement,
for which this Court should issue declaratory, and other equitable relief, pursuant to Cal.
Bus. & Prof. Code § 17203, as may be necessary to prevent and remedy the conduct held to

1 constitute unfair competition.

2 53. Throughout the CLASS PERIOD, it was also DEFENDANT's uniform policy
3 and practice to make unavailable mandatory meal and rest breaks to the PLAINTIFF and the
4 Class Members. DEFENDANT's uniform practice requires PLAINTIFF and the Class
5 Members to work continuously throughout the workday without being supplied meal and/or
6 rest periods in accordance with the number of hours they worked. At all relevant times
7 during the CLASS PERIOD, DEFENDANT failed to provide any compensated work time
8 for interrupting and/or failing to provide such breaks to the PLAINTIFF and the Class
9 Members. DEFENDANT's conduct therefore violates Labor Code §§ 226.7 and 512.

10 54. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
11 member of the CLASS, restitution in the amount of one (1) hour of pay for each workday in
12 which an off-duty meal period was not timely provided for each five (5) hours of work,
13 and/or one (1) hour of pay for each workday in which a second off-duty meal period was not
14 timely provided for each ten (10) hours of work.

15 55. PLAINTIFF further demands restitution on behalf of himself and on behalf of
16 each member of the CLASS, one (1) hour of pay for each workday in which a rest period
17 was not timely provided as required by law.

18 56. By and through the unfair and unlawful business practices described herein
19 above, DEFENDANT has obtained valuable property, money, and services from the
20 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them
21 of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
22 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and equitable
23 relief is necessary to prevent and remedy this unfair competition.

24 57. All the acts described herein as violations of, among other things, the
25 California Labor Code, California Code of Regulations, and the Industrial Welfare
26 Commission Wage Orders, are unlawful, are in violation of public policy, are immoral,
27 unethical, oppressive, and unscrupulous, and are likely to deceive employees, as herein
28 alleged, and thereby constitute deceptive, unfair and unlawful business practices in violation

1 of Cal. Bus. and Prof. Code § 17200 et seq.

2 58. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further
3 entitled to, and do, seek a declaration that the above described business practices are
4 deceptive unfair and/or unlawful.

5 59. The practices herein alleged presently continue to occur unabated. As a result
6 of the unfair and unlawful business practices described above, PLAINTIFF, and the other
7 members of the CALIFORNIA CLASS, have suffered legal and economic harm.

8
9 **SECOND CAUSE OF ACTION**

10 **For Failure To Pay Overtime Compensation**

11 **[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

12 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

13 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR
14 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,
15 paragraphs 1 through 59 of this Complaint.

16 61. Cal. Lab. Code § 510 states in relevant part:

17 Eight hours of labor constitutes a day's work. Any work in excess of eight
18 hours in one workday and any work in excess of 40 hours in any one
19 workweek and the first eight hours worked on the seventh day of work in any
20 one workweek shall be compensated at the rate of no less than one and one-
21 half times the regular rate of pay for an employee. Any work in excess of 12
22 hours in one day shall be compensated at the rate of no less than twice the
23 regular rate of pay for an employee. In addition, any work in excess of eight
24 hours on any seventh day of a workweek shall be compensated at the rate of
25 no less than twice the regular rate of pay of an employee.

26 62. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of
27 labor is entitled to one day's rest therefrom in seven."

28 63. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his
employees to work more than six days in seven."

64. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the
overtime rate of compensation required to be paid to a nonexempt full-time salaried
employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly

1 salary."

2 65. Cal. Lab. Code § 1194 states:

3 Notwithstanding any agreement to work for a lesser wage, any employee
4 receiving less than the legal minimum wage or the legal overtime
5 compensation applicable to the employee is entitled to recover in a civil action
6 the unpaid balance of the full amount of this minimum wage or overtime
7 compensation, including interest thereon, reasonable attorney's fees, and costs
8 of suit.

9 66. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the
10 standard conditions of labor fixed by the commission shall be the maximum hours of work
11 and the standard conditions of labor for employees. The employment of any employee for
12 longer hours than those fixed by the order or under conditions of labor prohibited by the
13 order is unlawful."

14 67. In addition, Labor Code Section 558 provides:

- 15 (a) Any employer or other person acting on behalf of an employer
16 who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial
18 Welfare Commission shall be subject to a civil penalty as follows:
19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
21 addition to an amount sufficient to recover underpaid wages.
22 (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was
24 underpaid in addition to an amount sufficient to recover underpaid wages
25 (3) Wages recovered pursuant to this section shall be paid to the
26 affected employee.
27 (b) If upon inspection or investigation the Labor Commissioner determines
28 that a person had paid or caused to be paid a wage for overtime work in
violation of any provision of this chapter, or any provision regulating hours
and days of work in any order of the Industrial Welfare Commission, the
Labor Commissioner may issue a citation. The procedures for issuing,
contesting, and enforcing judgments for citations or civil penalties issued by
the Labor Commissioner for a violation of this chapter shall be the same as
those set out in Section 1197.1.
(c) The civil penalties provided for in this section are in addition to any other
civil or criminal penalty provided by law.

29 68. DEFENDANT has intentionally and uniformly designated certain employees
30 as "exempt" employees, by their job title and without regard to DEFENDANT's realistic
31 expectations and actual overall requirements of the job, including the PLAINTIFF and the
32 other members of the CALIFORNIA LABOR SUB-CLASS who worked on the production
33 side of DEFENDANT's business. This was done in an illegal attempt to avoid payment of

1 overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
2 Commission requirements.

3 69. For an employee to be exempt as an "outside salesperson," all the following
4 criteria must be met and DEFENDANT has the burden of proving that:

- 5 (a) The employee's primary duty must be making sales as defined to include any
6 sale, exchange, contract to sell, consignment sale, shipment for sale, or other
7 disposition; or
- 8 (b) The employee must obtain orders or contracts for services or for the use of
9 facilities for which a consideration will be paid by the client or customer; and,
- 10 (c) The employee must customarily and regularly spend more than half the work
11 time away from the employer's place of business engaged in sales-related
12 activity; and,
- 13 (d) The employee must be primarily engaged in duties which meet the test of
14 exemption.

15 No member of the CALIFORNIA LABOR SUB-CLASS was or is an outside salesperson
16 because they all fail to meet the requirements of being an "outside salesperson" within the
17 meaning of the applicable Wage Order.

18 70. For an employee to be exempt as a bona fide "executive," all the following
19 criteria must be met and DEFENDANT has the burden of proving that:

- 20 (a) The employee's primary duty must be management of the enterprise, or of a
21 customarily recognized department or subdivision; and,
- 22 (b) The employee must customarily and regularly direct the work of at least two
23 (2) or more other employees; and,
- 24 (c) The employee must have the authority to hire and fire, or to command
25 particularly serious attention to his or his recommendations on such actions
26 affecting other employees; and,
- 27 (d) The employee must customarily and regularly exercise discretion and
28 independent judgment; and,

- 1 (e) The employee must be primarily engaged in duties which meet the test of
2 exemption.

3 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because
4 they all fail to meet the requirements of being an "executive" within the meaning of the
5 applicable Wage Order.

6 71. For an employee to be exempt as a bona fide "administrator," all of the
7 following criteria must be met and DEFENDANT has the burden of proving that:

- 8 (a) The employee must perform office or non-manual work directly related to
9 management policies or general business operation of the employer; and,
10 (b) The employee must customarily and regularly exercise discretion and
11 independent judgment; and,
12 (c) The employee must regularly and directly assist a proprietor or an exempt
13 administrator; or,
14 (d) The employee must perform, under only general supervision, work requiring
15 special training, experience, or knowledge, or,
16 (e) The employee must execute special assignments and tasks under only general
17 supervision; and,
18 (f) The employee must be primarily engaged in duties which meet the test of
19 exemption.

20 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
21 they all fail to meet the requirements for being an "administrator" under the applicable
22 Wage Order.

23 72. The Industrial Welfare Commission, in Wage Order 1-2001 and 4-2001, at
24 section (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be
25 complied with to place an employee in the "professional" exempt category. For an
26 employee to be exempt as a bona fide "professional," all the following criteria must be met
27 and DEFENDANT has the burden of proving that:

- 28 (a) The employee is primarily engaged in an occupation commonly recognized as

a learned or artistic profession. For the purposes of this subsection, “learned or artistic profession” means an employee who is primarily engaged in the performance of:

- 1) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part or necessarily incident to any of the above work; or,
- 2) Work that is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee or work that is an essential part of or incident to any of the above work; and,
- 3) Whose work is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be standardized in relation to a given period of time.

(b) The employee must customarily and regularly exercise discretion and independent judgment; and,

(c) The employee earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment.

No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they all fail to meet the requirements of being a "professional" within the meaning of the applicable Wage Order.

73. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not fit the definition of an exempt outside salesperson, executive, administrative, or professional employee because:

- 1 (a) They did not work as outside salespeople, executives or administrators; and,
2 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
3 members of the CALIFORNIA LABOR SUB-CLASS because they did not
4 meet all the applicable requirements to work under the professional exemption
5 for the reasons set forth above in this Complaint.

6 74. During the class period, the PLAINTIFF, and the other members of the
7 CALIFORNIA LABOR SUB-CLASS, worked more than eight (8) hours in a workday, forty
8 (40) hours in a workweek, and/or worked on the seventh (7th) consecutive day of a
9 workweek.

10 75. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the
11 other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the
12 hours they have worked in excess of the maximum hours permissible by law as required by
13 Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of
14 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact
15 work, overtime hours.

16 76. By virtue of DEFENDANT's unlawful failure to pay additional compensation
17 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
18 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR
19 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts
20 which are presently unknown to them and which will be ascertained according to proof at
21 trial.

22 77. DEFENDANT knew or should have known that the PLAINTIFF, and the
23 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt
24 and DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
26 policy, practice and procedure.

27 78. Therefore, PLAINTIFF, and the other members of the CALIFORNIA
28 LABOR SUB-CLASS, request recovery of overtime compensation according to proof,

1 interest, costs, as well as the assessment of any statutory penalties against DEFENDANT, in
 2 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime
 3 compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-
 4 CLASS who have terminated their employment, these employees would also be entitled to
 5 waiting time penalties under Labor Code § 203, which penalties are sought herein, because
 6 DEFENDANT's failure to pay such overtime wages was willful. Further, PLAINTIFF, and
 7 the other members of the CALIFORNIA LABOR SUB-CLASS, are entitled to seek and
 8 recover statutory costs, and therefore request statutory costs as well.

9 79. In performing the acts and practices herein alleged in violation of labor laws
 10 and refusing to provide the requisite overtime compensation, DEFENDANT acted and
 11 continue to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and
 12 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious
 13 and utter disregard of their legal rights, or the consequences to them, and with the despicable
 14 intent of depriving them of their property and legal rights and otherwise causing them injury
 15 in order to increase corporate profits at the expense of the PLAINTIFF and the members of
 16 the CALIFORNIA CLASS.

17 18 **THIRD CAUSE OF ACTION**

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

20 **[Cal. Lab. Code § 226]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

22 80. PLAINTIFF, and the other members of the CALIFORNIA LABOR
 23 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,
 24 paragraphs 1 through 79 of this Complaint.

25 81. Cal. Labor Code § 226 provides that an employer must furnish employees
 26 with an "accurate itemized statement in writing" showing:

- 27 (1) gross wages earned,
 28 (2) total hours worked by the employee, except for any employee whose
 compensation is solely based on a salary and who is exempt from payment of
 overtime under subdivision (a) of Section 515 or any applicable order of the

1 Industrial Welfare Commission,

2 (3) the number of piecerate units earned and any applicable piece rate if the employee
is paid on a piece-rate basis,

3 (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item,

4 (5) net wages earned,

(6) the inclusive dates of the period for which the employee is paid,

5 (7) the name of the employee and his or her social security number, except that by
January 1, 2008, only the last four digits of his or her social security number or an
employee identification number other than a social security number may be shown on
6 the itemized statement,

7 (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 the employee.

8
9 82. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that
10 DEFENDANT failed to provide an accurate wage statement in writing that properly and
11 accurately itemized the number of hours worked by the PLAINTIFF, and the other members
12 of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay and the
effective overtime rates of pay.

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

25 FOURTH CAUSE OF ACTION

26 **Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. ("FLSA")**

27 **(By PLAINTIFF and the COLLECTIVE CLASS against DEFENDANT)**

28 84. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and

1 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 83 of this
2 Complaint.

3 85. DEFENDANT is engaged in communication, business, and transmission between
4 the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

5 86. The PLAINTIFF further brings the Fourth Cause of Action on behalf of a
6 COLLECTIVE CLASS in accordance with 29 U.S.C. §216 which consists of all Sales
7 Representatives employed in California by DEFENDANT during the period three (3) years
8 prior to the filing of the Complaint and ending on the date as determined by the Court, and who
9 performed work in excess of forty (40) hours in one week (the "COLLECTIVE CLASS").

10 87. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
11 violations of the FLSA.

12 88. 29 U.S.C. § 207(a)(1) provides in pertinent part:

13 Except as otherwise provided in this section, no employer shall employ any of his
14 employees who in any workweek is engaged in commerce or in the production
15 of goods for commerce, or is employed in an enterprise engaged in commerce or
16 in the production of goods for commerce, for a workweek longer than forty hours
unless such employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the regular
rate at which he is employed.

17 89. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does
18 not apply to:

19 any employee employed in a bona fide executive, administrative, or professional
20 capacity (including any employee employed in the capacity of academic
21 administrative personnel or teacher in elementary or secondary schools), or in the
22 capacity of outside salesman (as such terms are defined and delimited from time
23 to time by regulations of the Secretary, subject to the provisions of the
24 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee
25 of a retail or service establishment shall not be excluded from the definition of
employee employed in a bona fide executive or administrative capacity because
of the number of hours in his workweek which he devotes to activities not
directly or closely related to the performance of executive or administrative
activities, if less than 40 per centum of his hours worked in the workweek are
devoted to such activities).

26 90. DEFENDANT has willfully engaged in a widespread pattern and practice of
27 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
28 employees as "exempt" employees, by their job title and without regard to DEFENDANT's
realistic expectations and actual overall requirements of the job, including the PLAINTIFF and

1 the other members of the COLLECTIVE CLASS who worked on the production side of
2 DEFENDANT's business enterprise. This was done in an illegal attempt to avoid payment of
3 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
4 requirements.

5 91. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the
6 PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime
7 compensation for all overtime hours actually worked, at a rate not less than one and one-half
8 times their regular rate of pay for all hours worked in excess of forty (40) hours in any
9 workweek. DEFENDANT's failure to pay overtime wages as required by federal law was
10 willful and not in good faith.

11 92. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
12 exempt status of an employee. The exempt or nonexempt status of any particular employee
13 must be determined on the basis of whether the employee's salary and duties meet the
14 requirements of the regulations in this part.

15 93. The exemptions of the FLSA as listed in section 13(a), and as explained by 29
16 C.F.R. 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE
17 CLASS, because their work consists of non-management, production line labor performed with
18 skills and knowledge acquired from on-the-job training, rather than from the prolonged course
19 of specialized intellectual instruction required for exempt learned professional employees such
20 as medical doctors, architects and archeologists. Sales Representatives either do not hold an
21 advanced degree, have not taken any prolonged course of specialization, and/or have attained
22 the vast majority of the skills they use as employees of DEFENDANT from on-the-job training.

23 94. For an employee to be exempt as a bona fide "executive," all the following
24 criteria must be met and DEFENDANT has the burden of proving that:

- 25 (a) The employee's primary duty must be management of the enterprise, or of a
26 customarily recognized department or subdivision;
- 27 (b) The employee must customarily and regularly direct the work of at least two (2)
28 or more other employees;

1 (c) The employee must have the authority to hire and fire, or to command
2 particularly serious attention to his or his recommendations on such actions
3 affecting other employees; and,

4 (d) The employee must be primarily engaged in duties which meet the test of
5 exemption.

6 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet
7 the requirements of being an "executive " under section 13 of the FLSA and 29 C.F.R. 541.100.
8 Moreover, none of the members of the COLLECTIVE CLASS managed the work of two or
9 more other employees in a customarily recognized department or subdivision of the employer,
10 and whose recommendations as to the hiring, firing, advancement, promotion or other change
11 of status of the other employees were given particular weight and therefore, they do not qualify
12 for the executive exemption.

13 95. For an employee to be exempt as a bona fide "administrator,"all of the following
14 criteria must be met and DEFENDANT has the burden of proving that:

15 (a) The employee must perform office or non-manual work directly related to
16 management or general business operation of the employer or the employer's
17 customers;

18 (b) The employee must customarily and regularly exercise discretion and
19 independent
20 judgment with respect to matters of significance; and,

21 (c) The employee must regularly and directly assist a proprietor or an exempt
22 administrator; or,

23 (d) The employee must perform under only general supervision, work requiring
24 special training, experience, or knowledge; and,

25 (e) The employee must be primarily engaged in duties which meet the test of
26 exemption.

27 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
28 meet the requirements of for being an "administrator" under section 13(a) of the FLSA and 29

1 C.F.R. 541.300.

2 96. For an employee to be exempt as a bona fide "professional", the
3 DEFENDANT has the burden of proving that the primary duty of the employee is the
4 performance of work that:

5 (a) Requires knowledge of an advanced type in a field of science or learning
6 customarily acquired by a prolonged course of specialized intellectual instruction;

7 or

8 (b) Requires invention, imagination, originality or talent in a recognized field of
9 artistic or creative endeavor.

10 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet
11 the requirements of being an "professional" within the meaning of 29 CFR 541.300.

12 Further, the PLAINTIFF and the other Sales Representatives operated under intense scrutiny
13 from management and are strictly dictated by written guidelines and standardized procedures.

14 97. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other
15 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a workweek.

16 98. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other
17 members of the COLLECTIVE CLASS, overtime compensation for the hours they have worked
18 in excess of the maximum hours permissible by law as required by section 207 of the FLSA,
19 even though the PLAINTIFF, and the other members of the COLLECTIVE CLASS, were
20 regularly required to work, and did in fact work, overtime hours.

21 99. For purposes of the Fair Labor Standards Act, the employment practices of
22 DEFENDANT were and are uniform throughout the United States in all respects material to the
23 claims asserted in this Complaint.

24 100. There are no other exemptions applicable to the PLAINTIFF and/or to members
25 of the COLLECTIVE CLASS.

26 101. As a result of DEFENDANT's failure to pay overtime compensation for
27 overtime hours worked, as required by the FLSA, the PLAINTIFF and the members of the
28 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

102. Therefore, the PLAINTIFF demands that he and the members of the COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour of overtime worked in any workweek for which they were not compensated, plus interest and statutory costs as provided by law.

PRAYER

WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) An order requiring DEFENDANT to correctly calculate and pay all wages and all sums unlawfully withheld from compensation due to the PLAINTIFF and the other members of the CALIFORNIA CLASS; and,
- C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to the PLAINTIFF and to the other members of the CALIFORNIA CLASS according to proof.
- D) An order temporarily, preliminarily, and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- A) That the Court certify the Second and Third Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- B) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;

- 1 C) The wages of all terminated employees from the CALIFORNIA LABOR
2 SUB-CLASS as a penalty from the due date thereof at the same rate until paid
3 or until an action therefor is commenced, in accordance with Cal. Lab. Code §
4 203; and,
- 5 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
6 period in which a violation occurs and one hundred dollars (\$100) per each
7 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a
8 subsequent pay period, not exceeding an aggregate penalty of four thousand
9 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

10 3. On behalf of the COLLECTIVE CLASS:

- 11 A) That the Court certify the Fourth Cause of Action asserted by the
12 COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);
- 13 B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and
14 procedures complained of herein violated provisions of the Fair Labor
15 Standards Act;
- 16 C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS
17 recover compensatory damages and an equal amount of liquidated damages as
18 provided under the law and in 29 U.S.C. § 216(b).

19 4. On all claims:

- 20 A) An award of interest, including prejudgment interest at the legal rate;
- 21 B) An award of penalties and cost of suit, as allowable under the law. Neither
22 this prayer nor any other allegation or prayer in this Complaint is to be
23 construed as a request, under any circumstance, that would result in a request
24 for attorneys' fees or costs available under Cal. Lab. Code § 218.5; and,
- 25 C) Such other and further relief as the Court deems just and equitable.

26 Dated: December 15, 2010 BLUMENTHAL, NORDREHAUG & BHOWMIK

27 By: /s/ Norman B. Blumenthal
28 Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: December 15, 2010 BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOE C VALADEZ

(b) County of Residence of First Listed Plaintiff Orange County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman Blumenthal, Blumenthal, Nordrehaug & Bhowmik,
2255 Calle Clara, La Jolla, CA, 92037, (858)551-1223

DEFENDANTS

MERCK SHARP & DOHME CORP., solely and exclusively as successor in interest to SCHERING-PLOUGH CORP.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'10CV2595 WQHWVG

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety-Health ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark LABOR ☒ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.)
 29 U.S.C. § 216(b) (Fair Labor Standards Act) and 28 U.S.C. § 1332 (CAFA Jurisdiction)

Brief description of cause:

Claims for unpaid overtime compensation under Federal and California law

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**
 5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/16/2010

SIGNATURE OF ATTORNEY OF RECORD

/s/ Norman B. Blumenthal

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____