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Superior Court of CA, County of Santa Clara
Case #1-11-CV-195373 Filing #G-64412
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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **COUNTY OF SANTA CLARA**
24 **UNLIMITED JURISDICTION**

25 GUANG TIAN, YAN NIE, JING JIAN WU,
26 ZHEN SHENG YIN, TIE QUAN MA, as
27 individuals, and MING FANG TIE, YU HONG
28 CHANG, YI WU, BAO JIE ZHANG, CHAO
HUI LIU, on Behalf of Themselves and All
Others Similarly Situated, and CHRISTOPHER
CAVALIERE AND STEVEN LEE, on behalf of
Themselves and as PAGA representatives,

Plaintiffs,

v.

MA LABORATORIES, INC., ABRAHAM C.
MA, also known as CHIH KENG MA, and
CHRISTINE RAO, also known as RUITING C.
RAO,

Defendants.

Case No. 1-11-CV-195373

**THIRD AMENDED COMPLAINT FOR
CLASSWIDE WAGE AND HOUR
VIOLATIONS AND INDIVIDUAL
WRONGFUL TERMINATION**

JURY TRIAL DEMANDED

1 Plaintiffs allege, upon personal information as to themselves and upon information and
2 belief as to all other matters, as follows:

3 1. This action is brought by Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang,
4 Chao Hui Liu, Christopher Cavaliere, and Steven Lee, individually and on behalf of all present and
5 former hourly employees of Defendant Ma Labs, Inc. in California (collectively, “the Class” or
6 “Class Members” or “PAGA Class”) for classwide wage and hour violations. This action is also
7 brought individually by Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, Ming Fang Tie, and
8 Steven Lee for wrongful termination and retaliation. Plaintiffs Guang Tian, Yan Nie, Jing Jian
9 Wu, Zhen Sheng Yin, and Tie Quan Ma also claim wage and hour violations individually. Steven
10 Lee brings suit as an individual and as a representative plaintiff under the Private Attorney General
11 Act.

12 2. This action seeks to remedy the illegal practices of Ma Labs, which deliberately and
13 uniformly cheats Plaintiffs and similarly situated low-wage workers out of hard-earned wages for
14 their work, and retaliates against those who protest unfair treatment.

15 **I. JURISDICTION AND VENUE**

16 3. This case is properly before this Court because the matter involves issues of state
17 law and all Defendants, presently and at all times relevant to this action, have conducted substantial
18 and continuous commercial activities in Santa Clara County.

19 4. Defendants’ corporate headquarters are located in Santa Clara County, making the
20 County an appropriate venue, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5.

21 **II. THE PARTIES**

22 **A. The Plaintiffs**

23 5. Plaintiff **Guang Tian** was a full-time employee for Ma Labs from approximately
24 October 1, 2007 until November 26, 2010. He worked in the Warehouse Department and made
25 \$8.50 per hour at the time of termination.

26 6. Plaintiff **Yan Nie** was a full-time employee for Ma Labs from approximately
27 February 13, 2006 until October 1, 2010. Mr. Nie had just moved to the U.S. at the time he was
28 hired by Ma Labs. Ma Labs paid him a regular rate of \$9.30 per hour at the time of termination.

1 7. Plaintiff **Jing Jian Wu** worked for Ma Labs full-time for almost 9 years, first in the
2 Inventory department, and then in the Warehouse department, from approximately January 15,
3 2002 until July 9, 2010. After getting several raises over 9 years, Mr. Wu achieved the wage of
4 \$10.25 per hour.

5 8. Plaintiff **Zhen Sheng Yin** came to the U.S. in 2000 and worked in a number of
6 restaurants before coming to Ma Labs in 2006. He worked in the Warehouse department while his
7 wife worked in the Assembly Department.

8 9. Plaintiff **Tie Quan Ma** is an individual and a resident of the State of California. Ma
9 was a full-time employee for Ma Labs from October 16, 2006 until October 1, 2010. He worked in
10 the Warehouse Department and made \$9.25 per hour at the time of termination.

11 10. Plaintiff **Ming Fang Tie** worked for Ma Labs from approximately November 28,
12 2005 until November 26, 2010. From November 2005 through February 2007 he was a “part-
13 time” employee with a schedule of 1:00 p.m. to 7:45 p.m. or 8:15 p.m. From November 2005 to
14 mid-2008 he worked in the Shipping Department, and thereafter he worked in the Warehouse
15 Department until his termination in November 2010. His last wage rate was \$9.50 per hour.

16 11. Plaintiff **Yu Hong Chang** was a full-time employee for Ma Labs from
17 approximately April 19, 2004 until January 20, 2008. She was a member of the Inventory
18 Department, although she also helped out in the Assembly department from time to time. Ms.
19 Chang resigned from Ma Labs in 2008, at which time her wage was \$9.50 per hour.

20 12. Plaintiff **Yi Wu** was a full-time employee for Ma Labs in the Inventory Department
21 for five years, from approximately November 21, 2005 until May 17, 2010. She is the sister of
22 Plaintiff Jing Jian Wu.

23 13. Plaintiff **Bao Jie Zhang** was a full-time employee for Ma Labs from approximately
24 June 24, 2009 to July 9, 2010. He started out in the Shipping Department, and then became a
25 driver in the Will-Call/Delivery Department.

26 14. Plaintiff **Chao Hui Liu** was a full-time employee for Ma Labs from approximately
27 November 5, 2007 to June 10, 2011, when he was laid off. He worked in the Warehouse
28 Department and made \$9.00 per hour.

1 15. Plaintiff **Christopher Cavaliere** worked full-time for Ma Labs for more than six
2 and a half years, from approximately February 2006 to November 2012, in the Will-Call/Delivery
3 Department. He worked initially at the will-call window for a few months, but thereafter he
4 worked as a driver.

5 16. Plaintiff Steven Lee worked full-time for Ma Labs from October 2002 to November
6 2013 as a front lobby guard / receptionist. His position was an hourly, non-exempt position. Ma
7 Labs formally terminated his employment in March 2014.

8 17. With the exception of Christopher Cavaliere, the Plaintiffs are immigrants from
9 China who are limited English proficient, speak practically no English, or speak English as a
10 second language.

11 18. All Plaintiffs were employed by Ma Labs as non-exempt hourly employees working
12 in Defendants' electronics distribution warehouse in San Jose, California. They were stable and
13 long-term employees at Ma Labs, in comparison with the turnover rate of low-wage workers, and
14 had excellent performance records.

15 **B. The Defendants**

16 19. Defendant **Ma Laboratories, Inc.** ("Ma Labs") is a privately held computer
17 component distributor which specializes in the distribution of memory modules, central processing
18 units, storage products, motherboards, multimedia products, communication products, video
19 graphic cards, notebooks, USB drives, and other PC products. Ma Labs is also the parent company
20 of a number of wholly-owned subsidiaries which engage in related lines of business.

21 20. Ma Labs does business in the State of California, has facilities in San Jose and Los
22 Angeles (City of Industry), and is headquartered at 2075 North Capitol Avenue, San Jose,
23 California. It has Branch Offices elsewhere in the United States, and it has other locations and
24 facilities abroad, including in China.

25 21. Ma Labs' facilities in San Jose and Los Angeles are large in square footage. Each
26 facility includes both warehousing rooms where the manual labor of warehousing and shipping
27 activities take place, and rooms with desks and computers housing so-called white collar office
28 workers.

1 22. Ma Labs is a closely-held corporation. It is owned and controlled by Defendant
2 Abraham Ma and his spouse Defendant Christine Rao.

3 23. Defendant **Abraham C. Ma** is the founder and Chairman of Ma Labs. His alias or
4 true legal name is Chih Keng Ma. He is the legal owner of 100 percent of the stock of Ma Labs.
5 He is based out of the Company headquarters at 2075 N. Capitol Avenue, San Jose, California.
6 Defendant Ma is an agent, representative, officer, director, and alter ego of Defendant Ma Labs.
7 He exercises substantial independent authority and judgment in his corporate decision-making such
8 that his decisions ultimately determine corporate policy.

9 24. Defendant Ma is an employer, as defined in the California Labor Code and in
10 Industrial Welfare Commission Wage Order 7-2001.

11 25. Defendant **Christine Rao** is Chief Executive Officer (“CEO”) and the legally
12 married spouse of Defendant Abraham Ma. Her alias or true legal name is Ruiting Rao or Ruiting
13 C. Rao. As the spouse of Defendant Ma during all relevant times, Defendant Rao is the equitable
14 or legal co-owner of Ma Labs. She is based out of the Company headquarters in San Jose.
15 Defendant Rao is an agent, representative, officer, director, and alter ego of Defendant Ma Labs.
16 She exercises substantial independent authority and judgment in her corporate decision-making
17 such that her decisions ultimately determine corporate policy.

18 26. Defendant Rao is an employer, as defined in the California Labor Code and in
19 Industrial Welfare Commission Wage Order 7-2001.

20 27. Together, Defendants Ma and Rao lead an executive team and oversee the
21 Company’s overall operations with the help of an executive team. All top executives are also
22 located in San Jose.

23 28. Ma Labs has a centralized decision-making structure concerning wage and hour and
24 personnel issues, with Defendants Ma and Rao making the ultimate decisions or delegating their
25 authority for day-to-day decisions to one of several deputies trusted to follow Defendants Ma and
26 Rao’s instructions and policies. Two deputies merit special mention.

27 29. As one of the longest serving employees of Ma Labs, HR/Payroll Manager Christy
28 Yee performed multiple important functions. While she has ostensibly been “Payroll Manager,”

1 she has also been known as “HR Manager.” As head of Payroll, Ms. Yee was in charge of day-to-
2 day management of employee timekeeping, including the review and editing of electronic time data
3 and manual review and data entry from the company’s paper-based timekeeping forms and logs.
4 Moreover, Ms. Yee has filled the role of owner Abraham Ma’s point-person for legal issues,
5 responsible for acting as liaison with outside legal counsel on all legal matters, including but not
6 limited to employment law.

7 30. General Counsel Mark Musto joined Ma Labs in 2008 and shares an office with
8 Christy Yee. As detailed below, he has been involved in the policies, practices, and events
9 underlying the claims in this action.

10 **III. NATURE OF THIS COMPLAINT AND CLASS ACTION ALLEGATIONS**

11 31. The Class that Plaintiffs seek to represent is composed of: All persons employed by
12 Defendant in California during the Class Period in an hourly position.

13 32. The Class Period for the Class begins on March 1, 2007, the date that is within four
14 years prior to the filing of the Complaint on March 1, 2011, and continues through the date of
15 judgment. To the extent equitable tolling operates to toll claims by Class Members against the
16 Defendant, the Class Period should be adjusted accordingly.

17 33. In violation of state wage and hour laws, Defendants’ wrongful acts against
18 Plaintiffs and the Class include:

- 19 a. failure to pay wages for all hours worked;
- 20 b. failure to pay wages for all overtime hours worked;
- 21 c. failure to pay all overtime compensation due;
- 22 d. failure to provide full and uninterrupted off-duty meal periods during the
23 workday;
- 24 e. failure to authorize and permit off-duty rest breaks during the workday, and
- 25 f. failure to record, maintain, and timely furnish employees with wage statements
26 and payroll records accurately showing their total hours worked.

27 34. The above violations are the result of centralized policies and practices created by
28 upper management and the Human Resources and Payroll departments located in the San Jose

1 headquarters. The centralized policies and practices were implemented by department managers
2 and HR/Payroll staff in San Jose and Los Angeles with respect to the Class.

3 35. This action may be properly maintained as a class action pursuant to Code of Civil
4 Procedure 382 because there is a well-defined community of interest in the litigation and the
5 proposed class is easily ascertainable.

6 a. **Numerosity:** The potential members of the Class as proposed are so
7 numerous that joinder of all of its members is impracticable. The size of the class is estimated at
8 over 500 individuals. The precise class list is easily ascertainable through Ma Labs' ADP Payroll
9 Database. Hourly workers are predominantly concentrated in the back-end including but not
10 limited to persons employed in the departments covering the functions of shipping, warehousing,
11 inventory, will call/delivery, data entry, and Return Merchandise Authorization ("RMA").

12 b. **Commonality:** Common questions of law and fact predominate over any
13 questions affecting only individual Class Members. These common questions include, without
14 limitation: (i) whether Ma Labs' timekeeping policies violated Labor Code § 1174 by failing to
15 keep accurate records of employees' work; (ii) whether Ma Labs' timekeeping system was
16 designed in such a manner as to prevent the accurate recording of actual time worked and to shave
17 time for purposes of payroll computations; (iii) whether Ma Labs had policies and practices
18 discouraging the reporting and claiming of overtime; (iv) whether Ma Labs had policies and
19 practices discouraging the reporting and claiming of missed meal periods and rest breaks; (v)
20 whether Ma Labs took actions to affirmatively provide off-duty meal periods as required by Wage
21 Order No. 7-2001 and the Labor Code; (vi) whether Ma Labs took actions to affirmatively provide
22 off-duty rest breaks as required by Wage Order No. 7-2001 and the Labor Code; (vii) whether Ma
23 Labs violated Wage Order 7-2001 and the Labor Code by failing to pay overtime compensation
24 earned and due; (viii) whether Ma Labs violated Labor Code §§ 201-203 by failing to pay wages
25 due and owed at the time that Plaintiffs' and Class Members' employment with Ma Labs was
26 terminated; (ix) whether Ma Labs knowingly and willfully violated wage and hour laws; (x)
27 whether Ma Labs obtained waivers and releases of wage and hour claims without paying back
28 wages owed; (xi) whether Ma Labs knowingly and willfully falsified records; and (xiii) whether

1 Ma Labs violated Business and Professions Code § 17200 by virtue of its class-wide practices.

2 c. **Typicality:** Each Plaintiff, being a non-exempt employee of Ma Labs in
3 California, has suffered the same violations and similar injuries as other Class Members arising out
4 of and caused by Ma Labs' common course of conduct in violation of law as alleged herein;

5 d. **Adequacy of representation:** Plaintiffs are members of the Class and will
6 fairly and adequately represent and protect the interests of all Class Members. Counsel who
7 represent the Plaintiffs are competent and experienced in litigating large wage and hour and other
8 employment class actions.

9 e. **Superiority of a class action in this case:** A class action is superior to
10 other available means for the fair and efficient adjudication of this controversy. The Class
11 Members in this case are among the most disadvantaged low-wage workers in the state's
12 workforce, being largely limited English proficient, lacking in resources to prosecute their wage
13 claims individually, and particularly susceptible to retaliation and coercion by the Company. The
14 individual damages suffered by the Class Members are too low for these workers to obtain legal
15 representation. Class action treatment will allow the Class Members to litigate their claims, which
16 otherwise would not likely be brought, in a manner that is most efficient and economical for the
17 parties and the judicial system.

18 36. In addition, Plaintiff Cavaliere seeks penalties established by Section 2698, et seq.,
19 of Private Attorneys General Act ("PAGA") and/or other California Labor Code sections, on behalf
20 of himself and other aggrieved employees, based on the fact that all of the at-issue illegal policies
21 and practices have continued without remediation since the filing of this action in March 2011.

22 37. The **PAGA Class** is comprised of current and former hourly employees who
23 worked for Ma Labs in California in the period of March 18, 2012 through the date of judgment.

24 **IV. FACTUAL ALLEGATIONS**

25 38. Plaintiffs are informed and believe that Defendants have uniformly subjected all
26 hourly workers in California to the following unlawful labor practices:

27 **Failure to pay earned overtime compensation**

28 39. Ma Labs' policy and practice is to intentionally and regularly undercount the actual

1 time worked by employees for payroll purposes, in order to keep up continuous operations during
2 an extended period of operations in its distribution business while limiting the amount of overtime
3 it pays.

4 40. Ma Labs underpays overtime through several methods. First, it permits and
5 encourages employees to begin work prior to their scheduled shift start time. However, it does not
6 pay for pre-shift work time, even when the time is recorded "on the clock" and the employees are
7 working and/or under the Company's control during that time. Second, it requires hourly
8 employees in California to work "off-the-clock" - *i.e.*, work hours not maintained in the
9 Company's time records and not compensated. Third, even hours that are recorded are not
10 compensated, by the very design of the timekeeping system, which defaults to payment of wages
11 based on the employee's pre-set work schedule, rather than actual work times logged. Fourth, Ma
12 Labs maintains a manual recordkeeping system alongside its electronic timekeeping system. The
13 times that are manually recorded and accompanied by manager signature overrides any electronic
14 record, through a process of manual time-editing and inputting by agents of the Payroll
15 Department.

16 41. Ma Labs mandates "off-the-clock" work by: (a) encouraging employees to perform
17 work without compensation outside their scheduled shift, before they "punched in" to Ma Labs'
18 timekeeping system, and/or after they "punched out" of the timekeeping system; (b) failing to
19 record, and therefore pay for, time worked by employees outside of scheduled shifts; (c) designing
20 and implementing unlawful timekeeping procedures that discouraged and prevented employees
21 from recording and reporting all of the hours they worked; and (d) requiring and/or encouraging
22 employees to work through mandatory meal periods without recording the work time.

23 42. Hourly workers frequently were given a work schedule that had overtime built in.
24 However, incidental, non-scheduled overtime work must be performed to complete work that is in
25 progress or to meet a deadline. It is a condition of employment to perform incidental overtime in
26 accordance with business needs. The nature of work of the hourly workers was by its nature time-
27 sensitive and determined by the volume of orders and customer calls/inquiries.

28 43. Despite requiring overtime work, Ma Labs has a policy of not paying overtime

1 compensation for time worked in excess of a scheduled shift, which may be eight (8) hours or
2 longer, unless the overtime was approved in advance by upper management. According to the
3 Company's Employee Handbook, "all overtime requires the advance written approval of your
4 supervisor." Ma Labs refuses to pay overtime compensation to non-exempt employees unless they
5 "received prior written approval for such overtime from Abraham Ma or the Company's
6 Operations Manager(s)," according to a document that is passed out to new hires.

7 44. In addition, Ma Labs refuses to pay overtime compensation unless employees'
8 overtime requests are completed and submitted within two days, pursuant to company policy that
9 overtime is waived unless timely reported by the employee and then approved by management.

10 45. Furthermore, Ma Labs communicates to employees that failure to comply with its
11 overtime policies is grounds for discipline, including termination.

12 46. By its uniform policies and practices, Ma Labs discouraged Plaintiffs and Class
13 Members from claiming overtime incurred by working beyond their scheduled shift.

14 47. As a result of Ma Labs' illegal practices, a typical hourly employee works anywhere
15 from 5 to 10 additional unpaid overtime hours per week "off-the-clock," in addition to their
16 scheduled shift hours.

17 **Failure to provide full and uninterrupted off-duty meal periods during the workday**

18 48. Ma Labs does not inform its employees that they are entitled to an uninterrupted and
19 off-duty first meal of at least 30 minutes in duration, where employees are free to leave the
20 premises, if they are employed for 5 hours or more. Ma Labs also does not inform its employees
21 that if they are working more than 10 hours in a day that they are entitled to a second meal period.

22 49. At all relevant times, Ma Labs has maintained a *de facto* "auto-deduct" policy for
23 lunch time. At all relevant times, Ma Labs deducted either 30 minutes or 45 minutes or longer
24 from Plaintiffs and Class Members' time records to account for the so-called official lunch time.
25 After February 2010, workers were told they had to use the time clock to document a lunch period
26 of at least 45 minutes, regardless of how much time they actually took for lunch. Ma Labs ensures
27 that the records reflect a lunch break of at least 45 minutes through its in-house programming of its
28 time clock.

1 50. By Company policy, Ma Labs considers time worked over lunch to be waived
2 unless reported by the employee on the same day to the employee's manager and to the Human
3 Resources department.

4 51. By its policies and practices, Ma Labs discourages employees from claiming time
5 worked over lunch, but at the same time knowingly and willfully permits, encourages, and/or
6 requires Plaintiffs and the Class to forgo meal periods by keeping them on duty throughout the
7 mid-day period.

8 52. As a result of Ma Labs' illegal practices, hourly workers regularly work more than
9 five hours a day without the requisite meal period. Hourly workers acquiesce because they are
10 disciplined, reprimanded, or subject to being laid off if they are not available to work over lunch.

11 53. Similarly, hourly employees who work at least 10 hours a day do not receive a
12 second full and uninterrupted meal period of at least half an hour in which they are relieved of all
13 duties. Ma Labs' meal period policy only refers to a mid-day lunch.

14 54. By its stated policies, Ma Labs has failed to provide compliant meal periods. By its
15 stated policies and actual practice, it knowingly and willfully permits, encourages, and/or requires
16 Plaintiffs and the Class to forgo meal periods.

17 55. Ma Labs knows that employees are on-duty and are in fact called to work during
18 lunch, and purposefully has failed to account for such compensable time and purposefully failed to
19 pay any premium wages.

20 **Failure to authorize and permit paid rest breaks during the workday**

21 56. Ma Labs does not inform its employees that they are entitled to 10 minutes of net
22 rest time for every 4 hours worked, or major fraction thereof, where they are relieved of all duties.
23 In practice, departmental managers do not allow hourly employees to take such rest breaks. If
24 anything, Ma Labs only tells workers that they can have one lunch break, but the company does not
25 say or do anything to affirmatively provide employees an opportunity to take a proper rest break.

26 57. Ma Labs does not provide a resting area for hourly employees to use for rest breaks.
27 Hourly employees do not take off-duty breaks. Rather, if the flow of work permits, they take short
28 breaks from manual labor -- in areas near their workstations, not in any designated resting area, as

1 none was available to them -- where they are still on duty and subject to being called to work or
2 reprimanded if caught breaking.

3 58. Ma Labs does not authorize or permit employees to take 10 minutes of "net" paid
4 rest time for every four hours of work, or major fraction thereof, where employees are relieved of
5 all duties. Ma Labs knowingly and willfully permits, encourages, and/or requires Plaintiffs and the
6 Class to forgo rest periods. As a result of Ma Labs' illegal policies and practices, hourly workers
7 regularly work more than a four-hour period without a net ten-minute rest break.

8 **Failure to keep accurate time records and to furnish accurate wage statements and payroll**
9 **records to employees**

10 59. As a result of Ma Labs' policy and practice, Ma Labs fails to keep accurate records
11 of when employees begin and end each work period, fails to keep accurate records of meal periods,
12 and fails to keep accurate records of total daily hours worked.

13 60. By design, Ma Labs keeps and creates inaccurate records of work time, in order to
14 undercount work time. It does so through several methods:

15 61. One, it programs the time clock so that incidental overtime is not compensated.
16 Tardiness counts against the hourly employee's time, but pre-shift and post-shift time is not
17 compensated, by default. Payroll manually edits time entries to enter overtime minutes that have
18 been approved by the requisite personnel.

19 62. Two, Ma Labs does not compensate employees for incidental overtime, unless the
20 time is logged by a manager in a notebook and turned into Payroll. However, workers are told that
21 they cannot ask for their additional time to be logged unless it was at least 15 minutes beyond their
22 scheduled end of shift, and in practice managers do not log such work time, unless multiple
23 workers have experienced the incidental overtime.

24 63. Three, upon information and belief, Ma Labs programs the time clock so that after a
25 certain chosen hour, employees are unable to clock out at all, and are thus required to fill out a
26 form to claim work time. This "Request Form" -- designed for instances when the clock out is
27 unable to be registered by the computer -- must be filled out to reflect the scheduled shift.
28 Employees are not allowed to claim actual work times including incidental overtime by filling out

1 this form.

2 64. Four, since February 2010, Ma Labs has purposefully designed its recordkeeping
3 system for lunch time to generate records that facially show that workers had the required lunch
4 break, regardless of whether they did so or not. The clock program was fixed so that an employee
5 could not log back in until 45 minutes was finished. As a result, employees who had to work
6 during the lunch period were not able to accurately record their lunch times.

7 65. As a result of such designed practices, the Company furnishes inaccurate itemized
8 written wage statements and payroll records to its employees.

9 **Failure to pay all wages due to employees at the end of the employment relationship**

10 66. Ma Labs willfully fails to immediately pay employees all wages earned at the end of
11 the employment relationship, including overtime wages and premium wages.

12 **Other unlawful practices which deprive employees of the opportunity to discover legal**
13 **violations and deter employees from reporting violations and other unfair treatment**

14 67. Ma Labs systematically abuses the fact that the majority of Class Members are
15 immigrants, are limited-English proficient, and are unfamiliar with the protections afforded to them
16 by employment laws.

17 68. Ma Labs fails to post workplace notices in locations that are frequented by most
18 Class Members, including but not limited to, the state payday notices, the state wage theft notices,
19 and applicable state wage orders. To the extent Ma Labs posts workplace notices, the notices are
20 posted only in the "break room," a room with limited seating capacity that Class Members do not
21 use because they remain on call throughout lunch, because of the limited seats compared to the
22 number of employees on site, and because they are not afforded off-duty rest breaks.

23 69. To the extent Ma Labs posts government-required workplace rights notices, it fails
24 to use notices written in Chinese, the most prevalent language of its workforce and of the Class
25 Members.

26 70. Plaintiffs are informed and believe and thereupon allege that Ma Labs has failed to
27 comply with the much-publicized new law, the Wage Theft Protection Act of 2012, which requires
28 that employers distribute written notice of wage information at the time of hire (Labor Code

1 section 2810.5) in the language the employer normally uses to communicate employment-related
2 information to the employee. No languages other than English are used despite the ready
3 availability of this form notice in other languages.

4 71. Despite the fact that most managers read and write and primarily use Chinese at
5 work with respect to their interactions with Plaintiffs and Class Members and with one another, and
6 despite the fact that most, if not all, Human Resources personnel are bilingual in Chinese and
7 English, all documents of legal significance, such as confidentiality agreements, legal releases and
8 legal waivers, are only provided in English. Ma Labs requires that such documents must be signed
9 by employees and collected by managers typically within one day of distribution.

10 72. Ma Labs' strict confidentiality policy forbids employees from removing Company
11 documents from the premises, a rule that is verbally communicated and reinforced when the
12 Company distributes these important documents to be signed by employees. Hence, to maintain
13 secrecy, Ma Labs does not provide copies of employment agreements or the Employee Handbook
14 to employees as a matter of policy and practice. Ma Labs' policy prohibiting employees from
15 keeping copies of employment-related agreements that they sign violates Labor Code sections 432
16 and 432.5. Through such practices, Ma Labs deters employees from questioning the Company's
17 unfair employment practices and sends the message to employees that they have no legal recourse.

18 73. Ma Labs also requires that, as a condition of employment, employees refrain from
19 discussing wages, compensation, and other employment conditions, in violation of Labor Code
20 sections 232 and 232.5. Ma Labs employees are required to sign confidentiality agreements that
21 forbid them from discussing their wages or compensation. The agreements state that "[t]he
22 Company considers information concerning the amount of the salaries and bonuses that it pays to
23 employees to be confidential information that should not be disclosed to or discussed with other
24 employees (aside from one's own supervisor or the Company's senior management). Violations of
25 this rule may result in disciplinary action, including possible termination of employment." The
26 same policy is set forth in the Company's Employee Handbook and is verbally communicated to
27 employees by managers and Human Resources personnel.

28 74. In addition, Ma Labs has actively concealed the truth and prevented enforcement of

1 the wage and hour laws by coercing employees to lie to investigators from the California
2 Department of Labor. For example, in 2009 or 2010, Plaintiffs Nie and Tian were told by their
3 department manager almost verbatim what to say to government investigators who were
4 investigating the company's compliance with wage and hour laws. Plaintiffs Nie and Tian were
5 not able to speak freely to the investigators, because the Company's HR/Payroll manager Christy
6 Yee insisted on being in the room to translate for the limited English-speaking immigrant workers.
7 Various hourly departments' workers were brought by their managers into the interviews.
8 Plaintiffs are informed and believe that all workers were instructed by their supervisors and
9 managers as to what to say to the investigators.

10 75. In addition to the policies and practices above, Ma Labs has subjected its employees
11 to retaliation for resisting unfair and illegal practices. By so doing, Ma Labs further deters
12 employees from questioning practices that they feel are unfair.

13 76. The unlawful policies and practices described herein have deprived employees of
14 the opportunity to discover legal violations and deterred employees from reporting violations and
15 other unfair treatment.

16 **Ma Labs' Knowledge of Violations Based on Employees' Claims**

17 77. Defendants knew that Ma Labs' policies and practices violated state laws, including
18 provisions of the California Labor Code. At all relevant times, including such times when it
19 developed its written policies and procedures, it was represented and advised by legal counsel.

20 78. In 2008, a Warehouse employee named Jinxin Zhou filed a Division of Labor
21 Standards Enforcement ("DLSE") complaint against Ma Labs, alleging the lack of meal periods
22 and rest breaks. Mr. Zhou, a non-English-speaking worker, did not have a lawyer and he dropped
23 the case due to inability to prosecute it.

24 79. In 2009, an Inventory employee Bing Shen filed a DLSE complaint against Ma Labs
25 alleging wage and hour violations, including the lack of meal periods and rest breaks. The case
26 was confidentially settled in 2010 and a dismissal was filed in June 2010.

27 80. In 2010, an Account Manager (otherwise known as Inside Sales representative)
28 named Jeremy Ramsell filed a proposed Fair Labor Standards Act collective action in the U.S.

1 District Court for the Northern District of Georgia, alleging violations of federal wage and hour
2 law.

3 81. In 2010, an Assembly department hourly employee named Jie Shi, who was
4 formerly a plaintiff in this action, filed a lawsuit in Superior Court that included claims for wage
5 and hour violations.

6 82. In 2011, an Account Manager named Michelle Lou filed a filed a DLSE complaint
7 against Ma Labs alleging wage and hour violations, including the lack of overtime pay and lack of
8 meal periods and rest breaks.

9 **Recordkeeping for Hourly Workers After February 2010**

10 83. After it was on notice of widespread potential liability for wage and hour violation,
11 Ma Labs took various actions to avoid liability for its Labor Code violations.

12 84. Defendant Abraham Ma, Defendant Christine Rao, General Counsel Mark Musto,
13 with assistance from Christy Yee, the HR/Payroll staff, and in-house programmers, undertook a
14 concerted effort to create a paper trail that the Company could use in the future to demonstrate
15 supposed compliance with the law and/or waivers of claims. This included, among other things,
16 obtaining waivers and releases from unwitting employees in the Class and “updating” its
17 recordkeeping policies, as further described below.

18 85. Shortly after Bing Shen’s complaint, Ma Labs’ General Counsel Mark Musto
19 drafted and issued to all hourly employees a Memorandum. The Memo stated “the Company is
20 updating its workplace conduct rules, including its recordkeeping procedures and practices with
21 respect to hours worked by its non-exempt Hourly Employees” (hereinafter “Musto Memo”). The
22 Musto Memo was distributed and employee signatures were obtained in accordance with the
23 company’s usual practices: given to department managers, who then passed them out to the
24 employees under them, telling them to sign it and hand them in. A written translation was not
25 provided to employees who did not read English, and no verbal translation or explanation of the
26 policies in the Memo was provided to the hourly employees. The February 15, 2010 Musto Memo
27 was the beginning step in the Company’s making changes in its recordkeeping procedures to create
28 a false paper trail of supposed compliance. A true and correct copy of the Musto Memo is attached

1 hereto as Attachment A and is incorporated by reference.

2 86. Although the Musto Memo required prompt reporting of missed meal and rest
3 periods, this policy was not translated or explained. Ma Labs never, at any time, informed workers
4 of any form, or any procedure, that they are supposed to use to report a missed meal period and
5 claim additional work time. At the same time, Ma Labs adopted a policy that if a claim of a missed
6 or interrupted meal period or and rest period is not made within 48 hours of the occurrence, the
7 claim is deemed waived.

8 87. Plaintiffs are informed and believe and thereupon allege that Ma Labs *purposefully*
9 failed to explain the Musto Memo. Instead, after February 15, 2010, hourly employees were only
10 instructed to use the time clock to clock in and out for lunch, with no other explanation.

11 88. Plaintiffs are informed and believe that in conjunction with the updated
12 recordkeeping policies outlined in the Musto Memo, Musto and Larry Zhou, MIS Manager and one
13 of the in-house programmers, together made changes to the time clock program and time clock
14 interface, at the direction of Defendants Abraham Ma and Christine Rao. Musto also drafted all the
15 of the text language of electronic and paper-based certifications and waivers/releases that were
16 rolled out starting in February 2010.

17 89. Defendants Ma and Rao also met on numerous occasions with Mr. Musto and
18 HR/Payroll Manager Christy Yee. Mr. Musto worked with Larry Zhou to design the time clock so
19 as to require the minimum lunch period of 45 minutes and not allow recording of a lunch period of
20 less than that period. They worked together to design a time clock touchscreen that requires
21 employees at the end of every day to certify that they have taken their meal and rest breaks.

22 90. Every day when clocking out, hourly employees are required to press the time
23 clock touch screen button to affirm that they took their meal periods and rest breaks, regardless of
24 whether that is true. Hourly employees cannot clock out of the system unless they press that
25 button. For drivers whose off-site delivery responsibilities made it impractical or impossible for
26 them to clock in and out on premises, Ma Labs required these drivers to periodically sign a stack of
27 paper meal period and rest period waivers, to have them certify that they received all meal periods
28 and rest periods, regardless of the truth. This is required of workers whom the Company knows

1 cannot read English.

2 91. Clocking in and out, and filling the requisite paperwork or affirming the requisite
3 waivers and certifications were part of Ma Labs' recordkeeping requirements. Day-to-day practice
4 and corporate policy required workers to go through these steps in order to be compensated. In
5 sum, Ma Labs daily and in other regular intervals required the execution of releases of claims
6 involving hours worked and meal and rest periods taken, which the employer knew or had reason
7 to know to be false.

8 92. Plaintiffs are informed and believe and thereupon allege that during the Class Period
9 Ma Labs never undertook to study or investigate its wage and hour compliance through study of
10 the actual work patterns of Class Members (with the possible exception of work that outside
11 litigation counsel might have done following this lawsuit). Instead, Defendants Ma and Rao,
12 authorized a *new* layer of inaccurate recordkeeping on top of its existing, already-inaccurate
13 recordkeeping after February 2010, for the unitary purpose of creating a paper trail of employee
14 certifications that meal and rest periods were taken and time records showing lunches of at least 45
15 minutes in duration.

16 93. Plaintiffs are informed and believe that Defendants created these records with
17 knowledge of their falsity and/or reckless disregard for their truth.

18 94. Starting in June of 2010, Ma Labs and its owners and officers rolled out another
19 companywide measure in response to its wage and hour liability risk. Ma Labs distributed,
20 companywide, a "Supplement to Employment and General Release." Defendant Abraham Ma,
21 Defendant Christine Rao, and General Counsel Mark Musto were primarily responsible for
22 formulating the company response, including this document.

23 95. To deal with existing claims that had accrued, in late June 2010 Ma Labs distributed
24 to hourly employees in San Jose a lengthy legal document in English that was entitled "Supplement
25 to Employment Agreement and General Release (Hourly Employees)" (hereinafter "Supplement"),
26 a copy of which is attached hereto as **Attachment B** and incorporated by reference. The
27 Supplement, written in convoluted legal jargon and presented without explanation, required Ma
28 Labs employees to waive all labor claims against the Company "in consideration for Employee's

1 continued employment, and for additional consideration which will be paid by Employer to
2 Employee incident to the next pay period.” The general release included unwaivable statutory
3 claims, such as claims to unpaid wages.

4 96. Buried halfway through the document was a mandatory mediation and mandatory
5 arbitration agreement, itself several dense pages long.

6 97. Ma Labs, through Department Managers who supervise the employees, distributed
7 the Supplement to Plaintiffs Guang Tian, Jing Jian Wu, Ming Fang Tie, Yan Nie, Tie Quan Ma,
8 Bao Jie Zhang, Chao Hui Liu, and Chris Cavaliere, and all other Class Members working at Ma
9 Labs on or around late June 2010, with instructions to sign and return the Supplement within one
10 day or less.

11 98. Ma Labs knew that most Class Members were non-English-speaking or limited
12 English proficient. Managers informed Class Members that the Supplement was confidential and
13 could not be taken off premises or shown to outsiders.

14 99. Ma Labs asserted significant pressure on its employees to sign the Supplement. All
15 non-exempt employees were told and/or understood that signing the agreement was required to
16 effectively continue their employment with the Company, in accordance with the usual company
17 practice of requiring them to sign documents on a take-it-or-leave basis as a condition of
18 employment.

19 100. In exchange for signing the Supplement, the Supplement vaguely promised
20 monetary consideration, but this consideration was never specified. The Supplement also stated
21 that continued employment was part of the consideration for the employee’s acceptance of the
22 agreement, which functions as an admission by Ma Labs that rejection of the agreement would
23 likely lead to termination.

24 101. Almost all employees complied with the instructions and signed the Supplement
25 promptly and returned them to their supervisors, out of fear of losing their jobs. Plaintiffs Tian,
26 Wu, Tie, Nie, and Ma refused to sign the document, as described in further detail below. Plaintiff
27 Zhang also refused to sign the document, and he promptly resigned; his manager had told him that
28 not signing the document meant he would lose his job. Plaintiffs Liu and Cavaliere did sign the

1 document, out of fear of losing their jobs.

2 102. A few days after that, in July 2010, the hourly employees who signed the
3 Supplement received a small bonus of approximately \$100.00 each. Only those employees who
4 signed the Supplement received this payment. Those who had not signed it did not receive a
5 payment. Ma Labs never provided an official explanation or accounting to the employees to
6 inform them that the \$100.00 payment was in exchange for signing the Supplement.

7 103. In August 2010, the Supplement was rolled out to hourly employees in Los Angeles
8 in the same fashion. Also in August 2010, Ma Labs distributed a similar Supplement to
9 Employment Agreement & General Release to salaried employees companywide.

10 104. Through the company's dual electronic and paper-based recordkeeping systems and
11 through the coerced and/or unknowing waivers and releases from employees, Defendants sought to
12 create a paper trail of false documentation in the event of future legal claims by employees.

13 **Wrongful Termination Allegations of Five Plaintiffs (Tian, Nie, Wu, Ma, and Tie)**

14 105. In the Warehouse Department, Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie
15 Quan Ma, and Ming Fang Tie refused to sign the Supplement on the grounds that they could not
16 read English. They requested a Chinese translation. Thereafter, they were subjected to
17 interrogation and other pressures from management to sign the Supplement, during meetings with
18 management on July 6, 2010 and July 8, 2010.

19 106. In these meetings, these five Plaintiffs continued to question the imposition of the
20 Supplement on workers who could not read them. Plaintiffs are informed and believe and
21 thereupon allege that Defendants knew or should have known, having received the advice of
22 counsel, that they could not lawfully make the signing of an employment agreement, which
23 contained unenforceable exculpatory clauses, a condition of continued employment. During their
24 July 6, 2010 meeting with management, General Counsel Mark Musto was charged with
25 "explaining" the Supplement to those Chinese workers who had requested a translation and with
26 answering the questions that the workers asked him. In the course of this meeting, Mr. Musto
27 made misleading, confusing, and unethical statements under the auspices of explaining the
28 Supplement to those workers.

1 107. After the mysterious \$100 was distributed, as if it were a special bonus, these
2 Plaintiffs demanded that the management explain to them why \$100 was distributed to the signing
3 employees but not to them. These Plaintiffs also complained about the unsatisfactory and
4 confusing explanation of the Supplement that General Counsel Mark Musto provided to them.

5 108. These unusual actions were viewed as trouble-making and oppositional by Ma Labs.

6 109. Plaintiff Jing Jian Wu was fired on July 9, 2010. This termination was based on a
7 pretextual reason and was motivated instead by unlawful retaliatory reasons, due to the above-
8 described events concerning the Supplement and other preceding circumstances: Mr. Wu's sister,
9 Plaintiff Yi Wu, had recently assisted Bing Shen in her Labor Commissioner case. Yi Wu herself
10 had recently resigned and in her letter of resignation demanded compensation for similar wage and
11 hour violations; in the weeks after Yi Wu's resignation, Jing Jian Wu had refused to help the
12 Company persuade Yi Wu to drop her demands and had instead expressed to management that he
13 was sympathetic to her grievances and complaints. Soon after Mr. Wu refused to help
14 management with his sister's situation, Mr. Wu questioned management's intentions with respect
15 to the Supplement and he refused to sign the English-only Supplement; and finally, Mr. Wu was
16 seen by co-workers and managers speaking to other employees about not signing the document.

17 110. Because he was perceived as challenging the authority of management and
18 perceived as trying to organize employees to resist the Company, Defendant fired Mr. Wu on July
19 9, 2010, in a public and humiliating manner, including hiring an off-duty City of San Jose police
20 officer to escort Mr. Wu out of the company premises.

21 111. Plaintiffs are informed and believe that General Counsel Mark Musto, Head of
22 Human Resources and Payroll Christy Yee, and Individual Defendants Christine Rao and Abraham
23 Ma, individually and jointly participated in and approved the termination of Plaintiff Jing Jian Wu.
24 Plaintiffs are informed and believe that Christine Rao and Abraham Ma, respectively, provided the
25 final approvals for this termination.

26 112. Plaintiffs Guang Tian, Yan Nie, and Tie Quan Ma, and Ming Fang Tie, out of
27 frustration over the overall poor working conditions and the unfairness of the firing of their co-
28 worker Mr. Wu, voiced concerns up the management chain about longstanding workplace safety

1 problems. While on many previous occasions they had reported unsafe conditions to their
2 Department Manager, now these Plaintiffs took their concerns to the highest manager whom they
3 had access to, the Director of Operations Mike Lin, as well as to Human Resources.

4 113. In August 2010, only these four employees, Plaintiffs Tian, Nie, Ma, and Tie
5 received a Chinese translation of the Supplement. They informed their manager that they would
6 not be signing it.

7 114. As a result of their protests and complaints, Plaintiffs Tian, Nie, Ma, and Tie were
8 targeted for discipline and/or harassment.

9 115. On September 17, 2010, Plaintiffs Tian, Nie, and Ma received written warnings (in
10 English) for allegedly taking excessive breaks. A couple of other employees, including Plaintiff
11 Chao Hui Liu, who had signed the Supplement, were also included in these written warnings.

12 116. These warnings were drafted by General Counsel Mark Musto. These Plaintiffs
13 were forced to receive these warnings in intimidating one-on-one meetings with management,
14 where Director of Operations Mike Lin supposedly translated the content of the warnings for the
15 employees and attempted to elicit admissions from the employees that they had taken excessive
16 breaks. These meetings were videotaped by management.

17 117. Formal written warnings and such video recording of disciplinary meetings were
18 unprecedented at Ma Labs. Plaintiffs are informed and believe that these meetings were part and
19 parcel of a campaign to retaliate against them and provide post-hoc justifications for adverse
20 employment decisions that had already been made.

21 118. On October 1, 2010, Plaintiffs Nie and Ma were terminated.

22 119. In early October 2010, Plaintiff Tie was subjected to harassment, in the form of
23 being accused of being a rat by his Department Manager.

24 120. In late November 2010, Plaintiffs Tian and Tie were terminated from employment.
25 Thus, by the end of November 2010, Ma Labs had terminated the four remaining employees in the
26 Warehouse department who had refused to sign the Supplement and had brought their concerns
27 about workplace safety to the attention of upper management.

28 121. Plaintiffs are informed and believe that Warehouse Department Manager Chi Hong

1 Shau, General Counsel Mark Musto, HR Manager Christy Yee, Director of Operations Mike Lin,
2 Defendant Christine Rao, and Defendant Abraham Ma, individually and jointly participated in and
3 approved the disciplinary actions against and terminations of Plaintiffs Tian, Nie, Ma and Tie.

4 122. Shau, Musto, Yee, Lin, in addition to Defendants Ma and Rao, are officers,
5 directors, and/or managing agents of Defendant Ma Labs, who were acting on behalf of Ma Labs
6 with respect to the adverse actions against Plaintiffs Tian, Nie, Ma, and Tie. Jointly and
7 individually, they exercised substantial independent authority and judgment in their corporate
8 decision making through their participation in and approval of the disciplinary actions against and
9 terminations of Plaintiffs Tian, Nie, Ma, and Tie.

10 123. With respect to the disciplinary actions against and terminations of Plaintiffs Tian,
11 Nie, Ma, and Tie, Defendants Ma and Rao authorized the wrongful conduct of Manager Shau,
12 General Counsel Musto, HR Manager Yee, and Operations Director Lin and/or they knew of the
13 wrongful conduct and adopted or approved it after it occurred. Christine Rao and Abraham Ma,
14 respectively, provided the final approvals for these adverse actions of Plaintiffs Tian, Nie, Ma, and
15 Tie, subsequent to receiving the recommendations and approvals of their management personnel.

16 **Wrongful Termination Allegations of Plaintiff Steven Lee**

17 124. Plaintiff Lee was considered a longtime employee, having worked in the same
18 position for Ma Labs since October 2002. Lee was a good employee, having received no negative
19 feedback and multiple wage raises.

20 125. As an hourly, non-exempt employee, Lee has been a putative Class Member in this
21 action.

22 126. In early 2013, Lee was asked by Defendant Abraham Ma to assist the Company in
23 fighting the present lawsuit by working as Defendant Ma's spy. Lee initially acceded to Defendant
24 Ma's request to contact one of the Plaintiffs, but thereafter Lee refused Defendant Ma's further
25 requests because Ma made it clear to Lee that Ma wanted Lee to spy on the Plaintiffs and their
26 attorneys.

27 127. In June 2013, Lee told Defendant Abraham Ma that he did not get any breaks and
28 had been automatically deducted for lunchtime for many years. In July 2013, during the workday,

1 Defendant Ma, his agents and attorneys interviewed Lee about his workplace practices.
2 Defendants did not inform Lee in advance that such an interview would occur. Lee was
3 outnumbered in this meeting and the questions were posed to him in a hostile manner. Lee
4 expressed his opposition to the interrogation by indicating that he would not sign any statement for
5 Ma Labs and that he did not want Ma Labs' attorneys to type or record the information he
6 provided.

7 128. Thereafter, Defendants and Lee attempted to reach a settlement of Lee's wage and
8 hour claims, in several discussions that took place during working hours at Ma Labs. Lee had not
9 retained counsel at that time.

10 129. On November 11, 2013, Plaintiff Lee informed Defendants that he has retained the
11 lawyers who are prosecuting this action. At the same time, Lee provided testimony to support
12 plaintiffs pursuing wage and hour claims in federal court in which he disclosed communications
13 that Defendant Ma had with him. Soon thereafter, Lee informed Defendants that he wished to join
14 the instant action as a named plaintiff.

15 130. On November 27, 2013, Defendants sent Lee home on mandatory administrative
16 leave, informing Lee that they needed to investigate his lunch break practices.

17 131. On February 7, 2014, Lee gave notice to the California Labor & Workforce
18 Development Agency, telling the agency that he believed Ma Labs had committed Labor Code
19 violations against him and other employees.

20 132. On March 7, 2014, Ma Labs informed Lee that his employment was terminated.

21
22 **Additional Allegations of Individual Defendants' Personal Involvement**

23 133. Plaintiffs are informed and believe and thereupon allege that 100 percent of Ma
24 Labs' stock has been legally owned by Abraham C. Ma and that no corporate stock has been issued
25 to any other shareholders since the formation of the corporation.

26 134. The registered agent for service of process for Ma Labs is Abraham C. Ma, at 2075
27 N. Capitol Avenue in San Jose.

28 135. Plaintiffs are informed and believe that Defendants Ma and Rao exercise control

1 over the wages, hours or working conditions of hourly employees and engages, suffer, and permit
2 employees to work under the conditions complained of herein, within the meaning of the Industrial
3 Welfare Commission Wage Order No. 7-2001.

4 136. Defendants Ma and Rao have authority and oversight over wage and hour policies
5 and practices. They must be consulted whenever there are material changes to wage and hour
6 policies or practices, including those described in the Employee Handbook, the entire contents of
7 which are personally approved by Ma and Rao.

8 137. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
9 Rao were personally aware of the Bing Shen DLSE complaint, the Jinxin Zhou DLSE complaint,
10 and the Ramsell federal collective action complaint, that they actively participated in discussions
11 with the General Counsel, Payroll Manager Christy Yee and the department managers and
12 supervisors about how to respond to these complaints, and that they personally directed and
13 authorized the company's responses to these complaints.

14 138. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
15 Rao personally directed and authorized adoption and implementation of the policies described in
16 the Musto Memo of February 15, 2010. Plaintiffs are informed and believe and thereupon allege
17 that Defendants Ma and Rao personally directed and authorized the adoption and implementation
18 of the Supplement to Employment and General Release distributed to all already-employed
19 employees companywide in approximately June to August 2010.

20 139. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
21 Rao personally directed and authorized a strategy of false recordkeeping through the company's
22 dual electronic and paper-based recordkeeping systems and obtaining illegal waivers and releases
23 from employees.

24 140. Plaintiffs are informed and believe and thereupon allege that at all relevant times
25 Defendants Ma and Rao have known that overtime work was not being recorded, that off-the-clock
26 was being performed pre-shift, during lunch, and post-shift, and that employees were not being
27 compensated for all time worked.

28 141. Defendants Ma and Rao have had the power to prevent the uncompensated work

1 from being performed and to rectify the nonpayment of wages, yet failed to do so. Defendants Ma
2 and Rao have had the power to ensure proper recordkeeping, yet failed to do so. In short, they
3 could have exercised their power to control the details of how work was being performed and
4 recorded, yet chose not to do so, even after being placed on notice of violations through complaints
5 filed with public agencies or the courts.

6 142. Defendants Ma and Rao encouraged violations by placing Christy Yee in charge of
7 day-to-day recordkeeping and also by making her the owners' right-hand-woman with respect to
8 employee-employer legal affairs.

9 143. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
10 Rao actively encouraged wage and hour abuses in their supervision of the managers who worked
11 for them, through actions such as exhorting managers to keep overtime to a minimum and paying
12 bonuses to managers of hourly employees, Christy Yee and payroll staff, contingent upon their
13 tight oversight over payroll.

14 144. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
15 Rao have personally acquired unpaid wages in the form of profit-taking and that they adopted,
16 approved, and perpetuated wage and hour and recordkeeping policies and practices in a bad faith
17 attempt to avoid paying wages that are due and owing.

18 145. At the same time as they abused workers and exposed the corporation to legal
19 liability, Defendants Ma and Rao used company resources for their personal benefit. Defendants
20 Ma and Rao treated corporate assets as their own and diverted corporate resources for their own
21 personal use without any benefit to the corporation.

22 146. For example, Defendants Ma and Rao: (a) Use company labor, trucks, and funds on
23 a regular basis (e.g. moving furniture into and out of various houses owned by the Individual
24 Defendants), both during regular workdays and during weekends, resulting in diversions of labor
25 from company business and payments of regular and overtime wages to these workers from the
26 corporate payroll; (b) Use the San Jose warehouse to store personal/household items, taking up
27 space that should be going towards safe warehousing of inventory; (c) Use hourly workers to
28 perform household chores, such as home repairs, paid for by the company payroll; (d) Use

1 company personnel for nanny and child care in their home on a near-daily basis, paid for by the
2 company payroll; (e) Direct managers to arrange helpers for their personal benefit or the benefit of
3 their relatives or top managers, such as having company drivers run personal errands on company
4 time; (f) Pressure salaried managers to perform labor and other services on nights and weekends
5 for their personal/household benefit;

6 147. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
7 Rao allow their family members who are officers, directors, and managers of the corporation to use
8 the corporate entity to procure labor, services, or merchandise for their own personal benefit.

9 148. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
10 Rao have engaged in a pattern and practice of directing non-arm's length transactions between Ma
11 Labs, on the one hand, and other corporations which are wholly owned by Abraham Ma and which
12 are controlled and dominated by Ma and Rao. Defendants Ma and Rao utilize the corporate entity
13 of Ma Labs to procure or provide labor, services, or merchandise for their other entities, including
14 but not limited to Super Talent Technology Corporation, Super Biiz, Inc., and IT Express
15 Corporation. These and other corporations are wholly owned by Abraham Ma and are operated in
16 and/or managed from the same integrated campus in San Jose as Ma Labs.

17 149. For example, Ma Labs has directed Plaintiffs Yu Hong Chang and Yi Wu to work
18 for the "Assembly" department on an as-needed basis. The Assembly department, as it is known
19 among the putative class members, is housed in the same facility but is putatively under the
20 corporate entity Super Talent.

21 150. For example, upon information and belief, in January 2013 Defendants Ma and Rao
22 re-assigned employees from the Assembly department, putatively employees of Super Talent, to
23 the departments covered by this proposed class action, and extracted legal releases and waivers
24 from these employees in the process. Defendants re-categorized certain employees from being
25 employees of Super Talent to being employees of Ma Labs and doctored paperwork to make these
26 Assembly employees appear as if they were newly hired by Ma Labs, as subterfuge for illegal and
27 coercive transactions.

28 151. For example, Defendants Ma and Rao use IT Express Corporation to ship the

1 international orders that are procured and processed by Ma Labs-employed salespeople and the
2 Class Members. Similarly, Defendants Ma and Rao utilize Class Members to provide return
3 merchandise services for all of the various entities within the “Ma Labs family.”

4 152. Ma Labs shares human resources and payroll personnel and systems with the
5 various companies. The same professional staff (legal staff, CPAs) and top executives are
6 responsible for the management and supervision of the various Ma-owned entities. The nerve
7 centers of these entities are in the exact same executive quarters within the San Jose facility of Ma
8 Labs. Defendants Ma and Rao commingled all of the support functions (accounting/finance, legal,
9 HR and payroll) of their various companies in order to maximize the benefits of centralized
10 decision-making and economies of scale, while at the same time reserving flexibility for them to
11 insulate various entities from liability as the need arose.

12 153. At the same time, another company based in Wuhan, China, and called “NewBiiz,”
13 provides integrated back-office support to all Ma-owned entities globally. For example, certain
14 payroll functions for the various Ma Labs-entities, while directed by San Jose headquarters, are
15 outsourced to NewBiiz. NewBiiz is a Chinese corporation also wholly owned by Abraham Ma,
16 upon information and belief.

17 154. Plaintiffs are informed and believe and thereupon allege that as a result of the “mom
18 and pop” nature of its structure and operation, Ma Labs failed to follow normal corporate
19 procedures with respect to holding meetings and keeping records and on the whole failed to
20 maintain adequate corporate records for the various affiliated entities within the “Ma Labs family.”

21 155. Defendants Ma and Rao are identified totally with Defendant Ma Labs and are
22 identified as having total domination and control over the corporate entity.

23 156. Plaintiffs are informed and believe and thereupon allege that Defendants Ma and
24 Rao use the corporate form of the various entities, for the purpose of manipulating assets and
25 liabilities between entities so that assets are concentrated in one entity and liabilities in another.

26 157. Defendants Ma and Rao use the corporate form of the various entities, including Ma
27 Labs, Inc., as mere shells, instrumentalities, and conduits for a single global venture. Ma and
28 Rao’s exercise of complete dominance and control over Ma Labs and other entities and their

1 properties, rights, and interests, rendered such entities as mere shells and instrumentalities of each
2 of these individual defendants.

3 158. As a result of the above described practices, Defendants Ma and Rao have treated
4 the corporation of Ma Labs as their “alter ego,” rather than as a separate entity. Hence, Ma and
5 Rao, individually, are and have been the alter ego of Ma Labs. At all times mentioned, a unity of
6 interest in ownership and other interests between Ma and Ma Labs, and Rao and Ma Labs, existed
7 such that any separateness ceased to exist between them.

8 159. As a result of the above-described practices, and as a result of Defendants Ma and
9 Rao’s direct participation in the illegal and unfair business practices complained of herein;
10 upholding the corporate entity and allowing the Individual Defendants to escape personal liability
11 would promote injustice and lead to inequitable results.

12 **V. CAUSES OF ACTION**

13 **COUNT 1**

14 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**

15 **(California Labor Code §§ 510, 558, 1194 *et seq.* and Wage Order No. 7-2001; Brought by**
16 **Plaintiffs Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and**
17 **Christopher Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and**
18 **Brought by Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma,**
19 **and Steven Lee on Behalf of Themselves)**

20 160. Plaintiffs repeat and incorporate by reference all prior paragraphs as if fully alleged
21 herein.

22 161. During all relevant times, Defendants engaged in a widespread pattern and practice
23 of failing to pay employees for hours worked “off-the-clock” and shaving time from employees’
24 recorded time.

25 162. During all relevant times, Defendants, including Ma and Rao, were each employers
26 of Plaintiffs and Class Members under the IWC Wage Order and for purposes of Labor Code
27 section 1194.

28 163. During all relevant times, Defendants Ma and Rao were acting on behalf of Ma
Labs and therefore are covered by Labor Code section 558.

164. During all relevant times, Defendants required, and continues to require, their
employees to work in excess of eight hours per workday and forty hours per workweek.

1 165. During all relevant times, the California Labor Code § 510 and Wage Order No. 7-
2 2001 required that an employer compensate all work performed by an employee in excess of eight
3 hours in one work day and 40 hours in any one workweek; and all work performed by an employee
4 during the first eight hours worked on the seventh day of work in any one workweek at one and
5 one-half times the employee's regular rate of pay.

6 166. Defendants, knowingly and willfully, failed to pay overtime wages earned and due
7 to its hourly employees who worked 8 or more hours in a workday without a meal or rest break.
8 Defendants' conduct deprives the Class of full and timely payment for all overtime hours worked
9 in violation of the California Labor Code.

10 167. As a result of Defendants' willful and unlawful failure to pay the Class properly
11 earned overtime wages, Plaintiffs and Class Members are entitled to recover their unpaid overtime
12 compensation, and the relief requested below.

13
14
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16
17
18

COUNT 2
UNLAWFUL FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS AND MEAL
PERIOD COMPENSATION
(California Labor Code §§ 226.7 and 512, and Wage Order No. 7-2001; Brought by Plaintiffs
Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher
Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by
Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven
Lee on Behalf of Themselves)

19 168. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
20 paragraphs as if fully set forth herein.

21 169. Throughout the relevant statute of limitations, Defendants operated under and
22 continue to operate under a common policy and plan of failing and refusing to afford Plaintiffs and
23 Class Members at least one half-hour meal periods in which they were relieved of all duties after
24 five hours of work and a second meal period after ten hours of work, as required by IWC Wage
25 Order No. 4-2001 and Labor Code §§ 226.7 and 512.

26 170. Plaintiffs and Class Members were regularly expected to work during lunch.

27 171. Defendants never attempted to provide a second meal period for employees on duty
28 for ten hours or more.

1 172. Defendants failed to provide compensation of an additional hour of pay at the
2 regular wage rate, for meal periods that were not provided.

3 173. Defendants are liable for forcing Plaintiffs and Class Members to work during the
4 meal period mandated after five (5) hours of work for one additional hour of pay at the employee's
5 regular rate of compensation for each work day that Defendants failed to provide the first required
6 meal period to each Class Member.

7 174. Defendants are further liable for forcing Plaintiffs and Class Members to work
8 during the second meal period mandated after ten hours of work for one additional hour of pay at
9 the employee's regular rate of compensation for each work day that Defendants failed to provide
10 the second required meal period to each Class Member.

11 175. Plaintiffs and the Class request relief as described below.

12 **COUNT 3**
13 **UNLAWFUL FAILURE TO PROVIDE OFF-DUTY REST PERIODS**
14 **(California Labor Code §§ 226.7 and 512, and Wage Order No. 7-2001; Brought by Plaintiffs**
15 **Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher**
16 **Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by**
17 **Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven**
18 **Lee on Behalf of Themselves)**

19 176. Plaintiffs and Class Members were regularly compelled to work over a four (4) hour
20 period (or major fraction thereof) without Defendants authorizing and permitting them to take paid
21 rest periods of ten (10) minutes net rest time during which they were relieved of all duties, as
22 required by IWC Wage Order 7-2001 § 12(A) and Labor Code § 226.7.

23 177. Defendants failed to provide compensation of an additional hour of pay at the
24 regular wage rate, for rest breaks that were not provided.

25 178. Defendants are liable for one additional hour of pay at the employee's regular rate
26 of compensation for each work day that Defendants failed to permit and authorize a first mandated
27 rest period to each Class Member.

28 179. Defendants are further liable for one additional hour of pay at the employee's
regular rate of compensation for each work day that Defendants failed to permit and authorize a
second mandated rest period to each Class Member.

1 180. Defendants are further liable for one additional hour of pay at the employee's
2 regular rate of compensation for each work day that Defendants failed to permit and authorize a
3 third mandated rest period to each Class Member.

4 181. Plaintiffs and the Class request relief as described below.

5 **COUNT 4**
6 **UNLAWFUL FAILURE TO TIMELY PAY WAGES UPON SEPARATION FROM**
7 **EMPLOYMENT**
8 **(California Labor Code §§ 201-203; Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang,**
9 **Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves**
10 **and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing**
11 **Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)**

12 182. Plaintiffs, on behalf of themselves and the Class, repeat and incorporate by
13 reference all prior paragraphs as if fully set forth herein.

14 183. Defendants have operated under and continue to operate under a common policy
15 and plan of failing and refusing to timely pay unpaid wages and overtime owed to Plaintiffs and
16 Class Members whose employment is terminated, as required by California Labor Code § 201. As
17 a result of its failure to timely pay employees owed wages upon discharge, Defendants are liable
18 for statutory waiting time penalties pursuant to Cal. Labor Code § 203.

19 184. Defendants have operated under and continue to operate under a common policy
20 and plan of failing and refusing to timely pay unpaid wages and overtime owed to Plaintiffs and
21 Class Members who resigned from their employment within seventy-two (72) hours of their
22 resignation, as required by Labor Code § 202. As a result of its failure to timely pay employees
23 who quit, Defendants are liable for statutory penalties pursuant to Cal. Labor Code §§ 203 and 218.

24 185. Plaintiffs and the Class request relief as described below.

25 **COUNT 5**
26 **UNLAWFUL FAILURE TO FURNISH AND KEEP ACCURATE WAGE STATEMENTS**
27 **(California Labor Code §§ 226, 226.3; Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang,**
28 **Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves**
29 **and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing**
30 **Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)**

31 186. Plaintiffs, on behalf of themselves and the Class, repeat and incorporate by
32 reference all prior paragraphs as if fully set forth herein.

33 187. Defendants knowingly and intentionally failed to furnish and continue to fail to

1 furnish Plaintiffs and each Class Member with timely, itemized statements that accurately reflect
2 total number of hours worked and wages earned, as mandated by California Labor Code § 226(a),
3 which requires employers, semi-monthly or at the time of each payment of wages, to furnish each
4 employee with a statement that accurately reflects the total number of hours worked.

5 188. As a result, Defendants are liable to Plaintiffs and each of the Class Members for the
6 amounts provided by California Labor Code § 226(e): the greater of actual damages or fifty dollars
7 (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to
8 four thousand dollars (\$4,000).

9 **COUNT 6**
10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY, RETALIATION**
11 **(Common Law and California Government Code §§12940, et seq., Brought by Plaintiffs**
12 **Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie on Behalf of**
13 **Themselves Against All Defendants)**

14 189. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
15 paragraphs as if fully set forth herein.

16 190. The public policy of the State of California, as articulated in Government Code
17 §§12940, et seq., the California Constitution, and many other statutes, prohibits employers from
18 taking adverse employment actions against employees for engaging in legally protected activities.

19 191. Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie
20 engaged in protected activities, including questioning to management a legal agreement they
21 believed was unfair and suspected was unlawful; protesting unlawful discrimination against limited
22 English proficient immigrant workers in the form of requiring them to sign agreements that they
23 could not read; and complaining about unsafe working conditions.

24 192. By imposing various releases and waivers, through its timekeeping system, through
25 paper-based waivers and releases such as the 2010 Supplement, Defendants violated Labor Code
26 section 206.5 and the fundamental public policy against exculpatory contracts as embodied in
27 Labor Code section 206.5 and Civil Code section 1668. By refusing to sign the 2010 Supplement,
28 which contained an illegal and one-sided “general release,” and by refusing to sign the entire
agreement and submit to mandatory mediation and mandatory arbitration without first receiving a
written Chinese translation, Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming

1 Fang Tie engaged in protected activity.

2 193. Defendants targeted and retaliated against Plaintiffs Guang Tian, Yan Nie, Jing Jian
3 Wu, Tie Quan Ma, and Ming Fang Tie for engaging in protected activities.

4 194. Defendants targeted and retaliated against Plaintiffs Guang Tian, Yan Nie, Jing Jian
5 Wu, Tie Quan Ma, and Ming Fang Tie via harassment, discipline, and other adverse conditions of
6 employment, including termination.

7 195. As a direct and legal result of the Defendants' wrongful conduct, Plaintiffs Guang
8 Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie have suffered humiliation, mental
9 anguish, and emotional distress.

10 196. As a direct and legal result of the Defendants' wrongful conduct, Plaintiffs Guang
11 Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and Ming Fang Tie have suffered past and future lost
12 wages and related benefits, the exact amount of which will be proven during trial.

13 197. Defendants' wrongful conduct, as alleged in this cause of action, was oppressive,
14 fraudulent, and malicious toward Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie Quan Ma, and
15 Ming Fang Tie. The termination decisions were made, approved, and ratified by officers and
16 managing agents of Defendants, including Defendant Abraham Ma (Company Chairman),
17 Defendant Christine Rao (Chief Executive Officer), General Counsel Mark Musto, and Human
18 Resources manager Christy Yee. Accordingly, Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Tie
19 Quan Ma, and Ming Fang Tie are entitled to exemplary and/or punitive damages in an amount
20 sufficient to punish Defendants and deter future retaliation and discrimination of the same kind.

21 198. Plaintiffs request relief as described below.

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23 **COUNT 7**
24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY, RETALIATION**
(Common Law and California Government Code §§12940, *et seq.*, Brought by Plaintiff
Steven Lee Against All Defendants)

25 199. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
26 paragraphs as if fully set forth herein.

27 200. Plaintiff Steven Lee engaged protected activities by, among other things, refusing to
28 participate in Defendant Ma's strategies for defending against the instant lawsuit, by asserting to

1 the Company that he had wage-and-hour claims, by testifying in support of former coworkers who
2 had filed wage-and-hour claims in federal court, and by retaining counsel to assist him in asserting
3 his legal rights.

4 201. Defendants targeted and retaliated against Plaintiff Lee for engaging in activities
5 protected by the public policies of the State of California and the United States, by taking
6 disciplinary action against him and by terminating his employment. Plaintiff Lee's retaliatory
7 termination violates public policies that protect employees who speak out about unfair and
8 unlawful practices at their workplace.

9 202. As a direct and legal result of the Defendants' wrongful conduct, Plaintiff Lee has
10 suffered garden variety humiliation, mental anguish, and emotional distress.

11 203. As a direct and legal result of the Defendants' wrongful conduct, Plaintiff Lee has
12 suffered past and future lost wages and related benefits, the exact amount of which will be proven
13 during trial.

14 204. Defendants' wrongful conduct, as alleged in this cause of action, was oppressive,
15 fraudulent, and malicious toward Plaintiff Lee. The adverse employment actions were taken,
16 approved, and ratified by officers and managing agents of Defendants, including Defendant
17 Abraham Ma, Defendant Christine Rao, General Counsel Mark Musto, and managers Helen Guan
18 and Christy Yee. Accordingly, Plaintiff Lee is entitled to exemplary and/or punitive damages in an
19 amount sufficient to punish Defendants and deter future retaliation and discrimination of the same
20 kind.

21 205. Plaintiff Lee requests relief as described below.

22 **COUNT 8**
23 **RETALIATION FOR PROTECTED ACTIVITY**
24 **(California Labor Code § 98.6, Brought by Plaintiff Steven Lee Against All Defendants)**

25 206. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
26 paragraphs as if fully set forth herein.

27 207. As set forth above and particularly in Paragraphs 201 through 205, Defendants
28 retaliated against Plaintiff Lee for engaging in activities protected by the California Labor Code.

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208. Defendants' placing Plaintiff Lee on administrative leave and Defendants' termination of Plaintiff Lee were adverse employment actions that caused Lee monetary and other harm.

209. Plaintiff Lee requests relief as described below.

COUNT 9
UNFAIR COMPETITION – UNLAWFUL ACTS
(California Business and Professions Code §§ 17200 *et seq.*; Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)

210. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

211. Each Defendant is a "person" as defined under Cal. Business & Professions Code § 17021.

212. Defendants' willful failure to pay for all hours worked, failure to pay all overtime wages due, failure to pay premium wages when it did not provide off-duty meal and rest periods, and failure to maintain accurate time records, failure to timely furnish Class Members with statements accurately showing their hours worked, and failure to timely pay all owed wages upon separation, constitute unlawful activity prohibited by California Business and Professions Code § 17200.

213. By imposing various releases and waivers, through its timekeeping system, through paper-based waivers and releases such as the 2010 Supplement, Defendants violated Labor Code 206.5 and the fundamental public policy against exculpatory contracts.

214. As a result of its unlawful acts, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the Class Members.

215. Defendants should be made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class Members the wrongfully withheld wages to which they are entitled, interest on these wages, and all other injunctive and preventive relief authorized by Business and Professions Code §§ 17202 and 17203.

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216. This action is designed to ensure the enforcement of an important right affecting the public interest and a large number of low-wage workers. The necessity and financial burden of private enforcement is great, and the risks to the named plaintiffs for stepping forward are also significant. As such, Plaintiffs would be entitled to attorneys' fees should they prevail, and such fees should not in the interest of justice be paid out of the recovery.

217. Plaintiffs and the Class request relief as described below.

COUNT 10
UNFAIR COMPETITION – UNFAIR ACTS
(California Business and Professions Code §§ 17200 et seq.; Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)

218. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

219. Any business act or practice that violates the Labor Code through failure to pay wages is, by definition, an unfair business practice under § 17200.

220. Defendants' coercive efforts to secure waivers after individual claims of wage and hour violations started mounting were immoral, unethical, oppressive, and unscrupulous.

221. Defendants' stamping out of opposition to unfair and unsafe working conditions, its efforts to impose legally suspect agreements such as the Supplement on employees and its terminations of employees who did not acquiesce to these practices were particularly immoral, unethical, oppressive, and unscrupulous.

222. The injuries to Plaintiffs and Class Members and to fundamental public policy have no legitimate business justification and no legitimate countervailing benefits.

223. As a result of its unfair acts, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the Class Members.

224. Defendants should be made to disgorge these ill-gotten gains and restore to Plaintiffs and the Class Members the wrongfully withheld wages to which they are entitled, interest on these wages, and all other injunctive and preventive relief authorized by Business and

1 Professions Code §§ 17202 and 17203.

2 225. Plaintiffs and the Class request relief as described below.

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COUNT 11
UNFAIR COMPETITION – FRAUDULENT ACTS
(California Business and Professions Code §§ 17200 *et seq.*; Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)

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8 226. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing
9 paragraphs as if fully set forth herein.

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227. Defendants designed a system of recordkeeping that ensured that employees would
be underpaid and that their earnings statements would not reflect all hours worked.

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228. Defendants actively concealed information from and caused false information to be
presented to the State Department of Labor. After individual complaints mounted, in an attempt to
avoid liability, Defendants adopted a new layer of recordkeeping that it knew, or had reason to
believe, contained false or misleading information.

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229. As a result of their deceptive acts, Defendants have reaped and continue to reap
unfair benefits and illegal profits at the expense of Plaintiffs and the Class Members.

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230. Defendants should be made to disgorge these ill-gotten gains and restore to
Plaintiffs and the Class Members the wrongfully withheld wages to which they are entitled, interest
on these wages, and all other injunctive and preventive relief authorized by Business and
Professions Code §§ 17202 and 17203.

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231. Plaintiffs and the Class request relief as described below.

COUNT 12
UNFAIR COMPETITION
(For Preliminary and Permanent Injunction, Brought by Plaintiffs Ming Fang Tie, Yu Hong Chang, Yi Wu, Bao Jie Zhang, Chao Hui Liu and Christopher Cavaliere, on Behalf of Themselves and the Class Against All Defendants; and Brought by Plaintiffs Guang Tian, Yan Nie, Jing Jian Wu, Zhen Sheng Yin, Tie Quan Ma, and Steven Lee on Behalf of Themselves)

232. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing

1 paragraphs as if fully set forth herein.

2 233. Defendants have unlawfully failed to record time worked by the Class. Defendants
3 have unlawfully failed to pay overtime compensation for all hours worked in excess of eight hours
4 in a day and 40 hours in a workweek. Defendants have unlawfully failed to provide off-duty meal
5 periods or off-duty rest periods. Defendants have unlawfully failed to timely pay wages upon
6 employees' separation from the Company. Defendants have unlawfully failed to furnish and keep
7 accurate wage statements.

8 234. As a result of these acts and omissions, Plaintiffs allege that Defendants have been
9 able to unfairly compete with other similar businesses in the State of California in violation of
10 California Business and Professions Code § 17200 et seq.

11 235. If Defendants are not enjoined from these unlawful, unfair and fraudulent practices,
12 it will continue to engage in the same Labor Code violations that have injured and will continue to
13 injure the Class Members. There is a threatened future harm and/or continuing violation that
14 justifies injunctive relief. The threat of future harm is particularly present for the plaintiffs who
15 allege wrongful termination as a matter of policy and allege that they are entitled to reinstatement.

16 236. Current employees are as a matter of practice unable to seek either damages or
17 injunctive relief on their own behalf because of the fear of retaliation and the low individual stakes
18 compared to the potential high costs of pursuing judicial relief.

19 237. Plaintiffs, on behalf of the Class, request that the Court issue a preliminary and
20 permanent injunction prohibiting Defendants from (1) manipulating their electronic timekeeping
21 system to avoid accurate timekeeping; (2) requiring hourly employees to work more than eight
22 hours a day or forty hours per week in any work week without accurate full overtime
23 compensation; (4) depriving hourly employees of off-duty meal and rest periods; (5) refusing or
24 failing to timely pay hourly employees upon separation from the Company; (6) failing to maintain
25 adequate payroll records and to furnish hourly employees with accurate wage statements.

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COUNT 13

**VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT
(California Labor Code §§ 2698 *et seq.* Brought by Plaintiffs Christopher Cavaliere and Steven Lee on Behalf of Themselves and the PAGA Class Against All Defendants)**

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238. Plaintiffs repeat and re-allege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

239. California Labor Code § 2699 gives any employee aggrieved by an employer's violation of the Labor Code the right to file an action on behalf of all aggrieved employees for the penalties established by Section 2698 and/or other Labor Code sections.

240. Plaintiff Cavaliere and Lee are an aggrieved employee who has been deprived of overtime pay, meal periods and meal period compensation, rest breaks and rest break compensation, full wages upon separation, proper itemized wage statements, and has been the victim of willfully inaccurate recordkeeping and other willful wage and hour violations, as detailed above.

241. The aforementioned wrongful acts and omissions of Defendants are violations of California's Labor Code and the IWC Wage Order as set forth herein. They include violations of Labor Code Sections 201-203, 204, 206.5, 210, 510, 226(a), 226.3, 226.7, 558, and 1174.

242. Plaintiffs Cavaliere and Lee and the PAGA Class are employees of Defendants who have been aggrieved by Defendants' violations of the aforementioned Labor Code provisions.

243. By letter dated March 18, 2013, Plaintiff Cavaliere gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA"), and to Defendants and their respective counsel of record, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. By letter dated May 6, 2013, the LWDA provided Plaintiff Cavaliere with notice that it does not intend to investigate the violations.

244. By letter dated February 7, 2014, Plaintiff Lee gave written notice by certified mail to the LWDA, and to Defendants and their respective counsel of record, of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. By letter dated March 6, 2014, the LWDA provided Plaintiff Lee with notice that it does not intend to investigate the violations.

- 1 L. Award pre-judgment and post-judgment interest, as provided by law; and
- 2 M. Order such other and further legal and equitable relief as this Court deems
- 3 necessary, just, and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs and the Class demand a jury trial in this action for all the claims so triable.

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7 Respectfully submitted,

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9 Dated: July __, 2014

By:

10 _____
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ATTACHMENT A



MEMORANDUM
(Subject to All Applicable Privileges)

Date: February 15, 2010	cc: Abraham; Christine, Tony, HR
To: Hourly Employees and Supervisors	File Ref.
Fm: Mark Musto, Esq. (General Counsel)	
Re: Meal and Rest Periods – New Clock In/Out System For Meal Periods Starting Monday February 15, 2010	

The Company is updating its workplace conduct rules, including its recordkeeping policies, procedures and practices with respect to hours worked by its non-exempt Hourly Employees. We request that you acknowledge your receipt of a copy of this Memorandum and agreement to its terms by signing and dating it below.

Effective Monday February 15, 2010, all Hourly Employees are required to follow these workplace conduct rules in recording time at work, and agree to be bound thereto.

Hourly Employee Duty to Record Time Worked. Hourly Employees are responsible for accurately recording all time worked in the records of the Company. This includes the following:

- a. The time that the Hourly Employee begins (starts) work.
- b. The time that the Hourly Employee takes meal periods, whether off premises or on premises.
- c. The time that Hourly Employee stops work (leaves for the day).

Hourly Employees are encouraged to report to work on time and to leave work on time. No overtime shall be incurred without the prior knowledge and approval of the Hourly Employee's supervisor. Overtime shall be reported to HR/payroll by the Hourly Employee's supervisor no later than the next business day.

Use of Time Clock to Record Time Worked. The Company has provided Hourly Employees with access to time clocks, located at various places on premises, to record all time worked and to record their meal period. **Use of the time clock is mandatory.** Any violation shall be ground for discipline, up to and including termination of employment in case of repeated violations.

Grace Period. A grace period of two (2) minutes is allowed in clocking meal periods. The time clock will be programmed so as to not allow an Hourly Employee to deviate from this policy. Any exceptions must be reported to and approval obtained from HR. Any violations of the grace period shall be accounted for by Company payroll department on a net basis.

Clock-In at Beginning of Work Day/Shift. Hourly Employees shall record the time they begin work by clocking in at their scheduled start of work day/shift time.

MA Labs004332

CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER

Clock-Out at End of Work Day/Shift. Hourly Employees shall record the time they stop work by clocking out at their scheduled end of work day/shift time.

Meal Periods. The Company provides those of its Hourly Employees who work more than five (5) hours per day with a 45-minute uncompensated meal period. [California law only requires 30 minutes.] Hourly Employees who work five hours or less per work day are not entitled to a meal period for that work day. Employer and hourly Employee may consent to waive a meal period where a period of less than six (6) hours of work will complete the Hourly Employee's work day. Any such waiver(s) shall be reported to HR/payroll in advance.

Scheduling of Meal Periods. Meal periods shall be scheduled by your department and/or supervisor, so far as reasonably practicable, to take place near the mid-point in your work day/shift. Any complaints in scheduling shall be reported in writing directly to HR, which shall investigate and make such adjustments, if any, as are warranted. Failure to make such complaint on a same day basis shall waive the claim.

Clocking Meal Periods. Hourly Employees shall record the time they take for such meal periods, including any interruptions thereof. The Company shall accord such Hourly Employees a two (2)-minute grace period for recording their meal period(s).

Meal periods shall be recorded by each Hourly Employee by their use of the time clock to:

1. **Clock out** at the start of the meal period; and
2. **Clock in** at the end of the meal period (within a two-minute grace period).

The time clock shall be registered so as to prevent an Hourly Employee from clocking back more than two minutes *before* the 45 minutes is up, and will notify the Hourly Employee to come back when time is up. The time clock will also document any return *after* the grace period expires (in other words, if an Hourly Employee is more than 2 minutes late) and this shall be documented as part of the record of hours worked and reported to payroll with appropriate adjustment to compensation.

Hourly Employee Certificate. Hourly Employees will also be asked at the end of each work day to certify by pressing a "touch screen" dialog box confirming that each Hourly Employee took their meal period without interruption and was given their rest periods. The Company shall use such certificate as its record that the Hourly Employee took the meal period without interruption.

Meal Periods. Hourly Employees on an uncompensated meal period must not perform any work activities during such period and should remove themselves from the work area where it is foreseeable that their mealtime could be interrupted. The Company encourages Hourly Employees to use the lunch/break room provided on premises for this purpose. In general, Hourly Employees that may be responsible for taking deliveries or engaging in other work activities that could occur at the time that they are scheduled to take their meal period shall make arrangements to cover same through their Supervisor so that their meal period is not interrupted.

Meal Period Memo

Page 3

Interruption of Meal Period. It is the policy of the Company that meal periods are to be taken by Hourly Employees without interruption. If an interruption occurs, for whatever reason, the Hourly Employee shall extend the meal period by the time expended by the Hourly Employee in attending to the interruption, and shall complete his or her meal period by taking this additional time. This extension is mandatory unless the circumstances are such that the Hourly Employee is directed to return to work by his/her supervisor in which event the shortage shall be reported as work time and compensated as such. In such event, it is the responsibility of the Hourly Employee and supervisor to so notify HR.

Reporting of Meal Period Interruptions. Any interruptions to the meal period or missed meal periods of Hourly Employees shall be reported to HR and the Hourly Employee's immediate supervisor on the date of the interruption occurs. Hourly Employees must record the duration of any interruption as work time on the date that it occurs. Any claimed interruption to a meal period that is not reported by the Hourly Employee on the date it occurs shall be deemed waived.

Rest Periods. It is the policy of the Company to provide Hourly Employees with a ten (10) minute rest period per four (4) hours worked or major fraction thereof. Hourly Employees working more than four (4) hours are entitled to two 10-minute rest periods. Rest periods shall be taken, insofar as reasonably practicable, near the mid-point in each four (4) hour period worked, subject to supervisor approval and authorization. Authorized rest period time is counted as wages worked for which there shall be no deduction from wages.

Claims Reporting Deadline and Waiver. Any claim that the above workplace conduct rules regarding meal periods and rest periods have been violated by the Company, or any of its supervisory hourly Employees, shall be directly reported to HR within twenty-four (24) hours of the alleged violation. The failure to report a violation within forty-eight (48) hours of the claimed violation shall be deemed a knowing and voluntary waiver and release of any such claim.

Additional Documentation and Record-Keeping. Subject to the foregoing rules, practices, and procedures, the Company may in its sole discretion additionally require that each Hourly Employee certify that he/she has taken and/or been compensated for all meal periods and all rest periods on a quarterly basis. Hourly Employees shall be required to sign a certificate to this effect.

Please date and sign copy of this Memo and return to HR. Thank you.

* * * *

Understood and Agreed

Hourly Employee:

Signature

Print Name

Dated:

MA Labs004334

**CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER**

ATTACHMENT B

SUPPLEMENT TO EMPLOMENT AGREEMENT
AND
GENERAL RELEASE
(Hourly Employee)

This **SUPPLEMENT TO EMPLOYMENT AGREEMENT AND GENERAL RELEASE** (hereinafter referred to as “Supplemental Agreement” or “Agreement”) is made this ____ day of _____, 2010, by and between MA LABORATORIES, INC. (“Employer”) and _____ (“Employee”).

In exchange for the good and valuable consideration, mutual promises, terms and conditions of this Supplemental Agreement, the receipt and legal sufficiency of which is hereby acknowledged, Employer and Employee agree as follows:

A. Supplement to Employee Agreement.

The terms and conditions of employment set forth in this Supplemental Agreement shall be deemed to supplement and amend the Employment, Confidential Information, and Invention Assignment Agreement (“Employment Agreement”) between Employer and Employee. Except as stated herein, all of the terms and conditions of the Employment Agreement shall remain in full force and effect. Employee remains at “at-will” employee pursuant to the terms of the Employment Agreement and Employee Handbook.

1. Consideration.

This Supplemental Agreement and Release is entered into by Employee in consideration for Employee’s continued employment, and for additional consideration which will be paid by Employer to Employee incident to the next pay period.¹ Employee certifies that he/she has voluntarily signed this Supplemental Agreement and Release in exchange for such consideration in its entirety.²

As provided in the Employee Handbook, Employee is entitled to overtime pay for [approved] hours worked in excess of forty (40) hours per week and as provided by law; provided, however, that Employee must obtain prior written approval of overtime by the responsible management of Employer (Employee’s supervisor) *before* such overtime is incurred.

¹ Employer reserves the right to amend, alter and otherwise change Employee's overall Compensation Package, provided, however, that Employee shall be entitled to all compensation earned (and pro rated) through the date of such amendment, alteration, change or termination.

² Nothing herein shall change, alter, amend, limit or condition in any way the at-will employment relationship of the parties, as set forth in the Employment Agreement and Employee Handbook. Either party may terminate the employment relationship at-will, with or without cause, and without any prior notice, as provided by Cal. Labor Code Section 2922 and as recited in the Employment Agreement and Employee Handbook. Employer reserves the right to amend, alter and otherwise change the terms and conditions of employment, including the terms of compensation, provided, however, that Employee shall be entitled to all compensation, earned (and pro rated) through the date of such amendment, alteration, change or termination.

2. Rules Governing Overtime.

The rules governing overtime are set forth in the Employee Handbook, and require among other things prior written approval of the Employee's supervisor before any overtime is incurred. Employee shall timely clock in at start of his or her work shift, timely clock out and back in for meal periods, and timely clock out at end of work shift in timely manner. Employee shall arrive at work promptly at the start of the work shift, and shall depart the premises promptly upon the end of work shift.

- A. Violation of Clock In/Out and Overtime Rules and Procedures: Employee is obligated to clock in at start of their work shift and to clock out at end of their work shift in a timely manner, and to adhere to the Employer's rules and procedures in this regard. To be deemed "timely," Employee must clock in and/or clock out within five (5) minutes of the assigned time. Failure to timely clock in or clock out shall be deemed a material breach of the Employment Agreement and shall constitute basis for disciplinary action up to and including discharge from employment.
- B. Clock In/Out Rules and Procedures: Employee's violation of the clock in/out rules and procedures shall constitute grounds for disciplinary action. A first violation shall result in a written warning; a second violation shall result in mandatory disciplinary action, up to and including discharge from employment.
- C. Violation of Overtime Rules and Procedures. Employee's violation of the overtime rules and procedures shall constitute ground for disciplinary action. A first violation shall result in a written warning; a second violation shall result in disciplinary action, up to and including discharge.

B. General Release.

1. Voluntary Release by Employee.

In consideration of the terms and conditions of this Supplemental Agreement, the receipt and sufficiency of which is hereby acknowledged, Employee voluntarily waives, releases, acquits and forever discharges Employer, and each and every of its owners, officers, directors, shareholders, partners, insurers, agents, servants, managers, employees, attorneys, representatives, successors, affiliates, and assigns, to the fullest extent permitted by law, of and from any and all claims, liabilities, demands, causes of action (statutory or common law), costs, expenses, attorney's fees, damages, losses, injuries, indemnities, and obligations of every kind and nature, whether individual or in representative capacity, in law, in equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed (hereafter collectively referred to as "Claims") directly or indirectly arising out, in connection with, or otherwise in any way related to the Employment Agreement, the parties' employment relationship, any agreements, events, acts or conduct of Employer or Employee at any time prior to and including the execution of this Agreement, that arise out of and/or are related to Employee's employment and/or the employment relationship, including but not limited to:

- a) Any and all Claims of Employee to fringe benefits, expense reimbursements, per diem, stipend, SPIFF, rebates, and to discretionary pay of any kind;
- b) Any and all Claims of Employee to unpaid compensation of any kind including but not limited to, wages, hours, overtime, meal periods, rest periods, breaks, waiting time, bonuses, premiums, penalties;
- c) Any and all Claims of Employee under the Fair Labor Standards Act, the California Labor Code, or other applicable Labor Code of the jurisdiction where the employment arose or is being performed;
- d) Any and all Claims under the federal Civil Rights Act of 1964, as amended; the federal Americans with Disabilities Act of 1990, as amended; the National Labor Relations Act; the federal Age Discrimination Act of 1967, as amended; the federal Family Medical Leave Act, as amended; the Employee Retirement Income and Securities Act; the California Fair Employment and Housing Act (which may include, inter alia, claims for age, race, color, ancestry, national origin, disability, medical condition, marital status, sexual orientation, gender, gender identity, religious creed, pregnancy, sex discrimination and harassment), as amended; the California Family Rights Act, as amended; the California Labor Code; tort law; contract law; whistleblower laws; retaliation; wrongful discharge; discrimination; harassment; fraud; defamation; emotional distress; and breach of the implied covenant of good faith and fair dealing; and
- e) Any and all other Claims of Employee, whether individual or in representative capacity, based on any other legal and contractual rights and obligations of any kind, including more particularly, under any federal law, state law, and local statute, rule, regulation, order or ordinance of any kind.

Employer believes in good faith that Employee heretofore has been correctly classified as a non-exempt employee for overtime purposes and that Employee has been paid all wages currently due and owing (e.g., compensation, salary, earned commissions, overtime) and that Employee has been provided with all applicable meal periods and rest periods (breaks). Employee more particularly agrees that his or her Release of Claims in this Section includes and waives any and all Claims to disputed wages, overtime, meal periods, and rest periods (breaks). In this regard, Employee further expressly acknowledges, represents, and agrees that Employer has fully and timely paid Employee all compensation of any kind, salary, wages, overtime and premium wages, payments, bonuses, incentive compensation of all kinds, and benefits of any kind, owed or otherwise due to Employee predating the date of this Agreement (except for the elements of compensation identified in fn. 2).

2. Waiver of California Civil Code Section 1542.

Employee hereby expressly, knowingly and voluntarily waives any and all rights under Section 1542 of the California Civil Code, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

3. Representations By Employee.

Employee represents that he/she has no pending lawsuits, claims, legal or administrative proceedings, or other actions or proceedings of any kind pending against Employer.

4. No Other Representations By Employer.

Employee represents, acknowledges and agrees that no promises, statements, or inducements have been made by Employer or its officers, directors, employees, agents, attorneys, or representatives, to Employee which have caused Employee to sign this Agreement, other than those expressly stated in this Agreement and of Employee's own free will.

5. Knowing and Voluntary Waiver of Known and Unknown Claims.

EMPLOYEE REPRESENTS, ACKNOWLEDGES AND AGREES THAT EMPLOYEE (1) HAS BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL CONCERNING HIS OR HER RIGHTS UNDER THIS AGREEMENT, (2) HAS THOROUGHLY DISCUSSED (OR HAS KNOWINGLY AND FREELY CHOSEN NOT TO DISCUSS) THIS AGREEMENT AND HIS OR HER RIGHTS HEREUNDER WITH LEGAL COUNSEL OF HIS OR HER OWN CHOOSING, (3) UNDERSTANDS THAT HE OR SHE MAY BE WAIVING LEGAL RIGHTS OR CLAIMS BY SIGNING THIS AGREEMENT, (4) HAS BEEN GIVEN A REASONABLE PERIOD OF TIME TO CONSIDER THE ADVISABILITY OF SIGNING THIS AGREEMENT, (5) HAS CAREFULLY READ AND FULLY UNDERSTANDS THIS AGREEMENT AND ALL OF ITS TERMS, AND (6) DESIRES TO VOLUNTARILY SIGN THIS WAIVER AND RELEASE ON THE TERMS STATED AND IN CONSIDERATION THEREFOR.

6. Waiver of ADEA Rights.

Employee acknowledges that he/she is waiving rights that Employee may have under the Age Discrimination in Employment Act of 1967 (“ADEA”), and that this waiver and release is knowing and voluntary. Employee agrees that this waiver and release do not apply to any claims that may arise under the ADEA after the Effective Date of this Agreement. Employee acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Employee was already entitled.

Employee further acknowledges that he/she has been advised by this writing that: a) Employee should consult with an attorney prior to executing this Agreement; b) Employee has twenty-one (21) days within which to consider this Agreement; c) as stated below, Employee has seven (7) days following execution of this Agreement to revoke this Agreement; d) this Agreement shall not be effective until after the revocation period has expired; and e) nothing in this Agreement prevents or precludes Employee from challenging or seeking a good faith determination of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law.

In the event that Employee signs this Agreement and returns it to Employer in less than the 21-day period identified above, Employee hereby acknowledges and agrees that he/she freely and voluntarily has chosen to waive the time period allotted for considering this Agreement.

Employee shall have the right to revoke this Agreement in his/her sole discretion on or before seven (7) calendar days after execution of this Agreement. If Employee revokes this Agreement, Employee must return the additional compensation described in Section A, 1, above, together with written notice of revocation, to Employer by hand-delivery or certified mail, return receipt requested, addressed as follows:

Ma Laboratories, Inc.
2075 N. Capitol Ave.
San Jose, CA 95132
Attn: HR Dept.

IF I DECIDE TO REVOKE THIS AGREEMENT, IT SHALL NOT BE EFFECTIVE OR ENFORCEABLE FOR ANY PURPOSE, IT SHALL BE NULLAND VOID, AND EMPLOYEE WILL NOT RECEIVE THE ADDITIONAL COMPENSATION DESCRIBED ABOVE IN SECTION A, 1, ABOVE.

7. No Employer Admission.

This Agreement shall not be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by Employer of any Claim, fault or liability whatsoever to Employee or any third party, and shall not be admissible in any legal proceeding or action or in support of any Claim.

8. Confidentiality.

The terms and conditions of compensation set forth in this Section A.1 of this Agreement are strictly confidential. Employee agrees not to copy or forward to any third party the terms and conditions of compensation recited in this Agreement. Any form of distribution is considered a violation of Company policy, and may result in disciplinary action, up to and including discharge from employment, and rescission of this Agreement (and restoration of any additional consideration received by Employee hereunder).

9. Successors and Assigns.

This Agreement is and shall be binding upon Employee and Employer, as well as upon any heirs, administrators, representatives, executors, successors and assigns.

10. Entire Agreement of the Parties.

This Agreement constitutes the complete, final and exclusive embodiment of the entire agreement between Employer and Employee with regard to its subject matter. This Agreement shall not be deemed or construed as a modification of any terms and conditions of my employment, including the parties' agreement that the employment relationship is strictly at will. Employee is not relying on any promise or representation by Employer that is not expressly stated herein. This Agreement may only be modified by a writing signed by both Employer and Employee.

11. Savings Clause; Severability.

If any one or more of the provisions of this Agreement, or any part thereof, shall be determined by a court of competent jurisdiction or arbitrator to be invalid, void or voidable, or otherwise unenforceable, whether as a matter of law, equity, or public policy, then the remaining provisions, and any and all parts thereof, shall be saved, severable, and deemed to continue in full force and effect and to such extent to be fully enforceable.

12. Survival.

Employee agrees that the obligations created under this Agreement shall continue in force and effect after termination of employment, regardless of the reason or reasons for termination and regardless of whether such termination was voluntary or involuntary.

13. Forum Selection; Jurisdiction.

The parties agree to submit any Claim to mandatory binding arbitration, as more particularly set forth below in Section C. To the extent that it is determined that any Claim is determined to be exempt from arbitration or that the parties' agreement to arbitrate said Claim is invalid or unenforceable, the parties agree that any legal proceeding arising out of or related to such Claim, or otherwise arising out of or related to this Agreement, the Employment Agreement, the parties' legal rights and legal obligations to each other, or otherwise, shall be filed and prosecuted to judgment in the Superior Court of the State of California, County of Santa Clara.

14. Effective Date.

This Agreement and Release shall be effective immediately.

C. Mandatory Binding Arbitration.

The parties agree to submit any Claim arising out of or related to the Employment Agreement, this Supplemental Agreement and Release, including all questions regarding the existence, scope, validity and enforceability thereof, or otherwise pertaining in any way to the terms and conditions of employment and/or the employment relationship of the parties, to mandatory mediation and mandatory binding arbitration, as more fully and particularly set forth hereinbelow in the Agreement to Mandatory Mediation and Mandatory Binding Arbitration (all of the terms and conditions of which are incorporated herein by this reference as if set forth in full).

IN WITNESS WHEREOF, the parties voluntarily affix their signatures below.

EMPLOYER

EMPLOYEE

MA LABORATORIES, INC.

By: _____

Signature of Employee

Its _____

Print Name

Dated: _____, 2010

Dated: _____, 2010

**AGREEMENT TO MANDATORY MEDIATION
AND MANDATORY BINDING ARBITRATION**

Consideration.

For the above-described good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Employer and Employee, including the parties' mutual desire and mutual object of the speedy, efficient and inexpensive determination of any and all of the below-referenced claims and controversies, causes of action, grievances and other employment-related disputes or matters of any kind, MA LABORATORIES, INC. and Employee stipulate, acknowledge and agree as follows:

Agreement to Mandatory Mediation and Mandatory Binding Contractual Arbitration.

MA LABS and Employee agree to mandatory mediation and mandatory binding contractual arbitration, as more particularly set forth below, to resolve any and all claims or controversies, causes of action, grievances and other employment-related disputes or matters of any kind, whether in an individual or representative capacity, between them (hereafter sometimes referred to as "Employee claims" or "claims" for ease of reference), including the "Claims" as defined above, arising out of, relating to, or in any way connected with Employee's employment by MA LABS save and except for Employer claims giving rise to equitable and injunctive relief against Employee (whether during employment or post-termination) for violation of the Employment Agreement. Except insofar as stated above, in exchange for the aforementioned consideration, Employer and Employee voluntarily waive any rights Employer or Employee may have against

the other to assert such claims in a court of law or other forum or tribunal to the fullest extent permitted by law.

WAIVER OF RIGHT TO JURY TRIAL.

EMPLOYER AND EMPLOYEE HAVING BEEN ADVISED OF THEIR CONSTITUTIONAL AND OTHER RIGHT(S) TO TRIAL, INCLUDING THEIR RIGHT TO JURY TRIAL AS TO ANY AND ALL OF THE AFOREMENTIONED CLAIMS, KNOWINGLY AND VOLUNTARILY HEREBY WAIVE THEIR RIGHT(S) TO JURY TRIAL WITH RESPECT TO THE AFORESAID CLAIMS TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND AGREE TO SUBMIT ALL SUCH CLAIMS TO MANDATORY MEDIATION AND TO MANDATORY BINDING CONTRACTUAL ARBITRATION.

Comprehensive and All-Inclusive Scope of Agreement to Mandatory Mediation and Mandatory Binding Arbitration.

The mandatory mediation and mandatory binding contractual arbitration to which the parties agree to submit is intended by the parties to be comprehensive and all-inclusive in its scope and application, and thus shall include any and all aspects of Employee's employment by MA LABS, including the parties' respective performance of the terms and conditions thereof, including but not limited to any alleged acts, omissions, policy, practice, procedure, conduct or course of conduct on the part of Employer, and the interpretation and enforcement of any and all related contractual documentation, which, among other things, establish Employee's status as an at-will employee of Employer. This shall include any and all claims arising out of the employment relationship, the Employee's offer letter, if any, this Employment Agreement, and the Employee Handbook, including, but not limited to, any and all Employee claims (whether in individual or representative capacity) for alleged breach of contract, bad faith, torts of any kind, and violation of any federal or state statute to the full extent permitted by applicable law.

This mandatory mediation and mandatory binding arbitration shall include, by way of example only and without limitation, any and all Employee claims or controversies, causes of action, grievances or other disputes, arising out of or connected with any adverse employment action, including but not limited to, any claim or controversy, cause of action, grievance or other dispute, pertaining to, arising out of or in any way connected with Employee's discharge, demotion, compensation, severance, separation, layoff or reduction in force, or other Employer action or inaction of any kind (save and except to the extent that it has been established by federal or state statute or the decisional law of the governing jurisdiction that the subject matter thereof must be determined by a court of law, another tribunal or forum as a matter of law). Questions of jurisdiction over the parties and subject matter shall also be determined by the arbitrator in such mandatory binding contractual arbitration to the fullest extent permitted by applicable state and federal law.

Employer and Employee more specifically agree to mandatory mediation and mandatory binding arbitration of any and all claims subject to the FEHA (Fair Employment & Housing Act) and any other provision of the California Government Code, and the California Labor Code, as well as any and all other Employee claims subject to Title VII, the state and federal civil rights statutes, the Fair Labor Standards Act, any other state or federal anti-discrimination and equal employment opportunity laws, save and except to the extent that it has been established by

federal or state statute or the decisional law of the governing jurisdiction that the subject matter thereof is preempted and must be determined by a court of law, another tribunal or forum as a matter of law or public policy.

Agreement to Submit to Mandatory Mediation and Mandatory Binding Arbitration

Before JAMS.

Accordingly, Employer and Employee agree to submit to mandatory mediation and thereafter (as more particularly set forth below) to mandatory binding arbitration any dispute, claim or controversy arising out of or relating to this Agreement (the Employment Agreement and/or Employee Handbook) or the terms, conditions, breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to mediate and arbitrate, which shall be determined by arbitration to J.A.M.S., 160 W. Santa Clara Street, Suite 1150, San Jose, CA 95113 (Tel.408.288.2240; Fax 408.295.526) before **one** arbitrator.

In selecting the arbitrator, the parties shall in good faith simultaneously exchange their respective list of three nominees from the list of arbitrators maintained by JAMS – San Jose, ranked in descending order of preference (1-3). The highest ranked match shall be deemed selected as arbitrator by mutual agreement. If there is no match, the parties shall in good faith seek to agree to an arbitrator by stipulation. In the absence of any match or stipulation as to the identity of the arbitrator, the single arbitrator shall be appointed by JAMS, pursuant to the rules and regulations governing arbitration at JAMS. The arbitration shall be administered either by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Allocation of Fees and Costs. Employer shall advance and shall pay for all fees and costs of mandatory arbitration (including any mediation require prior to such mandatory arbitration). The arbitrator may, in the Arbitration Award, allocate all or part of the fees, costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party otherwise awardable, if any, including the value of the legal services rendered by General Counsel to the extent permitted by law and public policy, and the parties may allocate or re-allocate same in any settlement or agreement attending any mediation or arbitration proceedings contemplated by this Agreement.

- END -