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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 NICK COKER, as an individual on behalf of
the State of California and all other aggrieved
12 employees;

13 Plaintiff,

14 vs.

15 MIRAMAR PROFESSIONAL SERVICES, a
16 California corporation; and DOES 1
17 through 50, inclusive;

18 Defendants.
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Case No. 37-2020-00032172-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties for Failure to Pay All Regular and Minimum Wages
2. Civil Penalties for Failure to Pay All Overtime Wages
3. Civil Penalties for Meal Period Violations
4. Civil Penalties for Rest Period Violations
5. Civil Penalties for Untimely Payment of Wages
6. Civil Penalties for Wage Statement Violations
7. Civil Penalties for Failure to Timely Pay All Wages Upon Separation
8. Civil Penalties for Failure to Reimburse Business Expenses
9. Civil Penalties for Failure to Lawfully Distribute Gratuities
10. Civil Penalties for Recordkeeping Violations

1 Plaintiff NICK COKER (“Plaintiff”), as an individual and on behalf of the State of
2 California as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorneys General Act of 2004 (“PAGA,” California Labor Code § 2698, *et seq.*), brings
4 this representative action against Defendants MIRAMAR PROFESSIONAL SERVICES; and
5 DOES 1 through 50 (hereinafter collectively referred to as “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is representative action brought under the California Labor Code.

8 2. This complaint challenges systemic unlawful employment policies and practices that
9 resulted in violations of the Labor Code against individuals who worked for Defendants.

10 3. Plaintiff alleges on behalf of himself and other aggrieved employees that he was
11 subject to an unlawful “tip pooling” policy that deprived him and others of wages owed, was not
12 timely paid each pay day all regular wages owed and overtime amounts due for all hours worked at
13 the lawful “regular rate of pay,” did not receive compliant meal or rest periods (or premiums in lieu
14 thereof) on a consistent basis as required by law, did not receive expense reimbursements for use of
15 personal cell phones for work-related purposes, and did not receive accurate itemized wage
16 statements each pay period. As a result, Defendants have committed violations of California’s
17 employment and payroll recordkeeping laws and IWC Wage Orders.

18 4. This action seeks to recover civil penalties for the aggrieved employees and the State
19 of California and to effect change upon Defendants’ workplace policies and practices in a manner
20 consistent with the underlying enforcement purpose of the PAGA.

21 **JURISDICTION & VENUE**

22 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution.

24 6. Venue as to each defendant is proper in this judicial district under Code of Civil
25 Procedure sections 395 and 395.5 because Defendants conduct substantial business in this county,
26 employed Plaintiff in this county, and committed some of the alleged violations in this county.

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PARTIES

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2 7. Plaintiff NICK COKER worked for Defendants in San Diego County until October
3 2019 as an hourly, non-exempt employee.

4 8. The State of California, via the Labor and Workforce Development Agency
5 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims.

6 9. Plaintiff is informed, believes and alleges that Defendant MIRAMAR
7 PROFESSIONAL SERVICES is a California corporation that does business throughout California,
8 including San Diego. Defendants operates a storefront location at 7128 Miramar Road, San Diego,
9 California 92121 and does business as Mankind Cannabis Dispensary.

10 10. The true names and capacities, whether individual, corporate, or otherwise, of the
11 parties sued as DOES 1 through 50, are presently unknown to Plaintiff, who sues them by such
12 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes and
13 alleges that each of the fictitious defendants is responsible in some manner for the acts and omissions
14 alleged herein. Plaintiff will seek leave to amend this Complaint to reflect their true names and
15 capacities when they become known.

16 11. Plaintiff is informed, believes and alleges that all defendants in this action are
17 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
18 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
19 employees, suffers and permits them to work, and engages the workforce creating a common law
20 employment relationship. Additionally, all defendants have common ownership, common
21 management, interrelationship of operations, and centralized control over labor relations and are
22 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
23 omissions alleged herein.

24 12. Plaintiff is informed, believes and alleges that each defendant acted in all respects
25 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
26 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
27 such that the acts and omissions of each defendant are legally attributable to all others.

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1 13. Plaintiff is informed, believes and alleges that the above-mentioned defendants
2 violated and caused to be violated Labor Code and IWC Wage Order provisions regulating
3 minimum wages and days of work and Labor Code sections 203, 226, 226.7, 1193.6, 1194 and/or
4 2802 and may be held liable as the employer for such violation, as provided in Labor Code section
5 558.1.

6 **GENERAL ALLEGATIONS**

7 14. Attached to this Complaint as “Exhibit A” is Plaintiff’s Notice of Labor Code
8 Violations submitted to Defendants and the LWDA on July 6, 2020. Plaintiff incorporates the facts
9 and allegations of this notice in this Complaint as if fully set forth herein.

10 15. Plaintiff’s pay records reveal that during certain pay periods, Plaintiff was not paid at
11 the lawful overtime rate for all hours in excess of eight in a workday or 40 hours in a workweek.
12 Plaintiff believes that this failure to pay overtime wages applied equally to other aggrieved
13 employees. To illustrate, in the pay period of 08/24/2019 to 09/06/2019 (pay date of 09/13/2019),
14 Defendants paid Plaintiff for 0.89 overtime hours, yet Defendants’ paystub for Plaintiff reflects that
15 he worked at least 0.92 overtime hours. Additionally, on information and belief, Plaintiff alleges
16 that Defendants failed to pay all aggrieved employees overtime based on the lawful multiple of
17 their “regular rate of pay”—including incentive pay and other forms of non-excludable
18 commissions, earnings and bonuses—for all overtime hours worked.

19 16. For the hours in which Plaintiff and other aggrieved employees were not paid, as
20 illustrated in the above examples, among others, Plaintiff and the aggrieved employees were
21 deprived of minimum wage for such hours worked.

22 17. Defendants did not pay all meal and rest period premiums earned and owed to
23 Plaintiff and other aggrieved employees. For meal periods, although Plaintiff and other aggrieved
24 employees received *some* meal period premium payments, they were not paid meal period
25 premiums for all missed, late, short or interrupted meal periods as a matter of corporate
26 management policy and payroll administration. Separately, for rest periods (like meal periods), as a
27 result of customer and management demands as well as Defendants’ staffing practices and
28 prioritization of work demands over compliant rest periods, Defendants did not authorize and

1 permit all rest periods for Plaintiff and the aggrieved employees and did not pay rest period
2 premiums in lieu thereof.

3 18. As a result of Defendants unpaid wage and gratuity practices, Defendants did not
4 pay all wages and other amounts owed to Plaintiff and the aggrieved employees in a timely manner
5 and in full on the days designated in advance as regular pay days. Moreover, at the time of
6 separation of employment for Plaintiff and other aggrieved employees (or within 72 hours thereof)
7 as applicable, Defendants did not pay all wages due and did not pay waiting time penalties for such
8 violations.

9 19. Plaintiff and the other aggrieved employees were required to use their personal cell
10 phones for work-related purposes, including to communicate with supervisors, for scheduling, for
11 email, for messaging, all on work-related matters. Plaintiff and other aggrieved employees incurred
12 these work-related costs without reimbursement from Defendants.

13 20. As a result of the underpayment of wages, premiums and gratuities, as alleged in this
14 Complaint, as well as due to the format of the wage statements, Defendants did not provide accurate
15 itemized wage statements to Plaintiff and other aggrieved employees each pay period. Specifically,
16 as described with respect to the overtime violations, in certain pay periods the hours listed on wage
17 statements are inaccurate and do not correspond to the amounts paid, the number of hours worked,
18 or the wages actually earned. Defendants also do not list total hours worked on the wage statements
19 issued to Plaintiff and aggrieved employees. Moreover, Defendants' wage statements fail to state
20 the accurate gross wages earned, total hours worked, deductions from wages (including for the tip
21 pooling employees), net wages earned, or the hourly rates in effect and the corresponding number
22 of hours worked at each pay rate.

23 21. Moreover, Plaintiff and other aggrieved employees earned gratuities based on sales
24 of products while under the employ of Defendants, pursuant to company policy and procedure.
25 Defendants maintained a policy and practice of sharing these gratuities with employees who "have
26 the authority to hire or discharge any employee" or otherwise "supervise, direct, or control the acts
27 of employees." Additionally, Defendants maintained a policy and practice of sharing such gratuities
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1 with those outside the chain of service, including administrative, warehouse, dispatch, online, and
2 office employees.

3 22. Defendants offer consumers the ability to leave a tip for marijuana products and
4 related paraphernalia that they purchase from the dispensary. By law, these tips are left for the
5 aggrieved employees in the line of service, including delivery drivers, cashiers, salespeople and
6 others who interface with the consumers. Plaintiff and other aggrieved employees complained
7 about managers and others outside the chain of service from participating in the tip pool and taking
8 the gratuities left for the service employees. In response, Defendants held a meeting in or around
9 late summer/early autumn 2019 whereby Defendants decided to hold some form of election
10 whereby everyone—including the managers and employees outside the chain of service—voted on
11 the tip pooling policy. Defendants then continued to share tips with those who were not permitted
12 to be in the tip pool under Labor Code section 351, including managers, administrative workers,
13 warehouse workers, office workers and other individuals outside the line of service. As a result,
14 Defendants continued to collect, take and receive gratuities paid to and left for Plaintiff and other
15 service-oriented aggrieved employees.

16 23. Defendants maintain written policies and procedures and correspondence, ballots
17 and notes reflecting the common policy and confirmation of the policy at the meeting in or around
18 summer/early autumn 2019. Plaintiff and other aggrieved employees were deprived of the wages
19 earned, were not paid gratuities in accordance with the statutorily-proscribed statute and have
20 suffered losses as a result of this policy and practice.

21 24. Defendants further violated Labor Code section 353, which required Defendants to
22 keep accurate records of all gratuities received and to make those records open to inspection upon
23 request. On information and belief, Plaintiff alleges that Defendants failed to maintain proper
24 recordkeeping of gratuities.

25 25. Plaintiff is informed, believes and alleges that Defendants have engaged in willful
26 violations of the Labor Code and IWC Wage Orders by creating and maintain policies, practices
27 and customs that knowingly deny Plaintiff and aggrieved employees of their legal rights and
28 benefits.

PAGA ALLEGATIONS

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2 26. “Notwithstanding any other provision of law, any provision of this code that
3 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
4 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
5 violation of this code, may, as an alternative, be recovered through a civil action brought by an
6 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
7 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

8 27. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
9 behalf of the State of California and all other current and former non-exempt employees of
10 Defendants who work or worked within the State of California within the one-year period prior to
11 the date on which Plaintiff first provided written notice to the Labor and Workforce Development
12 Agency and Defendants under Labor Code § 2699.3 and continuing through the present (the
13 “aggrieved employees” and the “PAGA Period”).

14 28. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
15 and suffered one or more of the Labor Code violations committed by Defendants and alleged in this
16 Complaint.

17 29. On July 6, 2020, Plaintiff gave written notice by online filing with the LWDA and
18 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. Plaintiff paid the
20 requisite filing fee to the LWDA.

21 30. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
22 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
23 actions taken to cure the alleged violations.

24 31. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
25 violations, without any notice of cure from them or notice from the LWDA of its intent to
26 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
27 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

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FIRST CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO PAY

ALL REGULAR AND MINIMUM WAGES (PAGA)

Labor Code §§ 2698, *et seq.*

32. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

33. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3 .”

34. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

35. Labor Code section 558(a) provides: “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

36. Labor Code section 1197.1(a) provides: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

1 order of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed
2 pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one
3 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is
4 underpaid ... and any applicable penalties imposed pursuant to Section 203. (2) For each
5 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
6 underpaid employee for each pay period for which the employee is underpaid regardless of whether
7 the initial violation is intentionally committed.”

8 37. Plaintiff does not seek for any cause of action in this Complaint under PAGA any
9 amounts that are not recoverable pursuant to Labor Code section 2699 *et seq.* (i.e., underpaid
10 wages).

11 38. Defendants willfully failed in their affirmative obligation to pay Plaintiff and
12 aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor
13 Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work”
14 and “Minimum Wages” sections of the applicable orders).

15 39. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
16 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
17 by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees,
18 and costs to the extent permitted by law, including under Labor Code section 2699(g).

19 **SECOND CAUSE OF ACTION**

20 **CIVIL PENALTIES FOR FAILURE TO PAY**

21 **ALL OVERTIME WAGES (PAGA)**

22 **Labor Code §§ 2698, *et seq.***

23 40. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

24 41. Defendants failed in their affirmative obligation to pay Plaintiff and aggrieved
25 employees no less than one and one-half times their respective “regular rate of pay” for all hours
26 worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on
27 the seventh day of work in any one workweek, and no less than twice their respective “regular rate
28 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh

1 day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders
2 and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

3 42. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
4 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
5 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
6 to the extent permitted by law, including under Labor Code section 2699(g).

7 **THIRD CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

9 **Labor Code §§ 2698, et seq.**

10 43. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

11 44. Defendants willfully failed in their affirmative obligation to consistently provide
12 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
13 beginning before the fifth hour of hour for each work period of more than five hours per day and a
14 second on-duty meal period of not less than 30 minutes beginning before the tenth hour of hour of
15 work in violation of Labor Code sections 226.7 and 512 and the IWC Wage Orders (the “Meal
16 Periods” sections of the applicable orders). Further, Defendants willfully failed in their affirmative
17 obligation to consistently pay Plaintiff and aggrieved employees one additional hour of pay at the
18 respective regular rate of compensation for each workday that a fully compliant meal period was
19 not provided, in violation of Labor Code sections 226.7 and the IWC Wage Orders.

20 45. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
21 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required
22 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs
23 to the extent permitted by law, including under Labor Code section 2699(g).

24 **FOURTH CAUSE OF ACTION**

25 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

26 **Labor Code §§ 2698, et seq.**

27 46. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.
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1 by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
2 to the extent permitted by law, including under Labor Code section 2699(g).

3 **EIGHTH CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE BUSINESS**

5 **EXPENSES (PAGA)**

6 **Labor Code §§ 2698, *et seq.***

7 60. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 61. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and
9 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them in
10 direct discharge of the duties of their employment, in violation of Labor Code section 2802.

11 62. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
12 aggrieved employees and the State of California for civil penalties as required by Labor Code
13 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
14 by law, including under Labor Code section 2699(g).

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO LAWFULLY DISTRIBUTE GRATUITIES (PAGA)**

17 **Labor Code §§ 2698, *et seq.***

18 63. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

19 64. Labor Code section 351 provides: "No employer or agent shall collect, take, or
20 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or
21 deduct any amount from wages due an employee on account of a gratuity, or require an employee to
22 credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the
23 employee from the employer. Every gratuity is hereby declared to be the sole property of the
24 employee or employees to whom it was paid, given, or left for. An employer that permits patrons to
25 pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron
26 indicated on the credit card slip, without any deductions for any credit card payment processing fees
27 or costs that may be charged to the employer by the credit card company. Payment of gratuities
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1 made by patrons using credit cards shall be made to the employees not later than the next regular
2 payday following the date the patron authorized the credit card payment.”

3 65. Labor Code section 353 provides: “Every employer shall keep accurate records of all
4 gratuities received by him, whether received directly from the employee or indirectly by means of
5 deductions from the wages of the employee or otherwise. Such records shall be open to inspection
6 at all reasonable hours by the department.”

7 66. Defendants willfully failed in their affirmative obligation to comply with
8 California’s “tip pooling” compensation laws with respect to Plaintiff and aggrieved employees by
9 collecting, taking and receiving gratuities left for Plaintiff and aggrieved employees, failing to
10 maintain records of those gratuities, and unlawfully sharing those gratuities and amounts with
11 forbidden individuals, such as managers, supervisors, and those outside the line of service, in
12 violation of Labor Code sections 351 and 353.

13 67. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
14 aggrieved employees and the State of California for civil penalties as required by Labor Code
15 section 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted
16 by law, including under Labor Code section 2699(g).

17 **TENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS (PAGA)**

19 **Labor Code §§ 2698, *et seq.***

20 68. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

21 69. Labor Code section 1174 provides: “Every person employing labor in this state
22 shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which
23 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
24 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
25 employed at the respective plants or establishments. These records shall be kept in accordance with
26 rules established for this purpose by the commission, but in any case shall be kept on file for not
27 less than three years.”

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