

JUN 17 2015

Clerk of the Superior Court
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11 Attorneys for Representative Plaintiff
12 And the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN MATEO**

CIV 534295

15 FRANCISCO FLORES, individually,
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 vs.

20 MEDIFIT CORPORATE SERVICES,
21 INC., and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND RESTITUTION**

[Jury Trial Demanded]

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24 Representative Plaintiff alleges as follows:

25 **PRELIMINARY STATEMENT**

26 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages
27 (including overtime wages), and interest thereon, reimbursement of business expenses, rest and
28 meal period penalties, waiting time penalties, liquidated damages and other penalties, injunctive
and other equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, Title 8 of the
California Code of Regulations, California Labor Code §§ 200-204, inclusive, 221, 223, 226,
226.7, 400-410, 510, 512, 1174, 1194, 1194.2, 1197 and 2802, California Business and
Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5. The

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1 4. According to findings of the California Legislature, numerous studies have linked
2 long work hours to increased rates of accident and injury and a loss of family cohesion when
3 either or both parents are kept away from home for extended periods of time, on either a daily or
4 weekly basis.

5 5. Defendant provides on-site health and fitness services to its clients which include
6 corporations, medical fitness centers, and commercial fitness clubs. Within the Class Period,
7 Defendant has provided its services to numerous clients throughout California. In so doing,
8 Defendant has employed hundreds, if not thousands, of individuals in recent years alone as
9 Fitness Instructors, non-overtime-exempt employees who are entitled to, *inter alia*, be paid for
10 all hours worked, at their regular rate of pay, to full and uninterrupted meal and rest periods, to
11 be reimbursed for all business expenses related to MediFit's operations, and to be paid said
12 wages and reimbursed for said business-related expenses in a timely manner.

13 6. Defendant's Fitness Instructors are responsible for facilitating MediFit's clients'
14 health and fitness goals through the instruction of various class formats and personal training
15 sessions.

16 7. Group Exercise Instructors often teach several classes a day, and are responsible
17 for performing additional pre- and post-session duties required for the performance of their
18 positions with and for the benefit of Defendant.

19 8. Personal Trainers often hold several sessions a day, and are responsible for
20 performing additional pre- and post-session duties required for the performance of their positions
21 with and for the benefit of Defendant.

22 9. Notwithstanding the foregoing, no matter how many hours are spent by Fitness
23 Instructors performing tasks for the benefit of this employer, Fitness Instructors are paid only for
24 the length of time of the exercise instruction.

25 10. Moreover, the Representative Plaintiff is informed and believes and, based
26 thereon, alleges that MediFit knew and/or should have known that its Fitness Instructors are and,
27 at all times during the Class Period, were performing work off-premises (e.g., at home, at
28 continuing education/training programs, etc.) for which Class Members were not being

1 compensated as well as incurring business-related expenses for which they were not being
2 reimbursed by Defendant.

3 11. Despite actual knowledge of these facts and legal mandates, Defendant has
4 enjoyed an advantage over its competition and has disadvantaged its workers by electing not to
5 pay all wages due and/or provide reimbursement of business-related expenses to its Fitness
6 Instructors, and by failing to offer all required meal and rest periods.

7 12. The Representative Plaintiff is informed and believes and, based thereon, alleges
8 that officers of MediFit knew of these facts and legal mandates, yet, nonetheless, repeatedly
9 authorized and/or ratified the violation of the laws cited herein.

10 13. Despite Medifit's knowledge of the Class' entitlement to wages for all hours
11 worked and expense reimbursements for all applicable work periods, MediFit failed and
12 continues to fail to provide the same thereto in willful violation of California state statutes,
13 Industrial Welfare Commission Orders and Title 8 of the California Code of Regulations. This
14 action is brought to redress and end this long-time pattern of unlawful conduct.

15
16 **JURISDICTION AND VENUE**

17 14. This Court has jurisdiction over the Representative Plaintiff's and Class
18 Members' claims for unpaid wages, expenses and/or penalties under, *inter alia*, Title 8 of the
19 California Code of Regulations, California Labor Code §§ 200-204, inclusive, 221, 223, 226,
20 226.7, 400-410, 510, 1174, 1194, 1194.2, 1197 and 2802, California Business and Professions
21 Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5.

22 15. This Court has further jurisdiction over the Representative Plaintiff's and Class
23 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from
24 Defendant's unfair, unlawful and/or fraudulent business practices under Business & Professions
25 Code §§ 17203 and 17204.

26 16. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
27 Procedure § 395(a). Defendant transacts business in the County of San Mateo, has agents, and is
28 otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts

1 alleged herein have a direct effect on the Representative Plaintiff and those similarly situated
2 within the State of California and within San Mateo County. Defendant offers its services and
3 has employed numerous Class Members in San Mateo County, as well as in other counties
4 within the State of California.

5
6 **PLAINTIFF**

7 17. Representative Plaintiff Francisco Flores is a natural person and was, during the
8 relevant time period identified herein, employed by MediFit Corporate Services, Inc., within the
9 State of California, as a Fitness Instructor.

10 18. In said position, the Representative Plaintiff was repeatedly paid a substandard
11 wage insofar as he was denied full pay for all hours worked and reimbursement for expenses
12 made on behalf of Defendant. The Representative Plaintiff is informed and believes, and based
13 thereon, alleges that this conduct of MediFit is/was commonplace at every location where
14 Defendant's services were offered and/or provided.

15 19. As used throughout this Complaint, the terms "Class Members" and/or the
16 "Plaintiff Class" refer to the named plaintiff herein as well as each and every person eligible for
17 membership in the Plaintiff Class, as further described and defined herein.

18
19 **DEFENDANT**

20 20. At all times herein relevant, defendant MediFit Corporate Services, Inc. was, and
21 is, a corporation doing business within this judicial district and elsewhere across the State of
22 California.

23 21. The Representative Plaintiff is informed and believes and, on that basis, alleges
24 that Defendant has, and does, directly and/or indirectly, employed and/or exercised control over
25 the wages, hours and working conditions of the Representative Plaintiff and members of the
26 Class.

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27. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the class are so numerous that joinder of all members is impractical, if not impossible, insofar as the Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members exceeds hundreds of individuals. Membership in the Plaintiff Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.

Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. These common questions include, but are not necessarily limited to:

- 1) Whether Defendant violated one or more of California’s Wage Orders, the California Labor Code and/or California Business and Professions Code §§ 17200, *et seq.* by failing to pay all wages due to its Fitness Instructors;
- 2) Whether Defendant violated California Labor Code §§ 400-410 and/or § 2802 by requiring its Fitness Instructors to pay all or a portion of the normal business expenses of Defendant;
- 3) Whether Defendant violated and/or continues to violate, California Labor Code § 1174 by failing to keep accurate records of its Fitness Instructors’ hours of work;
- 4) Whether Defendant violated, and continues to violate California Labor Code §§ 201-203 by failing to pay all wages due and owing at the time particular Class Members’ employment with Defendant terminated;
- 5) Whether Defendant violated and/or continues to violate California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period;
- 6) Whether Defendant violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide duty-free meal and/or rest periods to Representative Plaintiff and the Class Members.

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- b. Typicality: The Representative Plaintiff’s claims are typical of the claims of the Plaintiff Class. The Representative Plaintiff and all members of the class sustained injuries and damages arising out of and caused by MediFit’s common course of conduct in violation of state law, as alleged herein.

- c. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for class members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual class member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other class members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

28. As described herein, MediFit has, for years, knowingly failed to adequately compensate those Fitness Instructors within the class definition identified above for wages due under California Labor Code §§ 200, *et seq.* and applicable California Wage Orders, thereby enjoying a significant competitive edge over other companies within its industry.

29. Moreover, Defendant has failed to provide the Plaintiff Class with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts exceeding five hours.

30. Even upon the termination or resignation of the employment of Representative Plaintiff and numerous other Class Members during the class period, MediFit declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

1 31. Moreover, according to Defendant’s policies, all Class Members were required to
2 incur business expenses related to the operations of Defendant.

3 32. Moreover, California Labor Code §§ 201 and 202 require MediFit to pay all
4 wages due to members of the Class immediately upon discharge. California Labor Code § 203
5 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a
6 penalty, continue to pay the subject employees’ wages until the back wages are paid in full or an
7 action is commenced, for a period not to exceed 30 days of wages.

8 33. Furthermore, despite its knowledge of the Representative Plaintiff’s and the Class
9 Members’ entitlement to pay for all work performed, MediFit violated California Labor Code §
10 1174(d) by failing to provide or require the use, maintenance or submission of time records by
11 members of the Class that reflect all hours worked thereby.

12 34. Finally, MediFit failed to provide Representative Plaintiff and members of the
13 Class with accurate semi-monthly itemized wage statements of the total number of hours worked
14 by each, and all applicable hourly rates in effect during the pay period, in violation of California
15 Labor Code § 226. In so doing, Defendant has not only failed to pay its workers the full amount
16 of compensation due, it has, until now, effectively shielded itself from its employees’ scrutiny
17 for its unlawful conduct by concealing the magnitude (the full number of hours worked) and the
18 financial impact of its wrongdoing.

19 35. Representative Plaintiff and all persons similarly situated who comprise the Class
20 are entitled to unpaid compensation, yet, to date, have not received such compensation, despite
21 the severance of their employment with MediFit.

22 36. More than 30 days have passed since certain class members have left MediFit’s
23 employ.

24 37. As a consequence of MediFit’s willful conduct in not paying compensation for all
25 hours worked, certain Class Members are entitled to 30 days wages as a penalty, pursuant to
26 California Labor Code § 203, together with attorneys’ fees and costs.

27 38. As a direct and proximate result of MediFit’s unlawful conduct, as set forth
28 herein, Representative Plaintiff and members of the Class identified herein have sustained

1 damages, as described above, including loss of earnings for hours worked on behalf of
2 Defendant, missed meal periods, and missed rest periods, in an amount to be established at trial.
3 As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
4 Representative Plaintiff and many Class Members herein are entitled to recover "waiting time"
5 penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
6 semi-monthly statements of hours worked and all applicable hourly rates (pursuant to California
7 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
8 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class
9 Members are entitled to recover attorneys' fees and costs, pursuant to the California Labor Code
10 and/or California Civil Code § 1021.5, among other authorities.

11
12 **FIRST CAUSE OF ACTION**
13 **UNLAWFUL FAILURE TO PAY WAGES**
14 **(Labor Code §§ 200 *et seq.*, 510, 1194 and 1198)**

15 39. Representative Plaintiff incorporates in this cause of action each and every
16 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
17 herein.

18 40. During the Class Period, Representative Plaintiff and the Class Members
19 frequently worked in excess of eight hours in a workday and/or forty hours in a workweek. The
20 precise number of overtime hours will be proven at trial.

21 41. During said time period, MediFit refused to compensate Representative Plaintiff
22 and the Class Members for some and/or all of the wages (including overtime wages) earned, in
23 violation of the applicable California Wage Order, Title 8 of the California Code of Regulations
24 and the provisions of the California Labor Code.

25 42. At all relevant times, MediFit was aware of, and was under a duty to comply with
26 the wage and overtime provisions of the California Labor Code, including, but not limited to
27 California Labor Code §§ 200, *et seq.*, 510, 1194 and 1198.

28 43. By refusing to properly compensate Representative Plaintiff and the Class
Members for wages earned (either at these Class Members' regular rate of pay and/or at their

1 applicable overtime rates) and/or at a level sufficient to satisfy California's minimum wage
2 provisions, MediFit violated the California Labor Code, as well as Title 8 of the California Code
3 of Regulations and the applicable IWC Wage Order.

4 44. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Representative Plaintiff and the Class Members have sustained damages, including loss
6 of earnings for hours worked, including overtime hours worked, on behalf of Defendant, in an
7 amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

8
9 **SECOND CAUSE OF ACTION**
10 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
11 **(California Labor Code §§ 406 and 2802)**

12 45. Representative Plaintiff incorporates in this cause of action each and every
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
14 herein.

15 46. During the class period, MediFit required the Representative Plaintiff and
16 members of the Class to incur expenses related to the business operations of Defendant. These
17 expenses include(d), without limitation, costs related to travel, continuing education and/or
18 fitness certification, licenses, materials, and equipment used in exercise instruction sessions.

19 47. These expenditures were incurred in direct consequence of the discharge of the
20 duties of Representative Plaintiff and members of the Class, or of their obedience to the
21 directions of the employer and have not yet been reimbursed by Defendant.

22 48. At all relevant times, MediFit was aware of and was under a duty to comply with
23 various provisions of the California Labor Code, including, but not necessarily limited to §§ 406
24 and 2802(a).

25 49. California Labor Code § 406 provides:

26 Any property put up by an employee, or applicant as a part of the contract
27 of employment, directly or indirectly, shall be deemed to be put up as a
28 bond and is subject to the provisions of this article whether the property is
put up on a note or as a loan or an investment and regardless of the
wording of the agreement under which it is put up.

50. California Labor Code § 2802(a) provides:

1 An employer shall indemnify his or her employee for all necessary
2 expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the
4 directions of the employer, even though unlawful, unless the employee, at
5 the time of obeying the directions, believed them to be unlawful.

6 51. By requiring the Representative Plaintiff and members of the Class to incur
7 uncompensated expenses in direct consequence of the discharge of their duties, Representative
8 Plaintiff and members of the Class were forced and/or brought to contribute to the capital and
9 expenses of Defendant's business which is legally a cash bond and which must be refunded by
10 Defendant to each Class Member.

11 52. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
12 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
13 attorneys' fees to collect reimbursement.

14 53. Therefore, Representative Plaintiff demands reimbursement for expenditures or
15 losses incurred by himself and other members of the Class in direct consequence of the discharge
16 of his or their duties, or of his or their obedience to the directions of the employer, plus return of
17 all cash bonds or other coerced investments in the business of Defendant, with interest, at the
18 statutory rate, plus attorneys' fees.

19 **THIRD CAUSE OF ACTION**
20 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
21 **(California Labor Code §§ 226.7 and 512)**

22 82. Representative Plaintiff incorporates in this cause of action each and every
23 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
24 herein.

25 83. At all relevant times, Defendant was aware of and was under a duty to comply
26 with California Labor Code §§ 226.7 and 512.

27 84. California Labor Code §226.7 provides:

- 28 (a) No employer shall require any employee to work during any meal
or rest period mandated by an applicable order of the Industrial
Welfare Commission.

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(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

85. Moreover, California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

86. By failing to consistently provide uninterrupted and unrestricted meal and rest periods to Representative Plaintiff and Class Members, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12 of the applicable IWC Wage Order.

87. Section 11 of the applicable Wage Order provides:

- a. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes
- c. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

88. Moreover, Section 12 of the applicable Wage Order provides:

- a. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
- b. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

1 89. By failing to consistently (1) provide meal breaks within the first five hours of a
2 work shift, (2) provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit
3 ten-minute rest periods to Representative Plaintiff and Class Members, Defendant violated the
4 California Labor Code and §§ 11 and 12 of the applicable IWC Wage Order.

5 90. Even where Defendant's records specifically evidence that no meal and/or rest
6 periods were provided to Representative Plaintiff and Class Members, Defendant refuses to
7 provide these employees with one hour of compensation for these respective violations as
8 mandated by California law. Representative Plaintiff is informed and believes and, on that basis,
9 alleges that Defendant has never paid the one hour of compensation to any Class Member.

10 91. As a direct and proximate result of Defendant's unlawful conduct, as set forth
11 herein, Representative Plaintiff and Class Members have sustained damages, including lost
12 compensation resulting from missed meal and/or rest periods, in an amount to be established at
13 trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
14 herein, certain Class Members are entitled to recover "waiting time" and other penalties, in an
15 amount to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to
16 statute.

17
18 **FOURTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
20 **(California Labor Code §§ 226 and 1174)**

21 92. Representative Plaintiff incorporates in this cause of action each and every
22 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
23 herein.

24 93. California Labor Code § 226(a) provides:

25 Each employer shall semimonthly, or at the time of each payment of
26 wages, furnish each of his or her employees either as a detachable part of
27 the check, draft or voucher paying the employee's wages, or separately
28 when wages are paid by personal check or cash, an itemized wage
statement in writing showing: (1) gross wages earned; (2) total number of
hours worked by each employee whose compensation is based on an
hourly wage; (3) all deductions; provided, that all deductions made on
written orders of the employee may be aggregated and shown as one item;
(4) net wages earned; (5) the inclusive date of the period for which the

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employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

94. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code Regs. § 11010, *et seq.*).

95. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees

96. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

97. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under these provisions on behalf of himself and the Class.

98. MediFit failed to provide timely, accurate itemized wage statements to Representative Plaintiff and the Class in accordance with Labor Code § 226(a) and the applicable IWC Wage Order. None of the statements provided by Defendant have accurately and/or completely reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

99. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained damages in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

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FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

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3 100. Representative Plaintiff incorporates in this cause of action each and every
4 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
5 herein.

6 101. California Labor Code § 203 provides that:

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

13 102. Representative Plaintiff and numerous Class Members were employed by MediFit
14 during the Class Period, employment which was thereafter voluntarily or involuntarily severed,
15 yet were not paid all wages due immediately upon the involuntary termination or within seventy-
16 two hours of the voluntary termination of their respective employment positions with Defendant.
17 Said non-payment and/or untimely payment was the direct and proximate result of a willful
18 refusal to do so by MediFit.

19 103. More than thirty days has elapsed since Representative Plaintiff and these
20 particular Class Members were terminated and/or resigned from Defendant's employ.

21 104. As a direct and proximate result of Defendant's willful conduct in failing to pay
22 said Class Members for all hours worked, Representative Plaintiff and certain Class Members are
23 entitled to recover "waiting time" penalties of thirty days' wages, pursuant to California Labor
24 Code § 203, in an amount to be established at trial, together with attorneys' fees and costs.

SIXTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(California Business & Professions Code §§ 17200-17208)

25
26 105. Representative Plaintiff incorporates in this cause of action each and every
27 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
28 herein.

1 recover in a civil action the unpaid balance of the full amount of
2 this minimum wage or overtime compensation, including interest
thereon, reasonable attorney's fees, and costs of suit.

3 113. During the class period, Defendant employed persons within the Plaintiff Class
4 who did not receive the applicable minimum wage for all hours worked on Defendant's behalf.
5 Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

6 114. As a direct and proximate result of Defendant's unlawful conduct, as set forth
7 herein, certain Class Members have sustained damages, including loss of earnings for hours
8 worked on behalf of Defendant, in an amount to be established at trial, and are entitled to recover
9 attorneys' fees and costs of suit.

10
11 **RELIEF SOUGHT**

12 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the **Plaintiff**
13 **Class**, prays for judgment and the following specific relief against **Defendants**, jointly and
14 separately, as follows:

15 1. That the Court declare, adjudge and decree that this action is a proper class action
16 and certify the proposed class under Code of Civil Procedure § 382;

17 2. That the Court declare, adjudge and decree that Defendant violated the wage and
18 overtime provisions of the California Labor Code and the applicable California Industrial
19 Welfare Commission Wage Order as to the Representative Plaintiff and the Plaintiff Class, as
20 applicable;

21 3. That the Court declare, adjudge and decree that Defendant willfully violated its
22 legal duties to pay wages, including overtime wages and/or the applicable minimum wage, under
23 the California Labor Code and the applicable California IWC Wage Order;

24 4. That the Court declare, adjudge and decree that Defendant violated California
25 Labor Code §§ 406 and 2802(a), *inter alia*, by willfully failing to reimburse the Representative
26 Plaintiff and Class Members for expenses incurred on behalf of Defendant;

27 5. That the Court declare, adjudge and decree that Defendant violated the record
28 keeping provisions of California Labor Code §§ 226(a) and 1174(d) and section 7 of the

1 applicable IWC Wage Order as to Representative Plaintiff and members of the Class, and
2 willfully failed to provide accurate semi-monthly itemized wage statements thereto;

3 6. That the Court declare, adjudge and decree that Defendant violated California
4 Labor Code § 203 by willfully failing to pay all compensation owed at the time of the
5 termination of the employment of Representative Plaintiff and other terminated Class Members
6 or within the statutorily-permitted grace period for payment of said wages;

7 7. That the Court declare, adjudge and decree that Defendant violated California
8 Business and Professions Code §§ 17200, *et seq.*, by failing to pay Representative Plaintiff and
9 Class Members all wages due, in a timely manner and/or by failing to provide Class Members
10 with accurate and complete itemized wage statements;

11 8. That the Court make an award to the Representative Plaintiff and the Class of
12 damages and/or restitution for the amount of unpaid wages, including minimum wages and/or
13 overtime compensation, including interest thereon, and penalties in an amount to be proven at
14 trial;

15 9. That the Court make an award to the Representative Plaintiff and the Class for
16 reimbursement of all employer related expenses incurred by said Class Members;

17 10. That the Court make an award to the Representative Plaintiff and Class Members
18 of one hour of wages at each employee's regular rate of compensation for each workday a meal
19 period was not provided;

20 11. That the Court make an award to the Representative Plaintiff and Class Members
21 of one hour of wages at each employee's regular rate of compensation for each workday a rest
22 period was not authorized and permitted;

23 12. That the Court order Defendant to pay restitution to Representative Plaintiff and
24 the Class due to Defendant's unlawful activities, pursuant to California Business and Professions
25 Code §§ 17200-08;

26 13. That the Court further enjoin Defendant, ordering it to cease and desist from
27 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

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