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6 Attorneys for Defendants
7 CVS Health Corporation; CVS Pharmacy,
Inc.; Garfield Beach CVS, LLC; and CVS
8 Rx Services, Inc.

9 UNITED STATES DISTRICT COURT
10 NORTHER DISTRICT OF CALIFORNIA

11 RYAN HYAMS, an individual, on behalf
of himself, and all others similarly
12 situated, ,

13 Plaintiff,

14 vs.

15 CVS HEALTH CORPORATION, a
Rhode Island Corporation; CVS
16 PHARMACY, INC., a Rhode Island
Corporation; GARFIELD BEACH CVS,
17 LLC, a California Corporation; and CVS
RX SERVICES, INC., a New York
18 Corporation; DOES 1 through 25,
inclusive, ,

19 Defendants.
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CASE NO. _____

**NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §
1332, 1441 AND 1446**

State Case No.: CGC-18-569060

State Complaint Filed: August 21, 2018

First Amended State Complaint Filed:
September 7, 2018

State Action Served: September 12, 2018

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
2 THE NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that Defendants CVS Health Corporation, CVS
4 Pharmacy, Inc., Garfield Beach CVS, LLC and CVS Rx Services, Inc. (collectively,
5 “Defendants”), hereby remove the state court action captioned *Ryan Hyams, et al. v.*
6 *CVS Health Corporaton, et al.*, Case No. CGC-18-569060 (the “State Court
7 Action”), from the California Superior Court for the County of San Francisco to this
8 United States District Court for the Northern District of California pursuant to 28
9 U.S.C. §§ 1332, 1441(a)-(b), and 1446. In support of this Notice, Defendants state
10 as follows:

11 **THE PARTIES AND THEIR CITIZENSHIP**

12 1. Defendant CVS Health Corporation is now, and was during all relevant
13 times, a corporation organized under the laws of the Delaware, with its principal
14 place of business in Woonsocket, Rhode Island. Declaration of Melanie Luker
15 (“Luker Decl.”) at ¶¶ 3-5. Thus, CVS Health Corporation is a citizen of Rhode
16 Island for purposes of diversity jurisdiction, and is not a citizen of California. 28
17 U.S.C. § 1332(c).

18 2. Defendant CVS Pharmacy, Inc. is now, and was at all relevant times, a
19 corporation organized under the laws of the State of Rhode Island, with its principal
20 place of business in Woonsocket, Rhode Island. *Id.* at ¶¶ 9-11. Thus, CVS
21 Pharmacy, Inc. is a citizen of Rhode Island for purposes of diversity jurisdiction,
22 and is not a citizen of California. 28 U.S.C. § 1332(c).

23 3. Defendant CVS Rx Services, Inc. is now, and was at all relevant times, a
24 corporation organized under the laws of the State of New York, with its principal
25 place of business in Woonsocket, Rhode Island. *Id.* at ¶¶ 6-8. Thus, CVS Rx
26 Services, Inc. is a citizen of the States of New York and Rhode Island for purposes
27 of diversity jurisdiction, and is not a citizen of California. 28 U.S.C. § 1332(c)(1).

28 4. Defendant Garfield Beach CVS, LLC is now, and was at all relevant

1 times, a limited liability company organized under the laws of the State of
2 California. Luker Decl. at ¶ 12. For purposes of diversity jurisdiction, however, a
3 limited liability company takes on the same citizenship as its owners/members.
4 *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).
5 Garfield Beach CVS, LLC’s sole member is CVS Pharmacy, Inc. Luker Decl. at ¶
6 12. As set forth above, CVS Pharmacy, Inc. is a citizen of the State of Rhode
7 Island. Luker Decl. at ¶ 12. Accordingly, Garfield Beach CVS, LLC is also a
8 citizen of the State of Rhode Island, and is not a citizen of the State of California.
9 *See Johnson*, 437 F.3d at 899.

10 5. Plaintiff Ryan Hyams (“Plaintiff”) was a California employee of CVS.
11 Plaintiff is a resident of California. First Amended Complaint (“FAC”) at ¶ 3.
12 Defendants’ records also show Mr. Hyams’s last known address as 1160 Mission
13 Street, Unit 1810, San Francisco, California 94103. Declaration of Sonia A.
14 Vucetic (“Vucetic Decl.”), at ¶ 8. Residence is *prima facie* evidence of domicile.
15 *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).
16 Accordingly, Plaintiff is a citizen of the state of California, and, for purposes of
17 diversity jurisdictions, is not a citizen of the States of Rhode Island, New York or
18 Delaware.

19 6. The putative class is alleged to consist of “current and former
20 [pharmacists] of DEFENDANTS in the State of California at any time within the
21 period beginning four (4) years prior to the filing of this action and ending at the
22 time this action settles or proceeds to final judgment” FAC ¶ 15.

23 7. Defendants’ company records indicate that the vast majority of these
24 putative class members have last known addresses located within the state of
25 California. Vucetic Decl. at ¶ 7. Therefore, Defendants assert and affirmatively
26 allege that at least one (and probably almost all) of the members of this putative
27 class are not citizens of the State of Rhode Island or Delaware, and are instead
28 citizens of California.

TIMELINESS OF REMOVAL

1
2 8. The State Court Action was filed in the Superior Court for the County of
3 San Francisco on or about August 21, 2018. *Id.* at ¶ 2. The First Amended
4 Complaint was filed on September 7, 2018. *Id.* at ¶ 2. On September 12, 2018, Mr.
5 Hyams served Defendants CVS Health Corporation, CVS Pharmacy, Inc. and CVS
6 RX Services, Inc. *Id.* at ¶ 3. After receipt and review of the First Amended
7 Complaint, Defendants became aware of the grounds for removal pursuant to the
8 Class Action Fairness Act. Thus, this Notice of Removal is timely, having been
9 filed prior to the expiration of thirty days “after receipt by the defendant, through
10 service or otherwise, of a copy of an amended pleading . . . from which it may first
11 be ascertained that the case is one which is or has become removable.” 28 U.S.C. §
12 1446(b).

**REMOVAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS
ACT**

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14
15
16 9. This Court has original jurisdiction over this action under the Class
17 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). In relevant part,
18 CAFA grants district courts original jurisdiction over civil class actions filed under
19 federal or state law where the following factors are met: (1) any member of a class
20 of plaintiffs is a citizen of a state different from any defendant; (2) the putative class
21 size exceeds 100 persons; (3) the aggregate amount in controversy exceeds
22 \$5,000,000, exclusive of interest and costs; and (4) the primary defendants are not
23 states, state officials, or other government entities against whom the district court
24 may be foreclosed from ordering relief. As set forth below, this case meets all of
25 CAFA’s requirements for removal and is timely and properly removed by the filing
26 of this Notice.

Minimal Diversity

27
28 10. In the present case, the minimal diversity requirement of the CAFA has

1 been met. As noted above, Defendants are citizens of Rhode Island, Delaware, and
2 New York, and Plaintiff is a citizen of California, and at least one member of the
3 putative class is a citizen of a state other than Rhode Island, Delaware, or New
4 York. FAC at ¶ 3; Luker Decl., ¶¶ 3-5, 6-8, 9-12. Accordingly, the minimal
5 diversity requirement of the CAFA is satisfied in two separate and equally sufficient
6 manners. *See* 28 U.S.C. § 1332(d)(2)(A), (B).

7 11. Additionally, Defendants are not states, state officials, or other
8 government entities against whom the district court may be foreclosed from
9 ordering relief.

10 **The Proposed Class Contains At Least 100 Members**

11 12. With respect to the CAFA requirement of numerosity, Plaintiff brings
12 this action on behalf of himself and all “current and former [pharmacists] of
13 DEFENDANTS in the State of California at any time within the period beginning
14 four (4) years prior to the filing of this action and ending at the time this action
15 settles or proceeds to final judgment” FAC at ¶ 15. Defendants’ records
16 confirm that the proposed class contains over 5,800 members. Vucetic Decl. at ¶ 7.

17 **The Amount In Controversy Exceeds \$5 Million**

18 13. While Plaintiff’s First Amended Complaint does not set forth the precise
19 amount of money being sought from Defendants, the allegations herein make it
20 clear that the aggregated amount in controversy for the putative class exceeds
21 \$5,000,000. *See* 28 U.S.C. § 1332(d)(6) (“the claims of the individual class
22 members shall be aggregated to determine whether the matter in controversy
23 exceeds the sum or value of \$5,000,000”).

24 14. Defendants’ burden to demonstrate the amount in controversy is low.
25 They need to show only that there is “reasonable probability that the stakes exceed
26 [the \$5,000,000] minimum.” *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446,
27 449 (7th Cir. 2005).

28 15. Plaintiff asserts causes of action for: (1) Failure to Provide Required

1 Meal Breaks; (2) Failure to Authorize and Permit Required Rest Breaks; (3) Failure
 2 to Pay Overtime; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Timely
 3 Wages Due at Termination/Waiting Time Penalties; (6) Failure to Pay All Wages;
 4 (7) Failure to Reimburse for Employment Related Expenses; (8) Failure to Maintain
 5 Required Records; (9) Failure to Furnish Accurate Itemized Wage Statements; (10)
 6 Failure to Provide Written Notice of Paid Sick Leave; (11) Failure to Provide One
 7 Day's Rest in Seven; (12) Failure to Comply with California Labor Code Section
 8 850 and 851; (13) Unfair and Unlawful Business Practices; and (14) Penalties under
 9 the California Labor Code Private Attorneys General Act, as Representative Action.
 10 Plaintiff pursues these claims on behalf of the putative class/putative collective.

11 16. Plaintiff alleges, among other things, that Plaintiff and the putative class
 12 "were subject to the same policies, practices and conduct that [have knowingly]
 13 resulted in . . . Routinely working through meal and/or rest breaks without proper
 14 compensation for the same, including payment of penalties for interrupted meal
 15 and/or rest breaks . . . Routinely working off-the-clock when answering work-
 16 related text messages and/or when forced by management to continue to work while
 17 clocked out, without receiving wages, premium pay, or minimum wages for the off-
 18 the-clock time worked . . . No compensation for unpaid wages and/or premium pay
 19 at the time of termination . . . Use of personal cell phones without adequate
 20 reimbursement . . . Receipt of inaccurate wage statement . . . Lack of receipt of
 21 adequate written notice of paid sick leave; g. Routinely working without receiving
 22 one day's rest in seven . . . Routinely working in excess of the prescribed time
 23 limitations set forth in Labor Code sections 850 and 851." FAC at ¶¶ 28, 33-41.
 24 Plaintiff further alleges that Defendants "acted pursuant to common, company-wide
 25 policies and practices regarding the provision of meal and/or rest breaks; the
 26 practice of requiring employees to work off-the-clock; scheduling employees for
 27 work; the Company's payroll and wage payments to employees, including the
 28 provision of wage statements; reimbursements of necessary business expenses; time

1 and pay recordkeeping; and notice to employees of paid sick leave.” FAC at ¶ 29.

2 17. Plaintiff further alleges that his claims “are typical of all class members”
3 (FAC ¶ 48(B)) and seeks, among other things, compensatory damages, restitution,
4 liquidated damages, penalties, and injunctive relief. (Prayers 1, 2, 4, 5, 6, 7).

5 **a. Waiting Time Penalties, Cause of Action 5.**

6 18. Plaintiff alleges that he and putative class members are entitled to
7 waiting-time penalties and seeks “30 days’ worth of their average daily wages as a
8 penalty under Labor Code section 203.” FAC at ¶ 96.

9 19. California Labor Code §§ 201, 202 and 203 require timely payment of
10 wages upon termination of employment (immediately for fired employees, and
11 within 72 hours if an employee quits). If an employer willfully violates these
12 requirements, Cal. Labor Code § 203 states that the employer must pay a “penalty”
13 to the employee of the employee’s regular wage rate for each day the wages remain
14 unpaid up to 30 days.

15 20. According to company records, Mr. Hyams made \$76 per hour at the
16 time of the termination of his employment. Vucetic Decl. ¶ 10; Declaration of
17 Howard Kobey (“Kobey Decl.”), at ¶¶ 3-4; *see also* FAC at ¶ 5.

18 21. According to company records, over 2,200 individuals who fall within
19 Mr. Hyams’ class definitions are former employees, *i.e.*, potentially entitled to
20 waiting time penalties pursuant to Cal. Labor Code § 203. Vucetic Decl. at ¶ 8;
21 Kobey Decl. at ¶¶ 3-4. According to company records, the average rate of pay for
22 the former employees who fall within Mr. Hyams’ class definition is \$65. Vucetic
23 Decl. at ¶ 15; Kobey Decl. at ¶¶ 3-4.

24 22. Thus, Mr. Hyams’ waiting-time claim (Cause of Action 5) alone puts
25 over \$34,320,000 at issue. ($\$65 \text{ per hour} * 8 \text{ hours per day} * 30 \text{ days} * 2,200$
26 individuals).

27 **b. Total Amount In Controversy**

28 23. Assuming the truth of Plaintiff’s allegations, and even looking at only

1 one of his 14 claims, the amount in controversy in this case far exceeds \$5,000,000.
2 Plaintiff's waiting time claims alone put over \$34,320,000 at issue.

3 24. This amount does not include additional amounts for Plaintiff's alleged
4 wage statement claims, meal and rest break penalties, unpaid overtime,
5 underpayment of wages due, reimbursement of business expenses owed, and
6 attorney fees on behalf of the putative class. Thus, the amount in controversy
7 threshold has been met and it is clear that there is "a reasonable probability that the
8 stakes exceed \$5,000,000." *Brill*, 427 F.3d at 448-89. Accordingly, removal is
9 proper. 28 U.S.C. § 1332(d).

10 25. Further, while 28 U.S.C. § 1332(d)(3) & (4) does recognize situations
11 where this Court may or must decline jurisdiction despite the fact that the minimal
12 diversity and the amount in controversy requirements of §1332(d)(2) are satisfied,
13 this case does not fall into either category because Defendants are not citizens of
14 California. *See* 28 U.S.C. § 1331(d)(3) (discretionary declination of jurisdiction is
15 limited to situation where "the primary defendants are citizens of the state where the
16 action was originally filed") and 1332(d)(4)(A) (local controversy mandatory
17 declination limited to where "at least one defendant is . . . a citizen of the State in
18 which the class action was filed"); *see also* 1331(d)(4)(B) (home state controversy
19 mandatory declination limited to cases where "the primary defendants are citizens
20 of the State in which the action was originally filed"). Additionally, Plaintiff
21 shoulders the burden of establishing that any of these exceptions apply. *Hart*, 457
22 F.3d at 681 ("Our holding [is] that the plaintiff has the burden of persuasion on the
23 question whether the home-state or local controversy exceptions apply.").

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26 VENUE

27 26. Venue is proper in the Northern District of California pursuant to 28
28 U.S.C. §§ 84(a) and 1441(a) because it is the district embracing San Francisco

1 County, California, the county in which the State Court Action was pending. Venue
2 is also proper in the Northern District of California pursuant to 28 U.S.C. §
3 1391(b)(2), because a substantial part of the events giving rise to the alleged claims
4 occurred in the Northern District of California. FAC at ¶¶ 5-14.

5
6 **DEFENSES**

7 27. The removal of this action to the Northern District of California does
8 not waive Defendants' ability to assert any defenses in this action.

9
10 **PLEADINGS**

11 28. On August 21, 2018, Plaintiff filed a Complaint captioned *Ryan Hyams*
12 *v. CVS Health Corporation, et al.*, Case No. CGC-18-569060, in the Superior Court
13 of the State of California, County of San Francisco. Vucetic Decl. at ¶ 2. On
14 September 7, 2018, Plaintiff filed a First Amended Complaint ("FAC") to add a
15 Private Attorneys General Act of 2004 ("PAGA") claim. *Id.* at ¶ 2. On September
16 12, 2018, Defendants received service of the Summons and First Amended
17 Complaint, along with a Notice of Case Management Conference and an Alternative
18 Dispute Resolution Program Information Packet. On October 10, 2018, Defendant
19 filed and served an Answer to the First Amended Complaint. *Id.* at ¶ 4.

20 29. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleading, and
21 orders served upon and by Defendants is attached hereto as Exhibits 1-4.

22
23 **NOTICE TO PLAINTIFF AND THE STATE COURT**

24 30. Pursuant to 28 U.S.C. § 1446(d), in addition to serving a copy of this
25 Notice of Removal on counsel for Plaintiff, Defendants are filing in the San
26 Francisco Superior Court and serving upon counsel for Plaintiff a separate
27 document entitled "Notice of Filing of Notice of Removal to Federal Court."
28

1 Accordingly, Defendants respectfully request that the State Court Action be
2 removed in its entirety to this Court.

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4 Date: October 12, 2018

SIDLEY AUSTIN LLP

5
6 By: 

7 Jennifer B. Zargarof
8 Sonia A. Vucetic
9 Attorneys for Defendants

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7 **Attorneys for Defendants**
CVS Health Corporation;
 8 **CVS Pharmacy, Inc.;**
Garfield Beach CVS, LLC; and
 9 **CVS Rx Services, Inc.**

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 RYAN HYAMS, an individual, on
 13 behalf of himself, and all others
 similarly situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a
 17 Rhode Island Corporation; CVS
 PHARMACY, INC., a Rhode Island
 18 Corporation; GARFIELD BEACH CVS,
 LLC, a California Corporation; and CVS
 19 RX SERVICES, INC., a New York
 Corporation; DOES 1 through 25,
 20 inclusive,

21 Defendants.

Case No.

**DECLARATION OF HOWARD
 KOBAY IN SUPPORT OF
 DEFENDANTS' NOTICE OF
 REMOVAL**

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DECLARATION OF HOWARD KOBAY

I, Howard Kobey, hereby declare as follows:

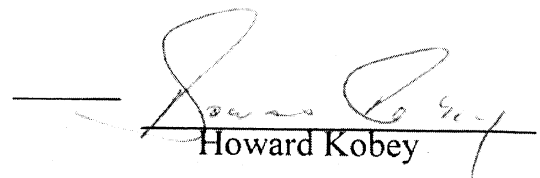
1. I am currently a Senior Director, Human Resources Shared Services, for CVS Pharmacy, Inc. ("CVS"). I make this Declaration in support of Defendant's Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332(a), 1441(a), and 1446. All of the information set forth herein is based on my personal knowledge, or information and belief based where stated, and if called and sworn as a witness, I could and would competently testify thereto.

2. In my capacity as Senior Director, Human Resources Shared Services, I am required to be and am readily familiar with CVS's payroll, timekeeping, and personnel policies. As the Senior Director, Human Resources Shared Services, I also have access to CVS's employee payroll records.

3. In support of this Notice of Removal, I was provided with, the following payroll data generated from CVS's payroll system: (1) the names of all Pharmacist employees who worked for any CVS retail location in the state of California from August 21, 2014 to the present; (2) their employment status; (3) their last or current rate of pay; (4) their date of hire; and (5) their termination date (if applicable).

4. An excel spreadsheet containing the aforementioned payroll data was made available to CVS's outside counsel, Jennifer B. Zargarof, without making any changes or alterations to it.

5. I declare under penalty of perjury, under the laws of the United States of America and the State of California, that the foregoing is true and correct, and that this declaration is being executed the 12th day of October, 2018, in the City and State of Woonsocket, Rhode Island.


Howard Kobey

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2 Jennifer B. Zargarof, SBN 204382
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3 Sonia A. Vucetic, SBN 307414
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6 Facsimile: (213) 896-6600

7 Attorneys for Defendants
CVS Health Corporation;
8 CVS Pharmacy, Inc.;
Garfield Beach CVS, LLC; and
9 CVS Rx Services, Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 RYAN HYAMS, an individual, on
13 behalf of himself, and all others
similarly situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a
17 Rhode Island Corporation; CVS
PHARMACY, INC., a Rhode Island
18 Corporation; GARFIELD BEACH CVS,
LLC, a California Corporation; and CVS
19 RX SERVICES, INC., a New York
20 Corporation; DOES 1 through 25,
inclusive,

21 Defendants.

) Case No.

) **DECLARATION OF MELANIE K.
LUKER IN SUPPORT OF
DEFENDANTS' NOTICE OF
REMOVAL**

) State Action Filed: August 21, 2018

) Amended Action Filed: September 7, 2018

) State Action Served: September 12, 2018

DECLARATION OF MELANIE K. LUKER

I, Melanie K. Luker, hereby declare as follows:

1. I am currently a Manager, Corporate Services and Assistant Secretary for CVS Pharmacy, Inc., (“CVS”). I make this Declaration in support of Defendant’s Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332(a), 1441(a), and 1446. All of the information set forth herein is based on my personal knowledge, or information and belief based where stated, and if called and sworn as a witness, I could and would competently testify thereto.

2. In my capacity as Manager, Corporate Services, I am readily familiar with CVS’s day-to-day business operations and corporate governance and have access to corporate structure information concerning employees and payroll. I am also required to be and am familiar with CVS’s payroll, timekeeping, and personnel policies, and I have access to employee personnel records.

3. CVS Health Corporation is a corporation incorporated under the laws of the State of Delaware with its principal place of business, headquarters, and center of direction, control, and coordination in Woonsocket, Rhode Island.

4. CVS Health Corporation’s corporate decisions generally are made in Woonsocket, Rhode Island, including its operational, executive, administrative, and policymaking decisions. The majority of CVS Health Corporation’s executive officers principally conduct their business from headquarters in Rhode Island.

5. The administrative functions crucial to CVS Health Corporation’s day-to-day operations are conducted in Woonsocket, Rhode Island. The respective officers for those departments work in Woonsocket, Rhode Island, and are responsible for developing policies and protocols for CVS Pharmacy, Inc.’s nationwide operations.

6. CVS Rx Services, Inc. is a corporation incorporated under the laws of the State of New York, with its principal place of business, headquarters, and center of direction, control, and coordination in Woonsocket, Rhode Island.

7. CVS Rx Services, Inc.’s corporate decisions generally are made in

1 Woonsocket, Rhode Island, including its operational, executive, administrative, and
2 policymaking decisions. The majority of CVS Rx Services, Inc.'s executive officers
3 principally conduct their business from headquarters in Rhode Island.

4 8. The administrative functions crucial to CVS Rx Services, Inc.'s day-to-
5 day operations are conducted in Woonsocket, Rhode Island. The respective officers
6 for those departments work in Woonsocket, Rhode Island, and are responsible for
7 developing policies and protocols for CVS Rx Services, Inc.'s nationwide operations.

8 9. CVS Pharmacy, Inc. is a corporation incorporated under the laws of the
9 State of Rhode Island with its principal place of business, headquarters, and center of
10 direction, control, and coordination in Woonsocket, Rhode Island.

11 10. CVS Pharmacy, Inc.'s corporate decisions generally are made in
12 Woonsocket, Rhode Island, including its operational, executive, administrative, and
13 policymaking decisions. The majority of CVS Pharmacy, Inc.'s executive officers
14 principally conduct their business from headquarters in Rhode Island.

15 11. The administrative functions crucial to CVS Pharmacy, Inc.'s day-to-day
16 operations are conducted in Woonsocket, Rhode Island. The respective officers for
17 those departments work in Woonsocket, Rhode Island, and are responsible for
18 developing policies and protocols for CVS Pharmacy, Inc.'s nationwide operations.

19 12. Garfield Beach CVS, L.L.C. is a limited liability company organized
20 under the laws of the State of California. Garfield Beach CVS, L.L.C. has a sole
21 member, CVS Pharmacy, Inc.

22 13. I declare under penalty of perjury, under the laws of the United States of
23 America and the State of California, that the foregoing is true and correct, and that this
24 declaration is being executed the 12th day of October, 2018, in the City and State of
25 Woonsocket, Rhode Island.

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27 
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Melanie K. Luker

1 **Douglas R. Hart, SBN 115673**
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3 **Jennifer B. Zargarof, SBN 204382**
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12 **Attorneys for Defendants**
13 **CVS Health Corporation;**
14 **CVS Pharmacy, Inc.;**
15 **Garfield Beach CVS, LLC; and**
16 **CVS Rx Services, Inc.**

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 RYAN HYAMS, an individual, on
20 behalf of himself, and all others
21 similarly situated,

22 Plaintiff,

23 vs.

24 CVS HEALTH CORPORATION, a
25 Rhode Island Corporation; CVS
26 PHARMACY, INC., a Rhode Island
27 Corporation; GARFIELD BEACH CVS,
28 LLC, a California Corporation; and CVS
RX SERVICES, INC., a New York
Corporation; DOES 1 through 25,
inclusive,

Defendants.

) Case No.

) **DECLARATION OF SONIA A.**
) **VUCETIC IN SUPPORT OF**
) **DEFENDANTS' NOTICE OF**
) **REMOVAL**

) State Case No.: CGC-18-569060

) State Complaint Filed: August 21, 2018

) Am. Complaint Filed: September 7,
2018

) State Action Served: September 12,
2018

DECLARATION OF SONIA A. VUCETIC

I, Sonia A. Vucetic, hereby declare as follows:

1. I am an associate with the law firm of Sidley Austin LLP, counsel for Defendants CVS Health Corporation, CVS Pharmacy, Inc., Garfield Beach CVS, LLC, and CVS Rx Services, Inc. (“Defendants”). I make this Declaration in support of Defendants’ Notice of Removal in the above-captioned action. I have personal knowledge of the facts set forth in this Declaration, or know of such facts from my review of the case documents and the court docket in this matter. If called and sworn as a witness, I could and would competently testify thereto. As counsel for Defendants, Sidley Austin LLP maintains in the ordinary course of its business all pleadings served on or by Defendant in the above-captioned action.

2. I understand that on or around August 21, 2018, Plaintiff Ryan Hyams (“Plaintiff”) filed an action entitled *Ryan Hyams v. CVS Health Corporaton, et al.*, Case No. CGC-18-569060, in the Superior Court of the State of California, County of San Francisco (“the Action”). I understand that on or around September 7, 2018, Plaintiff filed a First Amended Complaint in the above-referenced Action to add a Private Attorneys General Act of 2004 claim.

3. I also understand that on September 12, 2018, Defendants received service of the Summons and First Amended Complaint, along with a Notice of Case Management Conference and an Alternative Dispute Resolution Program Information Packet, all of which are attached hereto as Exhibits 1, 2, and 3 respectively.

4. On or around October 10, 2018, Defendant filed and served an Answer to the First Amended Complaint, attached hereto as Exhibit 4.

5. Exhibits 1 through 4 constitute all process, pleadings, and orders filed by and/or served by Defendants or on Defendants to date.

6. All of the following statements are based on my review of the payroll data I received from the Company.

EXHIBIT 1



**Service of Process
Transmittal**

09/12/2018

CT Log Number 534043770

TO: Service of Process
CVS Health Companies
1 Cvs Dr Mail Code 1160
Woonsocket, RI 02895-6146

RE: Process Served in California

FOR: CVS Pharmacy, Inc. (Domestic State: RI)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RYAN HYAMS, ETC., ET AL., PLTFs. vs. CVS HEALTH CORPORATION, ETC., ET AL., DFTS.

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit(s)

COURT/AGENCY: San Francisco County - Superior Court - San Francisco, CA
Case # CGC18569060

NATURE OF ACTION: Employee Litigation - Wrongful Termination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 09/12/2018 at 14:53

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 calendar days after this summons

ATTORNEY(S) / SENDER(S): Beth Gunn
Gunn Coble LLP
101 S. 1st Street
Suite 407
Burbank, CA 91502
818-573-6392

ACTION ITEMS: CT has retained the current log, Retain Date: 09/12/2018, Expected Purge Date: 09/17/2018

Image SOP

Email Notification, Service of Process Service_of_Process@cvs.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

9.12.18

SUMMONS on First Amended Complaint
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: CVS HEALTH CORPORATION, a Rhode Island
(**AVISO AL DEMANDADO**): Corporation, **CVS PHARMACY, INC.**, a Rhode
Island Corporation, **GARFIELD BEACH CVS, LLC**, a California Corporation, and
CVS RX SERVICES, INC., a NY Corporation, DOES 1 through 25, inclusive

YOU ARE BEING SUED BY PLAINTIFF: RYAN HYAMS, an individual, on
(**LO ESTÁ DEMANDANDO EL DEMANDANTE**): behalf of himself, and all
others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

CASE NUMBER: CGC-18-569060
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Catherine J. Coble
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GUNN COBLE LLP

101 S. 1st Street, Suite 407, BURBANK, CA 91502

(818) 900-0695

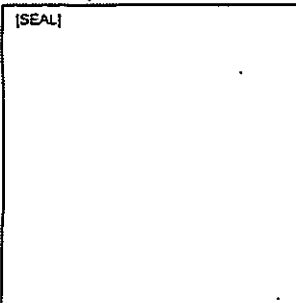
DATE: SEP 10 2018
(Fecha)

DEPUTY CLERK Clerk, by
(Secretario)

BOWMAN LIU

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

CVS pharmacy, Inc., a Rhode Island corporation

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):

1 BETH GUNN, CA Bar No. 218889
beth@gunncoble.com
2 CATHERINE J. COBLE, CA Bar No. 223461
cathy@gunncoble.com
3 GUNN COBLE LLP
101 S. 1st Street, Suite 407
4 Burbank, CA 91502
Telephone: 818.900.0695
5 Facsimile: 818.900.0723

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/07/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated
7

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

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RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated,

Plaintiff,

vs.

CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

Defendants.

Case No. CGC-18-569060

**CLASS ACTION FIRST AMENDED
COMPLAINT**

1. Failure To Provide Required Meal Periods;
2. Failure To Authorize And Permit Required Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
6. Failure To Timely Pay All Wages;
7. Failure To Reimburse For Employment Related Expenses;
8. Failure To Maintain Required Records;
9. Failure To Furnish Accurate Itemized Wage Statements;
10. Failure To Provide Written Notice Of Paid Sick Leave
11. Failure To Provide One Day's Rest In Seven
12. Failure to Comply With California Labor Code Sections 850 and 851
13. Unfair And Unlawful Business Practices;
14. Penalties Under The California Labor Code Private Attorneys General Act, As Representative Action

DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS ("PLAINTIFF"), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 ("DEFENDANTS") as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a "Fortune 10"
7 company, publicly avows its purpose as "helping people on the path to better health." See CVS
8 Health's Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS' continuous and intentional
10 violation of California's wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state's citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code ("Labor Code") in multiple ways. The most obvious of DEFENDANTS' illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law "enacted as a measure for the protection of the public health." See
16 Labor Code § 855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS' customers who depend on them "on the path to better health."

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF's claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone),
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.

24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.

28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF's
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

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28 ///

CLASS ACTION ALLEGATIONS

1
2 27. DEFENDANTS employed, and continue to employ, employees throughout
3 California during the last four (4) years.

4 28. Based on information and belief, PLAINTIFF believes that other members of THE
5 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
6 in the following:

- 7 a. Routinely working through meal and/or rest breaks without proper
8 compensation for the same, including the payment of penalties for interrupted
9 meal and/or rest breaks;
- 10 b. Routinely working off-the-clock when answering work-related text messages
11 and/or when forced by management to continue to work while clocked out,
12 without receiving wages, premium pay, or minimum wages for the off-the-clock
13 time worked;
- 14 c. No compensation for unpaid wages and/or premium pay at the time of
15 termination;
- 16 d. Use of personal cell phones without adequate reimbursement;
- 17 e. Receipt of inaccurate wage statements;
- 18 f. Lack of receipt of adequate written notice of paid sick leave;
- 19 g. Routinely working without receiving one day's rest in seven; and
- 20 h. Routinely working in excess of the prescribed time limitations set forth in Labor
21 Code sections 850 and 851.

22 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
23 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
24 the-clock; scheduling employees for work; the Company's payroll and wage payments to
25 employees, including the provision of wage statements; reimbursements of necessary business
26 expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

27 30. In particular, DEFENDANTS' reliance on performance and/or prescription full-time
28 metrics, centralized scheduling systems, managerial instructions, and operational policies and

1 procedures applied on a class-wide basis.

2 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human
3 Resources department, which is responsible for the hiring of new employees, collecting and
4 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
5 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
6 sick time policies, vacation time policies, and payroll policies and practices applicable to their
7 employees in California.

8 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
9 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
10 created uniform policies and procedures at the corporate level and implemented them
11 companywide, regardless of the employees' location.

12 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
13 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
14 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
15 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
16 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
17 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
18 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
19 minute meal period.

20 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
21 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
22 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
23 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
24 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
25 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
26 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
27 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

28 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS

1 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
2 and did not receive overtime compensation for work that DEFENDANTS knew or should have
3 known was performed.

4 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
5 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
6 least minimum wages for compensation and that, in violation of the Labor Code, they were not
7 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
8 performed.

9 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
10 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
11 payment of wages upon termination of employment. In violation of the Labor Code,
12 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
13 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
14 statutorily required time periods.

15 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
16 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
17 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
18 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
19 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
20 periods.

21 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
22 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
23 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
24 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
25 to do so in violation of the Labor Code.

26 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
28 reimbursement for all business-related expenses and costs they incurred during the course and

1 scope of their employment, and that they did not receive full reimbursement of applicable business-
2 related expenses and costs in violation of the Labor Code.

3 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
4 knew or should have known that they had a duty to maintain accurate and complete payroll records
5 in accordance with the Labor Code and IWC Wage Order-7-2001, but willfully, knowingly, and
6 intentionally failed to do so.

7 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
8 department at their company headquarters, which processes payroll for all employees working for
9 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
10 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
11 statements to all employees in California, irrespective of their work location. PLAINTIFF is
12 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
13 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
14 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
15 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements.

16 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
17 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
18 notice of paid sick leave or paid time off available. In violation of the Labor Code,
19 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
20 sick leave or paid time off available.

21 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
22 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
23 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

24 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
26 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
27 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
28 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and

1 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
2 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more
3 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
4 direction.

5 **SATISFACTION OF CLASS ACTION CRITERIA**

6 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
7 all other persons similarly situated and seeks class certification of THE CLASS and
8 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

9 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
10 relief authorized by California law.

11 48. There is a well-defined community of interest in litigation and the class members
12 are readily ascertainable:

13 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
14 numerous that joinder of all members would be unfeasible and impractical. The membership of the
15 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
16 greater than one thousand (1000) individuals and the identity of such membership is readily
17 ascertainable by inspection of DEFENDANTS' employment records.

18 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
19 protect the interests of each member of THE CLASS with whom he has a well-defined community
20 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
21 demonstrated herein.

22 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
23 protect the interest of each class member with whom he has a well-defined community of interest
24 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
25 obligation to make known to the Court any relationship, conflicts, or differences with any class
26 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
27 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
28 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
2 member.

3 D. Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve economies of time, effort, and
5 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
6 same issues can be adjudicated in the same manner and at the same time for the entire class.

7 E. Public Policy Considerations: California has a stated public policy in favor
8 of class actions in this context for the vindication of employee rights and enforcement of the Labor
9 Code. Employers in the State of California violate employment and labor laws every day. Current
10 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
11 employees are fearful of bringing actions because they believe their former employers might
12 damage their future endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a type of anonymity that
14 allows for the vindication of their rights while simultaneously protecting their privacy.

15 **FIRST CAUSE OF ACTION**

16 **Failure To Provide Required Uninterrupted Meal Periods**

17 **(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)**

18 **(Against ALL DEFENDANTS and DOES 1 to 25)**

19 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
20 and every allegation set forth above.

21 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
22 that no employer shall require an employee to work during any meal period mandated by an
23 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
26 employer may not employ an employee for a work period of more than five hours per day without
27 providing the employee with a meal period of not less than 30 minutes,” except that if the total
28 work period per day of the employee is not more than six (6) hours, the meal period may be waived

1 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
2 period of not less than thirty (30) minutes, the employee is to be completely free of the employer's
3 control and must not perform any work for the employer. If the employee does perform work for
4 the employer during this thirty (30) minute meal period, the employee has not been provided with a
5 duty-free meal period, in accordance with California law, and is to be compensated for any work
6 performed during this (30) minute meal period in addition to one (1) additional hour of
7 compensation at each employee's regular rate of pay for each workday that a meal period was not
8 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

9 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
10 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
11 of more than ten (10) hours per day without providing the employee with another meal period of
12 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
13 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
14 second meal period may be waived by mutual consent of the employer and the employee only if
15 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
16 tit. 8 § 11050.

17 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
18 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
19 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
20 Code Regs. tit. 8 § 11050.

21 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
22 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
23 who were not provided with an uninterrupted meal period or one (1) additional hour of
24 compensation at each employee's regular rate of pay for each workday that a meal period was not
25 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
26 § 11050.

27 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
28 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and

1 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
2 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS
3 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
4 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
5 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
6 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
7 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
8 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
9 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

10 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
11 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
12 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
13 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
14 *codified* at Cal. Code Regs. tit. 8 § 11050.

15 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
16 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
17 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
18 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
19 when meal periods were late and/or interrupted.

20 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
21 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
22 including all compensation, such as shift differential pay and other compensation, as required by
23 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
24 Cal. Code Regs. tit. 8 § 11050.

25 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
26 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

27 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
28 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

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5 61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very
11 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time
13 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer
16 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
17 to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each
20 four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were
21 regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-
22 2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

23 66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5
28 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 110501; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code §1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed:

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

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SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050)

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 §11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS’ management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS’ business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS’ company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)**

8 **(Against ALL DEFENDANTS and DOES 1 to 25)**

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to, total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 124. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
3 and costs of suit.

4 **TENTH CAUSE OF ACTION**

5 **Failure To Provide Written Notice of Paid Sick Leave**

6 **(Cal. Lab. Code section 246(i))**

7 **(Against ALL DEFENDANTS and DOES 1 to 25)**

8 125. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 126. At all times herein, Labor Code section 246 has required that employers provide
11 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
12 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
13 described in section 226 or in a separate writing provided on the designated pay date with the
14 employee's payment of wages." Cal. Lab. Code § 246(i).

15 127. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
16 MEMBERS with the required written notice on wage statements and/or other separate written
17 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
18 DEFENDANTS' wage statements fail to state PLAINTIFF's and CLASS MEMBERS' paid sick
19 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

20 128. DEFENDANTS' conduct violates Labor Code section 246(i).

21 129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
23 and costs of suit.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure To Provide One Day's Rest In Seven**

26 **(Cal. Lab. Code sections 551, 552, and 852)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 130. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks...” Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. *See*
5 Cal. Lab. Code § 851

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS’ conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys’ fees, expenses, and costs of suit, , as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that “person”
20 shall mean and include “natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons.” Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS’ conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS’ competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS’ unlawful business practices.

26 146. At all times herein, DEFENDANTS’ activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 *et seq.*

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5)

(Against ALL DEFENDANTS and DOES 1 to 25)

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5 151. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 152. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code section
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other current
9 and former employees of DEFENDANTS pursuant to the procedures specified in Labor Code
10 section 2699.3, because PLAINTIFF was employed by DEFENDANTS and the alleged violations
11 of the Labor Code were committed against PLAINTIFF.

12 153. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
13 sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to
14 penalties under Labor Code sections 2699, 210, 225.5, 226.3, 558, 850, 851, 852, 853, 1174.5,
15 1197.1, and 1199, from DEFENDANTS in representative action for the violations set forth above,
16 including but not limited to violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,
17 850, 851, 852, 853, 1174, 1194, 1197, 1198, and 2802. PLAINTIFF is also entitled to an award of
18 reasonable attorneys' fees and costs pursuant to Labor Code section 2699 (g)(1).

19 154. Pursuant to Labor Code Section 2699.3, PLAINTIFF gave written notice by
20 certified mail to the California Labor and Workforce Development Agency ("LWDA") and
21 DEFENDANTS of the specific provisions of the Labor Code and IWC Wage Orders alleged to
22 have been violated, including the facts and theories to support the alleged violations.
23 PLAINTIFF's notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days
24 of the postmark date of PLAINTIFF's notice letter, the LWDA did not provide notice to
25 PLAINTIFF that it intends to investigate the alleged violations.

26 155. Therefore, PLAINTIFF has complied with all of the requirements set forth in Labor
27 Code Section 2699.3 to commence a representative action under PAGA.

28

PRAYER FOR RELIEF

1
2 Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated,
3 respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of
4 them, as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
- 6 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as
7 disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
- 8 3. For meal and rest period compensation pursuant to Labor Code section 226.7 and
9 IWC Wage Order NO. 7-2001;
- 10 4. For liquidated damages pursuant to Labor Code section 1194.2;
- 11 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
12 violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in
13 the unlawful business practices complained of herein;
- 14 6. For waiting time penalties pursuant to Labor Code section 203;
- 15 7. For statutory and civil penalties according to proof, including but not limited to all
16 penalties authorized by the Labor Code sections 226(e), 853 and 2699;
- 17 8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code
18 Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable
19 provision providing for pre-judgment interest;
- 20 9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194,
21 2699, 2802, California Civil Code section 1021.5, and any other applicable provisions providing
22 for attorneys' fees and costs;
- 23 10. For declaratory relief;
- 24 11. For an order requiring and certifying the first thirteen Causes of Action pled in this
25 FIRST AMENDED COMPLAINT as a class action;
- 26 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
27 counsel as class counsel; and

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13. For such further relief that the Court may deem just and proper.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Catherine J. Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated

DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury
trial with respect to all issues triable of right by jury.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Cathy Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated.

Exhibit A



Beth Gunn
818.573.6389
beth@gunncoble.com

Cathy Coble
818.573.6392
cathy@gunncoble.com

July 2, 2018

VIA ONLINE FILING

David M. Lanier, Secretary
California Labor and Workforce Development Agency

RE: Labor Code Private Attorneys General Act of 2004 – Notice on behalf of Ryan Hyams

Dear Secretary Lanier:

Please be advised that Gunn Coble LLP has been retained by Ryan Hyams (“Mr. Hyams”) to represent him in respect to matters arising out of his employment with CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc., and, as appropriate, any of their parent companies, subsidiaries, or affiliates (collectively, “CVS” or the “Company”). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Mr. Hyams.

This letter provides notice on behalf of Mr. Hyams and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Mr. Hyams is an “aggrieved employee” as defined by Labor Code section 2698 *et seq.*, due to CVS’ numerous violations of the Labor Code, including unpaid wages, failure to provide meal and rest breaks, failure to pay meal and rest period premiums, failure to provide mandated rest days, failure to comply with California Labor Code Section 850-851, inaccurate wage statements, unreimbursed expenses, failure to pay wages upon termination, interest, penalties, attorneys’ fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, an “aggrieved employee” should be considered to include all non-exempt employees of CVS who have worked for CVS during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency ("LWDA") and to the Company via certified mail at its address for business operations.

Based on the below summary of the facts and legal theories upon which Mr. Hyams will base his claims, he requests that the LWDA regard this notice as written notice pursuant to California Labor Code section 2699.3 of his intent to seek civil penalties against CVS and any parent companies identified as co-defendants prior to and during litigation of this matter.

A. Facts

CVS is a retail pharmacy chain with hundreds of physical locations in California, including standalone stores and locations within Target branded stores. As part of its operations, CVS employs pharmacists to, among other things, dispense medications, counsel patients on the use of prescription and over-the-counter medications, and advise physicians about medication therapy. In many locations CVS also employs pharmacy technicians to assist with the dispensation of medication to its clientele, though there are CVS locations where only a pharmacist is employed to handle all pharmacy operations. Plaintiff Ryan Hyams is a former non-exempt employee of CVS who primarily worked as a pharmacist at its Garfield Beach location, but also occasionally assisted at other pharmacy locations during his more than two years of employment with CVS. At the end of his employment with CVS, Mr. Hyams was earning \$76/hour.

As a pharmacist, Mr. Hyams' primary duties were to safely and accurately dispense approximately 250-300 prescriptions per day to CVS clientele. This included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), checking for drug interactions and precautions, contacting physicians where appropriate, advising patients regarding the use of their prescriptions, entering information in CVS systems, and dispensing and packaging medications to CVS customers. When pharmacy technicians were unavailable, Mr. Hyams would also work at the pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy.

During his employment, Mr. Hyams would regularly work more than 9 hours per day on average, and more than 108 hours in two consecutive week periods. In fact, CVS utilized a centralized scheduling procedure where he and other pharmacists were routinely scheduled for 12-hour shifts. On occasion, Mr. Hyams would work more than 12 hours per day, for which CVS would then pay him double-time. There also were occasions where he worked more than 12 days in a consecutive two week period. Each day, before clocking in on the CVS computer and after clocking out at the end of the day, Mr. Hyams would perform work for his position, as required by CVS. Also, as part of his job duties and responsibilities, Mr. Hyams would receive text messages on his personal cell phone from his supervisor to discuss work-related matters. Furthermore, CVS relied on Mr. Hyams, a loyal employee, to fill in at other pharmacies to ensure its business needs were met, which required him to drive great distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations, Mr. Hyams was entitled to, but did not receive uninterrupted meal and rest breaks. Mr. Hyams was not paid for the time he

spent reviewing and responding to text messages from his supervisor relating to work for CVS while off-the-clock. Additionally, Mr. Hyams never received any reimbursement from CVS for the personal use of his cell phone to conduct business for CVS.

When Mr. Hyams' employment with CVS ended, he was only paid for a portion of his accrued vacation. CVS failed to provide him with his accrued vacation time in violation of the Labor Code. For a portion of his employment, in violation of Labor Code Section 246(i), CVS failed to provide Mr. Hyams, or other aggrieved employees, with written notice setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu of sick leave.

Throughout his employment at CVS, Mr. Hyams was routinely unable to take his uninterrupted meal and rest breaks due to CVS' under-staffing and fill-time metrics. During the breaks he was able to take, after clocking out and before clocking back in, Mr. Hyams was routinely interrupted with pharmacy questions. Mr. Hyams was also asked to sign a waiver, wherein, on a standing basis without regard to the actual business needs, he waived all of his second meal periods. Mr. Hyams observed other employees also working through breaks and not being properly compensated for the same. Mr. Hyams was not paid any penalties for these interrupted meal and/or rest breaks. In addition, CVS often failed to provide Mr. Hyams with a rest day as required under the Labor Code.

Additionally, to date, CVS has refused to comply with its obligation under the Labor Code to produce the entirety of Mr. Hyams payroll records and personnel file, making it even more difficult to determine the extent of CVS' improper and illegal practices.

B. Labor Code Violations

1. CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours Worked.

Labor Code section 204, provides in relevant part: "All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month." California Labor Code section 204. In short, this means an employee must be paid for *all* hours worked. Time spent by Mr. Hyams reviewing and answering text messages, as required by CVS, is deemed time worked and must be compensated. Furthermore, pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order. Pursuant to IWC Wage Order number 7, subdivision 2(G), at all times material hereto, "hours worked" means "the time during which an employee is subject to the control of an employer, and includes all time the employee is suffered or permitted to work, whether or not required to do so." Mr. Hyams was not paid for any work conducted prior to clocking in and after clocking out, as required by CVS. He also observed and is aware of other aggrieved employees who were forced to use their own cell phones and work off-the-clock who were not paid for the work performed.

In direct violation of the Labor Code, CVS failed to pay Mr. Hyams and similarly situated employees for time reading and responding to messages related to work. In the case of Mr. Hyams, he has spent hours receiving and responding to messages from management regarding work for which he has not received pay. Mr. Hyams contends that other similarly situated employees also did not receive any pay for the time spent receiving and responding to work related messages. Additionally, CVS required its employees, including Mr. Hyams and other aggrieved employees, to perform work before clocking in and after clocking out on the Company's computers. Thus, Mr. Hyams and other aggrieved employees' time records do not accurately reflect their actual hours worked. As such, Mr. Hyams and other employees were never compensated for all time worked. Therefore, CVS has violated Labor Code sections 204, 1194, 1194.2, and 1197.

2. CVS Violated Labor Code Sections 246(i) and 246.5.

California Labor Code section 246 requires that employers provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off an employer provides in lieu of sick leave, either on the employee's itemized wage statement described in section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. Here, during a portion of Mr. Hyam's employment, CVS failed to provide Mr. Hyams and other aggrieved employees with the required notice setting forth the amount of sick leave available.

3. Failure to Pay Overtime Wages and Therefore Failure to Pay Minimum Wage.

Employers operating under California law must pay at least minimum wage to their employees for all hours worked. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. See Cal. Lab. Code sections 1182.12 and 1194. In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well as interest. See Cal. Lab. Code section 1194.2. Furthermore, an employer failing to pay minimum wages must pay a civil penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which such violations occurred. See Cal. Lab. Code section 1197.1.

Section 510 of the Labor Code mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a). Section 1194 creates a cause of action to recover such unpaid overtime wages. See Cal. Lab. Code section 1194. IWC Order No. 7-2001(3)(A) further provides that employees such as Mr. Hyams "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." IWC Order No. 7-2001(3)(A).

As discussed above, Mr. Hyams and other similarly aggrieved employees routinely worked off-the-clock when answering work-related text messages and when forced by management to continue to work while clocked out. During these periods of off-the-clock work, CVS did not pay at least minimum wage to employees.

As a result of these actions, CVS violated Labor Code sections 223, 510, 1182.12, 1194, 1194.2, 1197.1, and 1198.

4. **CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing to Provide Lawful Meal or Rest Breaks, and Forcing Its Employees to Sign Meal Period Waivers.**

Labor Code section 512 provides that “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.” Cal. Lab. Code section 512. Section 226.7 further provides in relevant part that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute.” Cal. Lab. Code section 226.7. IWC Order 7-2001 (12) states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

CVS has violated sections 512 and 226.7 by failing to provide Mr. Hyams and similarly situated employees with at least 30 uninterrupted minutes of meal break time and/or at least 10 minutes of uninterrupted rest time during their shifts. Mr. Hyams and similarly situated CVS employees were and are routinely interrupted during their meal and rest breaks in order to comply with their managers’ demands and instructions to meet CVS customers’ expectations and CVS’ fill time metrics. Mr. Hyams and other aggrieved employees were also asked to sign a waiver, wherein, on a standing basis, they waived all of their second meal periods, without consideration of the pharmacies’ daily needs. Thus, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the 30-minute uninterrupted meal period was not provided. See Cal. Lab. Code section 226.7. In addition, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the ten-minute rest break was not provided. See Cal. Labor Code § 226.7; IWC 7-2001(12), as well as PAGA penalties.

5. **CVS Violated Labor Code Sections 551 and 552.**

Under Labor Code section 551, “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code section 552 provides that “[n]o employer of labor shall cause his employees to work more than six days in seven.” Here, CVS violated these sections by failing to provide the legally-mandated rest days to Mr. Hyams and other similarly situated employees. Further, “an employer’s obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal.5th 1074, 1091 (2017). Instead of complying with this obligation, CVS did not inform its employees in California of their right to a day of rest, and then failed to properly staff its locations with sufficient personnel and pressured employees into working without a day of rest.

6. **Failure to Comply with Labor Code Sections 850 and 851.**

California Labor Code section 850 provides, in pertinent part, that “[n]o person employed to sell at retail drugs and medicines or to compound physicians' prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days in any two consecutive weeks...” The accompanying California Labor Code section 851 prohibits employers from requiring employees covered by Section 850 to work in excess of the hours prescribed therein. Mr. Hyams and other aggrieved employees throughout California regularly worked hours and days in excess of these specific limitations set forth by the California Labor Code.

7. **Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code Section 226 (a).**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CVS did not provide Mr. Hyams, and other aggrieved employees, with properly itemized wage statements. Additionally, the violations include, without limitation, the failure to accurately list the total regular and overtime wages earned or meal and rest break premiums entitled to Mr. Hyams and other similarly situated employees. CVS' failure to provide accurate itemized wage statements was an intentional act based on its policy and practice of failing to properly compensate employees to avoid paying penalty pay and overtime premiums to employees.

8. **CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related Purposes.**

California Labor Code section 2802 requires an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Cal. Lab. Code section 2802. This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

CVS has violated section 2802 by failing to reimburse employees for costs incurred relating to the necessary use of personal cell phones for work-related purposes. Mr. Hyams, and other CVS employees, were routinely required to use their personal cell phones to exchange text messages with CVS management. CVS did not provide Mr. Hyams or the other CVS employees with a work-issued cell phone, nor has it reimbursed Mr. Hyams and the other CVS employees for the necessary expenses they incurred in using their personal cell phones for CVS business.

9. **Failure to Pay All Wages Due Upon Termination**

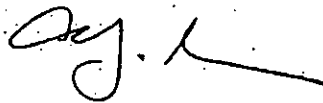
Employers must pay all wages due upon termination, including accrued but unused vacation. Labor Code sections 201-202, 227.3. The Company violated these sections by failing to pay Mr. Hyams and other aggrieved employees their unpaid wages, including accrued vacation time and premium penalties, as discussed above, at the time of termination. These violations subject the Company to civil penalties under Labor Code sections 203 and 2699.

This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. If the LWDA elects not to take any action, Mr. Hyams intends to file a complaint on behalf of himself and all similarly situated aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages, unpaid minimum wages, meal and rest period premiums, unreimbursed expenses, unpaid sick leave, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



Cathy Coble
Gunn Coble LLP

CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. may be contacted at the following address:

One CVS Drive
Woonsocket, Rhode Island 02895

The registered agent for service of process for CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. is:

C T Corporation System
818 W Seventh Street, Suite 930
Los Angeles, CA 90017

My contact information is:

Beth Gunn

Cathy Coble

Gunn Coble LLP

101 S. First Street, Suite 407

Burbank, CA 91502

beth@gunncoble.com

cathy@gunncoble.com

818.573.6392

CM-010

| | |
|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Catherine J. Coble GUNN COBLE LLP 101 S. 1st Street, Suite 407, BURBANK, CA 91502 TELEPHONE NO.: (818) 900-0695 FAX NO.: (818) 900-0723 SBN: 223461 ATTORNEY FOR (NAME): Ryan Hyams on behalf of himself and others similarly situated | ENDORSED FILED San Francisco County Superior Court AUG 21 2018 CLERK OF THE COURT BY: ROSSALY DE LA VEGA Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse | CASE NUMBER: CGC-18-569060 JUDGE: DEPT: |
| CASE NAME: Hyams v. CVS HEALTH CORPORATION, et al. | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 13
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 21, 2018

Catherine J. Coble

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

| | | |
|--|--|--|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) |
| Auto (22)–Personal Injury/Property Damage/Wrongful Death | Breach of Contract/Warranty (06) | Antitrust/Trade Regulation (03) |
| Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) | Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) | Construction Defect (10) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Contract/Warranty Breach–Seller Plaintiff (not fraud or negligence) | Claims Involving Mass Tort (40) |
| Asbestos (04) | Negligent Breach of Contract/Warranty | Securities Litigation (28) |
| Asbestos Property Damage | Other Breach of Contract/Warranty | Environmental/Toxic Tort (30) |
| Asbestos Personal Injury/Wrongful Death | Collections (e.g., money owed, open book accounts) (09) | Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) |
| Product Liability (not asbestos or toxic/environmental) (24) | Collection Case–Seller Plaintiff | Enforcement of Judgment |
| Medical Malpractice (45) | Other Promissory Note/Collections Case | Enforcement of Judgment (20) |
| Medical Malpractice–Physicians & Surgeons | Insurance Coverage (not provisionally complex) (18) | Abstract of Judgment (Out of County) |
| Other Professional Health Care Malpractice | Auto Subrogation | Confession of Judgment (non-domestic relations) |
| Other PI/PD/WD (23) | Other Coverage | Sister State Judgment |
| Premises Liability (e.g., slip and fall) | Other Contract (37) | Administrative Agency Award (not unpaid taxes) |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) | Contractual Fraud | Petition/Certification of Entry of Judgment on Unpaid Taxes |
| Intentional Infliction of Emotional Distress | Other Contract Dispute | Other Enforcement of Judgment Case |
| Negligent Infliction of Emotional Distress | Real Property | Miscellaneous Civil Complaint |
| Other PI/PD/WD | Eminent Domain/Inverse Condemnation (14) | RICO (27) |
| Non-PI/PD/WD (Other) Tort | Wrongful Eviction (33) | Other Complaint (not specified above) (42) |
| Business Tort/Unfair Business Practice (07) | Other Real Property (e.g., quiet title) (26) | Declaratory Relief Only |
| Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) | Writ of Possession of Real Property | Injunctive Relief Only (non-harassment) |
| Defamation (e.g., slander, libel) (13) | Mortgage Foreclosure | Mechanics Lien |
| Fraud (16) | Quiet Title | Other Commercial Complaint Case (non-tort/non-complex) |
| Intellectual Property (19) | Other Real Property (not eminent domain, landlord/tenant, or foreclosure) | Other Civil Complaint (non-tort/non-complex) |
| Professional Negligence (25) | Unlawful Detainer | Miscellaneous Civil Petition |
| Legal Malpractice | Commercial (31) | Partnership and Corporate Governance (21) |
| Other Professional Malpractice (not medical or legal) | Residential (32) | Other Petition (not specified above) (43) |
| Other Non-PI/PD/WD Tort (35) | Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) | Civil Harassment |
| Employment | Judicial Review | Workplace Violence |
| Wrongful Termination (36) | Asset Forfeiture (05) | Elder/Dependent Adult Abuse |
| Other Employment (15) | Petition Re: Arbitration Award (11) | Election Contest |
| | Writ of Mandate (02) | Petition for Name Change |
| | Writ–Administrative Mandamus | Petition for Relief From Late Claim |
| | Writ–Mandamus on Limited Court Case Matter | Other Civil Petition |
| | Writ–Other Limited Court Case Review | |
| | Other Judicial Review (39) | |
| | Review of Health Officer Order | |
| | Notice of Appeal–Labor Commissioner Appeals | |

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5 Facsimile: 818.900.0723

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated

ENDORSED
FILED
San Francisco County Superior Court

AUG 21 2018

CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 CGC-18-569060

11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated,

12 Plaintiff,

13 vs.

14
15 CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
16 Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
17 RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

18 Defendants.
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Case No. _____

CLASS ACTION COMPLAINT

1. Failure To Provide Required Meal Periods;
2. Failure To Authorize And Permit Required Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
6. Failure To Timely Pay All Wages;
7. Failure To Reimburse For Employment Related Expenses;
8. Failure To Maintain Required Records;
9. Failure To Furnish Accurate Itemized Wage Statements;
10. Failure To Provide Written Notice Of Paid Sick Leave
11. Failure To Provide One Day's Rest In Seven,
12. Failure to Comply With California Labor Code Sections 850 and 851
13. Unfair And Unlawful Business Practices;

DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS (“PLAINTIFF”), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 (“DEFENDANTS”) as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a “Fortune 10”
7 company, publicly avows its purpose as “helping people on the path to better health.” See CVS
8 Health’s Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS’ continuous and intentional
10 violation of California’s wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state’s citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code (“Labor Code”) in multiple ways. The most obvious of DEFENDANTS’ illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law “enacted as a measure for the protection of the public health.” See
16 Labor Code § 855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS’ customers who depend on them “on the path to better health.”

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF’s claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone),
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.

24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.

28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive (“DOES”), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS’ injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF’s
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

27 **CLASS ACTION ALLEGATIONS**

28 27. DEFENDANTS employed, and continue to employ, employees throughout

1 California during the last four (4) years.

2 28. Based on information and belief, PLAINTIFF believes that other members of THE
3 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
4 in the following:

- 5 a. Routinely working through meal and/or rest breaks without proper
6 compensation for the same, including the payment of penalties for interrupted
7 meal and/or rest breaks;
- 8 b. Routinely working off-the-clock when answering work-related text messages
9 and/or when forced by management to continue to work while clocked out,
10 without receiving wages, premium pay, or minimum wages for the off-the-clock
11 time worked;
- 12 c. No compensation for unpaid wages and/or premium pay at the time of
13 termination;
- 14 d. Use of personal cell phones without adequate reimbursement;
- 15 e. Receipt of inaccurate wage statements;
- 16 f. Lack of receipt of adequate written notice of paid sick leave;
- 17 g. Routinely working without receiving one day's rest in seven; and
- 18 h. Routinely working in excess of the prescribed time limitations set forth in Labor
19 Code sections 850 and 851.

20 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
21 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
22 the-clock; scheduling employees for work; the Company's payroll and wage payments to
23 employees, including the provision of wage statements; reimbursements of necessary business
24 expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

25 30. In particular, DEFENDANTS' reliance on performance and/or prescription fill-time
26 metrics, centralized scheduling systems, managerial instructions, and operational policies and
27 procedures applied on a class-wide basis.

28 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human

1 Resources department, which is responsible for the hiring of new employees, collecting and
2 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
3 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
4 sick time policies, vacation time policies, and payroll policies and practices applicable to their
5 employees in California.

6 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
7 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
8 created uniform policies and procedures at the corporate level and implemented them
9 companywide, regardless of the employees' location.

10 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
11 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
12 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
13 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
14 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
15 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
16 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
17 minute meal period.

18 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
19 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
20 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
21 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
22 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
23 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
24 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
25 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

26 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
28 and did not receive overtime compensation for work that DEFENDANTS knew or should have

1 known was performed.

2 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
3 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
4 least minimum wages for compensation and that, in violation of the Labor Code, they were not
5 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
6 performed.

7 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
8 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
9 payment of wages upon termination of employment. In violation of the Labor Code,
10 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
11 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
12 statutorily required time periods.

13 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
14 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
15 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
16 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
17 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
18 periods.

19 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
20 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
21 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
22 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
23 to do so in violation of the Labor Code.

24 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
26 reimbursement for all business-related expenses and costs they incurred during the course and
27 scope of their employment, and that they did not receive full reimbursement of applicable business-
28 related expenses and costs in violation of the Labor Code.

1 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
2 knew or should have known that they had a duty to maintain accurate and complete payroll records
3 in accordance with the Labor Code and IWC Wage Order 7-2001, but willfully, knowingly, and
4 intentionally failed to do so.

5 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
6 department at their company headquarters, which processes payroll for all employees working for
7 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
8 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
9 statements to all employees in California, irrespective of their work location. PLAINTIFF is
10 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
11 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
12 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
13 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements.

14 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
15 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
16 notice of paid sick leave or paid time off available. In violation of the Labor Code,
17 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
18 sick leave or paid time off available.

19 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
20 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
21 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

22 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
23 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
24 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
25 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
26 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and
27 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
28 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more

1 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
2 direction.

3 **SATISFACTION OF CLASS ACTION CRITERIA**

4 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
5 all other persons similarly situated and seeks class certification of THE CLASS and
6 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

7 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
8 relief authorized by California law.

9 48. There is a well-defined community of interest in litigation and the class members
10 are readily ascertainable:

11 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
12 numerous that joinder of all members would be unfeasible and impractical. The membership of the
13 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
14 greater than one thousand (1000) individuals and the identity of such membership is readily
15 ascertainable by inspection of DEFENDANTS' employment records.

16 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
17 protect the interests of each member of THE CLASS with whom he has a well-defined community
18 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
19 demonstrated herein.

20 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
21 protect the interest of each class member with whom he has a well-defined community of interest
22 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
23 obligation to make known to the Court any relationship, conflicts, or differences with any class
24 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
25 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
26 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will
27 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
28 member.

1 D. Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve economies of time, effort, and
3 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
4 same issues can be adjudicated in the same manner and at the same time for the entire class.

5 E. Public Policy Considerations: California has a stated public policy in favor
6 of class actions in this context for the vindication of employee rights and enforcement of the Labor
7 Code. Employers in the State of California violate employment and labor laws every day. Current
8 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
9 employees are fearful of bringing actions because they believe their former employers might
10 damage their future endeavors through negative references and/or other means. Class actions
11 provide the class members who are not named in the complaint with a type of anonymity that
12 allows for the vindication of their rights while simultaneously protecting their privacy.

13 **FIRST CAUSE OF ACTION**

14 **Failure To Provide Required Uninterrupted Meal Periods**

15 **(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
20 that no employer shall require an employee to work during any meal period mandated by an
21 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
22 § 11050.

23 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
24 employer may not employ an employee for a work period of more than five hours per day without
25 providing the employee with a meal period of not less than 30 minutes,” except that if the total
26 work period per day of the employee is not more than six (6) hours, the meal period may be waived
27 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
28 period of not less than thirty (30) minutes, the employee is to be completely free of the employer’s

1 control and must not perform any work for the employer. If the employee does perform work for
2 the employer during this thirty (30) minute meal period, the employee has not been provided with a
3 duty-free meal period, in accordance with California law, and is to be compensated for any work
4 performed during this (30) minute meal period in addition to one (1) additional hour of
5 compensation at each employee's regular rate of pay for each workday that a meal period was not
6 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

7 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
8 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
9 of more than ten (10) hours per day without providing the employee with another meal period of
10 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
11 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
12 second meal period may be waived by mutual consent of the employer and the employee only if
13 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
16 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
17 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
18 Code Regs. tit. 8 § 11050.

19 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
20 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
21 who were not provided with an uninterrupted meal period or one (1) additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
26 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and
27 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
28 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS

1 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
2 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
3 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
4 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
5 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
6 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
7 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

8 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
9 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
10 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
11 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
12 *codified* at Cal. Code Regs. tit. 8 § 11050.

13 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
14 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
15 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
16 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
17 when meal periods were late and/or interrupted.

18 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
19 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
20 including all compensation, such as shift differential pay and other compensation, as required by
21 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
22 Cal. Code Regs. tit. 8 § 11050.

23 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
24 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

25 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
26 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.
27
28

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

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2
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5 61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very
11 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time
13 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer
16 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
17 to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each
20 four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were
21 regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-
22 2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

23 66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5
28 hours, in excess of six (6) hours, and in excess of ten (10) hours; without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code §1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050)

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 §11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...” Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS’ management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS’ business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS’ company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)**

8 **(Against ALL DEFENDANTS and DOES 1 to 25)**

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to, total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 124. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
3 and costs of suit.

4 **TENTH CAUSE OF ACTION**

5 **Failure To Provide Written Notice of Paid Sick Leave**

6 **(Cal. Lab. Code sections 246(i))**

7 **(Against ALL DEFENDANTS and DOES 1 to 25)**

8 125. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 126. At all times herein, Labor Code section 246 has required that employers provide
11 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
12 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
13 described in section 226 or in a separate writing provided on the designated pay date with the
14 employee's payment of wages." Cal. Lab. Code § 246(i).

15 127. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
16 MEMBERS with the required written notice on wage statements and/or other separate written
17 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
18 DEFENDANTS' wage statements fail to state PLAINTIFF's and CLASS MEMBERS' paid sick
19 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

20 128. DEFENDANTS' conduct violates Labor Code section 246(i).

21 129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
23 and costs of suit.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure To Provide One Day's Rest In Seven**

26 **(Cal. Lab. Code sections 551, 552, and 852)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 130. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks..." Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. *See*
5 Cal. Lab. Code § 851

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys' fees, expenses, and costs of suit, , as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that "person"
20 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

26 146. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 *et seq.*

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

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PRAYER FOR RELIEF

Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to Labor Code section 226.7 and IWC Wage Order NO. 7-2001;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to Labor Code section 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code sections 226(e), and 853;
8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194, 2802, California Civil Code section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the thirteen Causes of Action pled in this COMPLAINT as a class action;
12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel; and

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13. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August 21, 2018

GUNN COBLE LLP

By: 

Beth Gunn
Cathy Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated

QUALITY

EXPERIENCE

TRUST

WHAT IS BASF'S MEDIATION SERVICE?

The Bar Association of San Francisco's Mediation Services is a private mediation service which will assist you with almost any type of dispute, from simple contract disputes to complex commercial matters.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbar.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

OUR CASE IS FILED IN COURT. HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

WHY SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website at www.sfbar.org/mediation provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is always available to assist you with selection or to answer questions.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

HOW MUCH DOES THE SERVICE COST?

A \$295 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

MORE INFORMATION

Visit our website (www.sfbar.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-23-2019
TIME: 10:30AM
PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco
Alternative Dispute Resolution
Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3869

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below:

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbay.org or see the enclosed brochure.

(B) JUDICIAL MEDIATION provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

Operation: Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



Superior Court of California County of San Francisco



HON. TERI L. JACKSON
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng

The Honorable Samuel K. Feng
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach

The Honorable Stephen M. Murphy
The Honorable Joseph M. Quinn
The Honorable James Robertson, II
The Honorable John K. Stewart
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869



Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an expedited jury trial—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at www.courts.ca.gov/rules.

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- The trial will be shorter. Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- The jury will be smaller. There will be 8 jurors instead of 12.
- Choosing the jury will be faster. The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in 7 below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—all parties must waive their rights to appeal. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in 9.

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and





Expedited Jury Trial Information Sheet

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to voluntary expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in 1, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if both sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney before agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.

| | |
|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | FOR COURT USE ONLY CASE NUMBER: DEPARTMENT 610 |
| STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR) | |

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF) -** Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- Mediation Services of BASF -** Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Private Mediation -** Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration -** Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- Judicial Mediation -** The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

Plaintiff Defendant Cross-defendant

Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

CM-110

| | |
|--|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: | |
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | |
| CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) | CASE NUMBER: |
| A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____ | |

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. This statement is submitted by party (name):
 - b. This statement is submitted jointly by parties (names):

2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):

3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. Description of case
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial
The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. The trial has been set for (date):
b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. days (specify number):
b. hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. E-mail address:
f. Fax number:
g. Party represented:
 Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

- (1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.
(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

- (1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.
(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

| | The party or parties completing this form are willing to participate in the following ADR processes (check all that apply): | If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation): |
|-------------------------------------|---|---|
| (1) Mediation | <input type="checkbox"/> | <input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date): |
| (2) Settlement conference | <input type="checkbox"/> | <input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date): |
| (3) Neutral evaluation | <input type="checkbox"/> | <input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date): |
| (4) Nonbinding judicial arbitration | <input type="checkbox"/> | <input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date): |
| (5) Binding private arbitration | <input type="checkbox"/> | <input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date): |
| (6) Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date): |

CM-110

| | |
|--|-----------------------|
| PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ | CASE NUMBER: _____ |
|--|-----------------------|

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage Issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
 - b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

EXHIBIT 2



**Service of Process
Transmittal**

09/12/2018

CT Log Number 534044151

TO: Service of Process
CVS Health Companies
1 Cvs Dr Mail Code 1160
Woonsocket, RI 02895-6146

RE: Process Served in California

FOR: CVS Rx Services, Inc. (Domestic State: NY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RYAN HYAMS, an individual, on behalf of himself, and all others similarly situated, PLTF. vs. CVS HEALTH CORPORATION, ET AL., DFTS. // TO: CVS Rx Services, Inc.

DOCUMENT(S) SERVED: SUMMONS, COMPLAINT, ATTACHMENT(S), EXHIBIT(S)

COURT/AGENCY: San Francisco County - Superior Court - San Francisco, CA
Case # CGC18569060

NATURE OF ACTION: Employee Litigation - Failure To Provide Required Meal Periods (SEE THE DOCUMENT FOR ADDITIONAL INFORMATION)

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 09/12/2018 at 14:48

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: WITHIN 30 CALENDAR DAYS AFTER THIS SUMMONS AND LEGAL PAPERS ARE SERVED ON YOU

ATTORNEY(S) / SENDER(S): BETH GUNN
GUNN COBLE LLP
101 S . 1ST STREET, SUITE 407
BURBANK, CA 91502
818-900-0695

ACTION ITEMS: CT has retained the current log, Retain Date: 09/13/2018, Expected Purge Date: 09/18/2018

Image SOP

Email Notification, Service of Process Service_of_Process@cvs.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

912
4.30

SUM-100

SUMMONS *on First Amended Complaint*
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: CVS HEALTH CORPORATION, a Rhode Island
(AVISO AL DEMANDADO): Corporation, **CVS PHARMACY, INC.**, a Rhode
Island Corporation, **GARFIELD BEACH CVS, LLC**, a California Corporation, and
CVS RX SERVICES, INC., a NY Corporation, DOES 1 through 25, inclusive

YOU ARE BEING SUED BY PLAINTIFF: RYAN HYAMS, an individual, on
(LO ESTÁ DEMANDANDO EL DEMANDANTE): behalf of himself, and all
others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney, referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

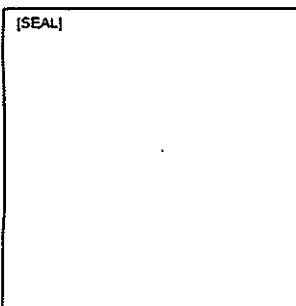
CASE NUMBER: CGC-18-569060
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Catherine J. Coble
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GUNN COBLE LLP
101 S. 1st Street, Suite 407, BURBANK, CA 91502 (818) 900-0695

DATE: SEP 10 2018 DEPUTY CLERK Clerk, by BOWMAN LIU Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **CVS RX Services, Inc., a NY Corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

1 BETH GUNN, CA Bar No. 218889
beth@gunncoble.com
2 CATHERINE J. COBLE, CA Bar No. 223461
cathy@gunncoble.com
3 GUNN COBLE LLP
101 S. 1st Street, Suite 407
4 Burbank, CA 91502
Telephone: 818.900.0695
5 Facsimile: 818.900.0723

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/07/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated
7

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

10
11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated;

12 Plaintiff,

13
14 vs.

15 CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
16 Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
17 RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

18 Defendants.
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Case No. CGC-18-569060

**CLASS ACTION FIRST AMENDED
COMPLAINT**

1. Failure To Provide Required Meal Periods;
2. Failure To Authorize And Permit Required Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
6. Failure To Timely Pay All Wages;
7. Failure To Reimburse For Employment Related Expenses;
8. Failure To Maintain Required Records;
9. Failure To Furnish Accurate Itemized Wage Statements;
10. Failure To Provide Written Notice Of Paid Sick Leave
11. Failure To Provide One Day's Rest In Seven
12. Failure to Comply With California Labor Code Sections 850 and 851
13. Unfair And Unlawful Business Practices;
14. Penalties Under The California Labor Code Private Attorneys General Act, As Representative Action

DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS (“PLAINTIFF”), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 (“DEFENDANTS”) as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a “Fortune 10”
7 company, publicly avows its purpose as “helping people on the path to better health.” *See* CVS
8 Health’s Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS’ continuous and intentional
10 violation of California’s wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state’s citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code (“Labor Code”) in multiple ways. The most obvious of DEFENDANTS’ illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law “enacted as a measure for the protection of the public health.” *See*
16 Labor Code §.855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS’ customers who depend on them “on the path to better health.”

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF’s claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone),
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS"), pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

- 20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.
- 24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.
- 28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF's
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

27 ///

28 ///

CLASS ACTION ALLEGATIONS

1
2 27. DEFENDANTS employed, and continue to employ, employees throughout
3 California during the last four (4) years.

4 28. Based on information and belief, PLAINTIFF believes that other members of THE
5 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
6 in the following:

- 7 a. Routinely working through meal and/or rest breaks without proper
8 compensation for the same, including the payment of penalties for interrupted
9 meal and/or rest breaks;
- 10 b. Routinely working off-the-clock when answering work-related text messages
11 and/or when forced by management to continue to work while clocked out,
12 without receiving wages, premium pay, or minimum wages for the off-the-clock
13 time worked;
- 14 c. No compensation for unpaid wages and/or premium pay at the time of
15 termination;
- 16 d. Use of personal cell phones without adequate reimbursement;
- 17 e. Receipt of inaccurate wage statements;
- 18 f. Lack of receipt of adequate written notice of paid sick leave;
- 19 g. Routinely working without receiving one day's rest in seven; and
- 20 h. Routinely working in excess of the prescribed time limitations set forth in Labor
21 Code sections 850 and 851.

22 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
23 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
24 the-clock; scheduling employees for work; the Company's payroll and wage payments to
25 employees, including the provision of wage statements; reimbursements of necessary business
26 expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

27 30. In particular, DEFENDANTS' reliance on performance and/or prescription fill-time
28 metrics, centralized scheduling systems, managerial instructions, and operational policies and

1 procedures applied on a class-wide basis.

2 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human
3 Resources department, which is responsible for the hiring of new employees, collecting and
4 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
5 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
6 sick time policies, vacation time policies, and payroll policies and practices applicable to their
7 employees in California.

8 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
9 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
10 created uniform policies and procedures at the corporate level and implemented them
11 companywide, regardless of the employees' location.

12 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
13 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
14 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
15 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
16 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
17 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
18 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
19 minute meal period.

20 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
21 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
22 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
23 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
24 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
25 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
26 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
27 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

28 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS

1 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
2 and did not receive overtime compensation for work that DEFENDANTS knew or should have
3 known was performed.

4 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
5 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
6 least minimum wages for compensation and that, in violation of the Labor Code, they were not
7 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
8 performed.

9 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
10 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
11 payment of wages upon termination of employment. In violation of the Labor Code,
12 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
13 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
14 statutorily required time periods.

15 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
16 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
17 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
18 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
19 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
20 periods.

21 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
22 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
23 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
24 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
25 to do so in violation of the Labor Code.

26 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
28 reimbursement for all business-related expenses and costs they incurred during the course and

1 scope of their employment, and that they did not receive full reimbursement of applicable business-
2 related expenses and costs in violation of the Labor Code.

3 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
4 knew or should have known that they had a duty to maintain accurate and complete payroll records
5 in accordance with the Labor Code and IWC Wage Order-7-2001, but willfully, knowingly, and
6 intentionally failed to do so.

7 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
8 department at their company headquarters, which processes payroll for all employees working for
9 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
10 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
11 statements to all employees in California, irrespective of their work location. PLAINTIFF is
12 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
13 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
14 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
15 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements.

16 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
17 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
18 notice of paid sick leave or paid time off available. In violation of the Labor Code,
19 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
20 sick leave or paid time off available.

21 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
22 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
23 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

24 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
26 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
27 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
28 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and

1 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
2 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more
3 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
4 direction.

5 **SATISFACTION OF CLASS ACTION CRITERIA**

6 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
7 all other persons similarly situated and seeks class certification of THE CLASS and
8 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code, § 382.

9 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
10 relief authorized by California law.

11 48. There is a well-defined community of interest in litigation and the class members
12 are readily ascertainable:

13 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
14 numerous that joinder of all members would be unfeasible and impractical. The membership of the
15 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
16 greater than one thousand (1000) individuals and the identity of such membership is readily
17 ascertainable by inspection of DEFENDANTS' employment records.

18 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
19 protect the interests of each member of THE CLASS with whom he has a well-defined community
20 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
21 demonstrated herein.

22 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
23 protect the interest of each class member with whom he has a well-defined community of interest
24 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
25 obligation to make known to the Court any relationship, conflicts, or differences with any class
26 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
27 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
28 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
2 member.

3 D. Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve economies of time, effort, and
5 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
6 same issues can be adjudicated in the same manner and at the same time for the entire class.

7 E. Public Policy Considerations: California has a stated public policy in favor
8 of class actions in this context for the vindication of employee rights and enforcement of the Labor
9 Code. Employers in the State of California violate employment and labor laws every day. Current
10 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
11 employees are fearful of bringing actions because they believe their former employers might
12 damage their future endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a type of anonymity that
14 allows for the vindication of their rights while simultaneously protecting their privacy.

15 **FIRST CAUSE OF ACTION**

16 **Failure To Provide Required Uninterrupted Meal Periods**

17 **(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)**

18 **(Against ALL DEFENDANTS and DOES 1 to 25)**

19 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
20 and every allegation set forth above.

21 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
22 that no employer shall require an employee to work during any meal period mandated by an
23 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
26 employer may not employ an employee for a work period of more than five hours per day without
27 providing the employee with a meal period of not less than 30 minutes,” except that if the total
28 work period per day of the employee is not more than six (6) hours, the meal period may be waived

1 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
2 period of not less than thirty (30) minutes, the employee is to be completely free of the employer's
3 control and must not perform any work for the employer. If the employee does perform work for
4 the employer during this thirty (30) minute meal period, the employee has not been provided with a
5 duty-free meal period, in accordance with California law, and is to be compensated for any work
6 performed during this (30) minute meal period in addition to one (1) additional hour of
7 compensation at each employee's regular rate of pay for each workday that a meal period was not
8 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

9 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
10 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
11 of more than ten (10) hours per day without providing the employee with another meal period of
12 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
13 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
14 second meal period may be waived by mutual consent of the employer and the employee only if
15 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
16 tit. 8 § 11050.

17 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
18 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
19 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
20 Code Regs. tit. 8 § 11050.

21 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
22 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
23 who were not provided with an uninterrupted meal period or one (1) additional hour of
24 compensation at each employee's regular rate of pay for each workday that a meal period was not
25 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
26 § 11050.

27 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
28 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and

1 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
2 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS
3 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
4 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
5 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
6 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
7 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
8 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
9 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

10 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
11 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
12 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
13 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
14 *codified* at Cal. Code Regs. tit. 8 § 11050.

15 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
16 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
17 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
18 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
19 when meal periods were late and/or interrupted.

20 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
21 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
22 including all compensation, such as shift differential pay and other compensation, as required by
23 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
24 Cal. Code Regs. tit. 8 § 11050.

25 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
26 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

27 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
28 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

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5 61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very
11 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time
13 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer
16 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
17 to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each
20 four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were
21 regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-
22 2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

23 66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5
28 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 110501; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code § 1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

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SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050)

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 §11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay..." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS’ management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS’ business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS’ company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)**

8 **(Against ALL DEFENDANTS and DOES 1 to 25)**

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to, total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 124. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
3 and costs of suit.

4 **TENTH CAUSE OF ACTION**

5 **Failure To Provide Written Notice of Paid Sick Leave**

6 **(Cal. Lab. Code section 246(i))**

7 **(Against ALL DEFENDANTS and DOES 1 to 25)**

8 125. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 126. At all times herein, Labor Code section 246 has required that employers provide
11 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
12 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
13 described in section 226 or in a separate writing provided on the designated pay date with the
14 employee's payment of wages." Cal. Lab. Code § 246(i).

15 127. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
16 MEMBERS with the required written notice on wage statements and/or other separate written
17 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
18 DEFENDANTS' wage statements fail to state PLAINTIFF's and CLASS MEMBERS' paid sick
19 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

20 128. DEFENDANTS' conduct violates Labor Code section 246(i).

21 129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
23 and costs of suit.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure To Provide One Day's Rest In Seven**

26 **(Cal. Lab. Code sections 551, 552, and 852)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 130. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks..." Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. See
5 Cal. Lab. Code § 851.

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys' fees, expenses, and costs of suit, as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, et seq.)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that "person"
20 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

26 146. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 et seq.

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5)

(Against ALL DEFENDANTS and DOES 1 to 25)

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5 151. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 152. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code section
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other current
9 and former employees of DEFENDANTS pursuant to the procedures specified in Labor Code
10 section 2699.3, because PLAINTIFF was employed by DEFENDANTS and the alleged violations
11 of the Labor Code were committed against PLAINTIFF.

12 153. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
13 sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to
14 penalties under Labor Code sections 2699, 210, 225.5, 226.3, 558, 850, 851, 852, 853, 1174.5,
15 1197.1, and 1199, from DEFENDANTS in representative action for the violations set forth above,
16 including but not limited to violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,
17 850, 851, 852, 853, 1174, 1194, 1197, 1198, and 2802. PLAINTIFF is also entitled to an award of
18 reasonable attorneys' fees and costs pursuant to Labor Code section 2699 (g)(1).

19 154. Pursuant to Labor Code Section 2699.3, PLAINTIFF gave written notice by
20 certified mail to the California Labor and Workforce Development Agency ("LWDA") and
21 DEFENDANTS of the specific provisions of the Labor Code and IWC Wage Orders alleged to
22 have been violated, including the facts and theories to support the alleged violations.
23 PLAINTIFF's notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days
24 of the postmark date of PLAINTIFF's notice letter, the LWDA did not provide notice to
25 PLAINTIFF that it intends to investigate the alleged violations.

26 155. Therefore, PLAINTIFF has complied with all of the requirements set forth in Labor
27 Code Section 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to Labor Code section 226.7 and IWC Wage Order NO. 7-2001;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to Labor Code section 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code sections 226(e), 853 and 2699;
8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194, 2699, 2802, California Civil Code section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the first thirteen Causes of Action pled in this FIRST AMENDED COMPLAINT as a class action;
12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel; and


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13. For such further relief that the Court may deem just and proper.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Catherine J. Coble


Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated

DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Cathy Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated.

Exhibit A



Beth Gunn
818.573.6389
beth@gunncoble.com

Cathy Coble
818.573.6392
cathy@gunncoble.com

July 2, 2018

VIA ONLINE FILING

David M. Lanier, Secretary
California Labor and Workforce Development Agency

RE: Labor Code Private Attorneys General Act of 2004 – Notice on behalf of Ryan Hyams

Dear Secretary Lanier:

Please be advised that Gunn Coble LLP has been retained by Ryan Hyams (“Mr. Hyams”) to represent him in respect to matters arising out of his employment with CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc., and, as appropriate, any of their parent companies, subsidiaries, or affiliates (collectively, “CVS” or the “Company”). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Mr. Hyams.

This letter provides notice on behalf of Mr. Hyams and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Mr. Hyams is an “aggrieved employee” as defined by Labor Code section 2698 *et seq.*, due to CVS’ numerous violations of the Labor Code, including unpaid wages, failure to provide meal and rest breaks, failure to pay meal and rest period premiums, failure to provide mandated rest days, failure to comply with California Labor Code Section 850-851, inaccurate wage statements, unreimbursed expenses, failure to pay wages upon termination, interest, penalties, attorneys’ fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, an “aggrieved employee” should be considered to include all non-exempt employees of CVS who have worked for CVS during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency ("LWDA") and to the Company via certified mail at its address for business operations.

Based on the below summary of the facts and legal theories upon which Mr. Hyams will base his claims, he requests that the LWDA regard this notice as written notice pursuant to California Labor Code section 2699.3 of his intent to seek civil penalties against CVS and any parent companies identified as co-defendants prior to and during litigation of this matter.

A. Facts

CVS is a retail pharmacy chain with hundreds of physical locations in California, including standalone stores and locations within Target branded stores. As part of its operations, CVS employs pharmacists to, among other things, dispense medications, counsel patients on the use of prescription and over-the-counter medications, and advise physicians about medication therapy. In many locations CVS also employs pharmacy technicians to assist with the dispensation of medication to its clientele, though there are CVS locations where only a pharmacist is employed to handle all pharmacy operations. Plaintiff Ryan Hyams is a former non-exempt employee of CVS who primarily worked as a pharmacist at its Garfield Beach location, but also occasionally assisted at other pharmacy locations during his more than two years of employment with CVS. At the end of his employment with CVS, Mr. Hyams was earning \$76/hour.

As a pharmacist, Mr. Hyams' primary duties were to safely and accurately dispense approximately 250-300 prescriptions per day to CVS clientele. This included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), checking for drug interactions and precautions, contacting physicians where appropriate, advising patients regarding the use of their prescriptions, entering information in CVS systems, and dispensing and packaging medications to CVS customers. When pharmacy technicians were unavailable, Mr. Hyams would also work at the pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy.

During his employment, Mr. Hyams would regularly work more than 9 hours per day on average, and more than 108 hours in two consecutive week periods. In fact, CVS utilized a centralized scheduling procedure where he and other pharmacists were routinely scheduled for 12-hour shifts. On occasion, Mr. Hyams would work more than 12 hours per day, for which CVS would then pay him double-time. There also were occasions where he worked more than 12 days in a consecutive two week period. Each day, before clocking in on the CVS computer and after clocking out at the end of the day, Mr. Hyams would perform work for his position, as required by CVS. Also, as part of his job duties and responsibilities, Mr. Hyams would receive text messages on his personal cell phone from his supervisor to discuss work-related matters. Furthermore, CVS relied on Mr. Hyams, a loyal employee, to fill in at other pharmacies to ensure its business needs were met, which required him to drive great distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations, Mr. Hyams was entitled to, but did not receive uninterrupted meal and rest breaks. Mr. Hyams was not paid for the time he

spent reviewing and responding to text messages from his supervisor relating to work for CVS while off-the-clock. Additionally, Mr. Hyams never received any reimbursement from CVS for the personal use of his cell phone to conduct business for CVS.

When Mr. Hyams' employment with CVS ended, he was only paid for a portion of his accrued vacation. CVS failed to provide him with his accrued vacation time in violation of the Labor Code. For a portion of his employment, in violation of Labor Code Section 246(i), CVS failed to provide Mr. Hyams, or other aggrieved employees, with written notice setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu of sick leave.

Throughout his employment at CVS, Mr. Hyams was routinely unable to take his uninterrupted meal and rest breaks due to CVS' under-staffing and fill-time metrics. During the breaks he was able to take, after clocking out and before clocking back in, Mr. Hyams was routinely interrupted with pharmacy questions. Mr. Hyams was also asked to sign a waiver, wherein, on a standing basis without regard to the actual business needs, he waived all of his second meal periods. Mr. Hyams observed other employees also working through breaks and not being properly compensated for the same. Mr. Hyams was not paid any penalties for these interrupted meal and/or rest breaks. In addition, CVS often failed to provide Mr. Hyams with a rest day as required under the Labor Code.

Additionally, to date, CVS has refused to comply with its obligation under the Labor Code to produce the entirety of Mr. Hyams payroll records and personnel file, making it even more difficult to determine the extent of CVS' improper and illegal practices.

B. Labor Code Violations

1. CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours Worked.

Labor Code section 204, provides in relevant part: "All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month." California Labor Code section 204. In short, this means an employee must be paid for *all* hours worked. Time spent by Mr. Hyams reviewing and answering text messages, as required by CVS, is deemed time worked and must be compensated. Furthermore, pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order. Pursuant to IWC Wage Order number 7, subdivision 2(G), at all times material hereto, "hours worked" means "the time during which an employee is subject to the control of an employer, and includes all time the employee is suffered or permitted to work, whether or not required to do so." Mr. Hyams was not paid for any work conducted prior to clocking in and after clocking out, as required by CVS. He also observed and is aware of other aggrieved employees who were forced to use their own cell phones and work off-the-clock who were not paid for the work performed.

In direction violation of the Labor Code, CVS failed to pay Mr. Hyams and similarly situated employees for time reading and responding to messages related to work. In the case of Mr. Hyams, he has spent hours receiving and responding to messages from management regarding work for which he has not received pay. Mr. Hyams contends that other similarly situated employees also did not receive any pay for the time spent receiving and responding to work related messages. Additionally, CVS required its employees, including Mr. Hyams and other aggrieved employees, to perform work before clocking in and after clocking out on the Company's computers. Thus, Mr. Hyams and other aggrieved employees' time records do not accurately reflect their actual hours worked. As such, Mr. Hyams and other employees were never compensated for all time worked. Therefore, CVS has violated Labor Code sections 204, 1194, 1194.2, and 1197.

2. CVS Violated Labor Code Sections 246(i) and 246.5.

California Labor Code section 246 requires that employers provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off an employer provides in lieu of sick leave, either on the employee's itemized wage statement described in section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. Here, during a portion of Mr. Hyam's employment, CVS failed to provide Mr. Hyams and other aggrieved employees with the required notice setting forth the amount of sick leave available.

3. Failure to Pay Overtime Wages and Therefore Failure to Pay Minimum Wage.

Employers operating under California law must pay at least minimum wage to their employees for all hours worked. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. See Cal. Lab. Code sections 1182.12 and 1194. In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well as interest. See Cal. Lab. Code section 1194.2. Furthermore, an employer failing to pay minimum wages must pay a civil penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which such violations occurred. See Cal. Lab. Code section 1197.1.

Section 510 of the Labor Code mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a). Section 1194 creates a cause of action to recover such unpaid overtime wages. See Cal. Lab. Code section 1194. IWC Order No. 7-2001(3)(A) further provides that employees such as Mr. Hyams "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." IWC Order No. 7-2001(3)(A).

As discussed above, Mr. Hyams and other similarly aggrieved employees routinely worked off-the-clock when answering work-related text messages and when forced by management to continue to work while clocked out. During these periods of off-the-clock work, CVS did not pay at least minimum wage to employees.

As a result of these actions, CVS violated Labor Code sections 223, 510, 1182.12, 1194, 1194.2, 1197.1, and 1198.

4. **CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing to Provide Lawful Meal or Rest Breaks, and Forcing Its Employees to Sign Meal Period Waivers.**

Labor Code section 512 provides that “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.” Cal. Lab. Code section 512. Section 226.7 further provides in relevant part that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute.” Cal. Lab. Code section 226.7. IWC Order 7-2001 (12) states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

CVS has violated sections 512 and 226.7 by failing to provide Mr. Hyams and similarly situated employees with at least 30 uninterrupted minutes of meal break time and/or at least 10 minutes of uninterrupted rest time during their shifts. Mr. Hyams and similarly situated CVS employees were and are routinely interrupted during their meal and rest breaks in order to comply with their managers’ demands and instructions to meet CVS customers’ expectations and CVS’ fill time metrics. Mr. Hyams and other aggrieved employees were also asked to sign a waiver, wherein, on a standing basis, they waived all of their second meal periods, without consideration of the pharmacies’ daily needs. Thus, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the 30-minute uninterrupted meal period was not provided. See Cal. Lab. Code section 226.7. In addition, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the ten-minute rest break was not provided. See Cal. Labor Code § 226.7; IWC 7-2001(12), as well as PAGA penalties.

5. **CVS Violated Labor Code Sections 551 and 552.**

Under Labor Code section 551, “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code section 552 provides that “[n]o employer of labor shall cause his employees to work more than six days in seven.” Here, CVS violated these sections by failing to provide the legally-mandated rest days to Mr. Hyams and other similarly situated employees. Further, “an employer’s obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal.5th 1074, 1091 (2017). Instead of complying with this obligation, CVS did not inform its employees in California of their right to a day of rest, and then failed to properly staff its locations with sufficient personnel and pressured employees into working without a day of rest.

6. **Failure to Comply with Labor Code Sections 850 and 851.**

California Labor Code section 850 provides, in pertinent part, that “[n]o person employed to sell at retail drugs and medicines or to compound physicians’ prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days in any two consecutive weeks...” The accompanying California Labor Code section 851 prohibits employers from requiring employees covered by Section 850 to work in excess of the hours prescribed therein. Mr. Hyams and other aggrieved employees throughout California regularly worked hours and days in excess of these specific limitations set forth by the California Labor Code.

7. **Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code Section 226 (a).**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CVS did not provide Mr. Hyams, and other aggrieved employees, with properly itemized wage statements. Additionally, the violations include, without limitation, the failure to accurately list the total regular and overtime wages earned or meal and rest break premiums entitled to Mr. Hyams and other similarly situated employees. CVS’ failure to provide accurate itemized wage statements was an intentional act based on its policy and practice of failing to properly compensate employees to avoid paying penalty pay and overtime premiums to employees.

8. **CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related Purposes.**

California Labor Code section 2802 requires an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Cal. Lab. Code section 2802. This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

CVS has violated section 2802 by failing to reimburse employees for costs incurred relating to the necessary use of personal cell phones for work-related purposes. Mr. Hyams, and other CVS employees, were routinely required to use their personal cell phones to exchange text messages with CVS management. CVS did not provide Mr. Hyams or the other CVS employees with a work-issued cell phone, nor has it reimbursed Mr. Hyams and the other CVS employees for the necessary expenses they incurred in using their personal cell phones for CVS business.

9. Failure to Pay All Wages Due Upon Termination

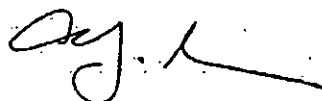
Employers must pay all wages due upon termination, including accrued but unused vacation. Labor Code sections 201-202, 227.3. The Company violated these sections by failing to pay Mr. Hyams and other aggrieved employees their unpaid wages, including accrued vacation time and premium penalties, as discussed above, at the time of termination. These violations subject the Company to civil penalties under Labor Code sections 203 and 2699.

This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. If the LWDA elects not to take any action, Mr. Hyams intends to file a complaint on behalf of himself and all similarly situated aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages, unpaid minimum wages, meal and rest period premiums, unreimbursed expenses, unpaid sick leave, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



Cathy Coble
Gunn Coble LLP

CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. may be contacted at the following address:

One CVS Drive
Woonsocket, Rhode Island 02895

The registered agent for service of process for CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. is:

CT Corporation System
818 W Seventh Street, Suite 930
Los Angeles, CA 90017

My contact information is:

Beth Gunn

Cathy Coble

Gunn Coble LLP

101 S. First Street, Suite 407

Burbank, CA 91502

beth@gunncoble.com

cathy@gunncoble.com

818.573.6392

CM-010

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Catherine J. Coble GUNN COBLE LLP 101 S. 1st Street, Suite 407, BURBANK, CA 91502 TELEPHONE NO.: (818) 900-0695 FAX NO.: (818) 900-0723 SBN: 223461 ATTORNEY FOR (Name): Ryan Hyams on behalf of himself and others similarly situated | FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court AUG 21 2018 CLERK OF THE COURT BY: ROSSALY DE LA VEGA Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse | CASE NUMBER: CGC-18-569060 JUDGE: DEPT: |
| CASE NAME: Hyams v. CVS HEALTH CORPORATION, et al. | |

Items 1-8 below must be completed (see Instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

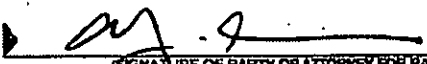
| | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 13

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 21, 2018
 Catherine J. Coble _____
(TYPE OR PRINT NAME) 
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

| | | |
|---|---|---|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) |
| Auto (22)—Personal Injury/Property Damage/Wrongful Death | Breach of Contract/Warranty (06) | Antitrust/Trade Regulation (03) |
| Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>) | Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>) | Construction Defect (10) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>) | Claims Involving Mass Tort (40) |
| Asbestos (04) | Negligent Breach of Contract/Warranty | Securities Litigation (28) |
| Asbestos Property Damage | Other Breach of Contract/Warranty | Environmental/Toxic Tort (30) |
| Asbestos Personal Injury/Wrongful Death | Collections (e.g., money owed, open book accounts) (09) | Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41) |
| Product Liability (<i>not asbestos or toxic/environmental</i>) (24) | Collection Case—Seller Plaintiff | Enforcement of Judgment |
| Medical Malpractice (45) | Other Promissory Note/Collections Case | Enforcement of Judgment (20) |
| Medical Malpractice—Physicians & Surgeons | Insurance Coverage (<i>not provisionally complex</i>) (18) | Abstract of Judgment (Out of County) |
| Other Professional Health Care Malpractice | Auto Subrogation | Confession of Judgment (<i>non-domestic relations</i>) |
| Other PI/PD/WD (23) | Other Coverage | Sister State Judgment |
| Premises Liability (e.g., slip and fall) | Other Contract (37) | Administrative Agency Award (<i>not unpaid taxes</i>) |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) | Contractual Fraud | Petition/Certification of Entry of Judgment on Unpaid Taxes |
| Intentional Infliction of Emotional Distress | Other Contract Dispute | Other Enforcement of Judgment Case |
| Negligent Infliction of Emotional Distress | Real Property | Miscellaneous Civil Complaint |
| Other PI/PD/WD | Eminent Domain/Inverse Condemnation (14) | RICO (27) |
| Non-PI/PD/WD (Other) Tort | Wrongful Eviction (33) | Other Complaint (<i>not specified above</i>) (42) |
| Business Tort/Unfair Business Practice (07) | Other Real Property (e.g., quiet title) (26) | Declaratory Relief Only |
| Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08) | Writ of Possession of Real Property | Injunctive Relief Only (<i>non-harassment</i>) |
| Delamation (e.g., slander, libel) (13) | Mortgage Foreclosure | Mechanics Lien |
| Fraud (16) | Quiet Title | Other Commercial Complaint Case (<i>non-tort/non-complex</i>) |
| Intellectual Property (19) | Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>) | Other Civil Complaint (<i>non-tort/non-complex</i>) |
| Professional Negligence (25) | Unlawful Detainer | Miscellaneous Civil Petition |
| Legal Malpractice | Commercial (31) | Partnership and Corporate Governance (21) |
| Other Professional Malpractice (<i>not medical or legal</i>) | Residential (32) | Other Petition (<i>not specified above</i>) (43) |
| Other Non-PI/PD/WD Tort (35) | Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>) | Civil Harassment |
| Employment | Judicial Review | Workplace Violence |
| Wrongful Termination (36) | Asset Forfeiture (05) | Elder/Dependent Adult Abuse |
| Other Employment (15) | Petition Re: Arbitration Award (11) | Election Contest |
| | Writ of Mandate (02) | Petition for Name Change |
| | Writ—Administrative Mandamus | Petition for Relief From Late Claim |
| | Writ—Mandamus on Limited Court Case Matter | Other Civil Petition |
| | Writ—Other Limited Court Case Review | |
| | Other Judicial Review (39) | |
| | Review of Health Officer Order | |
| | Notice of Appeal—Labor | |
| | Commissioner Appeals | |

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5 Facsimile: 818.900.0723

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated

ENDORSED
FILED
San Francisco County Superior Court
AUG 21 2018
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 CGC-18-569060

11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated,

Case No. _____

12 Plaintiff,

CLASS ACTION COMPLAINT

13 vs.

14
15 CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
16 Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
17 RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

- 1. Failure To Provide Required Meal Periods;
- 2. Failure To Authorize And Permit Required Rest Breaks;
- 3. Failure To Pay Overtime;
- 4. Failure To Pay Minimum Wages;
- 5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
- 6. Failure To Timely Pay All Wages;
- 7. Failure To Reimburse For Employment Related Expenses;
- 8. Failure To Maintain Required Records;
- 9. Failure To Furnish Accurate Itemized Wage Statements;
- 10. Failure To Provide Written Notice Of Paid Sick Leave
- 11. Failure To Provide One Day's Rest In Seven,
- 12. Failure to Comply With California Labor Code Sections 850 and 851
- 13. Unfair And Unlawful Business Practices;

18 Defendants.

21 DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS (“PLAINTIFF”), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 (“DEFENDANTS”) as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a “Fortune 10”
7 company, publicly avows its purpose as “helping people on the path to better health.” *See* CVS
8 Health’s Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS’ continuous and intentional
10 violation of California’s wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state’s citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code (“Labor Code”) in multiple ways. The most obvious of DEFENDANTS’ illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law “enacted as a measure for the protection of the public health.” *See*
16 Labor Code § 855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS’ customers who depend on them “on the path to better health.”

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF’s claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone),
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

- 20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.
- 24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.
- 28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF's
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

27 **CLASS ACTION ALLEGATIONS**

28 27. DEFENDANTS employed, and continue to employ, employees throughout

1 California during the last four (4) years.

2 28. Based on information and belief, PLAINTIFF believes that other members of THE
3 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
4 in the following:

- 5 a. Routinely working through meal and/or rest breaks without proper
6 compensation for the same, including the payment of penalties for interrupted
7 meal and/or rest breaks;
- 8 b. Routinely working off-the-clock when answering work-related text messages
9 and/or when forced by management to continue to work while clocked out,
10 without receiving wages, premium pay, or minimum wages for the off-the-clock
11 time worked;
- 12 c. No compensation for unpaid wages and/or premium pay at the time of
13 termination;
- 14 d. Use of personal cell phones without adequate reimbursement;
- 15 e. Receipt of inaccurate wage statements;
- 16 f. Lack of receipt of adequate written notice of paid sick leave;
- 17 g. Routinely working without receiving one day's rest in seven; and
- 18 h. Routinely working in excess of the prescribed time limitations set forth in Labor
19 Code sections 850 and 851.

20 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
21 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
22 the-clock; scheduling employees for work; the Company's payroll and wage payments to
23 employees, including the provision of wage statements; reimbursements of necessary business
24 expenses; time and pay recordkeeping; and notice to employees of paid-sick leave.

25 30. In particular, DEFENDANTS' reliance on performance and/or prescription fill-time
26 metrics, centralized scheduling systems, managerial instructions, and operational policies and
27 procedures applied on a class-wide basis.

28 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human

1 Resources department, which is responsible for the hiring of new employees, collecting and
2 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
3 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
4 sick time policies, vacation time policies, and payroll policies and practices applicable to their
5 employees in California.

6 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
7 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
8 created uniform policies and procedures at the corporate level and implemented them
9 companywide, regardless of the employees' location.

10 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
11 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
12 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
13 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
14 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
15 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
16 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
17 minute meal period.

18 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
19 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
20 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
21 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
22 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
23 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
24 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
25 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

26 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
28 and did not receive overtime compensation for work that DEFENDANTS knew or should have

1 known was performed.

2 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
3 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
4 least minimum wages for compensation and that, in violation of the Labor Code, they were not
5 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
6 performed.

7 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
8 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
9 payment of wages upon termination of employment. In violation of the Labor Code,
10 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
11 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
12 statutorily required time periods.

13 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
14 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
15 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
16 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
17 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
18 periods.

19 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
20 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
21 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
22 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
23 to do so in violation of the Labor Code.

24 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
26 reimbursement for all business-related expenses and costs they incurred during the course and
27 scope of their employment, and that they did not receive full reimbursement of applicable business-
28 related expenses and costs in violation of the Labor Code.

1 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
2 knew or should have known that they had a duty to maintain accurate and complete payroll records
3 in accordance with the Labor Code and IWC Wage Order 7-2001, but willfully, knowingly, and
4 intentionally failed to do so.

5 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
6 department at their company headquarters, which processes payroll for all employees working for
7 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
8 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
9 statements to all employees in California, irrespective of their work location. PLAINTIFF is
10 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
11 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
12 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
13 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements.

14 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
15 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
16 notice of paid sick leave or paid time off available. In violation of the Labor Code,
17 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
18 sick leave or paid time off available.

19 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
20 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
21 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

22 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
23 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
24 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
25 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
26 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and
27 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
28 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more

1 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
2 direction.

3 **SATISFACTION OF CLASS ACTION CRITERIA**

4 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
5 all other persons similarly situated and seeks class certification of THE CLASS and
6 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

7 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
8 relief authorized by California law.

9 48. There is a well-defined community of interest in litigation and the class members
10 are readily ascertainable:

11 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
12 numerous that joinder of all members would be unfeasible and impractical. The membership of the
13 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
14 greater than one thousand (1000) individuals and the identity of such membership is readily
15 ascertainable by inspection of DEFENDANTS' employment records.

16 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
17 protect the interests of each member of THE CLASS with whom he has a well-defined community
18 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
19 demonstrated herein.

20 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
21 protect the interest of each class member with whom he has a well-defined community of interest
22 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
23 obligation to make known to the Court any relationship, conflicts, or differences with any class
24 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
25 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
26 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will
27 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
28 member.

1 D. Superiority: The nature of this action makes the use of class action
 2 adjudication superior to other methods. A class action will achieve economies of time, effort, and
 3 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
 4 same issues can be adjudicated in the same manner and at the same time for the entire class.

5 E. Public Policy Considerations: California has a stated public policy in favor
 6 of class actions in this context for the vindication of employee rights and enforcement of the Labor
 7 Code. Employers in the State of California violate employment and labor laws every day. Current
 8 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
 9 employees are fearful of bringing actions because they believe their former employers might
 10 damage their future endeavors through negative references and/or other means. Class actions
 11 provide the class members who are not named in the complaint with a type of anonymity that
 12 allows for the vindication of their rights while simultaneously protecting their privacy.

13 FIRST CAUSE OF ACTION

14 **Failure To Provide Required Uninterrupted Meal Periods**

15 (Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)

16 (Against ALL DEFENDANTS and DOES 1 to 25)

17 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
 18 and every allegation set forth above.

19 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
 20 that no employer shall require an employee to work during any meal period mandated by an
 21 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
 22 § 11050.

23 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
 24 employer may not employ an employee for a work period of more than five hours per day without
 25 providing the employee with a meal period of not less than 30 minutes,” except that if the total
 26 work period per day of the employee is not more than six (6) hours, the meal period may be waived
 27 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
 28 period of not less than thirty (30) minutes, the employee is to be completely free of the employer’s

1 control and must not perform any work for the employer. If the employee does perform work for
2 the employer during this thirty (30) minute meal period, the employee has not been provided with a
3 duty-free meal period, in accordance with California law, and is to be compensated for any work
4 performed during this (30) minute meal period in addition to one (1) additional hour of
5 compensation at each employee's regular rate of pay for each workday that a meal period was not
6 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

7 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
8 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
9 of more than ten (10) hours per day without providing the employee with another meal period of
10 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
11 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
12 second meal period may be waived by mutual consent of the employer and the employee only if
13 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
16 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
17 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
18 Code Regs. tit. 8 § 11050.

19 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
20 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
21 who were not provided with an uninterrupted meal period or one (1) additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
26 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and
27 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
28 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS

1 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
2 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
3 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
4 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
5 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
6 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
7 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

8 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
9 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
10 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
11 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
12 *codified* at Cal. Code Regs. tit. 8 § 11050.

13 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
14 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
15 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
16 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
17 when meal periods were late and/or interrupted.

18 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
19 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
20 including all compensation, such as shift differential pay and other compensation, as required by
21 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
22 Cal. Code Regs. tit. 8 § 11050.

23 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
24 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

25 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
26 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.
27
28

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

1
2
3
4
5 61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very
11 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time
13 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer
16 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
17 to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each
20 four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were
21 regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-
22 2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

23 66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5
28 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 11050l; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code §1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050)

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 §11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...." Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. "If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802." *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS' business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS' company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys'

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*.

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)**

8 **(Against ALL DEFENDANTS and DOES 1 to 25)**

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to, total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 124. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
3 and costs of suit.

4 **TENTH CAUSE OF ACTION**

5 **Failure To Provide Written Notice of Paid Sick Leave**

6 **(Cal. Lab. Code sections 246(i))**

7 **(Against ALL DEFENDANTS and DOES 1 to 25)**

8 125. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 126. At all times herein, Labor Code section 246 has required that employers provide
11 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
12 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
13 described in section 226 or in a separate writing provided on the designated pay date with the
14 employee's payment of wages." Cal. Lab. Code § 246(i).

15 127. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
16 MEMBERS with the required written notice on wage statements and/or other separate written
17 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
18 DEFENDANTS' wage statements fail to state PLAINTIFF's and CLASS MEMBERS' paid sick
19 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

20 128. DEFENDANTS' conduct violates Labor Code section 246(i).

21 129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
23 and costs of suit.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure To Provide One Day's Rest In Seven**

26 **(Cal. Lab. Code sections 551, 552, and 852)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 130. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks..." Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. *See*
5 Cal. Lab. Code § 851

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys' fees, expenses, and costs of suit, , as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that "person"
20 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

26 146. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 *et seq.*

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business.
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

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PRAYER FOR RELIEF

Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to Labor Code section 226.7 and IWC Wage Order NO. 7-2001;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to Labor Code section 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code sections 226(e), and 853;
8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194, 2802, California Civil Code section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the thirteen Causes of Action pled in this COMPLAINT as a class action;
12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel; and

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13. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: August 21, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Cathy Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated

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- Intellectual Property
- Labor Disputes
- Landlord/Tenant Disputes
- Real Estate Disputes
- SBA Disputes
- Small Business Disputes
- Unemployment Disputes
- Workers' Compensation

TESTIMONIALS

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

*George Yuhas, Esq.
Orrick, Herrington & Sutcliffe LLP*

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

*Robert Charles Friese, Esq.
Shartsis Friese LLP*

"When the other side made their offer, I thought there was no way we would reach an agreement – we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

*Leslie Caplan
Global Warming Campaign Manager
Bluewater Network*

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

*Mark Abelson, Esq.
Campagnoli, Abelson & Campagnoli*

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

*Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter*



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When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WHO ARE THE MEDIATORS?

They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

**WHY SHOULD I GO THROUGH BASF?
CAN'T I JUST CALL THE
MEDIATOR DIRECTLY?**

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

**WE ARE ON A DEADLINE;
HOW QUICKLY CAN WE MEDIATE?**

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

**HOW DO I LEARN MORE
ABOUT THE MEDIATORS?**

BASF's website at www.sfbar.org/mediation provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is always available to assist you with selection or to answer questions.

**HOW LONG IS THE
MEDIATION SESSION?**

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

**WHAT TYPES OF DISPUTES
CAN I MEDIATE?**

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

**HOW MUCH DOES
THE SERVICE COST?**

A \$295 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

MORE INFORMATION

Visit our website (www.sfbar.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-23-2019
TIME: 10:30AM
PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco

**Alternative Dispute Resolution
Program Information Package**



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3869

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below.

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbay.org or see the enclosed brochure.

(B) JUDICIAL MEDIATION provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

Operation: Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



Superior Court of California County of San Francisco



HON. TERI L. JACKSON
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng
The Honorable Samuel K. Feng
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach

The Honorable Stephen M. Murphy
The Honorable Joseph M. Quinn
The Honorable James Robertson, II
The Honorable John K. Stewart
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869



Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an expedited jury trial—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at www.courts.ca.gov/rules.

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- The trial will be shorter. Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- The jury will be smaller. There will be 8 jurors instead of 12.
- Choosing the jury will be faster. The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in (7) below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—all parties must waive their rights to appeal. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in (9).

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and





Expedited Jury Trial Information Sheet

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to voluntary expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in 1, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if both sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney before agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.

| | |
|---|------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514 | FOR COURT USE ONLY |
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: DEPARTMENT 610 |
| STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR) | |

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- Mediation Services of BASF - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- Judicial Mediation - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

- Plaintiff Defendant Cross-defendant

- Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

CM-110

| | |
|--|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | |
| CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) | CASE NUMBER: _____ |
| A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____ | |

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. This statement is submitted by party (name):
 - b. This statement is submitted jointly by parties (names):

2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):

3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. Description of case
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. The trial has been set for (date):

b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. days (specify number):

b. hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CM-110

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

| | The party or parties completing this form are willing to participate in the following ADR processes (check all that apply): | If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation): |
|-------------------------------------|---|---|
| (1) Mediation | <input type="checkbox"/> | <input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date): |
| (2) Settlement conference | <input type="checkbox"/> | <input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date): |
| (3) Neutral evaluation | <input type="checkbox"/> | <input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date): |
| (4) Nonbinding judicial arbitration | <input type="checkbox"/> | <input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date): |
| (5) Binding private arbitration | <input type="checkbox"/> | <input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date): |
| (6) Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date): |

CM-110

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
 - b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

EXHIBIT 3



**Service of Process
Transmittal**

09/12/2018

CT Log Number 534043607

TO: Service of Process
CVS Health Companies
1 Cvs Dr Mail Code 1160
Woonsocket, RI 02895-6146

RE: Process Served in California

FOR: Garfield Beach CVS, L.L.C. (Domestic State: CA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: RYAN HYAMS, an individual on behalf of himself and all others similarly situated, PLTF. vs. CVS HEALTH CORPORATION, a Rhode Island Corporation, ET AL., DFTS. // TO: GARFIELD BEACH CVS, LLC, ETC. *Name discrepancy noted.*

DOCUMENT(S) SERVED: Summons, Complaint, Exhibit, Attachment(s)

COURT/AGENCY: San Francisco County - Superior Court - San Francisco, CA
Case # CGC18569060

NATURE OF ACTION: Employee Litigation - Complaint for Unpaid wages and Other related Compensations

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 09/12/2018 at 14:48

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 calendar days after service of summons

ATTORNEY(S) / SENDER(S): BETH GUNN
GUNN COBLE LLP
101 S. 1st Street, Suite 407
Burbank, CA 91502
818-900-0695

ACTION ITEMS: CT has retained the current log, Retain Date: 09/12/2018, Expected Purge Date: 09/17/2018

Image SOP

Email Notification, Service of Process Service_of_Process@cvs.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

130 P R

SUM-100

SUMMONS *on First Amended Complaint*
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: CVS HEALTH CORPORATION, a Rhode Island
(AVISO AL DEMANDADO): Corporation, CVS PHARMACY, INC., a Rhode
Island Corporation, **GARFIELD BEACH CVS, LLC**, a California Corporation, and
CVS RX SERVICES, INC., a NY Corporation, DOES 1 through 25, inclusive

YOU ARE BEING SUED BY PLAINTIFF: RYAN HYAMS, an individual, on
(LO ESTÁ DEMANDANDO EL DEMANDANTE): behalf of himself, and all
others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, California 94102

CASE NUMBER: CGC-18-569060
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Catherine J. Coble
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

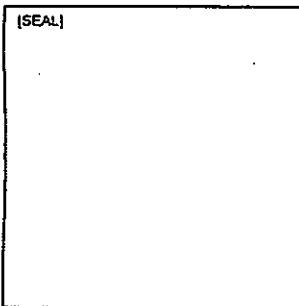
GUNN COBLE LLP
101 S. 1st Street, Suite 407, BURBANK, CA 91502 (818) 900-0695

DATE: SEP 10 2018 DEPUTY CLERK Clerk, by BOWMAN LU Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify):*
Garfield Beach CVS, LLC, a California corporation
- on behalf of *(specify):*
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify):*
- by personal delivery on *(date):*



1 BETH GUNN, CA Bar No. 218889
beth@gunncoble.com
2 CATHERINE J. COBLE, CA Bar No. 223461
cathy@gunncoble.com
3 GUNN COBLE LLP
101 S. 1st Street, Suite 407
4 Burbank, CA 91502
Telephone: 818.900.0695
5 Facsimile: 818.900.0723

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
09/07/2018
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated
7

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

10
11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated,

12 Plaintiff,

13
14 vs.

15 CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
16 Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
17 RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

18 Defendants.
19
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25
26
27
28

Case No. CGC-18-569060

**CLASS ACTION FIRST AMENDED
COMPLAINT**

1. Failure To Provide Required Meal Periods;
2. Failure To Authorize And Permit Required Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
6. Failure To Timely Pay All Wages;
7. Failure To Reimburse For Employment Related Expenses;
8. Failure To Maintain Required Records;
9. Failure To Furnish Accurate Itemized Wage Statements;
10. Failure To Provide Written Notice Of Paid Sick Leave
11. Failure To Provide One Day's Rest In Seven
12. Failure to Comply With California Labor Code Sections 850 and 851
13. Unfair And Unlawful Business Practices;
14. Penalties Under The California Labor Code Private Attorneys General Act, As Representative Action

DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS ("PLAINTIFF"), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 ("DEFENDANTS") as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a "Fortune 10"
7 company, publicly avows its purpose as "helping people on the path to better health." *See* CVS
8 Health's Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS' continuous and intentional
10 violation of California's wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state's citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code ("Labor Code") in multiple ways. The most obvious of DEFENDANTS' illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law "enacted as a measure for the protection of the public health." *See*
16 Labor Code § 855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS' customers who depend on them "on the path to better health."

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF's claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone);
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.

24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.

28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF's
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

27 ///

28 ///

CLASS ACTION ALLEGATIONS

1
2 27. DEFENDANTS employed, and continue to employ, employees throughout
3 California during the last four (4) years.

4 28. Based on information and belief, PLAINTIFF believes that other members of THE
5 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
6 in the following:

- 7 a. Routinely working through meal and/or rest breaks without proper
8 compensation for the same, including the payment of penalties for interrupted
9 meal and/or rest breaks;
- 10 b. Routinely working off-the-clock when answering work-related text messages
11 and/or when forced by management to continue to work while clocked out,
12 without receiving wages, premium pay, or minimum wages for the off-the-clock
13 time worked;
- 14 c. No compensation for unpaid wages and/or premium pay at the time of
15 termination;
- 16 d. Use of personal cell phones without adequate reimbursement;
- 17 e. Receipt of inaccurate wage statements;
- 18 f. Lack of receipt of adequate written notice of paid sick leave;
- 19 g. Routinely working without receiving one day's rest in seven; and
- 20 h. Routinely working in excess of the prescribed time limitations set forth in Labor
21 Code sections 850 and 851.

22 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
23 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
24 the-clock; scheduling employees for work; the Company's payroll and wage payments to
25 employees, including the provision of wage statements; reimbursements of necessary business
26 expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

27 30. In particular, DEFENDANTS' reliance on performance and/or prescription fill-time
28 metrics, centralized scheduling systems, managerial instructions, and operational policies and

1 procedures applied on a class-wide basis.

2 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human
3 Resources department, which is responsible for the hiring of new employees, collecting and
4 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
5 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
6 sick time policies, vacation time policies, and payroll policies and practices applicable to their
7 employees in California.

8 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
9 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
10 created uniform policies and procedures at the corporate level and implemented them
11 companywide, regardless of the employees' location.

12 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
13 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
14 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
15 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
16 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
17 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
18 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
19 minute meal period.

20 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
21 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
22 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
23 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
24 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
25 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
26 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
27 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

28 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS

1 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
2 and did not receive overtime compensation for work that DEFENDANTS knew or should have
3 known, was performed.

4 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
5 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
6 least minimum wages for compensation and that, in violation of the Labor Code, they were not
7 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
8 performed.

9 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
10 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
11 payment of wages upon termination of employment. In violation of the Labor Code,
12 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
13 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
14 statutorily required time periods.

15 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
16 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
17 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
18 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
19 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
20 periods.

21 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
22 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
23 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
24 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
25 to do so in violation of the Labor Code.

26 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
28 reimbursement for all business-related expenses and costs they incurred during the course and

1 scope of their employment, and that they did not receive full reimbursement of applicable business-
2 related expenses and costs in violation of the Labor Code.

3 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
4 knew or should have known that they had a duty to maintain accurate and complete payroll records
5 in accordance with the Labor Code and IWC Wage Order-7-2001, but willfully, knowingly, and
6 intentionally failed to do so.

7 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
8 department at their company headquarters, which processes payroll for all employees working for
9 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
10 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
11 statements to all employees in California, irrespective of their work location. PLAINTIFF is
12 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
13 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
14 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
15 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements.

16 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
17 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
18 notice of paid sick leave or paid time off available. In violation of the Labor Code,
19 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
20 sick leave or paid time off available.

21 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
22 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
23 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

24 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
26 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
27 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
28 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and

1 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
2 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more
3 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
4 direction.

5 **SATISFACTION OF CLASS ACTION CRITERIA**

6 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
7 all other persons similarly situated and seeks class certification of THE CLASS and
8 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

9 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
10 relief authorized by California law.

11 48. There is a well-defined community of interest in litigation and the class members
12 are readily ascertainable:

13 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
14 numerous that joinder of all members would be unfeasible and impractical. The membership of the
15 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
16 greater than one thousand (1000) individuals and the identity of such membership is readily
17 ascertainable by inspection of DEFENDANTS' employment records.

18 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
19 protect the interests of each member of THE CLASS with whom he has a well-defined community
20 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
21 demonstrated herein.

22 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
23 protect the interest of each class member with whom he has a well-defined community of interest
24 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
25 obligation to make known to the Court any relationship, conflicts, or differences with any class
26 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
27 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
28 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
2 member.

3 D. Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve economies of time, effort, and
5 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
6 same issues can be adjudicated in the same manner and at the same time for the entire class.

7 E. Public Policy Considerations: California has a stated public policy in favor
8 of class actions in this context for the vindication of employee rights and enforcement of the Labor
9 Code. Employers in the State of California violate employment and labor laws every day. Current
10 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
11 employees are fearful of bringing actions because they believe their former employers might
12 damage their future endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a type of anonymity that
14 allows for the vindication of their rights while simultaneously protecting their privacy.

15 **FIRST CAUSE OF ACTION**

16 **Failure To Provide Required Uninterrupted Meal Periods**

17 **(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)**

18 **(Against ALL DEFENDANTS and DOES 1 to 25)**

19 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
20 and every allegation set forth above.

21 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
22 that no employer shall require an employee to work during any meal period mandated by an
23 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
26 employer may not employ an employee for a work period of more than five hours per day without
27 providing the employee with a meal period of not less than 30 minutes,” except that if the total
28 work period per day of the employee is not more than six (6) hours, the meal period may be waived

1 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
2 period of not less than thirty (30) minutes, the employee is to be completely free of the employer's
3 control and must not perform any work for the employer. If the employee does perform work for
4 the employer during this thirty (30) minute meal period, the employee has not been provided with a
5 duty-free meal period, in accordance with California law, and is to be compensated for any work
6 performed during this (30) minute meal period in addition to one (1) additional hour of
7 compensation at each employee's regular rate of pay for each workday that a meal period was not
8 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

9 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
10 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
11 of more than ten (10) hours per day without providing the employee with another meal period of
12 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
13 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
14 second meal period may be waived by mutual consent of the employer and the employee only if
15 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
16 tit. 8 § 11050.

17 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
18 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
19 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
20 Code Regs. tit. 8 § 11050.

21 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
22 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
23 who were not provided with an uninterrupted meal period or one (1) additional hour of
24 compensation at each employee's regular rate of pay for each workday that a meal period was not
25 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
26 § 11050.

27 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
28 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and

1 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
2 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS
3 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
4 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
5 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
6 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
7 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
8 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
9 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

10 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
11 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
12 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
13 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
14 *codified* at Cal. Code Regs. tit. 8 § 11050.

15 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
16 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
17 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
18 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
19 when meal periods were late and/or interrupted.

20 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
21 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
22 including all compensation, such as shift differential pay and other compensation, as required by
23 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
24 Cal. Code Regs. tit. 8 § 11050.

25 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
26 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

27 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
28 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by DEFENDANTS.

63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute....” Cal. Lab. Code § 226.7(b).

65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 110501; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. *See* Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code §1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

27
28

SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050).

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 § 11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...." Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. "If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802." *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS' business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS' company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys'

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code, Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 (Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)

8 (Against ALL DEFENDANTS and DOES 1 to 25)

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to, total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks..." Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. See
5 Cal. Lab. Code § 851

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys' fees, expenses, and costs of suit, , as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that "person"
20 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

26 146. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 *et seq.*

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5)

(Against ALL DEFENDANTS and DOES 1 to 25)

1
2
3
4
5 151. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 152. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code section
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other current
9 and former employees of DEFENDANTS pursuant to the procedures specified in Labor Code
10 section 2699.3, because PLAINTIFF was employed by DEFENDANTS and the alleged violations
11 of the Labor Code were committed against PLAINTIFF.

12 153. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
13 sections 2698-2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to
14 penalties under Labor Code sections 2699, 210, 225.5, 226.3, 558, 850, 851, 852, 853, 1174.5,
15 1197.1, and 1199, from DEFENDANTS in representative action for the violations set forth above,
16 including but not limited to violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,
17 850, 851, 852, 853, 1174, 1194, 1197, 1198, and 2802. PLAINTIFF is also entitled to an award of
18 reasonable attorneys' fees and costs pursuant to Labor Code section 2699 (g)(1).

19 154. Pursuant to Labor Code Section 2699.3, PLAINTIFF gave written notice by
20 certified mail to the California Labor and Workforce Development Agency ("LWDA") and
21 DEFENDANTS of the specific provisions of the Labor Code and IWC Wage Orders alleged to
22 have been violated, including the facts and theories to support the alleged violations.
23 PLAINTIFF's notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days
24 of the postmark date of PLAINTIFF's notice letter, the LWDA did not provide notice to
25 PLAINTIFF that it intends to investigate the alleged violations.

26 155. Therefore, PLAINTIFF has complied with all of the requirements set forth in Labor
27 Code Section 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

1
2 Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated,
3 respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of
4 them, as follows:

- 5 1. For compensatory damages in an amount to be ascertained at trial;
- 6 2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as
7 disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
- 8 3. For meal and rest period compensation pursuant to Labor Code section 226.7 and
9 IWC Wage Order NO. 7-2001;
- 10 4. For liquidated damages pursuant to Labor Code section 1194.2;
- 11 5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from
12 violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in
13 the unlawful business practices complained of herein;
- 14 6. For waiting time penalties pursuant to Labor Code section 203;
- 15 7. For statutory and civil penalties according to proof, including but not limited to all
16 penalties authorized by the Labor Code sections 226(e), 853 and 2699;
- 17 8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code
18 Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable
19 provision providing for pre-judgment interest;
- 20 9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194,
21 2699, 2802, California Civil Code section 1021.5, and any other applicable provisions providing
22 for attorneys' fees and costs;
- 23 10. For declaratory relief;
- 24 11. For an order requiring and certifying the first thirteen Causes of Action pled in this
25 FIRST AMENDED COMPLAINT as a class action;
- 26 12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
27 counsel as class counsel; and

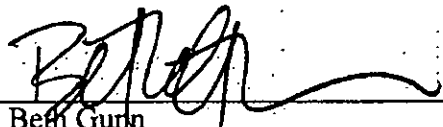
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13. For such further relief that the Court may deem just and proper.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Catherine J. Coble


Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated

DEMAND FOR JURY TRIAL

PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury
trial with respect to all issues triable of right by jury.

DATED: September 7, 2018

GUNN COBLE LLP

By: 
Beth Gunn
Cathy Coble

Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly
situated.

Exhibit A



Beth Gunn
818.573.6389
beth@gunncoble.com

Cathy Coble
818.573.6392
cathy@gunncoble.com

July 2, 2018

VIA ONLINE FILING

David M. Lanier, Secretary
California Labor and Workforce Development Agency

RE: Labor Code Private Attorneys General Act of 2004 – Notice on behalf of Ryan Hyams

Dear Secretary Lanier:

Please be advised that Gunn Coble LLP has been retained by Ryan Hyams ("Mr. Hyams") to represent him in respect to matters arising out of his employment with CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc., and, as appropriate, any of their parent companies, subsidiaries, or affiliates (collectively, "CVS" or the "Company"). All further questions, inquiries, or other communications about this matter should be directed to this firm, not to Mr. Hyams.

This letter provides notice on behalf of Mr. Hyams and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Mr. Hyams is an "aggrieved employee" as defined by Labor Code section 2698 *et seq.*, due to CVS' numerous violations of the Labor Code, including unpaid wages, failure to provide meal and rest breaks, failure to pay meal and rest period premiums, failure to provide mandated rest days, failure to comply with California Labor Code Section 850-851, inaccurate wage statements, unreimbursed expenses, failure to pay wages upon termination, interest, penalties, attorneys' fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, an "aggrieved employee" should be considered to include all non-exempt employees of CVS who have worked for CVS during the one year preceding the date of this letter through the present date.

This notice is being provided via electronic submission to the California Labor & Workforce Agency ("LWDA") and to the Company via certified mail at its address for business operations.

Based on the below summary of the facts and legal theories upon which Mr. Hyams will base his claims, he requests that the LWDA regard this notice as written notice pursuant to California Labor Code section 2699.3 of his intent to seek civil penalties against CVS and any parent companies identified as co-defendants prior to and during litigation of this matter.

A. Facts

CVS is a retail pharmacy chain with hundreds of physical locations in California, including standalone stores and locations within Target branded stores. As part of its operations, CVS employs pharmacists to, among other things, dispense medications, counsel patients on the use of prescription and over-the-counter medications, and advise physicians about medication therapy. In many locations CVS also employs pharmacy technicians to assist with the dispensation of medication to its clientele, though there are CVS locations where only a pharmacist is employed to handle all pharmacy operations. Plaintiff Ryan Hyams is a former non-exempt employee of CVS who primarily worked as a pharmacist at its Garfield Beach location, but also occasionally assisted at other pharmacy locations during his more than two years of employment with CVS. At the end of his employment with CVS, Mr. Hyams was earning \$76/hour.

As a pharmacist, Mr. Hyams' primary duties were to safely and accurately dispense approximately 250-300 prescriptions per day to CVS clientele. This included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), checking for drug interactions and precautions, contacting physicians where appropriate, advising patients regarding the use of their prescriptions, entering information in CVS systems, and dispensing and packaging medications to CVS customers. When pharmacy technicians were unavailable, Mr. Hyams would also work at the pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy.

During his employment, Mr. Hyams would regularly work more than 9 hours per day on average, and more than 108 hours in two consecutive week periods. In fact, CVS utilized a centralized scheduling procedure where he and other pharmacists were routinely scheduled for 12-hour shifts. On occasion, Mr. Hyams would work more than 12 hours per day, for which CVS would then pay him double-time. There also were occasions where he worked more than 12 days in a consecutive two week period. Each day, before clocking in on the CVS computer and after clocking out at the end of the day, Mr. Hyams would perform work for his position, as required by CVS. Also, as part of his job duties and responsibilities, Mr. Hyams would receive text messages on his personal cell phone from his supervisor to discuss work-related matters. Furthermore, CVS relied on Mr. Hyams, a loyal employee, to fill in at other pharmacies to ensure its business needs were met, which required him to drive great distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations, Mr. Hyams was entitled to, but did not receive uninterrupted meal and rest breaks. Mr. Hyams was not paid for the time he

spent reviewing and responding to text messages from his supervisor relating to work for CVS while off-the-clock. Additionally, Mr. Hyams never received any reimbursement from CVS for the personal use of his cell phone to conduct business for CVS.

When Mr. Hyams' employment with CVS ended, he was only paid for a portion of his accrued vacation. CVS failed to provide him with his accrued vacation time in violation of the Labor Code. For a portion of his employment, in violation of Labor Code Section 246(i), CVS failed to provide Mr. Hyams, or other aggrieved employees, with written notice setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu of sick leave.

Throughout his employment at CVS, Mr. Hyams was routinely unable to take his uninterrupted meal and rest breaks due to CVS' under-staffing and fill-time metrics. During the breaks he was able to take, after clocking out and before clocking back in, Mr. Hyams was routinely interrupted with pharmacy questions. Mr. Hyams was also asked to sign a waiver, wherein, on a standing basis without regard to the actual business needs, he waived all of his second meal periods. Mr. Hyams observed other employees also working through breaks and not being properly compensated for the same. Mr. Hyams was not paid any penalties for these interrupted meal and/or rest breaks. In addition, CVS often failed to provide Mr. Hyams with a rest day as required under the Labor Code.

Additionally, to date, CVS has refused to comply with its obligation under the Labor Code to produce the entirety of Mr. Hyams payroll records and personnel file, making it even more difficult to determine the extent of CVS' improper and illegal practices.

B. Labor Code Violations

1. CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours Worked.

Labor Code section 204, provides in relevant part: "All wages, other than those mentioned in Section[s] [not applicable here] earned by any person in any employment are due and payable twice during each calendar month." California Labor Code section 204. In short, this means an employee must be paid for *all* hours worked. Time spent by Mr. Hyams reviewing and answering text messages, as required by CVS, is deemed time worked and must be compensated. Furthermore, pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order. Pursuant to IWC Wage Order number 7, subdivision 2(G), at all times material hereto, "hours worked" means "the time during which an employee is subject to the control of an employer, and includes all time the employee is suffered or permitted to work, whether or not required to do so." Mr. Hyams was not paid for any work conducted prior to clocking in and after clocking out, as required by CVS. He also observed and is aware of other aggrieved employees who were forced to use their own cell phones and work off-the-clock who were not paid for the work performed.

In direction violation of the Labor Code, CVS failed to pay Mr. Hyams and similarly situated employees for time reading and responding to messages related to work. In the case of Mr. Hyams, he has spent hours receiving and responding to messages from management regarding work for which he has not received pay. Mr. Hyams contends that other similarly situated employees also did not receive any pay for the time spent receiving and responding to work related messages. Additionally, CVS required its employees, including Mr. Hyams and other aggrieved employees, to perform work before clocking in and after clocking out on the Company's computers. Thus, Mr. Hyams and other aggrieved employees' time records do not accurately reflect their actual hours worked. As such, Mr. Hyams and other employees were never compensated for all time worked. Therefore, CVS has violated Labor Code sections 204, 1194, 1194.2, and 1197.

2. CVS Violated Labor Code Sections 246(j) and 246.5.

California Labor Code section 246 requires that employers provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off an employer provides in lieu of sick leave, either on the employee's itemized wage statement described in section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. Here, during a portion of Mr. Hyam's employment, CVS failed to provide Mr. Hyams and other aggrieved employees with the required notice setting forth the amount of sick leave available.

3. Failure to Pay Overtime Wages and Therefore Failure to Pay Minimum Wage.

Employers operating under California law must pay at least minimum wage to their employees for all hours worked. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. See Cal. Lab. Code sections 1182.12 and 1194. In addition, an employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well as interest. See Cal. Lab. Code section 1194.2. Furthermore, an employer failing to pay minimum wages must pay a civil penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which such violations occurred. See Cal. Lab. Code section 1197.1.

Section 510 of the Labor Code mandates that any time worked beyond eight hours in one workday or beyond 40 hours in any workweek must be compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a). Section 1194 creates a cause of action to recover such unpaid overtime wages. See Cal. Lab. Code section 1194. IWC Order No. 7-2001(3)(A) further provides that employees such as Mr. Hyams "shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." IWC Order No. 7-2001(3)(A).

As discussed above, Mr. Hyams and other similarly aggrieved employees routinely worked off-the-clock when answering work-related text messages and when forced by management to continue to work while clocked out. During these periods of off-the-clock work, CVS did not pay at least minimum wage to employees.

As a result of these actions, CVS violated Labor Code sections 223, 510, 1182.12, 1194, 1194.2, 1197.1, and 1198.

4. **CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing to Provide Lawful Meal or Rest Breaks, and Forcing Its Employees to Sign Meal Period Waivers.**

Labor Code section 512 provides that “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.” Cal. Lab. Code section 512. Section 226.7 further provides in relevant part that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute.” Cal. Lab. Code section 226.7. IWC Order 7-2001 (12) states that “[e]very employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

CVS has violated sections 512 and 226.7 by failing to provide Mr. Hyams and similarly situated employees with at least 30 uninterrupted minutes of meal break time and/or at least 10 minutes of uninterrupted rest time during their shifts. Mr. Hyams and similarly situated CVS employees were and are routinely interrupted during their meal and rest breaks in order to comply with their managers’ demands and instructions to meet CVS customers’ expectations and CVS’ fill time metrics. Mr. Hyams and other aggrieved employees were also asked to sign a waiver, wherein, on a standing basis, they waived all of their second meal periods, without consideration of the pharmacies’ daily needs. Thus, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the 30-minute uninterrupted meal period was not provided. See Cal. Lab. Code section 226.7. In addition, Mr. Hyams and similarly situated employees are entitled to an additional hour of pay at the regular rate of compensation for each workday that the ten-minute rest break was not provided. See Cal. Labor Code § 226.7; IWC 7-2001(12), as well as PAGA penalties.

5. **CVS Violated Labor Code Sections 551 and 552.**

Under Labor Code section 551, “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code section 552 provides that “[n]o employer of labor shall cause his employees to work more than six days in seven.” Here, CVS violated these sections by failing to provide the legally-mandated rest days to Mr. Hyams and other similarly situated employees. Further, “an employer’s obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal.5th 1074, 1091 (2017). Instead of complying with this obligation, CVS did not inform its employees in California of their right to a day of rest, and then failed to properly staff its locations with sufficient personnel and pressured employees into working without a day of rest.

6. **Failure to Comply with Labor Code Sections 850 and 851.**

California Labor Code section 850 provides, in pertinent part, that “[n]o person employed to sell at retail drugs and medicines or to compound physicians' prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days in any two consecutive weeks...” The accompanying California Labor Code section 851 prohibits employers from requiring employees covered by Section 850 to work in excess of the hours prescribed therein. Mr. Hyams and other aggrieved employees throughout California regularly worked hours and days in excess of these specific limitations set forth by the California Labor Code.

7. **Failure to Provide Accurate Itemized Wage Statements in Violation of California Labor Code Section 226 (a).**

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. CVS did not provide Mr. Hyams, and other aggrieved employees, with properly itemized wage statements. Additionally, the violations include, without limitation, the failure to accurately list the total regular and overtime wages earned or meal and rest break premiums entitled to Mr. Hyams and other similarly situated employees. CVS' failure to provide accurate itemized wage statements was an intentional act based on its policy and practice of failing to properly compensate employees to avoid paying penalty pay and overtime premiums to employees.

8. **CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related Purposes.**

California Labor Code section 2802 requires an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” Cal. Lab. Code section 2802. This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

CVS has violated section 2802 by failing to reimburse employees for costs incurred relating to the necessary use of personal cell phones for work-related purposes. Mr. Hyams, and other CVS employees, were routinely required to use their personal cell phones to exchange text messages with CVS management. CVS did not provide Mr. Hyams or the other CVS employees with a work-issued cell phone, nor has it reimbursed Mr. Hyams and the other CVS employees for the necessary expenses they incurred in using their personal cell phones for CVS business.

9. Failure to Pay All Wages Due Upon Termination

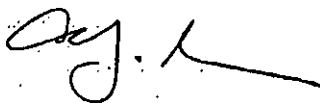
Employers must pay all wages due upon termination, including accrued but unused vacation. Labor Code sections 201-202, 227.3. The Company violated these sections by failing to pay Mr. Hyams and other aggrieved employees their unpaid wages, including accrued vacation time and premium penalties, as discussed above, at the time of termination. These violations subject the Company to civil penalties under Labor Code sections 203 and 2699.

This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. If the LWDA elects not to take any action, Mr. Hyams intends to file a complaint on behalf of himself and all similarly situated aggrieved employees in the California Superior Court seeking unpaid wages, including unpaid overtime wages, unpaid minimum wages, meal and rest period premiums, unreimbursed expenses, unpaid sick leave, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,



Cathy Coble
Gunn Coble LLP

CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. may be contacted at the following address:

One CVS Drive
Woonsocket, Rhode Island 02895

The registered agent for service of process for CVS Health Corporation, Garfield Beach CVS, L.L.C., CVS Pharmacy, Inc., and CVS Rx Services, Inc. is:

CT Corporation System
818 W Seventh Street, Suite 930
Los Angeles, CA 90017

My contact information is:

Beth Gunn

Cathy Coble

Gunn Coble LLP

101 S. First Street, Suite 407

Burbank, CA 91502

beth@gunncoble.com

cathy@gunncoble.com

818.573.6392

CM-010

| | | |
|---|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Catherine J. Coble GUNN COBLE LLP 101 S. 1st Street, Suite 407, BURBANK, CA 91502 TELEPHONE NO.: (818) 900-0695 FAX NO.: (818) 900-0723 SBN: 223461 ATTORNEY FOR (Name): Ryan Hyams on behalf of himself and others similarly situated | | ENDORSED FILED San Francisco County Superior Court AUG 21 2018 CLERK OF THE COURT ROSSALY DE LA VEGA Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: Civic Center Courthouse | | |
| CASE NAME: Hyams v. CVS HEALTH CORPORATION, et al. | | CASE NUMBER: CGC-18-569060 |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | | JUDGE: DEPT: |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|--|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (39) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 13
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 21, 2018

Catherine J. Coble

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

| | | |
|---|---|---|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) |
| Auto (22)—Personal Injury/Property Damage/Wrongful Death | Breach of Contract/Warranty (06) | Antitrust/Trade Regulation (03) |
| Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>) | Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>) | Construction Defect (10) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>) | Claims Involving Mass Tort (40) |
| Asbestos (04) | Negligent Breach of Contract/Warranty | Securities Litigation (28) |
| Asbestos Property Damage | Other Breach of Contract/Warranty | Environmental/Toxic Tort (30) |
| Asbestos Personal Injury/Wrongful Death | Collections (e.g., money owed, open book accounts) (09) | Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41) |
| Product Liability (<i>not asbestos or toxic/environmental</i>) (24) | Collection Case—Seller Plaintiff | Enforcement of Judgment |
| Medical Malpractice (45) | Other Promissory Note/Collections Case | Enforcement of Judgment (20) |
| Medical Malpractice—Physicians & Surgeons | Insurance Coverage (<i>not provisionally complex</i>) (18) | Abstract of Judgment (Out of County) |
| Other Professional Health Care Malpractice | Auto Subrogation | Confession of Judgment (<i>non-domestic relations</i>) |
| Other PI/PD/WD (23) | Other Coverage | Sister State Judgment |
| Premises Liability (e.g., slip and fall) | Other Contract (37) | Administrative Agency Award (<i>not unpaid taxes</i>) |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) | Contractual Fraud | Petition/Certification of Entry of Judgment on Unpaid Taxes |
| Intentional Infliction of Emotional Distress | Other Contract Dispute | Other Enforcement of Judgment Case |
| Negligent Infliction of Emotional Distress | Real Property | Miscellaneous Civil Complaint |
| Other PI/PD/WD | Eminent Domain/Inverse Condemnation (14) | RICO (27) |
| Non-PI/PD/WD (Other) Tort | Wrongful Eviction (33) | Other Complaint (<i>not specified above</i>) (42) |
| Business Tort/Unfair Business Practice (07) | Other Real Property (e.g., quiet title) (26) | Declaratory Relief Only |
| Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08) | Writ of Possession of Real Property | Injunctive Relief Only (<i>non-harassment</i>) |
| Delamation (e.g., slander, libel) (13) | Mortgage Foreclosure | Mechanics Lien |
| Fraud (16) | Quiet Title | Other Commercial Complaint Case (<i>non-tort/non-complex</i>) |
| Intellectual Property (19) | Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>) | Other Civil Complaint (<i>non-tort/non-complex</i>) |
| Professional Negligence (25) | Unlawful Detainer | Miscellaneous Civil Petition |
| Legal Malpractice | Commercial (31) | Partnership and Corporate Governance (21) |
| Other Professional Malpractice (<i>not medical or legal</i>) | Residential (32) | Other Petition (<i>not specified above</i>) (43) |
| Other Non-PI/PD/WD Tort (35) | Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>) | Civil Harassment |
| Employment | Judicial Review | Workplace Violence |
| Wrongful Termination (36) | Asset Forfeiture (05) | Elder/Dependent Adult Abuse |
| Other Employment (15) | Petition Re: Arbitration Award (11) | Election Contest |
| | Writ of Mandate (02) | Petition for Name Change |
| | Writ—Administrative Mandamus | Petition for Relief From Late Claim |
| | Writ—Mandamus on Limited Court Case Matter | Other Civil Petition |
| | Writ—Other Limited Court Case Review | |
| | Other Judicial Review (39) | |
| | Review of Health Officer Order | |
| | Notice of Appeal—Labor Commissioner Appeals | |

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5 Facsimile: 818.900.0723

6 Attorneys for Plaintiff RYAN HYAMS,
on behalf of himself, and all others similarly situated

ENDORSED
FILED
San Francisco County Superior Court

AUG 21 2018

CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 CGC-18-569060

11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated,

12 Plaintiff,

13 vs.

14
15 CVS HEALTH CORPORATION, a Rhode
Island Corporation, CVS PHARMACY, INC., a
16 Rhode Island Corporation, GARFIELD BEACH
CVS, LLC, a California Corporation, and CVS
17 RX SERVICES, INC., a New York Corporation,
DOES 1 through 25, inclusive,

18 Defendants.
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28

Case No. _____

CLASS ACTION COMPLAINT

1. Failure To Provide Required Meal Periods;
2. Failure To Authorize And Permit Required Rest Breaks;
3. Failure To Pay Overtime;
4. Failure To Pay Minimum Wages;
5. Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
6. Failure To Timely Pay All Wages;
7. Failure To Reimburse For Employment Related Expenses;
8. Failure To Maintain Required Records;
9. Failure To Furnish Accurate Itemized Wage Statements;
10. Failure To Provide Written Notice Of Paid Sick Leave
11. Failure To Provide One Day's Rest In Seven,
12. Failure to Comply With California Labor Code Sections 850 and 851
13. Unfair And Unlawful Business Practices;

DEMAND FOR JURY TRIAL.

1 Plaintiff RYAN HYAMS (“PLAINTIFF”), an individual, on behalf of himself and all other
2 persons similarly situated, hereby alleges against Defendants CVS HEALTH CORPORATION,
3 CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC.
4 (“DEFENDANTS”) as follows:

5 **INTRODUCTION**

6 1. DEFENDANTS, the largest pharmacy chain in the country, a “Fortune 10”
7 company, publicly avows its purpose as “helping people on the path to better health.” See CVS
8 Health’s Corporate Social Responsibility Report, [https://cvshealth.com/sites/default/files/2017-csr-](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf)
9 [full-report.pdf](https://cvshealth.com/sites/default/files/2017-csr-full-report.pdf). This commitment is hollow in light of DEFENDANTS’ continuous and intentional
10 violation of California’s wage and hour laws, which were designed specifically to protect the
11 health and well-being of the state’s citizens. Deviating from the law-abiding practices of its
12 competitors, DEFENDANTS unfairly compete in the marketplace by flouting the California Labor
13 Code (“Labor Code”) in multiple ways. The most obvious of DEFENDANTS’ illegal practices is
14 their blatant scheduling of pharmacy employees to regularly work shifts far in excess of the limits
15 imposed by California law “enacted as a measure for the protection of the public health.” See
16 Labor Code § 855. This illegal conduct injures not only the pharmacy employees but
17 DEFENDANTS’ customers who depend on them “on the path to better health.”

18 **JURISDICTION AND VENUE**

19 2. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages, penalties, and restitution sought by PLAINTIFF exceed the minimal
21 jurisdiction limits of the Superior Court and will be established according to proof at trial.

22 3. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California. Moreover, upon information and belief, two-
24 thirds or more of the class members and at least one of DEFENDANTS is a citizen of California,
25 the alleged wage and hour violations occurred in California, significant relief is being sought
26 against DEFENDANTS whose violations of California wage and hour laws form a significant basis
27 for PLAINTIFF’s claims, and no other class action has been filed within the past three (3) years on
28 behalf of the same proposed class against DEFENDANTS asserting the same or similar factual

1 allegations. Further, no federal question is at issue because the claims are based solely on
2 California law and at least DEFENDANT GARFIELD BEACH CVS, LLC is a resident of, and/or
3 regularly conducts business in the State of California, as well as its principal place of business is
4 located within California.

5 4. Venue is proper in this judicial district and the County of San Francisco, California
6 because PLAINTIFF, and other persons similarly situated, performed work for DEFENDANTS in
7 the County of San Francisco, DEFENDANTS maintain offices and facilities and transact business
8 in the County of San Francisco, and DEFENDANTS' illegal practices, which are the subject of this
9 action, were applied, at least in part, to PLAINTIFF, and other persons similarly situated, in the
10 County of San Francisco. Thus, a substantial portion of the transactions and occurrences related to
11 this action occurred in this county. Cal. Civ. Proc. Code § 395.

12 **PLAINTIFF**

13 5. PLAINTIFF is a former non-exempt employee who worked as a pharmacist for
14 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS,
15 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California.

16 6. As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately
17 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This
18 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone),
19 checking for drug interactions and precautions, contacting physicians where appropriate, advising
20 patients regarding the use of their prescriptions pursuant to California law, entering information in
21 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS'
22 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the
23 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A
24 pharmacist was required to be on the premises during all hours of operation, to comply with
25 operational policies and procedures.

26 7. During his employment, PLAINTIFF would regularly work more than 9 hours per
27 day on average, and more than 108 hours in two consecutive week periods. DEFENDANTS
28 utilized a centralized scheduling procedure where he and other pharmacists were routinely

1 scheduled for 12-hour shifts. On occasion, PLAINTIFF would work more than 12 hours per day,
2 for which DEFENDANTS would then pay him double-time. There also were occasions where he
3 worked more than 12 days in a consecutive two week period. DEFENDANTS often failed to
4 provide PLAINTIFF with a rest day as required under the Labor Code.

5 8. Each day, before clocking in on DEFENDANTS' computer and after clocking out at
6 the end of the day, PLAINTIFF would perform work for his position, as required by
7 DEFENDANTS.

8 9. As part of his job duties and responsibilities, PLAINTIFF would receive text
9 messages on his personal cell phone from his supervisor to discuss work-related matters.

10 10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
11 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
12 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
13 PLAINTIFF was entitled to, but did not receive uninterrupted meal and rest breaks.

14 11. PLAINTIFF was not paid for the time he spent reviewing and responding to text
15 messages from his supervisor relating to work for DEFENDANTS while off-the-clock.
16 Additionally, PLAINTIFF never received any reimbursement from DEFENDANTS for the
17 personal use of his cell phone to conduct business for DEFENDANTS.

18 12. During the course of PLAINTIFF'S employment, he accrued vacation time pursuant
19 to DEFENDANTS' vacation policy. When PLAINTIFF'S employment with DEFENDANTS
20 ended, he was only paid a portion of his accrued, but unused vacation. DEFENDANTS failed to
21 provide him with his accrued vacation time in violation of the Labor Code.

22 13. For a portion of his employment, in violation of Labor Code Section 246(i),
23 DEFENDANTS failed to provide PLAINTIFF, or other aggrieved employees, with written notice
24 setting forth the amount of paid sick leave available, or paid time off the Company provides in lieu
25 of sick leave. PLAINTIFF did not receive all of the sick time to which he was entitled.

26 14. Throughout his employment with DEFENDANTS, PLAINTIFF was routinely
27 unable to take his uninterrupted meal and rest breaks due to DEFENDANTS' under-staffing and
28 fill-time metrics, and his inability to leave the work premises. During the breaks he was able to

1 take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
2 pharmacy questions. PLAINTIFF was also asked to sign a waiver, wherein, on a standing basis
3 without regard to the actual business needs, he waived all of his second meal periods. PLAINTIFF
4 was not paid any penalties for these interrupted meal and/or rest breaks.

5 **THE CLASS**

6 15. PLAINTIFF brings this action on behalf of himself and all similarly situated class
7 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to California Code of Civil
8 Procedure section 382. THE CLASS is defined as follows: All current and former employees of
9 DEFENDANTS in the State of California at any time within the period beginning four (4) years
10 prior to the filing of this action and ending at the time this action settles or proceeds to final
11 judgment (the "CLASS PERIOD").

12 16. PLAINTIFF also seeks to represent the following subclasses (collectively,
13 "SUBCLASSES"), defined as follows:

- 14 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current
15 and former non-exempt employees of DEFENDANTS in the State of California
16 at any time within the CLASS PERIOD.
- 17 b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and
18 former employees of DEFENDANTS in the State of California at any time
19 within the CLASS PERIOD who were employed to sell at retail drugs and
20 medicines or to compound physicians' prescriptions.
- 21 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former
22 employees of DEFENDANTS in the State of California at any time within the
23 CLASS PERIOD.
- 24 d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and
25 former employees of DEFENDANTS in the State of California at any time
26 within the CLASS PERIOD who used personal cell phones for work-related
27 purposes without adequate reimbursement.
- 28 e. "VACATION PAY SUBCLASS," which is defined as all current and former

1 employees of DEFENDANTS in the State of California at any time within the
2 CLASS PERIOD who were not provided all vacation time, or wages in lieu
3 thereof, in compliance with California law.

4 17. PLAINTIFF reserves the right to redefine the definitions of THE CLASS or
5 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
6 liability.

7 **DEFENDANTS**

8 18. DEFENDANTS operate the largest retail pharmacy chain in the United States, with
9 hundreds of physical locations in California, including standalone stores and locations within
10 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among
11 other things, dispense medications, counsel patients on the use of prescription and over-the-counter
12 medications, and advise physicians about medication therapy. In many locations DEFENDANTS
13 also employ pharmacy technicians to assist with the dispensation of medication to its customers,
14 though there are CVS locations where only a pharmacist is employed to handle all pharmacy
15 operations.

16 19. At all times relevant hereto, DEFENDANTS were, and are, corporations authorized
17 to do business in the State of California and do in fact conduct business in the State of California.
18 Specifically, upon information and belief, DEFENDANTS maintain facilities and conduct business
19 in the County of San Francisco, State of California. Specifically,

- 20 a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized
21 under the laws of the State of Rhode Island that is engaged in the business of
22 operating retail stores that sell pharmaceuticals and general merchandise and
23 provide pharmacy services throughout the State of California.
- 24 b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the
25 laws of the State of Rhode Island that is engaged in the business of operating
26 retail stores that sell pharmaceuticals and general merchandise and provide
27 pharmacy services throughout the State of California.
- 28 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with

1 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a
2 limited liability company organized under the laws of the State of California that
3 is engaged in business as a pharmacy and medical supplier to CVS retail stores
4 located throughout the State of California.

5 d. DEFENDANT CVS RX SERVICES, INC. is a corporation organized under the
6 laws of the State of New York that is engaged in the business of providing
7 pharmacy services throughout the State of California.

8 20. The true names and capacities of DOES 1 through 25, inclusive ("DOES"), are
9 unknown to PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE Defendants under
10 fictitious names. PLAINTIFF is informed and believes, and thereon alleges, that each Defendant
11 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
12 that PLAINTIFF and CLASS MEMBERS' injuries and damages, as alleged herein, were
13 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
14 court to amend this complaint to allege the true names and capacities of such DOE Defendants when
15 ascertained.

16 21. PLAINTIFF is informed and believes, and based thereon alleges, that each
17 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
19 each DEFENDANT are legally attributable to the other DEFENDANTS.

20 22. PLAINTIFF is informed and believes, and thereon alleges, that CVS HEALTH
21 CORPORATION, CVS PHARMACY, INC., GARFIELD BEACH CVS, LLC, and CVS RX
22 SERVICES, INC each employed PLAINTIFF, in that they exercised control over PLAINTIFF's
23 wages, hours or working conditions, suffered and permitted PLAINTIFF to work, and/or engaged
24 PLAINTIFF to work. *See Martinez v. Combs* (2010) 49 Cal.4th 35, 64. Any of the three is sufficient
25 to create an employment relationship. *Ochoa v. McDonald's Corp.*, 133 F. Supp. 3d 1228, 1233
26 (N.D. Cal. 2015).

27 23. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
28 PLAINTIFF, PLAINTIFF further alleges that, upon information and belief, one or more

1 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
2 creating an employment relationship with PLAINTIFF. *See Castaneda v. Ensign Group, Inc.* (2014)
3 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 950.

4 24. As a direct and proximate result of the unlawful actions of DEFENDANTS,
5 PLAINTIFF and CLASS MEMBERS have suffered, and continue to suffer, from loss of earnings
6 in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this
7 Court.

8 25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct
9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS
10 were responsible for the events and damages alleged herein, including on the following bases: (a)
11 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the
12 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or
13 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course
14 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's
15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among
16 those DEFENDANTS such that any individuality and separateness between or among these
17 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS
18 exercised domination and control over one another to such an extent that any individuality or
19 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence
20 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate
21 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were
22 taken by employees, supervisors, executives, officers, and directors during employment with all
23 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized,
24 ratified, and approved of by all other DEFENDANTS.

25 26. Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of
26 all other DEFENDANTS in committing the acts alleged herein.

27 **CLASS ACTION ALLEGATIONS**

28 27. DEFENDANTS employed, and continue to employ, employees throughout

1 California during the last four (4) years.

2 28. Based on information and belief, PLAINTIFF believes that other members of THE
3 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted
4 in the following:

- 5 a. Routinely working through meal and/or rest breaks without proper
6 compensation for the same, including the payment of penalties for interrupted
7 meal and/or rest breaks;
- 8 b. Routinely working off-the-clock when answering work-related text messages
9 and/or when forced by management to continue to work while clocked out,
10 without receiving wages, premium pay, or minimum wages for the off-the-clock
11 time worked;
- 12 c. No compensation for unpaid wages and/or premium pay at the time of
13 termination;
- 14 d. Use of personal cell phones without adequate reimbursement;
- 15 e. Receipt of inaccurate wage statements;
- 16 f. Lack of receipt of adequate written notice of paid sick leave;
- 17 g. Routinely working without receiving one day's rest in seven; and
- 18 h. Routinely working in excess of the prescribed time limitations set forth in Labor
19 Code sections 850 and 851.

20 29. DEFENDANTS acted pursuant to common, company-wide policies and practices
21 regarding the provision of meal and/or rest breaks; the practice of requiring employees to work off-
22 the-clock; scheduling employees for work; the Company's payroll and wage payments to
23 employees, including the provision of wage statements; reimbursements of necessary business
24 expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

25 30. In particular, DEFENDANTS' reliance on performance and/or prescription fill-time
26 metrics, centralized scheduling systems, managerial instructions, and operational policies and
27 procedures applied on a class-wide basis.

28 31. Upon information and belief, DEFENDANTS maintain a single, centralized Human

1 Resources department, which is responsible for the hiring of new employees, collecting and
2 processing all new hire paperwork, and communicating and implementing DEFENDANTS'
3 company-wide policies and practices, including timekeeping policies, meal and rest break policies,
4 sick time policies, vacation time policies, and payroll policies and practices applicable to their
5 employees in California.

6 32. On information and belief, PLAINTIFF and CLASS MEMBERS received the same
7 standardized documents and/or written policies. Upon information and belief, DEFENDANTS
8 created uniform policies and procedures at the corporate level and implemented them
9 companywide, regardless of the employees' location.

10 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
11 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal
12 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the
13 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely,
14 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were
15 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate
16 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30)
17 minute meal period.

18 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
19 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to
20 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC")
21 Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when
22 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest
23 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take
24 compliant rest periods or payment of one (1) additional hour of pay at their regular rate when
25 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

26 35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
27 knew or should have known that PLAINTIFF and CLASS MEMEBERS were entitled to receive
28 and did not receive overtime compensation for work that DEFENDANTS knew or should have

1 known was performed.

2 36. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
3 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive at
4 least minimum wages for compensation and that, in violation of the Labor Code, they were not
5 receiving at least minimum wages for work that DEFENDANTS knew or should have known was
6 performed.

7 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
8 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
9 payment of wages upon termination of employment. In violation of the Labor Code,
10 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
11 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
12 statutorily required time periods.

13 38. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
14 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely
15 payment of wages during their employment. In violation of the Labor Code, DEFENDANTS did
16 not pay PLAINTIFF and CLASS MEMBERS all wages, including, but not limited to, overtime
17 wages, minimum wages, and meal and rest period premium wages, within statutorily required time
18 periods.

19 39. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
20 mentioned, DEFENDANTS knew or should have known that DEFENDANTS had a duty to
21 compensate PLAINTIFF and CLASS MEMBERS for all hours worked, and that DEFENDANTS
22 had the financial ability to pay such compensation but willfully, knowingly, and intentionally failed
23 to do so in violation of the Labor Code.

24 40. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
25 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to receive full
26 reimbursement for all business-related expenses and costs they incurred during the course and
27 scope of their employment, and that they did not receive full reimbursement of applicable business-
28 related expenses and costs in violation of the Labor Code.

1 41. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
2 knew or should have known that they had a duty to maintain accurate and complete payroll records
3 in accordance with the Labor Code and IWC Wage Order 7-2001, but willfully, knowingly, and
4 intentionally failed to do so.

5 42. Upon information and belief, DEFENDANTS maintain a centralized Payroll
6 department at their company headquarters, which processes payroll for all employees working for
7 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS
8 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage
9 statements to all employees in California, irrespective of their work location. PLAINTIFF is
10 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that
11 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage
12 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did
13 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements:

14 43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
15 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
16 notice of paid sick leave or paid time off available. In violation of the Labor Code,
17 DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
18 sick leave or paid time off available.

19 44. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
20 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's
21 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

22 45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
23 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any
24 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine
25 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days
26 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and
27 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
28 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more

1 than 12 days in any two consecutive weeks in violation of the Labor Code at DEFENDANTS'
2 direction.

3 **SATISFACTION OF CLASS ACTION CRITERIA**

4 46. PLAINTIFF brings this action on his own behalf, as well as on behalf of each and
5 all other persons similarly situated and seeks class certification of THE CLASS and
6 SUBCLASSES under California Code of Civil Procedure section 382. Cal. Civ. Proc. Code § 382.

7 47. All claims alleged herein arise under California law for which PLAINTIFF seeks
8 relief authorized by California law.

9 48. There is a well-defined community of interest in litigation and the class members
10 are readily ascertainable:

11 A. Numerosity: The members of THE CLASS and SUBCLASSES are so
12 numerous that joinder of all members would be unfeasible and impractical. The membership of the
13 entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be
14 greater than one thousand (1000) individuals and the identity of such membership is readily
15 ascertainable by inspection of DEFENDANTS' employment records.

16 B. Typicality: PLAINTIFF is qualified to, and will, fairly and adequately
17 protect the interests of each member of THE CLASS with whom he has a well-defined community
18 of interest, and PLAINTIFF's claims (or defenses, if any) are typical of all class members as
19 demonstrated herein.

20 C. Adequacy: PLAINTIFF is qualified to, and will, fairly and adequately
21 protect the interest of each class member with whom he has a well-defined community of interest
22 and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an
23 obligation to make known to the Court any relationship, conflicts, or differences with any class
24 member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing
25 class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the
26 duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will
27 be necessarily expanded for the prosecution of this action for the substantial benefit of each class
28 member.

1 D. Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve economies of time, effort, and
3 expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the
4 same issues can be adjudicated in the same manner and at the same time for the entire class.

5 E. Public Policy Considerations: California has a stated public policy in favor
6 of class actions in this context for the vindication of employee rights and enforcement of the Labor
7 Code. Employers in the State of California violate employment and labor laws every day. Current
8 employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former
9 employees are fearful of bringing actions because they believe their former employers might
10 damage their future endeavors through negative references and/or other means. Class actions
11 provide the class members who are not named in the complaint with a type of anonymity that
12 allows for the vindication of their rights while simultaneously protecting their privacy.

13 **FIRST CAUSE OF ACTION**

14 **Failure To Provide Required Uninterrupted Meal Periods**

15 **(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 49. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 50. At all relevant times, Labor Code sections 226.7, 512(a), and 1198 have provided
20 that no employer shall require an employee to work during any meal period mandated by an
21 applicable order of the IWC. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8
22 § 11050.

23 51. At all relevant times herein, Labor Code section 512 has provided that “[a]n
24 employer may not employ an employee for a work period of more than five hours per day without
25 providing the employee with a meal period of not less than 30 minutes,” except that if the total
26 work period per day of the employee is not more than six (6) hours, the meal period may be waived
27 by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
28 period of not less than thirty (30) minutes, the employee is to be completely free of the employer’s

1 control and must not perform any work for the employer. If the employee does perform work for
2 the employer during this thirty (30) minute meal period, the employee has not been provided with a
3 duty-free meal period, in accordance with California law, and is to be compensated for any work
4 performed during this (30) minute meal period in addition to one (1) additional hour of
5 compensation at each employee's regular rate of pay for each workday that a meal period was not
6 provided. *See also* IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

7 52. At all relevant times herein, pursuant to Labor Code sections 226.7, 512(a), 1198
8 and the applicable IWC Wage Order, an employer may not employ an employee for a work period
9 of more than ten (10) hours per day without providing the employee with another meal period of
10 not less than thirty (30) minutes, or to pay an employee one (1) additional hour of pay at the
11 employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the
12 second meal period may be waived by mutual consent of the employer and the employee only if
13 the first meal period was not waived. IWC Wage Order 7-2001(11), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 53. At all relevant times herein, DEFENDANTS failed to provide PLAINTIFF and
16 CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free from job duties,
17 as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11), *codified* at Cal.
18 Code Regs. tit. 8 § 11050.

19 54. At all relevant times herein, DEFENDANTS further violated Labor Code section
20 226.7 and IWC Order No. 7-2001 by failing to compensate PLAINTIFF and CLASS MEMBERS
21 who were not provided with an uninterrupted meal period or one (1) additional hour of
22 compensation at each employee's regular rate of pay for each workday that a meal period was not
23 provided. Cal. Lab. Code § 226.7(c), IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8
24 § 11050.

25 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company-
26 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and
27 CLASS MEMBERS. DEFENDANTS have understaffed, and continue to understaff, its locations
28 without providing sufficient meal break coverage, such that PLAINTIFF and CLASS MEMBERS

1 were prevented from taking all timely and uninterrupted thirty (30) minutes meal periods; as such,
2 PLAINTIFF and CLASS MEMBERS were routinely forced to work off-the-clock during their
3 meal periods in order to comply with DEFENDANTS' demands and instructions to meet pharmacy
4 customers' expectations. Moreover, DEFENDANTS did not provide PLAINTIFF and CLASS
5 MEMBERS with a second uninterrupted thirty (30) minute meal period on days they worked over
6 ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); IWC Order No. 7-
7 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

8 56. At all relevant times herein, as a result of DEFENDANTS' scheduling policies and
9 understaffing, in order to meet DEFENDANTS' expectations and customer demands, PLAINTIFF
10 and CLASS MEMBERS were forced to miss and/or take late or interrupted meal breaks, in
11 violation of the Labor Code. Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11),
12 *codified* at Cal. Code Regs. tit. 8 § 11050.

13 57. At all times herein, DEFENDANTS knew, or should have known, that as a result of
14 DEFENDANTS' scheduling policies and practices of understaffing, PLAINTIFF and CLASS
15 MEMBERS were forced to miss and/or take late or interrupted meal breaks, and that
16 DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS meal period premium wages
17 when meal periods were late and/or interrupted.

18 58. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
19 pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
20 including all compensation, such as shift differential pay and other compensation, as required by
21 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
22 Cal. Code Regs. tit. 8 § 11050.

23 59. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC
24 Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

25 60. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
26 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.
27
28

SECOND CAUSE OF ACTION

Failure To Authorize And Permit Required Rest Breaks

(Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

1
2
3
4
5 61. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 and every allegation set forth above.

7 62. At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

10 63. At all relevant times herein, IWC Wage Order 7-2001 has stated that “[e]very
11 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time
13 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), *codified* at Cal. Code Regs.
14 tit. 8 § 11050.

15 64. At all relevant times herein, Labor Code section 226.7 provides that “[a]n employer
16 shall not require an employee to work during a meal or rest or recovery period mandated pursuant
17 to an applicable statute....” Cal. Lab. Code § 226.7(b).

18 65. At all relevant times herein, DEFENDANTS regularly failed to authorize or permit
19 PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each
20 four (4) hours worked, or major fraction thereof. PLAINTIFF and CLASS MEMBERS were
21 regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-
22 2001, *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 226.7(b).

23 66. At all relevant times herein, DEFENDANTS’ staffing policies and scheduling
24 practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order
25 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
26 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
27 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5
28 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the

1 uninterrupted ten (10) minute rest periods to which they were entitled.

2 67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
3 MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
4 worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12),
5 *codified* at Cal. Code Regs. tit. 8 § 11050l; *see also* Cal. Lab. Code § 226.7.

6 68. At all relevant times herein, Labor Code section 226.7 has provided that "[i]f an
7 employer fails to provide an employee a meal or rest or recovery period in accordance with a state
8 law... the employer shall pay the employee one additional hour of pay at the employee's regular
9 rate of compensation for each workday that the meal or rest or recovery period is not provided."
10 Cal. Lab. Code § 226.7(c); IWC Order No. 7-2001(12), *codified* at Cal. Code Regs. tit. 8 § 11050.

11 69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
12 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
13 periods were missed, late and/or interrupted.

14 70. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
15 pay for purposes of paying rest period premiums to PLAINTIFF and CLASS MEMBERS by
16 including all compensation, such as shift differential pay and other compensation, as required by
17 the Labor Code. *See* Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), *codified* at
18 Cal. Code Regs. tit. 8 § 11050.

19 71. DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order
20 No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

21 72. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

23 **THIRD CAUSE OF ACTION**

24 **Failure To Pay Overtime**

25 **(Cal. Lab. Code sections 510, 1198; Cal. Code Regs. tit. 8 § 11050)**

26 **(Against ALL DEFENDANTS and DOES 1 to 25)**

27 73. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
28 and every allegation set forth above.

1 74. At all relevant times herein, Labor Code section 510 has mandated that any time
2 worked beyond eight hours in one workday or beyond 40 hours in any workweek must be
3 compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

4 75. IWC Wage Order 7-2001 further provides that employees “shall not be employed
5 more than eight (8) hours in any workday or more than 40 hours in any workweek unless the
6 employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours
7 worked over 40 hours in the workweek.” IWC Order No. 7-2001(3)(A), *codified* at Cal. Code
8 Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

9 76. At all relevant times herein, DEFENDANTS were required to compensate
10 PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
11 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
12 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
15 Code §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

16 77. At all relevant times herein, DEFENDANTS willfully failed to pay all overtime
17 wages owed to PLAINTIFF and CLASS MEMBERS. During the CLASS PERIOD, PLAINTIFF
18 and CLASS MEMBERS were not paid overtime premiums for all of the hours they worked in
19 excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight (8)
20 hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty (40)
21 hours in a week, because all hours were not recorded.

22 78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
23 CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
24 (1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
25 MEMBERS to work through meal and rest periods; and inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked.

27 79. At all relevant times herein, DEFENDANTS’ failure to provide adequate coverage
28 for meal periods for PLAINTIFF and CLASS MEMBERS so that they could be relieved of all

1 duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
2 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

3 80. At all relevant times herein, DEFENDANTS had a company-wide pattern and
4 practice of requiring PLAINTIFF and CLASS MEMBERS to communicate with DEFENDANTS
5 and DEFENDANTS' other employees using personal cellular phones, including during days off
6 and outside of scheduled shifts. DEFENDANTS knew or should have known that PLAINTIFF and
7 CLASS MEMBERS were communicating with DEFENDANTS and other employees while off-
8 the-clock in order to meet DEFENDANTS' demands, but DEFENDANTS failed to compensate
9 PLAINTIFF or CLASS MEMBERS for this off-the-clock work. Therefore, PLAINTIFF and
10 CLASS MEMBERS were not paid overtime wages for all overtime hours worked.

11 81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
12 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
13 compensation, such as shift differential pay and other compensation, as required by the Labor
14 Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

15 82. DEFENDANTS' conduct violates Labor Code sections 510 and 1198 and IWC
16 Order No. 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

17 83. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
19 and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198;**

23 **and Cal. Code Regs. Tit. 8, § 11050)**

24 **(Against ALL DEFENDANTS and DOES 1 to 25)**

25 84. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
26 and every allegation set forth above.

27 85. At all relevant times herein, employers operating under California law must pay at
28 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*

1 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
2 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
3 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
4 as interest. Cal. Lab. Code § 1194.2. An employer failing to pay minimum wages must pay a civil
5 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which
6 such violations occurred. Cal. Lab. Code § 1197.1.

7 86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling
8 policies and practices, PLAINTIFF and CLASS MEMBERS were forced to miss or shorten their
9 meal periods in order to meet DEFENDANTS' expectations and customer demands. PLAINTIFF
10 and CLASS MEMBERS were also required to perform off-the-clock work on their days off and
11 outside of scheduled shifts, including using their personal cellular phones.

12 87. At all relevant times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
13 MEMBERS minimum wages for all hours worked by: requiring, permitting or suffering
14 PLAINTIFF and CLASS MEMBERS to work off-the-clock through meal and rest breaks;
15 requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock
16 outside of scheduled shifts, including by using their personal cell phone on their days off. As a
17 result of these actions DEFENDANTS did not pay at least minimum wages for all hours worked by
18 PLAINTIFF and CLASS MEMBERS.

19 88. DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,
20 1197.1, and 1198 and IWC Order No. 7-2001(4), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
23 and costs of suit.

24 **FIFTH CAUSE OF ACTION**

25 **Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties**

26 **(Cal. Lab. Code sections 201, 202, 203)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 90. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
3 employers must pay all wages due upon termination and, if an employer terminates an employee,
4 the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
5 Labor Code section 202, employers are required to pay all wages due to an employee no later than
6 72 hours after the employee quits employment, unless the employee provided 72 hours of notice of
7 the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
8 Cal. Lab. Code § 202.

9 92. At all relevant times herein, Labor Code section 203 provides that "[i]f an employer
10 willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the
11 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
12 an action therefor is commenced; but the wages shall not continue for more than 30 days." Cal.
13 Lab. Code § 203.

14 93. At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
15 SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
16 wages, minimum wages, vacation wages, and all compensation owed to them.

17 94. When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from
18 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

19 95. DEFENDANTS' conduct violates Labor Code sections 201, 202, and 203.

20 96. As a consequence of DEFENDANTS' willful conduct in not paying wages owed at
21 the time of separation from employment, PLAINTIFF and the FORMER EMPLOYEE
22 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
23 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

24 97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
25 amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
26 attorneys' fees and costs of suit.

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SIXTH CAUSE OF ACTION

Failure To Timely Pay All Wages

(Cal. Lab. Code sections 204, 1182.12, 1194, 1194.2, 1197, 1198,

and Cal. Code Regs. tit. 8 § 11050)

(Against ALL DEFENDANTS and DOES 1 to 25)

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6 98. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
7 and every allegation set forth above.

8 99. At all times relevant herein, Labor Code section 204 has provided that all wages
9 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
10 inclusive, of any calendar month, other than those wages due upon termination of an employee, are
11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
12 which the labor was performed. Labor Code section 204 further provides that all wages earned by
13 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and payable
15 between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a).

16 100. At all times relevant herein, Labor Code section 204 has further provided that all
17 wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant
19 herein, Labor Code section 204 has provided that the requirements of this section are deemed
20 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
21 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
22 Code § 204(d).

23 101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
24 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the
26 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
27 defined in IWC Wage Order 7-2001 as "the time during which an employee is subject to the
28 control of an employer, and includes all time the employee is suffered or permitted to work,

1 whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
2 §11050(2)(K).

3 102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
4 CLASS MEMBERS all wages due including, but not limited to, overtime wages, minimum wages,
5 and meal and rest period premium wages, within the periods mandated by Labor Code section 204.

6 103. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
7 MEMBERS for time spent by PLAINTIFF and CLASS MEMBERS answering text messages
8 related to work and as required by DEFENDANTS, which is deemed time worked and must be
9 compensated.

10 104. At all relevant times herein, IWC Wage Order 7-2001 provides that "[e]ach
11 workday an employee is required to report for work and does report, but is not put to work or is
12 furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
13 for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
14 than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), *codified*
15 at Cal. Code Regs. tit. 8 § 11050.

16 105. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
17 MEMBERS for all work performed while off the clock, including checking and responding to text
18 messages and completing opening and closing procedures.

19 106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS
20 MEMBERS all wages owed at their legally prescribed regular rate of pay.

21 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
22 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

23 108. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
24 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys' fees
25 and costs of suit.

SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each and every allegation set forth above.

110. At all relevant times herein, Labor Code section 2802 has required an employer to indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs associated with the use of personal cell phones for work-related purposes. “If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text messages with DEFENDANTS’ management. DEFENDANTS did not provide PLAINTIFF or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS’ business.

112. At all relevant times, DEFENDANTS have intentionally and willfully failed to reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related expenses and costs. DEFENDANTS’ company-wide practice of requiring PLAINTIFF and the BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates Labor Code section 2802.

113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’

1 fees, expenses, and costs of suit.

2 **EIGHTH CAUSE OF ACTION**

3 **Failure To Maintain Required Records**

4 **(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8**
5 **§ 11050.)**

6 **(Against ALL DEFENDANTS and DOES 1 to 25)**

7 114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
8 and every allegation set forth above.

9 115. At all relevant times herein, Labor Code section 1174 has provided that every
10 employer shall “[k]eep, at a central location in the state or at the plants or establishments at which
11 employees are employed, payroll records showing the hours worked daily by and the wages paid
12 to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees
13 employed at the respective plants or establishments. These records shall be kept on file for not
14 less than three years.” Cal. Lab. Code §1174(d).

15 116. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
16 records including, but not limited to, when the employee begins and ends each work period and
17 meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
18 CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
19 times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
20 §1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

21 117. At all relevant times herein, Labor Code section 226 provides that an employer is to
22 maintain accurate records, including, but not limited to: total daily hours worked by each
23 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
24 employee begins and ends each work period; and accurate itemized statements. By
25 DEFENDANTS’ company-wide policies and practices of inaccurately recording time in which
26 PLAINTIFF and CLASS MEMBERS worked, including failing to record time during which
27 PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and intentionally failed
28 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also*

1 IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

2 118. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
3 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
4 and costs of suit.

5 **NINTH CAUSE OF ACTION**

6 **Failure To Furnish Accurate Itemized Wage Statements**

7 **(Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)**

8 **(Against ALL DEFENDANTS and DOES 1 to 25)**

9 119. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
10 and every allegation set forth above.

11 120. At all relevant times herein, Labor Code section 226 has required employers to
12 furnish each employee an accurate and itemized wage statement in writing that includes, but not
13 limited to; total daily hours worked by each employee; applicable rates of pay; all deductions; meal
14 periods; and total hours worked. *See* Cal. Lab. Code § 226(a); IWC Wage Order 7-2001(7),
15 *codified* at Cal. Code Regs. tit. 8 § 11050.

16 121. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFF
17 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
18 without limitation, the failure to accurately list the total daily hours worked by each employee, total
19 regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
20 premiums entitled to PLAINTIFF and CLASS MEMBERS.

21 122. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
22 wage statements was a knowing and intentional act based on their company-wide policy and
23 practice of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab.
24 Code §§ 226(a), 226(e), 226.3.

25 123. By DEFENDANTS' company-wide policies and practices of inaccurately recording
26 time in which PLAINTIFF and CLASS MEMBERS worked, DEFENDANTS knowingly and
27 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
28 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

1 124. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
2 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
3 and costs of suit.

4 **TENTH CAUSE OF ACTION**

5 **Failure To Provide Written Notice of Paid Sick Leave**

6 **(Cal. Lab. Code sections 246(i))**

7 **(Against ALL DEFENDANTS and DOES 1 to 25)**

8 125. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
9 and every allegation set forth above.

10 126. At all times herein, Labor Code section 246 has required that employers provide
11 employees with "written notice that sets forth the amount of paid sick leave available, or paid time
12 off an employer provides in lieu of sick leave, either on the employee's itemized wage statement
13 described in section 226 or in a separate writing provided on the designated pay date with the
14 employee's payment of wages." Cal. Lab. Code § 246(i).

15 127. At all times herein, DEFENDANTS failed to provide PLAINTIFF and CLASS
16 MEMBERS with the required written notice on wage statements and/or other separate written
17 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
18 DEFENDANTS' wage statements fail to state PLAINTIFF's and CLASS MEMBERS' paid sick
19 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

20 128. DEFENDANTS' conduct violates Labor Code section 246(i).

21 129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
22 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
23 and costs of suit.

24 **ELEVENTH CAUSE OF ACTION**

25 **Failure To Provide One Day's Rest In Seven**

26 **(Cal. Lab. Code sections 551, 552, and 852)**

27 **(Against ALL DEFENDANTS and DOES 1 to 25)**

28 130. PLAINTIFF incorporates by reference and realleges as if fully stated herein each

1 and every allegation set forth above.

2 131. At all times herein, Labor Code section 551 has provided that “[e]very person
3 employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab.
4 Code § 551.

5 132. At all times herein, Labor Code section 552 has provided that “[n]o employer of
6 labor shall cause his employees to work more than six days in seven.” Cal. Lab. Code § 552.

7 133. At all times herein, Labor Code section 852 has provided that “[t]he employer shall
8 apportion the periods of rest to be taken by an employee so that the employee will have one
9 complete day of rest during each week.” Cal. Lab. Code § 852.

10 134. At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
11 MEMBERS the legally-mandated rest days as required by California law. Further, “an employer’s
12 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
13 absolute neutrality as to the exercise of that right.” *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
15 MEMBERS.

16 135. DEFENDANTS’ conduct violates Labor Code sections 551, 552, and 852.

17 136. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
18 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys’ fees, expenses,
19 and costs of suit, as well as relief pursuant to Labor Code section 853.

20 **TWELFTH CAUSE OF ACTION**

21 **Failure To Comply with Labor Code Sections 850 and 851**

22 **(Cal. Lab. Code sections 850 and 851)**

23 **(Against ALL DEFENDANTS and DOES 1 to 25)**

24 137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
25 and every allegation set forth above.

26 138. At all times herein, Labor Code section 850 has provided, in pertinent part, that
27 “[n]o person employed to sell at retail drugs and medicines or to compound physicians’
28 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for

1 more than an average of nine hours per day, or for more than 108 hours in any two consecutive
2 weeks or for more than 12 days in any two consecutive weeks..." Cal. Lab. Code § 850.

3 139. At all times herein, Labor Code section 851 has prohibited employers from
4 requiring employees covered by Section 850 to work in excess of the hours prescribed therein. *See*
5 Cal. Lab. Code § 851

6 140. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
7 required PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
8 hours prescribed by Labor Code Section 850.

9 141. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

10 142. PLAINTIFF and the PHARMACY EMPLOYEE SUBCLASS have been damaged
11 in an amount according to proof at trial, and seek all wages earned and due, penalties, interest,
12 attorneys' fees, expenses, and costs of suit, , as well as relief pursuant to Labor Code section 853.

13 **THIRTEENTH CAUSE OF ACTION**

14 **Unfair And Unlawful Business Practices**

15 **(Cal. Bus. & Prof. Code section 17200, *et seq.*)**

16 **(Against ALL DEFENDANTS and DOES 1 to 25)**

17 143. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
18 and every allegation set forth above.

19 144. At all times herein, California Business & Professions Code provides that "person"
20 shall mean and include "natural persons, corporations, firms, partnerships, joint stock companies,
21 associations and other organizations of persons." Cal. Bus. & Prof. Code § 17201.

22 145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
23 continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
24 public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
25 injury in fact and have lost money as a result of DEFENDANTS' unlawful business practices.

26 146. At all times herein, DEFENDANTS' activities, as alleged herein, are violations of
27 California law, and constitute false, unfair, fraudulent and deceptive business acts and practices in
28 violation of California Business & Professions Code sections 17200 *et seq.*

1 147. Each and every one of the DEFENDANTS' acts and omissions in violation of the
2 Labor Code and IWC Wage Order 7-2001 as alleged herein, including but not limited to
3 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS'
4 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime
5 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed
6 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to
7 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage
8 statements; DEFENDANTS' failure to maintain required records; DEFENDANTS' failure to
9 provide written notice of paid sick leave; DEFENDANTS' failure to provide one day's rest in
10 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes
11 an unfair and unlawful business practice under California Business & Professions Code sections
12 17200 *et seq.*

13 148. DEFENDANTS' violations of California wage and hour laws constitute a business
14 practice because DEFENDANTS' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of PLAINTIFF and CLASS
16 MEMBERS.

17 149. As a result of the violations of California law herein described, DEFENDANTS
18 unlawfully gained an unfair advantage over other businesses. PLAINTIFF and CLASS
19 MEMBERS have suffered pecuniary loss by DEFENDANTS' unlawful business acts and practices
20 alleged herein.

21 150. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
22 PLAINTIFF and CLASS MEMBERS are entitled to restitution of the wages withheld and retained
23 by DEFENDANTS during a period that commences four years prior to the filing of this complaint;
24 a permanent injunction requiring DEFENDANTS to pay all outstanding wages due to PLAINTIFF
25 and CLASS MEMBERS; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 ///

28 ///

PRAYER FOR RELIEF

Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated, respectfully prays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to PLAINTIFF and CLASS MEMBERS, as well as disgorged profits from the unfair and unlawful business practices of DEFENDANTS;
3. For meal and rest period compensation pursuant to Labor Code section 226.7 and IWC Wage Order NO. 7-2001;
4. For liquidated damages pursuant to Labor Code section 1194.2;
5. For preliminary and permanent injunctive relief enjoining DEFENDANTS from violating the relevant provisions of the Labor Code and IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For waiting time penalties pursuant to Labor Code section 203;
7. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code sections 226(e), and 853;
8. For interest on the unpaid wages at 10% per annum pursuant to Labor Code Sections 218.6, 1194, 2802, California Civil Code sections 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
9. For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194, 2802, California Civil Code section 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
10. For declaratory relief;
11. For an order requiring and certifying the thirteen Causes of Action pled in this COMPLAINT as a class action;
12. For an order appointing PLAINTIFF as class representative, and PLAINTIFF's counsel as class counsel; and

///

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 - Free Disputes
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 - Real Estate
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 - Labor/Construction/General
 - Labor
 - Landlord/Tenant
 - Litigation
 - OGB/Trusts

TESTIMONIALS

"This was the third attempt to mediate this case, and the BASF mediator was far and away the best mediator. I dare say that we would not have settled today but for his efforts."

George Yuhas, Esq.
Orrick, Herrington & Sutcliffe LLP

"We had an excellent experience and, after 8 1/2 hours of mediation, [the BASF mediator] settled a very difficult case involving claims against four clients of ours by a wealthy investor who claimed inadequate disclosure was made."

Robert Charles Friese, Esq.
Shartsis Friese LLP

"When the other side made their offer, I thought there was no way we would reach an agreement – we were too far apart, but the mediator brought us together. He saved me a lot of time and aggravation by facilitating a settlement. Thanks!"

Leslie Caplan
Global Warming Campaign Manager
Bluewater Network

"BASF staff was very helpful – stayed on the task and kept after a hard to reach party. The mediator was great!"

Mark Abelson, Esq.
Campagnoli, Abelson & Campagnoli

"The [BASF] mediator was excellent! He was effective with some strong, forceful personalities."

Denise A. Leadbetter, Esq.
Zacks, Utrecht & Leadbetter



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They are established mediators who have private mediation practices and have met our extensive experience requirements. By going through BASF you receive the services of these highly qualified mediators at a great value.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website at www.sfbar.org/mediation provides bios, photos and hourly rates of mediators. You can search by name or by area of law needed for your case. BASF staff is always available to assist you with selection or to answer questions.

HOW MUCH DOES THE SERVICE COST?

A \$295 per party administrative fee is paid to BASF at the time the Consent to Mediate form is filed. This fee covers the first hour of mediator preparation time and the first two hours of session time. Time beyond that is paid at the mediator's normal hourly rate.

HOW IS THE MEDIATOR CHOSEN?

You may request a specific mediator from our website (www.sfbar.org/mediation) and indicate your choice on the BASF Consent to Mediate form, or you may indicate on the form that you would like BASF staff to assist with the selection.

WHY SHOULD I GO THROUGH BASF? CAN'T I JUST CALL THE MEDIATOR DIRECTLY?

BASF mediators have agreed to provide three free hours as a service to BASF. If you go directly to one of our mediators, you do not qualify for the free hours unless you notify us. Once you have filed with us, you will talk directly to the mediator to ask questions and to set a convenient mediation date and time.

HOW LONG IS THE MEDIATION SESSION?

The time spent in mediation will vary depending on your dispute. BASF mediators are dedicated to reaching a settlement, whether you need a few hours or several days.

WHO CAN USE THE SERVICE?

BASF mediation can be utilized by anyone and is NOT limited to San Francisco residents or issues. Also, the service may be used before a court action is filed or at any time during a court action.

OUR CASE IS FILED IN COURT. HOW DO WE USE BASF'S MEDIATION SERVICES?

When you file the San Francisco Superior Court's Stipulation to ADR form, check the box indicating "Mediation Services of BASF." Then complete BASF's Consent to Mediate form found on our website and file it with us. (If the matter was filed in a different county, please check with that court for the appropriate process.)

WE ARE ON A DEADLINE; HOW QUICKLY CAN WE MEDIATE?

Once all parties have filed all the paperwork, BASF can normally have you in touch with the mediator within a day or two. If there is a deadline, BASF staff will give the matter top priority.

WHAT TYPES OF DISPUTES CAN I MEDIATE?

BASF mediators are trained in 30+ areas of law. If you don't see the area you need on our website or in this brochure, contact us; it is very likely we can match your need with one of our panelists.

MORE INFORMATION

Visit our website (www.sfbar.org/mediation) where you can search by name or by area of law. For personal assistance, please call 415-982-1600.

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: JAN-23-2019

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

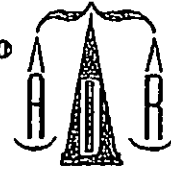
Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco

Alternative Dispute Resolution Program Information Package



The plaintiff must serve a copy of the ADR information package on each defendant along with the complaint. (CRC 3.221(c))

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to court.

WHY CHOOSE ADR?

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial." (Local Rule 4)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet) at the clerk's office located at 400 McAllister Street, Room 103;
- Indicating your ADR preference on the Case Management Statement (also attached to this packet); or
- Contacting the court's ADR office (see below) or the Bar Association of San Francisco's ADR Services at 415-782-8905 or www.sfbar.org/adr for more information.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
415-551-3869

Or, visit the court ADR website at www.sfsuperiorcourt.org

The San Francisco Superior Court offers different types of ADR processes for general civil matters; each ADR program is described in the subsections below.

1) SETTLEMENT CONFERENCES

The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute early in the litigation process.

(A) THE BAR ASSOCIATION OF SAN FRANCISCO (BASF) EARLY SETTLEMENT PROGRAM (ESP): ESP remains as one of the Court's ADR programs (see Local Rule 4.3) but parties must select the program – the Court no longer will order parties into ESP.

Operation: Panels of pre-screened attorneys (one plaintiff, one defense counsel) each with at least 10 years' trial experience provide a minimum of two hours of settlement conference time, including evaluation of strengths and weakness of a case and potential case value. On occasion, a panelist with extensive experience in both plaintiff and defense roles serves as a sole panelist. BASF handles notification to all parties, conflict checks with the panelists, and full case management. The success rate for the program is 78% and the satisfaction rate is 97%. Full procedures are at: www.sfbar.org/esp.

Cost: BASF charges an administrative fee of \$295 per party with a cap of \$590 for parties represented by the same counsel. Waivers are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see enclosed brochure.

(B) MANDATORY SETTLEMENT CONFERENCES: Parties may elect to apply to the Presiding Judge's department for a specially-set mandatory settlement conference. See Local Rule 5.0 for further instructions. Upon approval of the Presiding Judge, the court will schedule the conference and assign the case for a settlement conference.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO, in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending.

Operation: Experienced professional mediators, screened and approved, provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. The BASF website contains photographs, biographies, and videos of the mediators as well as testimonials to assist with the selection process. BASF staff handles conflict checks and full case management. Mediators work with parties to arrive at a mutually agreeable solution. The success rate for the program is 64% and the satisfaction rate is 99%.

Cost: BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the administrative fee are available to those who qualify. For more information, call Marilyn King at 415-782-8905, email adr@sfbar.org or see the enclosed brochure.

(B) JUDICIAL MEDIATION provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at anytime throughout the litigation process.

Operation: Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge for the Judicial Mediation program.

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may elect any private mediator of their choice; the selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

3) ARBITRATION

An arbitrator is neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION: When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial.

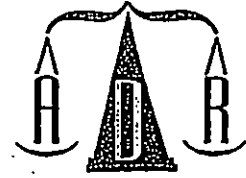
Operation: Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.2 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after the filing of a complaint. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION: Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF TO ENROLL IN THE LISTED BASF PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF.



Superior Court of California County of San Francisco



HON. TERI L. JACKSON
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos
The Honorable Angela Bradstreet
The Honorable Andrew Y.S. Cheng
The Honorable Samuel K. Feng
The Honorable Curtis E.A. Karnow
The Honorable Charlene P. Kiesselbach

The Honorable Stephen M. Murphy
The Honorable Joseph M. Quinn
The Honorable James Robertson, II
The Honorable John K. Stewart
The Honorable Richard B. Ulmer, Jr.
The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3869



Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an expedited jury trial—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at www.courts.ca.gov/rules.

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- The trial will be shorter. Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- The jury will be smaller. There will be 8 jurors instead of 12.
- Choosing the jury will be faster. The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in (7) below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—all parties must waive their rights to appeal. In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in (9).

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as "high/low agreements." You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and





Expedited Jury Trial Information Sheet

pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to voluntary expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in 1, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if both sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney before agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | FOR COURT USE ONLY CASE NUMBER: DEPARTMENT 610 |
| STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR) | |

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-screened experienced attorneys provide a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$295 per party. Waivers are available to those who qualify. BASF handles notification to all parties, conflict checks with the panelists, and full case management. www.sfbar.org/esp
- Mediation Services of BASF - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org
- Judicial Mediation - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

Plaintiff Defendant Cross-defendant

Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

CM-110

| | |
|--|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | |
| PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ | |
| CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) | CASE NUMBER: _____ |
| A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): _____ | |

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. This statement is submitted by party (name):
 - b. This statement is submitted jointly by parties (names):

2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):

3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. Description of case
 - a. Type of case in complaint cross-complaint (Describe, including causes of action):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request a jury trial a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. The trial has been set for (date):

b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. days (specify number):

b. hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. Preference

This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. ADR information package. Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel has has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party has has not reviewed the ADR information package identified in rule 3.221.

b. Referral to judicial arbitration or civil action mediation (if available).

(1) This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

CJM-110

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (check all that apply and provide the specified information):

| | The party or parties completing this form are willing to participate in the following ADR processes (check all that apply): | If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (attach a copy of the parties' ADR stipulation): |
|-------------------------------------|---|---|
| (1) Mediation | <input type="checkbox"/> | <input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input type="checkbox"/> Agreed to complete mediation by (date): <input type="checkbox"/> Mediation completed on (date): |
| (2) Settlement conference | <input type="checkbox"/> | <input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date): |
| (3) Neutral evaluation | <input type="checkbox"/> | <input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date): |
| (4) Nonbinding judicial arbitration | <input type="checkbox"/> | <input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date): |
| (5) Binding private arbitration | <input type="checkbox"/> | <input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date): |
| (6) Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date): |

CM-110

| | |
|--|--------------|
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | CASE NUMBER: |
|--|--------------|

11. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

- Bankruptcy Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status: Additional cases are described in Attachment 13a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

14. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

16. Discovery

- a. The party or parties have completed all discovery.
 - b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
|--------------|--------------------|-------------|

- c. The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

| | |
|-----------------------|--------------|
| PLAINTIFF/PETITIONER: | CASE NUMBER: |
| DEFENDANT/RESPONDENT: | |

17. Economic litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

EXHIBIT 4

1 Jennifer B. Zargarof (SBN 204382)
jzargarof@sidley.com
2 Sonia A. Vucetic (SBN 307414)
svucetic@sidley.com
3 SIDLEY AUSTIN LLP
555 West Fifth Street
4 Los Angeles, CA 90013
Telephone: +1 213 896 6058
5 Facsimile: +1 213 896 6600

6 Attorneys for Defendants
7 CVS Health Corporation; CVS Pharmacy, Inc.;
Garfield Beach CVS, LLC; and CVS Rx Services,
8 Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN FRANCISCO

11 RYAN HYAMS, an individual, on behalf of
himself, and all others similarly situated, ,

12 Plaintiff,

13 vs.

14 CVS HEALTH CORPORATION, a Rhode Island
15 Corporation; CVS PHARMACY, INC., a Rhode
Island Corporation; GARFIELD BEACH CVS,
16 LLC, a California Corporation; and CVS RX
SERVICES, INC., a New York Corporation;
17 DOES 1 through 25, inclusive, ,

18 Defendants.

Case No. CGC-18-569060

Assigned to: Hon. Teri L. Jackson
Dept. 610

**ANSWER TO FIRST AMENDED
COMPLAINT**

Complaint Filed: August 21, 2018
FAC Filed: September 7, 2018

1 Defendants CVS Health Corporation, CVS Pharmacy, Inc., Garfield Beach CVS, LLC and
2 CVS Rx Services, Inc. (collectively, "Defendants") answer the First Amended Complaint
3 ("Complaint") of Plaintiff Ryan Hyams ("Plaintiffs") and deny and aver as follows:
4

5 **GENERAL DENIAL**

6 Pursuant to the provisions of Section 431.30 of the California Code of Civil Procedure,
7 Defendants generally deny all the allegations of Plaintiff's unverified Complaint, and further deny
8 that Plaintiff has been damaged in any amount, or at all. Defendants also specifically deny that
9 they are liable to Plaintiff, or any member of the purported class asserted, for the sum or sums
10 alleged or for any other amount whatsoever.
11

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 (Failure To State a Cause of Action)

15 1. Neither the Complaint, nor any purported cause of action alleged therein,
16 states facts sufficient to constitute a cause of action upon which relief can be granted against
17 Defendant.

18 **SECOND AFFIRMATIVE DEFENSE**

19 (Statute of Limitations)

20 2. The Complaint, and each purported cause of action alleged therein, is barred
21 by applicable statutes of limitations.

22 **THIRD AFFIRMATIVE DEFENSE**

23 (Lack of Standing)

24 3. Defendants are informed and believe, and based upon such information and
25 belief aver, that the Complaint, and each purported cause of action alleged therein, is barred
26 because Plaintiffs lacks standing to assert all causes of action alleged in the Complaint.

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FOURTH AFFIRMATIVE DEFENSE

(Waiver/Release)

4. Defendants are informed and believe, and based upon such information and belief aver, that by their conduct and/or based on a written waiver or release, Plaintiffs and putative class members have waived and/or released some or all of the causes of action asserted in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Misrepresentation)

5. Defendants are informed and believe, and on that basis alleges that Plaintiffs' Complaint is barred, in whole or in part, by misrepresentations made by Plaintiffs and/or putative class members.

SIXTH AFFIRMATIVE DEFENSE

(Consent)

6. Plaintiff's causes of action are barred, in whole or in part, because of the ratification, agreement, acquiescence or consent to Defendants' alleged conduct by Plaintiff and/or putative class members.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

7. Defendants are informed and believe, and based upon such information and belief aver, that the Complaint, and each cause of action therein, is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Laches)

8. Defendants are informed and believe, and based upon such information and belief avers, that the Complaint, and each and every claim therein, is barred by the doctrine of laches, in that Plaintiff unreasonably delayed bringing the action.

///

///

1 **NINTH AFFIRMATIVE DEFENSE**

2 (Estoppel)

3 9. Defendants are informed and believe, and based upon such information and
4 belief aver, that the Complaint, and each cause of action therein, is barred for the reason that, by
5 their actions, Plaintiff and putative class members are estopped from bringing any cause of action.

6 **TENTH AFFIRMATIVE DEFENSE**

7 (Adequacy of Remedy at Law)

8 10. The Complaint's claims for equitable relief fail because adequate legal
9 remedies may be pursued.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 (Setoff, Offset, Recoupment)

12 11. Some of all of the purported causes of action in the Complaint seek damages
13 that are subject to setoff, offset, and/or recoupment.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 (No Penalties – Good Faith Dispute)

16 12. Plaintiff and putative class members cannot recover California Labor Code
17 Section 226(e) penalties because any alleged failure to pay wages or provide compliant wage
18 statements was based on a good faith dispute regarding the applicable law or facts.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 (Failure to Exhaust Administrative Remedies)

21 13. Defendants are informed and believe, and based upon such information and
22 belief aver, that the Court has no jurisdiction over the subject matter of the Complaint, or parts
23 thereof, because Plaintiff failed to adequately exhaust their administrative remedies under the
24 appropriate statutory provisions.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Claims Subject to Arbitration Agreement)

14. As to some members of the putative class, the Court lacks jurisdiction over the Complaint, and each and every purported cause of action alleged therein, because they are subject to a binding arbitration agreement with Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Specificity)

15. The Complaint’s claim for unfair competition in violation of California Business and Professions Code Section 17200, *et seq.*, is barred because it fails to plead specific facts capable of stating a claim for violation of the unfair competition act.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Loss/Unjust Enrichment)

16. Plaintiff and/or putative class members have not suffered any loss and Defendant has not been unjustly enriched as a result of any action or inaction of Defendants and its agents. Hence, Plaintiffs and/or putative class members are not entitled to any restitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. With respect to Defendants CVS Health Corporation, CVS Pharmacy, Inc., and Garfield Beach CVS, LLC, Plaintiff’s causes of action are barred, in whole or in part, because no employment relationship exists.

RESERVATION OF RIGHT TO AMEND ANSWER

Defendant hereby gives notice that it intends to rely on such other and further defenses as may become available during discovery in this action and reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, Defendant prays as follows:

1. That the Complaint be dismissed in its entirety;
2. That Plaintiff’s request for injunctive relief be denied in its entirety;
3. That Plaintiff’s requests for monetary relief be denied in its entirety;
4. That Plaintiff takes nothing by reason of his Complaint and that judgment be


1 rendered in favor of Defendants;

2 5. That Defendants be awarded its costs of suit and attorneys' fees incurred in
3 defense of this action; and

4 6. For such other and further relief as this court deems just and proper.

SIDLEY AUSTIN LLP

5
6 Date: October 10, 2018

7 By: 
8 Jennifer B. Zargarof
9 Sonia A. Vucetic
10 Attorneys for Defendants

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Los Angeles, California 90013-1010.

On October 10, 2018, I served the foregoing document described as **ANSWER TO FIRST AMENDED COMPLAINT** on all interested parties in this action as follows:

Beth Gunn
Catherine J. Coble
Gunn Coble LLP
101 S. First Street, Suite 407
Burbank, CA 91502

I served the foregoing document by U.S. Mail, as follows: I placed true copies of the document in a sealed envelope addressed to each interested party as shown above. I placed each such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP, Los Angeles, California. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 10, 2018, at Los Angeles, California.



Kristina Wilcox



Order #12386796: eFiling

Submitted: 10/10/2018 4:23 PM PT | Attorney: Jennifer Zargarof | Contact: Daniel Tamayo



Under court clerk review

10/10/2018 4:23 PM PT

Court Transaction #100050499

MESSAGE FROM ONE LEGAL: The court has received your filing. This status will be updated and you will receive an email immediately upon completion of the court clerk's review. Although court processing times vary, the court filing date for accepted filings will reflect the date this order was submitted.

MESSAGE FROM THE COURT CLERK: -

Documents

Returned (0)

Documents will be available here once they are provided by the court's system.

Your Files (1)

| Document Title | Document Type | Pages | Status |
|-----------------------------------|-------------------|-------|----------|
| Answer to First Amended Complaint | Answer (Original) | 7 | Uploaded |

Case Information

Court

San Francisco County, Superior Court of California (San Francisco-McAllister)

Number

CGC-18-569060

Title

RYAN HYAMS VS. CVS HEALTH CORPORATION, A RHODE ISLAND CORPORATION ET AL

Client Billing Code

3764323

Confirmation Receipt #21919807

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ryan Hyams, an individual

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Both Gunn, SBN 218889
Catherine Coble, SBN 223461
Gunn Coble LLP, 101 S. 1st Street, Suite 407
Burbank, CA 91502

DEFENDANTS

CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; CVS Rx Services, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) Providence County, Rhode Island

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

Attorneys (If Known)

Jennifer B. Zargarof, SBN 204382
Sonia A. Vucetic, SBN 307414
Sidley Austin LLP, 555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Sections 1332(d)(the Class Action Fairness Act); 1441(b), and 1446(b).

Brief description of cause:

Plaintiff alleges violations of the California Labor Code related to, among other things, failure to provide meal and rest breaks and pay all wages due.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Alsup; Birotte; Aenlle-Rocha DOCKET NUMBER 17-cv-05803-WHA; 16-cv-08979-AB-AGR; BC 702290

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/12/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sonia A. Vucetic

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Pharmacy Tech Files Wage and Hour Lawsuit Against CVS in California](#)
