	Case 4:18-cv-06278-HSG Document 1	Filed 10/12/18 Page 1 of 10
1	Jennifer B. Zargarof (SBN 204382)	
2	jzargarof@sidley.com Sonia A. Vucetic (SBN 307414) svucetic@sidley.com	
3		
4	555 West Fifth Street Los Angeles, CA 90013	
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6		
7	Attorneys for Defendants CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; and CVS	
8	Inc.; Garfield Beach CVS, LLC; and CVS Rx Services, Inc.	
9	UNITED STATES	DISTRICT COURT
10	NORTHER DISTRIC	CT OF CALIFORNIA
11	RYAN HYAMS, an individual, on behalf	CASE NO.
12	of himself, and all others similarly situated, ,	
13	Plaintiff,	NOTIVE OF REMOVAL
14	VS.	PURSUANT TO 28 U.S.C. § 1332, 1441 AND 1446
15	CVS HEALTH CORPORATION, a Rhode Island Corporation; CVS PHARMACY, INC., a Rhode Island Corporation; CAPEUE D DE A CH CVG	
16		State Case No.: CGC-18-569060
17	LLC, a California Corporation; and CVS RX SERVICES, INC., a New York Corporation; DOES 1 through 25,	State Complaint Filed: August 21, 2018
	Corporation; DOES 1 through 25, inclusive,	First Amended State Complaint Filed: September 7, 2018
19	Defendants.	State Action Served: September 12, 2018
20		State Metion Served. September 12, 2018
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ACTIVE 236352619v.1	Notice of Removal Pursuant to 2	28 U.S.C. 88 1332 1441 AND 1446
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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 <i>Ryan Hyams, et al. v.</i>
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. <i>Id.</i> at $\P\P$ 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
52619v. 1	2
	Notice of Removal Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446

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

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

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

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

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TIMELINESS OF REMOVAL

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

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REMOVAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

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

Minimal Diversity

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

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

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

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The Proposed Class Contains At Least 100 Members

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

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The Amount In Controversy Exceeds \$5 Million

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

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

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

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Meal Breaks; (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 2 Wages Due at Termination/Waiting Time Penalties; (6) Failure to Pay All Wages; 3 (7) Failure to Reimburse for Employment Related Expenses; (8) Failure to Maintain 4 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 Section 850 and 851; (13) Unfair and Unlawful Business Practices; and (14) Penalties under the California Labor Code Private Attorneys General Act, as Representative Action. Plaintiff pursues these claims on behalf of the putative class/putative collective.

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

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

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

a. <u>Waiting Time Penalties, Cause of Action 5.</u>

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

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

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

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

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

b. Total Amount In Controversy

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

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

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

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

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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

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

DEFENSES

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

PLEADINGS

28. On August 21, 2018, Plaintiff filed a Complaint captioned *Ryan Hyams v. CVS Health Corporation, et al.*, Case No. CGC-18-569060, in the Superior Court of the State of California, County of San Francisco. Vucetic Decl. at \P 2. On September 7, 2018, Plaintiff filed a First Amended Complaint ("FAC") to add a Private Attorneys General Act of 2004 ("PAGA") claim. *Id.* at \P 2. 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. On October 10, 2018, Defendant filed and served an Answer to the First Amended Complaint. *Id.* at \P 4.

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

NOTICE TO PLAINTIFF AND THE STATE COURT

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

	Case 4:18-cv-06278-HSG	Document 1	Filed 10/12/18	Page 10 of 10	
1	Accordingly, Defend	dants respectfu	lly request that	the State Court A	Action be
2	removed in its entirety to the	his Court.			-
3	Date: October 12, 2018				
4			SIDLEY AU	STIN LLP	
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6			By:	2	
7			Jennifer B	. Zargarof	
8			Sonia A. V Attorneys	/ucetic for Defendants	
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	NOTICE OF REMOVA	L PURSUANT TO	28 U.S.C. §§ 1332,	, 1441 and 1446	

	Case 4:18-cv-06278-HSG Document 1	-1 Filed 10/12/18 Page 1 of 2
1 2 3 4 5 6 7 8 9	Douglas R. Hart, SBN 115673 dhart@sidley.com Jennifer B. Zargarof, SBN 204382 jzargarof@sidley.com Sonia A. Vucetic, SBN 307414 svucetic@sidley.com SIDLEY AUSTIN LLP 555 West Fifth Street, Suite 4000 Los Angeles, California 90013 Telephone: (213) 896-6000 Facsimile: (213) 896-6600 Attorneys for Defendants CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; and CVS Rx Services, Inc.	
10	UNITED STATES	DISTRICT COURT
11		ICT OF CALIFORNIA
12	RYAN HYAMS, an individual, on) Case No.
13	behalf of himself, and all others similarly situated,	
14	Plaintiff,) DECLARATION OF HOWARD) KOBEY IN SUPPORT OF
15	vs.) DEFENDANTS' NOTICE OF) REMOVAL
16 17	CVS HEALTH CORPORATION, a	
18	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	
19	RX SERVICES, INC., a New York	
20	inclusive,	
21	Defendants.	
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	Ducu an amount of	
	DECLARATION OF	HOWARD KOBEY

DECLARATION OF HOWARD KOBEY

I, Howard Kobey, hereby declare as follows:

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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.

	Case 4:18-cv-06278-HSG Document 1-	-2 Filed 10/12/18 Page 1 of 3
1 2 3 4 5 6 7 8 9	Douglas R. Hart, SBN 115673 dhart@sidley.com Jennifer B. Zargarof, SBN 204382 jzargarof@sidley.com Sonia A. Vucetic, SBN 307414 svucetic@sidley.com SIDLEY AUSTIN LLP 555 West Fifth Street, Suite 4000 Los Angeles, California 90013 Telephone: (213) 896-6000 Facsimile: (213) 896-6600 Attorneys for Defendants CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; and CVS Rx Services, Inc.	
10	UNITED STATES	DISTRICT COURT
11 12	NORTHERN DISTR	ICT OF CALIFORNIA
12	RYAN HYAMS, an individual, on behalf of himself, and all others) Case No.
14	similarly situated, Plaintiff,)) DECLARATION OF MELANIE K.
15	VS.) LUKER IN SUPPORT OF) DEFENDANTS' NOTICE OF) REMOVAL
16 17 18 19 20	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,	 State Action Filed: August 21, 2018 Amended Action Filed: September 7, 2018 State Action Served: September 12, 2018
21	Defendants.	
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27 28		
20	DECLARATION OF M	1elanie K. Luker

DECLARATION OF MELANIE K. LUKER

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-today 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.

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

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

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The administrative functions crucial to CVS Rx Services, Inc.'s day-to-8. 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 Rx Services, Inc.'s nationwide operations.

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

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

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

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

I declare under penalty of perjury, under the laws of the United States of 13. 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.

	Case 4:18-cv-06278-HSG Document 1	-3 Filed 10/12/18 Page 1 of 3
1 2 3 4 5 6 7 8 9	dhart@sidley.com Jennifer B. Zargarof, SBN 204382 jzargarof@sidley.com	
10	UNITED STATES	DISTRICT COURT
11	NORTHERN DISTR	ICT OF CALIFORNIA
12	RYAN HYAMS, an individual, on behalf of himself, and all others) Case No.
13	similarly situated,	
14	Plaintiff,) DECLARATION OF SONIA A.) VUCETIC IN SUPPORT OF) DEFENDANTS' NOTICE OF
15	VS.) REMOVAL
16	CVS HEALTH CORPORATION, a Rhode Island Corporation; CVS) State Case No.: CGC-18-569060
17	Corporation: GARFIELD REACH CVS	State Complaint Filed: August 21, 2018
18	RX SERVICES, INC., a New York) Am. Complaint Filed: September 7,
19 20	Corporation; DOES 1 through 25, inclusive,	2018
20	Defendants.	State Action Served: September 12, 2018
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	DECLARATION OF S	ONIA A. VUCETIC

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.

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7. According to CVS's records, there are over 5,800 individuals who fall within Mr. Hyams' class definition. The vast majority of these employees have last known addresses located within the state of California.

8. Of the 5,800 individuals who fall within Plaintiff's class definition, these individuals, over 2,200 are former employees. According to CVS's records, the average rate of pay for the former employees who fall within Plaintiff's class definition is \$65 per hour.

9. According to CVS's records for Plaintiff, Plaintiff was a Pharmacist as of December 16, 2015, and remained in that position through his termination, which was effective August 24, 2017. CVS's records show Plaintiff's last known address as 1160 Mission Street, Unit 1810, San Francisco, California 94103.

10. According to CVS's payroll records, at the time of Plaintiff's termination, Plaintiff's hourly rate of pay was \$76.

11. 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. Executed on the 12th day of October in Los Angeles, California.

Sonia A. Vucetic

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EXHIBIT 1



Service of Process Transmittal 09/12/2018 CT Log Number 534043770

TO: Serviceof 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:

RYAN HYAMS, ETC., ET AL., PLTFS. vs. CVS HEALTH CORPORATION, ETC., ET AL., DFTS.
Summons, Complaint, Exhibit(s)
San Francisco County - Superior Court - San Francisco, CA Case # CGC18569060
Employee Litigation - Wrongful Termination
C T Corporation System, Los Angeles, CA
By Process Server on 09/12/2018 at 14:53
California
Within 30 calendar days after this summons
Beth Gunn Gunn Coble LLP 101 S. 1st Street Suite 407 Burbank, CA 91502 818-573-6392
CT has retained the current log, Retain Date: $09/12/2018$, Expected Purge Date: $09/17/2018$
Image SOP
Email Notification, Serviceof Process Service_of_Process@cvs.com
C T Corporation System 818 West Seventh Street Los Angeles, CA 90017 213-337-4615

Page 1 of 1 / AB

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

1)	•		SUM-100
a.121,50	SUMMONS on F CITACION JUDICIAL,	First Amended Compla	int for court us (SOLO PARA USO D	EONLY
NOTICE TO DEFENDANT (AVISO AL DEMANDADO Island Corporation, GARFIE CVS RX SERVICES, INC): Corporation, CVS PHARM LD BEACH CVS, LLC, a Ca	ACY, INC., a Rhode llifornia Corporation, an	đ	
YOU ARE BEING SUED B (LO ESTÁ DEMANDANDO others similarly situated				
	•		Inless you respond within 30 days. F	
served on the plaintiff. A letter of case. There may be a court form Online Self-Help Center (www.c the court clerk for a fee waiver for may be taken without further wa There are other legal requirer referral service. If you cannot aff these nonprofit groups at the Ca (www.courtinfo.ca.gov/selfnelp), costs on any settlement or arbitr ;AVISO! Lo han demandado. Si continuación. Tiene 30 DÍAS DE CALENDA corte y hacer que se entregue un en formato legal correcto si dese Puede encontrar estos formulari biblioteca de layes de su condad que le dé un formulario de exemi podrá quitar su sueldo, dinero y Hay otros requisitos legales. E remisión a abogados. Si no pueu programa de servicios legales si (www.lawhelpcalifornia.org). en colegio de abogados locales. Av cualquier recuperación de \$10,0	r phone call will not protect you. Y a that you can use for your respon ourinfo.ca.gov/selfhelp), your cou- brm. If you do not file your respon ining from the court. ments. You may want to call an a ford an attorney, you may be eligi lifornia Legal Services Web site (or by contacting your local court atton award of \$10,000 or more in i no responde dentro de 30 dlas. I RIO después de que le entreguer na copia al demandante. Una car ea que procesen su caso en la co os de la corte y más información do o en la corte que le quede más ción de pago de cuotas. Si no pre bienes sin más advertencia. 's recomendable que llame a un a de pagar a un abogado, es posibl n fines de lucro. Puede encontrar el Centro de Ayuda da las Cortes VISO: Por ley, la corte tiene derec	Your written response must lise. You can find these courd ise. You can find these courd ise on time, you may lose the tormey right away. If you do ble for free legal services fro www.lawhelpcalifornia.org), or county bar association. Non a civil case. The courd's lie la corte puede decidir en su in esta citación y papeles leg ta o una llamada telefónica rte. Es posible que haya un en el Centro de Ayuda de la secta. Si no puede pagar l senta su respuesta a tiemp abogado inmediatamente. S e que cumpla con los requis restos grupos sin fines de to de California, (vivw.sucorte ho a reclamar las cuotas y l inte un acuerdo o una conco	b file a written response at this court be in proper legal form if you want the thouse nearest you. If you cannot par- ie case by default, and your wages, ie case by default, and your wages, o not know an attorney, you may war of a nonprofit legal services progra- the California Courts Online Self-Hi IOTE: The court has a statutory lien in must be paid before the court will o contra sin escuchar su versión. Les pales para presentar una respuesta no lo protegen. Su respuesta por es formulario que usted pueda usar pa es Cortes de California (vww.sucorte a cuota de presentación, pida al sec o, puede perder el caso por incumpi i no conoce a un abogado, puede lla sitos para obtener servicios legales (ucro en el sitio web de California Leg e.ca.gov) o poniéndose en contacto los costos exentos por imponer un g esión de arbitraje en un caso de dem	le court to hear your California Courts y the filing fee, ask money, and property ht to call an attorney m. You can locate elp Center for walved fees and dismiss the case. A la información a por escrito en esta crito tiene que estar tra su respuesta. Aca.gov), en la retario de la corte imiento y la corte le amar a un servicio de gratuitos de un gal Services, con la corte o el ravamen sobre
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Superior Court of California, (400 McAllister Street				•
San Francisco, California 941 The name, address, and telep	hone number of plaintiffs atto úmero de teléfono del abogad	rney, or plaintiff without a lo del demandante, o del	an attorney, is: Catherine J. Cobl I demandante que no tiene abog (818	le ado, es):) 900-0695
DATE: SEP 1 0 2011 (Fecha)	·	Enk Clerk, by (Secretario)	BOWMAN LIU	, Deputy (Adjunto)
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Form Adopted for Mandatory Use
Judicial Council of California
SUM 100 [Rev. July 1, 2009]

CCP 416.40 (association or partnership)

under: CCP 416.10 (corporation) CCP 416.20 (defunct corporation)

4. by personal delivery on (date):

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CCP 416.60 (minor) CCP 416.70 (conservatee)

3. (specify):

WA

CCP 416.90 (authorized person)

-	Case 4:18-cv-06278-HSG Document 1-4	Filed 10/12/18 Page 4 of 298
	•	
1 2 3 4 5	BETH GUNN, CA Bar No. 218889 beth@gunncoble.com CATHERINE J. COBLE, CA Bar No. 223461 cathy@gunncoble.com GUNN COBLE LLP 101 S. 1st Street, Suite 407 Burbank, CA 91502 Telephone: 818.900.0695 Facsimile: 818.900.0723	ELECTRONICALLY FILED Superior Court of California, County of San Francisco 09/07/2018 Clerk of the Court BY:BOWMAN LIU Doputy Clork
6 7	Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly situat	ed
8	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
9	FOR THE COUNTY (OF SAN FRANCISCO
10		
11	RYAN HYAMS, an individual, on behalf of	Case No. <u>CGC-18-569060</u>
1 [:] 2	himself, and all others similarly situated,	CLASS ACTION FIRST AMENDED COMPLAINT
13	Plaintiff,	
14	vs.	 Failure To Provide Required Meal Periods Failure To Authorize And Permit Required
15 16 17	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,	 Rest Breaks; Failure To Pay Overtime; Failure To Pay Minimum Wages; Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties;
18	Defendants.	 Failure To Timely Pay All Wages; Failure To Reimburse For Employment
19	Derendans.	Related Expenses; 8. Failure To Maintain Required Records;
· 20		9. Failure To Furnish Accurate Itemized
21		Wage Statements; 10. Failure To Provide Written Notice Of Paid
2,2		Sick Leave 11. Failure To Provide One Day's Rest In
23	· · ·	Seven 12. Failure to Comply With California Labor
24	.	Code Sections 850 and 851 13. Unfair And Unlawful Business Practices;
25		14. Penalties Under The California Labor
26		Code Private Attorneys General Act, As Representative Action
27		DEMAND FOR JURY TRIAL.
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	}	1 TION FIRST AMENDED COMPLAINT

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

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

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

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PLAINTIFE

PLAINTIFF is a former non-exempt employee who worked as a pharmacist for 5. 13 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS, 14 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California. 15 As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately 16 6. dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This 17 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), 18 checking for drug interactions and precautions, contacting physicians where appropriate, advising 19 patients regarding the use of their prescriptions pursuant to California law, entering information in 20 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS' .21 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the · 22 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A 23 pharmacist was required to be on the premises during all hours of operation, to comply with 24 25 operational policies and procedures.

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

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

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

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

10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
 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.

13. For a portion of his employment, in violation of Labor Code Section 246(i),
DEFENDANTS failed to provide PLAINTIFF, 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. PLAINTIFF did not receive all of the sick time to which he was entitled.

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

take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
 pharmacy questions. PLAINTIFF 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. PLAINTIFF
 was not paid any penalties for these interrupted meal and/or rest breaks.

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:

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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	с.	"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 5
	C	LASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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

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

DEFENDANTS

DEFENDANTS operate the largest retail pharmacy chain in the United States, with 18. 8 hundreds of physical locations in California, including standalone stores and locations within 9 Target branded stores. As part of their operations, DEFENDANTS employ pharmacists to, among 10 other things, dispense medications, counsel patients on the use of prescription and over-the-counter 11 medications, and advise physicians about medication therapy. In many locations DEFENDANTS 12 also employ pharmacy technicians to assist with the dispensation of medication to its customers, 13 though there are CVS locations where only a pharmacist is employed to handle all pharmacy 14 operations. 1.5

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,

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

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

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

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

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

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

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

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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1DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby2creating an employment relationship with PLAINTIFF. See Castaneda v. Ensign Group, Inc. (2014)3229 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.

25. All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct 8 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS 9 were responsible for the events and damages alleged herein, including on the following bases: (a) 10 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the -11 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or 12 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course 13 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's .14 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among 15 those DEFENDANTS such that any individuality and separateness between or among these 16 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS 17 exercised domination and control over one another to such an extent that any individuality or 18 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence 19 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate 20 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were 2.122 taken by employees, supervisors, executives, officers, and directors during employment with all DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized, 23 ratified, and approved of by all other DEFENDANTS. 24

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 || ///

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1	CLASS ACTION ALLEGATIONS
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	\hat{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
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

procedures applied on a class-wide basis.

31. Upon information and belief, DEFENDANTS maintain a single, centralized Human
Resources department, which is responsible for the hiring of new employees, collecting and
processing all new hire paperwork, and communicating and implementing DEFENDANTS'
company-wide policies and practices, including timekeeping policies, meal and rest break policies,
sick time policies, vacation time policies, and payroll policies and practices applicable to their
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 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal 13 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, uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were 16 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate 17 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30) 18 19 minute meal period.

34.1 PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 20 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to 21 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 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest 24 25periods 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.

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

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

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

DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but
 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within
 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.

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

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

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

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

Upon information and belief, DEFENDANTS maintain a centralized Payroll 42. department at their company headquarters, which processes payroll for all employees working for 8 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS 9 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage 10 statements to all employees in California, irrespective of their work location. PLAINTIFF is 11 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that 12 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage 13 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did 14 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements. 15 PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 16 43: knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written 17 notice of paid sick leave or paid time off available. In violation of the Labor Code, 18

DEFENDANTS did not provide to PLAINTIFF and CLASS MEMBERS written notice of paid
sick leave or paid time off available.

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

PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were not to 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, and that DEFENDANTS should not have required PLAINTIFF and

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

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.

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

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

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

C. <u>Adequacy</u>: PLAINTIFF is qualified to, and will, fairly and adequately protect the interest of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. PLAINTIFF acknowledges that he has an obligation to make known to the Court any relationship, conflicts, or differences with any class member. PLAINTIFF's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. PLAINTIFF has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will 13

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

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

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

FIRST CAUSE OF ACTION

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Failure To Provide Required Uninterrupted Meal Periods

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

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

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived

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

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

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

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

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

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

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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)

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.

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.

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 72001, 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

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

67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12), *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.

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

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

1971.DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order20No. 7-2001, codified at Cal. Code Regs. tit. 8 § 11050.

2172.PLAINTIFF and CLASS MEMBERS have been damaged in an amount according22to proof at trial, and seek all wages carned and due, penalties, interest, expenses, and costs of suit.

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(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.

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74. At all relevant times herein, Labor Code section 510 has mandated 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).

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75. IWC Wage Order 7-2001 further provides that employees "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), codified at Cal. Code 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 ¹/₂) 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 double13 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.

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

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

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

81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
compensation, such as shift differential pay and other compensation, as required by the Labor
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 all	egation set forth above.	
27	. 85.	At all relevant times herein, employers operating under California law must pay at	
28	least minimu	m wage to their employees for all hours worked. IWC Order No. 7-2001(4), codified 20	
•		CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT	

at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
as interest. Cal. Lab. Code §1194.2. 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. Cal. Lab. Code § 1197.1.

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

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

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 88.
 DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,

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 1197.1, and 1198 and IWC Order No. 7-2001(4), codified at Cal. Code Regs. tit. 8 § 11050.

89. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees
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 21 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

and every allegation set forth above.

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

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

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

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

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

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

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

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

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

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

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At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and 101. 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage 24 25 Order is the minimum wage to be paid to employees, and the payment of a wage less than the minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is 26 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,

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

102. At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages, 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.

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 107.
 DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,

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 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.

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SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

5 109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 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).

14 At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE 111. 15 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 16 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange 17 text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF 18 or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed 19 PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred 20 21 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.

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

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|| fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each 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
records including, but not limited to, when the employee begins and ends each work period and
meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
§1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

At all relevant times herein, Labor Code section 226 provides that an employer is to 21 117. maintain accurate records, including, but not limited to: total daily hours worked by each 22 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 25DEFENDANTS' 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

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

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

NINTH CAUSE OF ACTION

Failure To Furnish Accurate Itemized Wage Statements (Cal. Lab. Code section 226(a), 226(e), 226.3, Cal. Code Regs. tit. 8 § 11050)

(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.

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

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

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

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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.

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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
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." Cal. Lab. Code § 246(i).

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

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 28
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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1 and every allegation set forth above.

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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.

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.

TWELFTH CAUSE OF ACTION 20Failure To Comply with Labor Code Sections 850 and 851 21 (Cal. Lab. Code sections 850 and 851) 22 (Against ALL DEFENDANTS and DOES 1 to 25) 23 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 24 137. 25 and every allegation set forth above. At all times herein, Labor Code section 850 has provided, in pertinent part, that 26 138. '[n]o person employed to sell at retail drugs and medicines or to compound physicians' 27 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for 28 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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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.

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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.

THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

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

(Against ALL DEFENDANTS and DOES 1 to 25)

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.

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

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

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

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

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

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FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5)

(Against ALL DEFENDANTS and DOES 1 to 25)

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, 8531174, 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, PLAINITFF has complied with all of the requirements set forth in Labor
27 Code Section 2699.3 to commence a representative action under PAGA.

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1	PRAYER FOR RELIEF		
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	2 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		
28	/// 33		
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT		

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1	1 13. For such further relief that the Court may deem just and proper.				
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3	DATED: September 7, 2018 GU	JNN COBLE LLP			
4.					
. 5		Pollen _			
6	Ву	Been Guran			
7		Catherine J. Coble			
8	on on	torneys for Plaintiff RYAN HYAMS, behalf of himself, and all others similarly nated			
10					
11	DEMAND FOR J	URY TRIAL			
12	12 PLAINTIFF, on behalf of himself and all others similarly situated, hereby demand				
. 15	trial with respect to all issues triable of right by jury.				
. 15					
16		JNN COBLE LLP			
17		and An			
18	Ву				
19		Beth Gunn Cathy Coble			
20		torneys for Plaintiff RYAN HYAMS,			
21	on sit	behalf of himself, and all others similarly uated			
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	CLASS AND REPRESENTATIVE ACTI	ON FIRST AMENDED COMPLAINT			
		· · · · ·			

Exhibit A

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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. <u>Facts</u>

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

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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. <u>Labor Code Violations</u>

1. <u>CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours</u> 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. <u>CVS Violated Labor Code Sections 246(i) and 246.5.</u>

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. Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 43 of 298

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

4. <u>CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing</u> 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 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.

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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. <u>Failure to Provide Accurate Itemized Wage Statements in Violation of California</u> <u>Labor Code Section 226 (a).</u>

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. <u>CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs</u> 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.

Page | 7

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

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 46 of 298

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 Page | 8

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 47 of 298

		CM-010		
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar)		ENDORSED USE ONLY		
Catherine J. Coble	SBN: 223461	FILED		
GUNN COBLE LLP		San Francisco County Superior Court		
101 S. 1st Street, Suite 407, BURBANK, CA				
TELEPHONE NO.: (818) 900-0695	FAX NO.: (818) 900-0723	AUG 2 1 2018		
ATTORNEY FOR Mamol: Ryan Hyams on behalf of	nimself and others similarly situated			
UPERIOR COURT OF CALIFORNIA, COUNTY OF SAT	FRANCISCO	CLERK OF THE COURT		
STREET ADDRESS: 400 McAllister Street		BY: ROSSALY DE LA VEGA		
MALING ADDRESS: 400 MCAllister Street	· ·			
CITY AND ZIP CODE: San Francisco, 94102	,	Deputy Clerk		
BRANCH NAME: Civic Center Courthouse				
CASE NAME: Hyams v. CVS HEALTH COR	PORTION, CLAS.			
		CASE NUMBER:		
CIVIL CASE COVER SHEET	Complex Case Designation	<u>CGC-18-569060</u>		
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. Check one box below for the case type that		· · · ·		
Auto Tort	Contract	Provisionally Complex Civil Litigation		
Auto (22)	Breach of contract/warranty (06)	(Cal. Rules of Court, rules \$400-3.403)		
Uninsured material (48)	Rule 3.740 collections (09)	Antitrust/Trade regulation (03)		
Other PI/PD/WD (Personal injury/Property	Other collections (09)	Construction defect (10)		
Damage/Wrongtul Death) Tort	trisurance coverage (16)	Mass tori (40)		
Asbestos (04)	Other contract (37)	Securities flügation (28)		
Product liability (24)	Real Property	Environmental/Toxic tort (30)		
Medical matpractice (45)	Emineril domain/Inverse	Insurance coverage claims arising from the above fisted provisionally complex case		
Other PVPD/WD (23)	condemnation (14)	above listed provisionally complex case lypes (41)		
Non-PUPD/WD (Other) Tort	Wrongful eviction (33)			
Business tort/unfair business practice (0	7) Other real property (26)	Enforcement of Judgment		
Civil rights (08)	Uninertit Detainer	Entorcement of judgment (20)		
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Intellectual property (19)	Orugs (38)	Other comptaint (not specified above) (42)		
Professional negligence (25)	Judicial Review	Miscellaneous Civil Petition		
Other non-PI/PO/WD tort (35)	Asset forteiture (05)	Partnership and corporate governance (21)		
Employment	Petition re: arbitration award (11)	Other petition (not specified above) (43)		
Wrongful termination (38)	Writ of mandate (02)			
X Other employment (15)	Other judicial review (39)	· · · · · · · · · · · · · · · · · · ·		
2 This case X is is not con	nplex under rule 3.400 of the California	Rules of Court. If the case is complex, mark the		
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a. Large number of separately rep	resented parties d. X Large rumi			
b. Extensive motion practice raisin	a difficult ar novel e. 🔄 Coordinatio	n with related actions pending in one or more cour		
issues that will be time-consumi	ng to resolve in other cou	intles, states, or countries, or in a federal court		
c. X Substantial amount of documen	tary evidence f. X Substantia	postjudgment judicial supervision		
		r; declaratory or injunctive relief c X punitive		
3. Remedies sought (check all that apply):		, declaratory or injunctive resor		
4. Number of causes of action (specify): 13		•		
5. This case X is L is not a c	lass action suit.			
6. If there are any known related cases, fib	and serve a notice of related case. (Yo	u may use torm CM-015.)		
Date: August 21, 2018		$\gamma \wedge \gamma$		
Catherine J. Coble		1.4		
(TYPE OR PRINT NAVE)		BIGNATURE OF PARTY ON ATTORNEY FOR PARTY)		
	NOTICE	find target small datas cases or cases filed		
 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 				
• If this case is complex under rule 3.400 et seq. of the California Hules of Court, you must serve a copy of this cover sheet on an				
other parties to the action or proceeding	3.	sheet will be used for statistical humases only		
Unless this is a collections case under	rula 3.740 or a complex case, this cover	sheet will be used for statistical purposes only.		
Form Adapted for Mandatory Uso	CIVIL CASE COVER SHEET	Cal. Rutes of Costs allies 2.30, 3.220, 3.400-3.400, 3.74 Col. Standards of Autocial Administration, etcl. 3.		
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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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 complete 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

Breach of Contract/Warranty (06)

Auto Tort Auto (22)-Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tori Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wronoful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice-Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vancalism) Intentional Infliction of **Emotional Distress** Negligent Infliction of **Emotional Distress** Other PI/PD/WD Non-PI/PD/WD (Other) Tort **Business Tort/Unfair Business** Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Detamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)

CM-010 (Rev. July 1, 2007)

Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach-Seller Plaintill (not fraud or negligence) Negligent Breach of Contract/ Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case-Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud **Other Contract Dispute Real Property** Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure **Quiet Title** Other Real Property (not eminent domain, landlord/tenant, or (oreclosure) **Unlawful Detainer** Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) **Judicial Review** Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mancate (02) Writ-Administrative Mandamus Writ-Mandamus on Limited Court Case Malter Writ--Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal-Labor **Commissioner** Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) **Enforcement of Judgment** Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (nondomestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case **Miscellaneous Civil Complaint RICO (27)** Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (nonharassment) Mechanics Lien Other Commercial Complaint Case (non-tont/non-complex) Other Civil Complaint (non-tort/non-complex) **Miscellaneous Civil Petition** Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition

CIVIL CASE COVER SHEET

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 49 of 298 BETH GUNN, CA Bar No. 218889 beth@gunncoble.com CATHERINE J. COBLE, CA Bar No. 223461 2 ENDORSED cathy@gunncoble.com FILED Sen Francisco County Superior Court GUNN COBLE LLP 3 101 S. 1st Street, Suite 407 Burbank, CA 91502 4 AUG 2 1 2018 818.900.0695 Telephone: 818.900.0723 Facsimile: CLERK OF THE COURT 5 ROSSALY DE LA VEGA Attorneys for Plaintiff RYAN HYAMS, 6 on behalf of himself, and all others similarly situated Denuty Clerk ŵ: .7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 FOR THE COUNTY OF SAN FRANCISCO 9 CGC-18-569060 10 Case No. RYAN HYAMS, an individual, on behalf of 11 himself, and all others similarly situated, CLASS ACTION COMPLAINT 12 Plaintiff. 1. Failure To Provide Required Meal Periods; 2. Failure To Authorize And Permit Required 13 vs. **Rest Breaks:** 14 3. Failure To Pay Overtime; CVS HEALTH CORPORATION, a Rhode 4. Failure To Pay Minimum Wages; Island Corporation, CVS PHARMACY, INC., a 15 5. Failure To Pay Timely Wages Due At Rhode Island Corporation, GARFIELD BEACH CVS, LLC, a California Corporation, and CVS Termination/Waiting Time Benalties; 16 RX SERVICES, INC., a New York Corporation, 6. Failure To Timely Pay All Wages; 17 DOES 1 through 25, inclusive, 7. Failure To Reimburse For Employment Related Expenses; 18 Defendants. 8. Failure To Maintain Required Records; 9. Failure To Furnish Accurate Itemized 19 Wage Statements: 2010. Failure To Provide Written Notice Of Paid Sick Leave 21 11. Failure To Provide One Day's Rest In Seven 22 12. Failure to Comply With California Labor Code Sections 850 and 851 23 13. Unfair And Unlawful Business Practices; 24 25 DEMAND FOR JURY TRIAL. 26 27 28 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

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

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

PLAINTIFF

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PLAINTIFF is a former non-exempt employee who worked as a pharmacist for 5. 13 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS, 14 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California. 15 As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately 16 6. dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This 17 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), 18 checking for drug interactions and precautions, contacting physicians where appropriate, advising 19 patients regarding the use of their prescriptions pursuant to California law, entering information in 20 DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS' 21 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the 22 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A 23 pharmacist was required to be on the premises during all hours of operation, to comply with 24 operational policies and procedures. 25

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

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

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

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

10. DEFENDANTS relied on PLAINTIFF, a loyal employee, to fill in at other
 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
 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.

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

13. For a portion of his employment, in violation of Labor Code Section 246(i),
DEFENDANTS failed to provide PLAINTIFF, 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. PLAINTIFF did not receive all of the sick time to which he was entitled.

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

take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
 pharmacy questions. PLAINTIFF 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. PLAINTIFF
 was not paid any penalties for these interrupted meal and/or rest breaks.

THE CLASS

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

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

 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD.

b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who were employed to sell at retail drugs and medicines or to compound physicians' prescriptions.

 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD.

d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who used personal cell phones for work-related purposes without adequate reimbursement.

e. "VACATION PAY SUBCLASS," which is defined as all current and former

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

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

DEFENDANTS

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

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

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

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

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

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

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

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

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

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

DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
 creating an employment relationship with PLAINTIFF. See Castaneda v. Ensign Group, Inc. (2014)
 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.

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

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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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CLASS ACTION ALLEGATIONS

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

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California during the last four (4) years.

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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:

 Routinely working through meal and/or rest breaks without proper compensation for the same, including the payment of penalties for interrupted meal and/or rest breaks;

 Routinely working off-the-clock when answering work-related text messages and/or when forced by management to continue to work while clocked out, without receiving wages, premium pay, or minimum wages for the off-the-clock time worked;

 No compensation for unpaid wages and/or premium pay at the time of termination;

d. Use of personal cell phones without adequate reimbursement;

e. Receipt of inaccurate wage statements;

f. Lack of receipt of adequate written notice of paid sick leave;

g. Routinely working without receiving one day's rest in seven; and

h. Routinely working in excess of the prescribed time limitations set forth in Labor 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.

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were not to 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, and that DEFENDANTS should not have required PLAINTIFF and
CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more

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

SATISFACTION OF CLASS ACTION CRITERIA

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

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

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

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

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

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

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1D.Superiority: The nature of this action makes the use of class action2adjudication superior to other methods. A class action will achieve economies of time, effort, and3expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the4same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

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Failure To Provide Required Uninterrupted Meal Periods

(Cal. Lab. Code sections 226.7, 512(a), and 1198; Cal. Code Regs. tit. 8 § 11050) (Against ALL DEFENDANTS and DOES 1 to 25)

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

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived
by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
period of not less than thirty (30) minutes, the employee is to be completely free of the employer's

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

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

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.

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

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

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

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

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

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

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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
8 Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by
9 DEFENDANTS.

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).

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. 1WC Wage Order 722 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

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

67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12), *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.

69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
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.

2172.PLAINTIFF and CLASS MEMBERS have been damaged in an amount according22to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(Against ALL DEFENDANTS and DOES 1 to 25)

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

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74. At all relevant times herein, Labor Code section 510 has mandated 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).

75. IWC Wage Order 7-2001 further provides that employees "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 $(1 \frac{1}{2})$ 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), *codified* at Cal. Code Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

76. At all relevant times herein, DEFENDANTS were required to compensate
PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
hours per week, and for the first eight (8) hours on the seventh consecutive workday, with doubletime for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
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.

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

1duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and2CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

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

81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
 compensation, such as shift differential pay and other compensation, as required by the Labor
 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 20	
		CLASS AND REPRESENTATIVE ACTION COMPLAINT

at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an 2 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well 3 as interest. Cal. Lab. Code §1194.2. 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. Cal. Lab. Code § 1197.1. 6

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

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

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

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

FIFTH CAUSE OF ACTION 24 Failure To Pay Timely Wages Due At Termination/Waiting Time Penaltics 25 (Cal. Lab. Code sections 201, 202, 203) 26 (Against ALL DEFENDANTS and DOES 1 to 25) 27 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 28 90. CLASS AND REPRESENTATIVE ACTION COMPLAINT

and every allegation set forth above.

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

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

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

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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).

97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
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)

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

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

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

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At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and 101. 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage 24 Order is the minimum wage to be paid to employees, and the payment of a wage less than the 25 minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is 2627 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,

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

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

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

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

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

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

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

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

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• *	
1	SEVENTH CAUSE OF ACTION
2	Failure To Reimburse For Employment Related Expenses
3	(Cal. Lab. Code section 2802)
4	(Against ALL DEFENDANTS and DOES 1 to 25)
5	109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6	and every allegation set forth above.
7	110. At all relevant times herein, Labor Code section 2802 has required an employer to
8	indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct
9	consequence of the discharge of his or her duties" Cal. Lab. Code § 2802(a). This includes
10	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
12	for purposes of section 2802." Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137,
13	1144 (2014).
14	111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE
15	SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by
16	DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the
17	BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange
18	text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF
. 19	or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed
20	PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred
21	in using their personal cell phones for DEFENDANTS' business.
22	112. At all relevant times, DEFENDANTS have intentionally and willfully failed to
23	reimburse PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for necessary business-related
24	expenses and costs. DEFENDANTS' company-wide practice of requiring PLAINTIFF and the
25	BUSINESS EXPENSE SUBCLASS to use their own personal cellular phones for work violates
. 26	Labor Code section 2802.
27	113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an
28	amount according to proof at trial, and seck all wages earned and due, penalties, interest, attorneys'
	CLASS AND REPRESENTATIVE ACTION COMPLAINT

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fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each 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).

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

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

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

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

NINTH CAUSE OF ACTION

Failure To Furnish Accurate Itemized Wage Statements

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

(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
and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
without limitation, the failure to accurately list the total daily hours worked by each employee, total
regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
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.

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

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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.

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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
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." Cal. Lab. Code § 246(i).

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

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.

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 28
	CLASS AND REPRESENTATIVE ACTION COMPLAINT

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and every allegation set forth above.

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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
MEMBERS the legally-mandated rest days as required by California law. 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,
14 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
MEMBERS.

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.

Failure To Comply with Labor Code Sections 850 and 851	
(Cal. Lab. Code sections 850 and 851)	
(Against ALL DEFENDANTS and DOES 1 to 25)	
137. PLAINTIFF incorporates by reference and realleges as if fully stated herein each	
and every allegation set forth above.	
138. At all times herein, Labor Code section 850 has provided, 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 fo	
CLASS AND REPRESENTATIVE ACTION COMPLAINT	

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..." 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

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

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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.

THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

(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.

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

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

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

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

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

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1	<u>PRAYER FOR RELIEF</u>		
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), and 853;		
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	2802, California Civil Code section 1021.5, and any other applicable provisions providing for		
22	attorneys' fees and costs;		
23	10.	For declaratory relief;	
24	11.	For an order requiring and certifying the thirteen Causes of Action pled in this	
25	COMPLAINT as a class action;		
26	12.	For an order appointing PLAINTIFF as class representative, and PLAINTIFF's	
27	counsel as class counsel; and		
28	111	32	
		CLASS AND REPRESENTATIVE ACTION COMPLAINT	

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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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City Rights ါ်လူ။ ၃.၅(၄)(၁)(၃) และเกิดเป็นแก่ได้เอากิ C. White Graffs Discussion ് ചെട്ടേം നില്പറുള്ള എന്ന TO WE SHARE to marking mounit / my to the place ¹² novi combro onliteili Frommetter يليبارو (جمدان (). محمد ال Frankolin & Kol 2000 GAN 10.00 GANH ം പാം എന്നും പ്ര Mrs Lever Propriet WHO CHORE THE MANNER LIOTONDA . op allong a fight don't 1.0"1 0 C ... ROST HARAS Advertised of a compart of a provide a comparison of Par we to mar Busser , in one Personal month Prophatic / Times 8 Friendly active threadour integr र्शक्लिको में सीठमेड Sec. W Mich. ¹⁶(a) Sinfit (orm) In caused Allehonert A 10,0: 110 3 (3

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 8¹/2 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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MEDIATION SERVICES



THE BAR ASSOCIATION OF

QUALITY

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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.

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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.

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 84 of 298 CASE NUMBER: CGC-18-569060 RYAN HYAMS VS. CVS HEALTH CORPORATION, A RHODE

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 <u>www.sfbar.org/adr</u> 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

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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 partles, 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: <u>www.sfbar.org/esp</u>.

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 <u>adr@sfbar.org</u> 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 <u>www.sfbar.org/mediation</u> 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%.

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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 <u>adr@sfbar.org</u> 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 BASE TO ENROLL IN THE LISTED BASE PROGRAMS, THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASE.

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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

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Expedited Jury Trial Information Sheet

(3)

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.

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 $\begin{pmatrix} 9 \\ 9 \end{pmatrix}$.

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.

Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only threequarters 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

Judicial Council of California, Instructouris, co.gov Revised July 1, 2018, Mandatory Form Code of Chil Proceduro, 5 630,01-630,10 Cali Rules of Court, rules 3 1545–3,1553

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Expedited Jury Trial Information Sheet

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.

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.

EJT-001-INFO, Page 2 of 2

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 91 of 298

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 MCAUster Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	FOR COURT USE ONLY
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 84102-4514 PLAINTIFF/PETITIONER:	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 84102-4514 PLAINTIFF/PETITIONER:	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 84102-4514 PLAINTIFF/PETITIONER:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 MCAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER:	
400 MCAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER:	
San Francisco, CA 84102-4514 PLAINTIFF/PETITIONER:	
PLAINTIFF/PETITIONER:	
	•
DEFENDANT/RESPONDENT:	
DEFENDANT/RESPONDENT:	
CASE NUMBE	IR:
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	· ·
	DEPARTMENT 610
1) The parties hereby stipulate that this action shall be submitted to the following ADR pro	cess:
Early Settlement Program of the Bar Association of San Francisco (BASF) - Pre-scr a minimum of 2 hours of settlement conference time for a BASF administrative fee of \$29 those who qualify. BASF handles notification to all parties, conflict checks w management. www.sfbar.org/esp	5 per party. Walvers are available to

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. <u>www.sfbar.org/mediation</u>

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. Partles 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) _

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

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-defendan
Dated:	Dated:

STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION

ADR-2 03/15

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	CM-1
ATTORNEY OR PARTY WITHOUT ATTORNEY (Namo, Siale Bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO : FAX NO. (Optionsi):	
E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS: ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ;	•
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF/PETITIONER:	
EFENDANT/RESPONDENT:	
CASE MANAGEMENT STATEMENT	CASE NUMBER:
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Check one): UNLIMITED CASE LIMITED CASE	
(Amount demanded (Amount demanded is \$25,000	
exceeds \$25,000) or less)	· ·
CASE MANAGEMENT CONFERENCE is scheduled as follows:	
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Idress of court (if different from the eddress above):	
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 Notice of Intent to Appear by Telephone, by (name): INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a This statement is submitted by party (name): b This statement is submitted jointly by partles (names): 	information must be provided.
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INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a. This statement is submitted by party (name): b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complainent a. The cross-complaint (to be answered by plaintiffs and cross-complainent a. The cross-complaint, if any, was filed on (date): b. The cross-complaint, if any, was filed on (date): Service (to be answered by plaintiffs and cross-complainents only) a. All parties named in the complaint and cross-complaint have been served, b. The following parties named in the complaint or cross-complaint	s only)
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INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a. This statement is submitted by party (name): b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complainent): a. The complaint was filed on (date): b. The cross-complaint, if any, was filed on (date): Service (to be answered by plaintiffs and cross-complainants only) a. All parties named in the complaint and cross-complaint have been served, b. The following parties named in the complaint or cross-complaint	s only) have appeared, or have been dismissed.
INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a. This statement is submitted by party (name): b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complainant The complaint was filed on (date): b. The cross-complaint, if any, was filed on (date): Service (to be answered by plaintiffs and cross-complainants only) a. All parties named in the complaint and cross-complaint have been served, b. The following parties named in the complaint or cross-complaint (1) have not been served (specify names and explain why not): 	s only) have appeared, or have been dismissed.
INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a. This statement is submitted by party (name): b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complainant a. The complaint was filed on (date): b. The cross-complaint, if any, was filed on (date): Service (to be answered by plaintiffs and cross-complainants only) a. All parties named in the complaint and cross-complaint have been served, 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 complaint	s o <i>nly)</i> have appeared, or have been dismissed. lismissed (<i>specify names</i>):
INSTRUCTIONS: All applicable boxes must be checked, and the specified Party or parties (answer one): a. This statement is submitted by party (name): b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complainent: a. The cross-complaint (to be answered by plaintiffs and cross-complainent: a. The cross-complaint, if any, was filed on (date): b. The cross-complaint, if any, was filed on (date): Service (to be answered by plaintiffs and cross-complainants only) a. All parties named in the complaint and cross-complaint have been served, 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 of (3) have had a default entered against them (specify names): c. The following additional parties may be added (specify names, nature of implant)	s o <i>nly)</i> have appeared, or have been dismissed. lismissed (<i>specify names</i>):
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· · ·	<u>CM-110</u>
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	
4. b. Provide a brief statement of the case, including any damages. (If personal injury damages claimed, including medical expenses to date [indicate source and amount] earnings to date, and estimated future lost earnings. If equilable relief is sought, des), estimated future medical expenses, lost
(If more space is needed, check this box and attach a page designated as Attach	nment 4b.)
 Jury or nonjury trial The party or parties request a jury trial a nonjury trial. (If more than requesting a jury trial): 	one party, provide the name of each party
 5. Trial date a. The trial has been set for (<i>dato</i>): b. No trial date has been set. This case will be ready for trial within 12 months of not, explain): 	the date of the filing of the complaint <i>(if</i>
c. Dates on which parties or attorneys will not be available for trial (specify dates and e	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 ta. Attorney: b. Firm: c. Address: d. Telephone number. e. E-mail address: g. Party repr Additional representation is described in Attachment 8. 	er.
). Preference	
This case is entitled to preference (specify code section):	
 Alternative dispute resolution (ADR) ADR information package. Please note that different ADR processes are available the ADR information package provided by the court under rule 3.221 for information court and community programs in this case. 	e in different courts and communities; read about the processes available through the
(1) For parties represented by counsel: Counsel has has not provid in rule 3.221 to the client and reviewed ADR options with the client.	led the ADR information package identified
(2) For self-represented parties: Party 🛄 has 🛄 has not reviewed the ADR is	nformation 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 I mediation under Code of Civil Procedure section 1775.3 because the amountation statutory limit. 	Procedure section 1141.11 or to dvil action unt in controversy does not exceed the
(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit red Civil Procedure section 1141.11.	covery to the amount specified in Code of
(3) This case is exempt from judicial arbitration under rule 3.811 of the Californ mediation under Code of Civil Procedure section 1775 et seq. (specify exe	nia Rules of Courtor from civil action amplion):
M-110 (Rev July 1, 2011) CASE MANAGEMENT STATEMENT	Pogo 2 of 6

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		CIVI-110
PLAINTIFF/PETITIONER:	· · · ·	CASE NUMBER:
DEFENDANT/RESPONDENT:		

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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 agread to participate in or have already completed an ADR process or processes, indicate the status of the processes (atlach a copy of the parties' ADR slipulation):
(1) Mediation		 Mediation session not yet scheduled Mediation session scheduled for (<i>date</i>): Agreed to complete mediation by (<i>date</i>): Mediation completed on (<i>date</i>):
(2) Settlement conference		 Settlement conference not yet scheduled Settlement conference scheduled for (<i>date</i>): Agreed to complete settlement conference by (<i>date</i>): Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation		 Neutral evaluation not yet scheduled Neutral evaluation scheduled for (<i>date</i>): Agreed to complete neutral evaluation by (<i>date</i>): Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicia) arbitration		Judicial arbitration not yet scheduled Judicial arbitration scheduled for (date): Agreed to complete judicial arbitration by (date): Judicial arbitration completed on (date):
(5) Binding private arbitration		 Private arbitration not yet scheduled Private arbitration scheduled for (<i>deto</i>): Agreed to complete private arbitration by (<i>dato</i>): Private arbitration completed on (<i>dato</i>):
(6) Other (<i>specify</i>):		 ADR session not yet scheduled ADR session scheduled for (date): Agreed to complete ADR session by (date): ADR completed on (date):

CM-110 (Rev. July 1, 2011)

CASE MANAGEMENT STATEMENT

Page 3 of 5

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 95 of 298

	•	• .			
			· · ·	<u></u>	CM-110
PLAINTIFF/PETITIONER:			CASE N	UMBER:	
DEFENDANT/RESPONDENT:	. <u></u>	·		· · · ·	·
b. Reservation of rights:	Yes 🗌	g this statement <i>(name)</i> No ct resolution of this case			
	. •				
2. Jurisdiction Indicate any matters that n		urisdiction or processing) of this case and descrif	ce the status.	
Status:	Uther (specity):	•	•		
3. Related cases, consolida a There are compa (1) Name of cas	anion, underlying, or i	ion related cases.	· ·	•	
(2) Name of cou (3) Case numbe (4) Status:	nt: -				• • •
Additional cases	are described in Atta	ichment 13a.			• • •
b. 🔲 A motion to	consolidate	coordinate	will be filed by <i>(name pa</i>	rty):	
5. Other motions	ng party, type of motic expect to file the follow		(specify moving party, ty	rps of motion, and iss	ues):
b The following dis	ties have completed a scovery will be comple	eted by the date specifie	d (describe all anticipate	d discovery):	• • •
Party	•	Description		Date	
				•	,
 				• • • •	
c The following dis anticipated (spec	covery issues, includ	ng issues regarding the	discovery of electronical	ly stored information, a	9 7 2
c. The following dis anticipated (spec	covery issues, includ rify):	ing issues regarding the	discovery of electronical	ly stored information, i	17 2
c. The following dis anticipated (spec	covery issues, includ	ing issues regarding the	discovery of electronical	ly stored information, i	are
c. The following dis anticipated (spec	covery issues, includ	ing issues regarding the	discovery of electronical	y stored information, i	are
c. — The following dis anticipated (spec	covery issues, includ	ing issues regarding the	discovery of electronical	ly stored information, i	are
c. — The following dis anticipated (spec	covery issues, includ ify):	ing issues regarding the	discovery of electronical	y stored information, a	are

•		· .		<u>CM-110</u>
PLAINTIFF/PETITIONER:	•••	CASE NUMBER	t.,	•
DEFENDANT/RESPONDENT:	·	•		

17. Economic litigation

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a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic liligation procedures in Code of Civil Procedure sections 90-98 will apply to this case.

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):

19. Meet and confer

18. Other issues

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):

The party or parties request that the following additional matters be considered or determined at the case management

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):

conference (specify):

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.

ate:		• •		•
			•	
	(TYPE OR PRINT NAME)	 	<u>r</u>	(SIGNATURE OF PARTY OR ATTORNEY)
			`₽.	
	(TYPE OR PRINT NAME)		*	(SIGNATURE OF PARTY OR ATTORNEY)
				Additional signatures are attached.

CM-110 [Rov. July 1, 2011]

CASE MANAGEMENT STATEMENT

Page 6 of 6

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EXHIBIT 2



Service of Process Transmittal 09/12/2018 CT Log Number 534044151

TO: Serviceof 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)

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, Serviceof Process Service_of_Process@cvs.com
SIGNED: Address: Telephone:	C T Corporation System 818 West Seventh Street Los Angeles, CA 90017 213-337-4615

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

Page 1 of 1 / NM

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents. Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 99 of 298

		.30_	SUM-100
	SUMMONS on First Amended Complaint (CITACION JUDICIAL)		URT USE ONLY 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		
1	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 y below. You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a w served on the plaintiff. A letter or phone call will not protect you. Your written response must be in procase. There may be a court form that you can use for your response. You can find these court forms Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse n the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case 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 referral service. If you cannot alford an attorney, you may be eligible for free legal services from a not these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the Ca (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: T costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must jAVISOI Lo han demandado. Si no responde dentro de 30 dias, la corte puede decidir en su contra	written response at this oper legal form if you v and more information hearest you. If you can by default, and your w ow an attorney, you m onprofit legal services p lifornia Courts Online i The court has a statuto be paid before the cou	a court and have a copy want the court to hear your at the California Courts not pay the filing fee, ask ages, money, and property ay want to call an attorney, program. You can locate Self-Help Center ny lien for walved fees and urt will dismiss the case.
I	Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales pa	ara presentar una resp	uesta por escrito en esta

Tiene 30 DIAS 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 6 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:			CASE NUMBER: CGC-18-569060)
(El nombre	e y dirección de la corte es):	•	•	(Número del Caso):	-
	Court of California, County c	of San Francisco			
400 McAl	lister Street			L	
The name,				attorney, is: Catherine J. Coble emandante que no tiene abogado	
•	DBLE LLP		-		.,, -
	Street, Suite 407, BURBAN	K. CA 91502		(818) 90	0-0695
DATE: (Fecha)	SEP 1 0 2018	DEPUTY CLERK	Clerk, by (Secretario)	BOWMAN LIU	, Deputy (Adjunto)
(SEAL)	1 2 3 un	CCP 416.40 (as	r the fictitious name CNS rporation) funct corporation) sociation or partners	$\begin{array}{c} \begin{array}{c} \begin{array}{c} \\ \end{array} \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} \\ \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} \\ \end{array} \\ \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} \\ \end{array} \\ \end{array} \\ \end{array} \\ \end{array} \\ \begin{array}{c} \end{array} \\ \end{array} $	vatee)
•		_] by personal delivery on (Page 1 of 1
	/				

Form Adopted for Mandatory Use Judicial Council of California SUM-100 [Rev. July 1, 2009] SUMMONS

Code of Civil Procedure §§ 412 20, 465 www.courtunfo.ca.gov Westlaw Doc & Form Bulider

-	Case 4:18-cv-06278-HSG Document 1-4	Filed 10/12/18 Page 100 of 298
1 2	BETH GUNN, CA Bar No. 218889 beth@gunncoble.com CATHERINE J. COBLE, CA Bar No. 223461 cathy@gunncoble.com	ELECTRONICALLY FILED Superior Court of California,
3	GUNN COBLE LLP 101 S. 1st Street, Suite 407	County of San Francisco 09/07/2018 Clerk of the Court
4 5.	Burbank, CA 91502 Telephone: 818.900.0695 Facsimile: 818.900.0723	BY:BOWMAN LIU Deputy Clork
6	Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly situat	ed
7.		
8	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
9	FOR THE COUNTY (OF SAN FRANCISCO
10		
1:1	RYAN HYAMS, an individual, on behalf of himself, and all others similarly situated,	Case No. <u>CGC-18-569060</u>
12	Plaintiff,	CLASS ACTION FIRST AMENDED COMPLAINT
13		1. Failure To Provide Required Meal Periods;
14	VS.	2. Failure To Authorize And Permit Required
1.15	CVS HEALTH CORPORATION, a Rhode Island Corporation, CVS PHARMACY, INC., a	Rest Breaks; 3. Failure To Pay Overtime;
16	Rhode Island Corporation, GARFIELD BEACH CVS, LLC, a California Corporation, and CVS	 Failure To Pay Minimum Wages; Failure To Pay Timely Wages Due At
17	RX SERVICES, INC a New York Corporation, DOES 1 through 25, inclusive,	Termination/Waiting Time Penalties; 6. Failure To Timely Pay All Wages;
18	Defendants.	7. Failure To Reimburse For Employment
19		Related Expenses; 8. Failure To Maintain Required Records;
2 0		 9. Failure To Furnish Accurate Itemized Wage Statements;
<u>,</u> 21		10. Failure To Provide Written Notice Of Paid
22		Sick Leave 11. Failure To Provide One Day's Rest In
23		Seven 12. Failure to Comply With California Labor
24		Code Sections 850 and 851 13. Unfair And Unlawful Business Practices;
25		14. Penalties Under The California Labor
26		Code Private Attorneys General Act, As Representative Action
27		DEMAND FOR JURY TRIAL.
28	· · · · · · · · · · · · · · · · · · ·	
		1 TION FIRST AMENDED COMPLAINT
·	CLASS AND REPRESENTATIVE AC	
	II · · · ·	

...

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

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

PLAINTIFF

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PLAINTIFF is a former non-exempt employee who worked as a pharmacist for 13 5. DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS, 14 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California. 15 As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately 16 6. dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This 17 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), 18 checking for drug interactions and precautions, contacting physicians where appropriate, advising 19 patients regarding the use of their prescriptions pursuant to California law, entering information in 20DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS' 21 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the 22 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A 23 pharmacist was required to be on the premises during all hours of operation, to comply with 24 operational policies and procedures. 25

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

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

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

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

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

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

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

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

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

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take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
 pharmacy questions. PLAINTIFF 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. PLAINTIFF
 was not paid any penalties for these interrupted meal and/or rest breaks.

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:

 a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current and former non-exempt employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD.

> b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who were employed to sell at retail drugs and medicines or to compound physicians' prescriptions.

 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD.

d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who used personal cell phones for work-related purposes without adequate reimbursement.

e. "VACATION PAY SUBCLASS," which is defined as all current and former

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

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

DEFENDANTS

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

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,

a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized 20 under the laws of the State of Rhode Island that is engaged in the business of 21operating retail stores that sell pharmaceuticals and general merchandise and 22 provide pharmacy services throughout the State of California. 23b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the 24 laws of the State of Rhode Island that is engaged in the business of operating 25 retail stores that sell pharmaceuticals and general merchandise and provide 26 pharmacy services throughout the State of California. 27 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with 28

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

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

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

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

DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby
 creating an employment relationship with PLAINTIFF. See Castaneda v. Ensign Group, Inc. (2014)
 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.

All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct 25. 8 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS 9 were responsible for the events and damages alleged herein, including on the following bases: (a) 10 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the -11 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or 1.2 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course 13 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's 14 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among 15 those DEFENDANTS such that any individuality and separateness between or among these 16 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS 17 exercised domination and control over one another to such an extent that any individuality or 18 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence 19 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate 20 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were 21taken by employees, supervisors, executives, officers, and directors during employment with all 22 DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized, 2324 ratified, and approved of by all other DEFENDANTS.

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

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1	CLASS ACTION ALLEGATIONS
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
	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
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT
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procedures applied on a class-wide basis.

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

PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 12 33. knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal 13 periods in accordance with the Labor Code or payment of one (1) additional hour of pay at the 14 regular rate when PLAINTIFF and CLASS MEMBERS were not provided with timely, 15 uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were 16 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate 17 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 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to 21 22 uninterrupted rest periods in accordance with the Labor Code and Industrial Wage Order ("IWC") Wage Order 7-2001 or payment of one (1) additional hour of pay at their regular rate when 23 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest 24 25 periods and that PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest periods or payment of one (1) additional hour of pay at their regular rate when 26 27 PLAINTIFF and CLASS MEMBERS were not provided a compliant rest period.

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

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

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

PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 9 37. knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to timely 10 payment of wages upon termination of employment. In violation of the Labor Code, 11

DEFENDANTS did not pay PLAINTIFF and CLASS MEMBERS all wages due, including, but 12 not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within 13 statutorily required time periods. 14

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

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

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

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scope of their employment, and that they did not receive full reimbursement of applicable businessrelated expenses and costs in violation of the Labor Code.

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

Upon information and belief, DEFENDANTS maintain a centralized Payroll 4Ż. department at their company headquarters, which processes payroll for all employees working for 8 DEFENDANTS at their various locations in California, including PLAINTIFF and CLASS 9 MEMBERS. Based upon information and belief, DEFENDANTS issue the same formatted wage 10 statements to all employees in California, irrespective of their work location. PLAINTIFF is • 11 informed and believes, and thereon alleges, that DEFENDANTS knew or should have known that 12 PLAINTIFF and CLASS MEMBERS were entitled to receive complete and accurate wage 13 statements in accordance with California law. In violation of the Labor Code, DEFENDANTS did 14 not provide PLAINTIFF and CLASS MEMBERS with complete and accurate wage statements. ·15

43. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to written
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.

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

45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were not to 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, and that DEFENDANTS should not have required PLAINTIFF and

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

SATISFACTION OF CLASS ACTION CRITERIA

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

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Failure To Provide Required Uninterrupted Meal Periods

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

(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.

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

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived

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

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

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

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

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

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

S8. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
pay for purposes of paying meal period premiums to PLAINTIFF and CLASS MEMBERS by
including all compensation, such as shift differential pay and other compensation, as required by
the Labor Code. See Cal. Lab. Code §§ 226.7, 512(a); and IWC Order No. 7-2001(11), codified at
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.

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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.

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.

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).

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 722 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.

67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12), *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); 1WC Order No. 7-2001(12), codified at Cal. Code Regs. tit. 8 § 11050.

69. At all relevant times herein, DEFENDANTS have had a company-wide policy and
 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest
 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.

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(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.

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74. At all relevant times herein, Labor Code section 510 has mandated 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).

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75. IWC Wage Order 7-2001 further provides that employees "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), codified at Cal. Code Regs. tit. 8 § 11050; see also Cal. Lab. Code § 1198.

76. At all relevant times herein, DEFENDANTS were required to compensate
PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
hours per week, and for the first eight (8) hours on the seventh consecutive workday, with doubletime for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab.
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.

78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
(1 ½) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
MEMBERS to work through meal and rest periods; and inaccurately recording time in which
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
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duties and take timely, uninterrupted thirty (30) minutes meal periods forced PLAINTIFF and
 CLASS MEMBERS to work off-the-clock during meal periods to complete their assigned tasks.

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

1181. At all times herein, DEFENDANTS failed to properly calculate the regular rate of12pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all13compensation, such as shift differential pay and other compensation, as required by the Labor14Code. 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), 20		
		CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT	
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at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
as interest. Cal. Lab. Code §1194.2. 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. Cal. Lab. Code § 1197.1.

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

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

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 88.
 DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,

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 1197.1, and 1198 and IWC Order No. 7-2001(4), codified at Cal. Code Regs. tit. 8 § 11050.

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

FIFTH CAUSE OF ACTION

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

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

(Against ALL DEFENDANTS and DOES 1 to 25)

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

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and every allegation set forth above.

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

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

1794.When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from18employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

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

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

97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
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)

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) ddays, 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).

101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
Order is the minimum wage to be paid to employees, and the payment of a wage less than the
minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
defined in IWC Wage Order 7-2001 as "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,

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whether or not required to do so..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
\$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
workday an employee is required to report for work and does report, but is not put to work or is
furnished less than half said employee's usual or scheduled day's work, the employee shall be paid
for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more
than four (4) hours, at the employee's regular rate of pay...." IWC Wage Order 7-2001(5), codified
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.

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 107. DÈFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,

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 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.

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SEVENTH CAUSE OF ACTION

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

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

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).

14 At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE 111. 15 SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by 16 DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the 17 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange 18 text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF 19 or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed 20 PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred 21 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.

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

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fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(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 maintain accurate records, including, but not limited to: total daily hours worked by each 22 employee; applicable rates of pay; all deductions; meal periods; time records showing when each 23 employee begins and ends each work period; and accurate itemized statements. By 24 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 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); see also 28

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

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

NINTH CAUSE OF ACTION

Failure To Furnish Accurate Itemized Wage Statements

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

(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.

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

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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.

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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).

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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 28
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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and every allegation set forth above.

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

133. At all times herein, Labor Code section 852 has provided that "[t]he employer shall apportion the periods of rest to be taken by an employee so that the employee will have one 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.

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.

TWELFTH CAUSE OF ACTION 20 Failure To Comply with Labor Code Sections 850 and 851 21 (Cal. Lab. Code sections 850 and 851) 22 (Against ALL DEFENDANTS and DOES 1 to 25) 23 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 24 137. 25and every allegation set forth above. At all times herein, Labor Code section 850 has provided, in pertinent part, that 26 138. [n]o person employed to sell at retail drugs and medicines or to compound physicians' 27 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for 28 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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..." 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.

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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.

THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

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

(Against ALL DEFENDANTS and DOES 1 to 25)

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

145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
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.

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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 DEFENDANTS' failure to authorize and provide uninterrupted meal periods; DEFENDANTS' 3 failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime 4 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.

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

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CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5)

(Against ALL DEFENDANTS and DOES 1 to 25)

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, 8531174, 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, PLAINITFF has complied with all of the requirements set forth in Labor
 27 Code Section 2699.3 to commence a representative action under PAGA.

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1	PRAYER FOR RELIEF					
· 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;					
i 4	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					
28	/// 33					
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT					

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		••••			
1	13. For such furthe	r relief that the Co	ourt may deem just and proper.		
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3	DATED: September 7, 2018		GUNN COBLE LLP		
4			· • •		
5		•	Pollot -		
6			By: Been Gurin		
7	· :		Catherine J. Coble		
8		. •	Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly situated		
9			· · ·		
10			·		
11	DEMAND FOR JURY TRIAL				
12	PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury				
13	trial with respect to all issues triable of right by jury.				
14	· · ·	•			
15	DATED: September 7, 2018		GUNN COBLE LLP		
16			nt 1-		
17 18			BITT		
10 19			By: Beth Gunn Cathy Coble		
20 21			Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly situated		
22	· .				
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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.

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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. <u>Facts</u>

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

Page | 3

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. <u>CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours</u> 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 forththe 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.

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

4. <u>CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing</u> 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 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. <u>CVS Violated Labor Code Sections 551 and 552.</u>

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.

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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. <u>Failure to Provide Accurate Itemized Wage Statements in Violation of California</u> 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. <u>CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs</u> Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related <u>Purposes.</u>

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.

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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 Angelès, CA 90017

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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

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		CM-01				
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar nu		ENDORSED USE ONLY				
Catherine J. Coble	SBN: 223461					
GUNN COBLE LLP		San Francisco County Superior Court				
101 S. 1st Street, Suite 407, BURBANK, CA						
TELEPHONE NO.: (818) 900-0695 ATTORNEY FOR (Name): Ryan Hyams on behalf of hi	FAX NO.: (818) 900-0723	AUG 2 1 2018				
UPERIOR COURT OF CALIFORNIA, COUNTY OF SAN	FRANCISCO					
STREET ADDRESS: 400 McAllister Street		CLERK OF THE COURT				
MALING ADDRESS: 400 McAllister Street		BY: ROSSALY DE LA VEGA				
CITY AND ZP CODE: San Francisco, 94102	•	Deputy Clerk				
BRANCH NAME: Civic Center Courthouse						
CASE NAME: Hyams v. CVS HEALTH CORF	PORATION, et al.	· · ·				
CIVIL CASE COVER SHEET	Complex Case Designation	CASE MUMBER:				
X Unlimited Limited		CGC-18-56906(
(Amount (Amount		JUDGE:				
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exceeds \$25,000) \$25,000 or less)	(Cal: Rules of Court, rule 3.402					
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. Check one box below for the case type that	Contract	Provisionally Complex Civil Litigation				
Auto Tort	Breach of contract/warranty (06)	(Cal. Rules of Court, ndes \$400-3.403)				
Auto (22) Uninsured motorist (48)	Rule 3.740 collections (09)	Antitrust/Trade regulation (03)				
Other PI/PD/WD (Personal Injury/Property	Other collections (09)	Construction defect (10)				
Damage/Wrongful Death) Tort	trisurance coverage (18)	Mass tort (40)				
Asbestos (04)	Other contract (37)	Securities flugation (28)				
Product liability (24)	Real Property	Environmental/Toxic tort (30)				
Medical matpractice (45)	Eminent domain/Inverse	insurance coverage claims arising from the above listed provisionally complex case				
Other PVPD/WD (23)	condemnation (14)	above listed provisionally complex case lypes (41)				
Non-PI/PD/WD (Other) Tort	Wrangtul eviction (33)	•				
Business tort/unlair business practice (07)	Other real property (26)	Enforcement of Judgment				
Civil rights (08)	Uniawiul Detainer	Entorcement of judgment (20)				
Detamation (13)	Commercial (31)	Miscellaneous Civil Complaint				
Fraud (16)	Residential (32)					
Intellectual property (19)	Orugs (38)	Other complaint (not specified above) (42)				
Protessional negligence (25)	Judicial Review	Miscellaneous Civil Petition				
Other non-PI/PD/WD tort (35)	Asset forteiture (05)	Partnership and corporate governance (21)				
Employment	Petition re: arbitration award (11)	Other petition (not specified above) (43)				
Wrongful termination (38)	Writ of mandate (02)					
X Other employment (15)	Other judicial review (39)	Rules of Court. If the case is complex, mark the				
factors requiring exceptional judicial mana	gement					
, a Large number of separately repre	sented parties 🛹 d. 🔀 Large rum	ber of witnesses				
b. Extensive motion practice raising		n with related actions pending in one or more co				
issues that will be time-consumin		unties, states, or countries, or in a federal court				
c. X. Substantial amount of documenta	ny evidence f. X Substantia	postjudgment judicial supervision				
3. Remedies sought (check all that apply): a	X monetary o X nonmonetary	r; declaratory or injunctive relief C X punitiv				
4. Number of causes of action (specify):13						
5. This case X is Is is not a cla 6. If there are any known related cases, file	85 80000 SULL . and conta a natica of calated case. (Ve	winay use form CM-015				
6. If there are any known related cases, the to Date: August 21, 2018	and online a univer of largraph range (16					
Catherine J. Coble		NJ . 4				
(TYPE OR PRINT NAME)		GIGNATURE OF PARTY OR ATTORNEY FOR PARTY)				
under the Probate Code, Family Code, or	first paper filed in the action or process Welfare and Institutions Code). (Cal. I	ding (except small claims cases or cases filed Rules of Court, rule 3.220.) Failure to file may res				
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	le 3.740 or a complex case, this cover	sheet will be used for statistical purposes only.				
Form Adapted for Mandatory Uso	CIVIL CASE COVER SHEET	Cal. Rutes of Costs nites 2.40, 3.220, 3.400-3.400.				
Judicial Council of California CM-010 (Play, July 1, 2007)		Cal. Standards of Audicial Administration, and www.countinto.c				
-		Wagilano Dat & Pain S				

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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 complie 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

Contract (not unlawful detainer

Breach of Contract/Warranty (06)

Breach of Rental/Lease

Contract

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wrongful Death Product Liability (not asbestos or (24) toxic/environmental Medical Maloractice (45) Medical Malpractice-Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of **Emotional Distress** Negligent Infliction of **Emotional Distress** Other PI/PD/WD Non-PI/PD/WD (Other) Tort **Business Tort/Unfair Business** Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13)Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)

or wrongful eviction) Contract/Warranty Breach-Seller Plaintifl (not fraud or negligence) Negligent Breach of Contract/ Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case-Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) **Contractual Fraud** Other Contract Dispute **Real Property** Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Monaage Foreclosure **Quiet Title** Other Real Property (noi eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) **Judicial Review** Asset Forfeiture (05) Pelition Re: Arbitration Award (11) Writ of Mandate (02) Writ-Administrative Mandamus Writ-Mandamus on Limited Court Case Matter Writ-Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal-Labor

Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (nondomestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case **Miscellaneous Civil Complaint** RICO (27) Other Complaint (not specilied above) (42) Declaratory Relief Only Injunctive Relief Only (nonharassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition

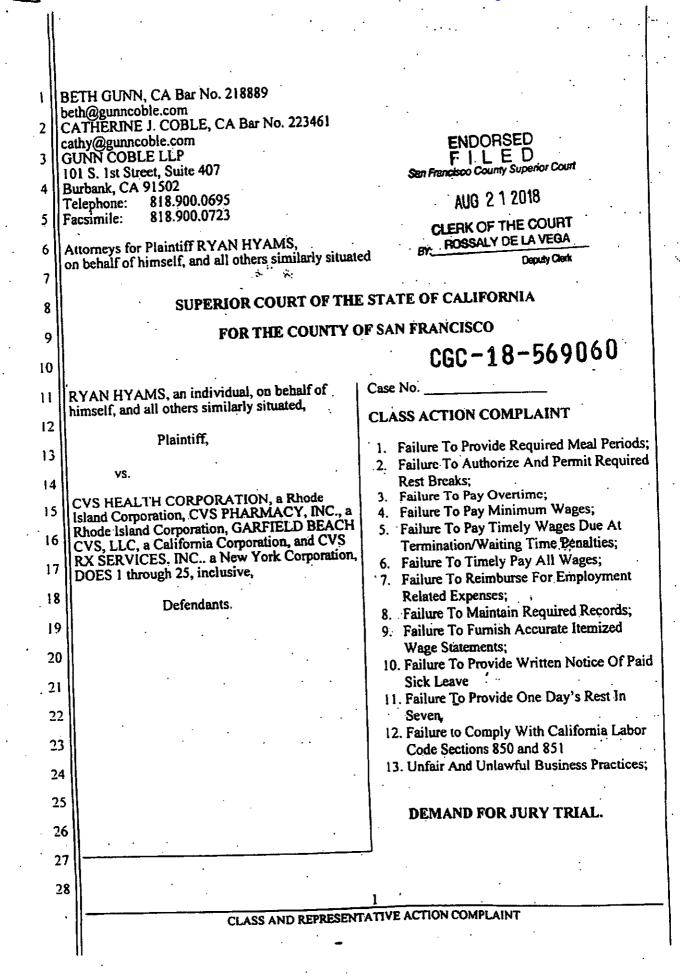
Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)

CM-010 [Rev. July 1, 2007]

Civil CASE COVER SHEET

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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

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PLAINTIFF

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

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

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

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

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

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

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

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

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

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

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

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take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
 pharmacy questions. PLAINTIFF 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. PLAINTIFF
 was not paid any penalties for these interrupted meal and/or rest breaks.

THE CLASS

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

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

- 14a. "NON-EXEMPT EMPLOYEE SUBCLASS," which is defined as all current15and former non-exempt employees of DEFENDANTS in the State of California16at any time within the CLASS PERIOD.
 - b. "PHARMACY EMPLOYEE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who were employed to sell at retail drugs and medicines or to compound physicians' prescriptions.

 c. "FORMER EMPLOYEE SUBCLASS," which is defined as all former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD.

d. "BUSINESS EXPENSE SUBCLASS," which is defined as all current and former employees of DEFENDANTS in the State of California at any time within the CLASS PERIOD who used personal cell phones for work-related purposes without adequate reimbursement.

e. "VACATION PAY SUBCLASS," which is defined as all current and former

CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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.

DEFENDANTS

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

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,

a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized 20under the laws of the State of Rhode Island that is engaged in the business of 21operating retail stores that sell pharmaceuticals and general merchandise and 22provide pharmacy services throughout the State of California. 23DEFENDANT CVS PHARMACY, INC. is a corporation organized under the 24 laws of the State of Rhode Island that is engaged in the business of operating 25retail stores that sell pharmaceuticals and general merchandise and provide 26 pharmacy services throughout the State of California. 27 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with 28 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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

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

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

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

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

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

Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of 2526. all other DEFENDANTS in committing the acts alleged herein. 26

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CLASS ACTION ALLEGATIONS

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

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:

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

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

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31. Upon information and belief, DEFENDANTS maintain a single, centralized Human 9

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

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

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

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

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

CLASS AND REPRESENTATIVE ACTION COMPLAINT

|| known was performed.

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

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

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

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

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

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

1944. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS20knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to one day's21rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 45. 22 knew or should have known that PLAINTIFF and CLASS MEMBERS were not to perform any 23 work in any store, dispensary, pharmacy, laboratory, or office for more than an average of nine 24 hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12 days 25 in any two consecutive weeks, and that DEFENDANTS should not have required PLAINTIFF and 26 CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average 27 of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more 28 17

CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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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:

11A.Numerosity: The members of THE CLASS and SUBCLASSES are so12numerous that joinder of all members would be unfeasible and impractical. The membership of the13entire class is unknown to PLAINTIFF at this time; however THE CLASS is estimated to be14greater than one thousand (1000) individuals and the identity of such membership is readily15ascertainable by inspection of DEFENDANTS' employment records.

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

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

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1D.Superiority: The nature of this action makes the use of class action2adjudication superior to other methods. A class action will achieve economies of time, effort, and3expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the4same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

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Failure To Provide Required Uninterrupted Meal Periods

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

(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.

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived
by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
period of not less than thirty (30) minutes, the employee is to be completely free of the employer's

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

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

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.

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

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

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

2359. DEFENDANTS' conduct violates Labor Code sections 226.7, 512(a), and IWC24Order No. 7-2001(11), codified at Cal. Code Regs. tit. 8 § 11050.

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

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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.

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. 1WC Wage Order 72001, 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

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uninterrupted ten (10) minute rest periods to which they were entitled.
 67. By DEFENDANTS' failure to authorize and permit PLA

67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS
MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof
worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12), *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.

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

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

1971.DEFENDANTS' conduct violates Labor Code sections 226.7, 1198, and IWC Order20No. 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.

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(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.

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CLASS AND REPRESENTATIVE ACTION COMPLAINT

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74. At all relevant times herein, Labor Code section 510 has mandated 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).

75. IWC Wage Order 7-2001 further provides that employees "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), *codified* at Cal. Code
Regs. tit. 8 § 11050; *see also* Cal. Lab. Code § 1198.

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

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

78. At all relevant times herein, DEFENDANTS failed to compensate PLAINTIFF and
CLASS MEMBERS for all overtime hours worked by: failing to pay overtime at one and one-half
(1 ¹/₂) times or double the regular rate; requiring, permitting or suffering PLAINTIFF and CLASS
MEMBERS to work through meal and rest periods; and inaccurately recording time in which
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

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

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

81. At all times herein, DEFENDANTS failed to properly calculate the regular rate of
 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
 compensation, such as shift differential pay and other compensation, as required by the Labor
 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 all	egation set forth above.
27	85.	At all relevant times herein, employers operating under California law must pay at
28	least minimu	m wage to their employees for all hours worked. IWC Order No. 7-2001(4), codified
		CLASS AND REPRESENTATIVE ACTION COMPLAINT

at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
 recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
 employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
 as interest. Cal. Lab. Code §1194.2. 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. Cal. Lab. Code § 1197.1.

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

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

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 88.
 DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,

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 .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 21 CLASS AND REPRESENTATIVE ACTION COMPLAINT

and every allegation set forth above.

91. At all relevant times herein, pursuant to Labor Code sections 201 and 202,
employers must pay all wages due upon termination and, if an employer terminates an employee,
the employee's wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to
Labor Code section 202, employers are required to pay all wages due to an employee no later than
72 hours after the employee quits employment, unless the employee provided_72 hours of notice of
the intention to quit, in which case the employee is entitled to those wages at the time of quitting.
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.

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

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

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

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

97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
attorneys' fces 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)

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) ddays, 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 which the labor was performed. Labor Code section 204 further provides that all wages earned by 12 any person in any employment between the sixteenth (16th) and the last day, inclusive, of any 13 14 calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month. Cal. Lab. Code § 204(a). 15

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

23 At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and 101. 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,

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

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

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

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 107. DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,

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 1197, 1198, and IWC Order No. 7-2001, codified at Cal. Code Regs. tit. 8 § 11050.

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

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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).

14 At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE 111. SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by 15 DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the 16 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange 17 text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF 18 or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed 19 PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred 20 in using their personal cell phones for DEFENDANTS' business. 21

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.

27 113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an
 28 amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' 25

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fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

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

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

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

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

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

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

NINTH CAUSE OF ACTION

Failure To Furnish Accurate Itemized Wage Statements

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

(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
and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
without limitation, the failure to accurately list the total daily hours worked by each employee, total
regular and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break
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.

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

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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.

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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.

126. At all times herein, Labor Code section 246 has required 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." Cal. Lab. Code § 246(i).

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

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 28
	CLASS AND REPRESENTATIVE ACTION COMPLAINT

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and every allegation set forth above.

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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.

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 29
	CLASS AND REPRESENTATIVE ACTION COMPLAINT

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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..." 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

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

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

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

THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

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

(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.

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

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

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

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

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1		PRAYER FOR RELIEF
2	Where	fore PLAINTIFF, individually and on behalf of all other persons similarly situated,
3	respectfully p	rays for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of
4	them, as follo	ws:
· 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 pro	fits 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 O	rder 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 aut	norized by the Labor Code sections 226(e), and 853;
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 pro	oviding for pre-judgment interest;
20	9.	For reasonable attorneys' fees and costs pursuant to Labor Code sections 1194,
21	2802, Califor	mia Civil Code section 1021.5, and any other applicable provisions providing for
22	attomeys' fe	es and costs;
23	10.	For declaratory relief;
24	11.	For an order requiring and certifying the thirteen Causes of Action pled in this
25	COMPLAIN	IT as a class action;
26	12.	For an order appointing PLAINTIFF as class representative, and PLAINTIFF's
27	counsel as c	lass counsel; and
28	111	
•		32 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

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GUNN COBLE LLP

By: n. Cathy Coble

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

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Experience in the bollowing areas

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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 8¹/2 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 Coplan Global Warming Campaign Manager Bluewater Network

"BASF staff was very helpful – stayed on the task and kept alter 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



PROCEDURES, PODCASTS, FORMS, MEDIATOR BIOGRAPHIES AND PHOTOGRAPHS: www.sfbar.org/mediation

adr@sfbar.org or 415-982-1600



MEDIATION SERVICES



THE BAR ASSOCIATION OF

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TRUST

WHAT IS BASE'S MEDIATION SERVICE?

QUALITY

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.

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.

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. Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 180 of 298 CASE NUMBER: CGC-18-569060 RYAN HYAMS VS. CVS HEALTH CORPORATION, A RHODE

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 <u>www.sfbar.org/adr</u> 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

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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 <u>adr@sfbar.org</u> 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 <u>www.sfbar.org/mediation</u> 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%.

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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 <u>adr@sfbar.org</u> 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 BASE TO ENROLL IN THE LISTED BASE PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASE.

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Page 3



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

EUTEODIAINFO

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.

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 $\begin{pmatrix} 9 \\ 9 \end{pmatrix}$.

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.

Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only threequarters 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

Judicial Council of California, unwercourts co.gov Revised July 1, 2016, Mandatory Form Code of Civil Proceduro, 5 630,01–630,10 Col. Rules of Court, rules 3 1545–3,1553

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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.

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.

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)	FOR COURT USE ONLY
TELEPHONE ND.:	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAlifster Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	· · ·
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: DEPARTMENT 610
 The parties hereby stipulate that this action shall be submitted to the formation shall b	
Early Settlement Program of the Bar Association of San Francisco a minimum of 2 hours of settlement conference time for a BASF admini those who qualify. BASF handles notification to all parties, of	strative fee of \$295 per party. Walvers are available to

- management. <u>www.sfbar.org/esp</u>
 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. <u>www.sfbar.org/mediation</u>
- 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 equilable 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:
🗋 Add	itional signature(s) attached

STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION

ADR-2 03/15

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Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 189 of 298

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PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	
b. Provide a brief statement of the case, including any damages. (If personal injury damages claimed, including medical expenses to date [indicate source and amou earnings to date, and estimated future lost earnings. If equilable relief is sought, or the source and source an	unt), estimated future medical expenses, lost
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(If more space is needed, check this box and attach a page designated as Atta	achment 4b.)
. Jury or nonjury trial The party or parties request a jury trial a nonjury trial. (If more the requesting a jury trial):	an one party, provide the name of each party
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c. Dates on which parties or attorneys will not be available for trial (specify dates an	d explain reasons for unavailablily):
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Trial representation (to be answered for each party) The party or parties will be represented at trial b. Firm: c. Address: d. Telephone number: f. Fax number: e. E-mail address: o. Party represented	•
G. Party n Additional representation is described in Attachment 8. Preference This case is entitled to preference (specify code section):	
Alternative dispute resolution (ADR)	•
 ADR information package. Please note that different ADR processes are availa the ADR information package provided by the court under rule 3.221 for informati court and community programs in this case. 	ble in different courts and communities; read ion about the processes available through the
(1) For parties represented by counsel: Counsel has has not pro in rule 3.221 to the client and reviewed ADR options with the client.	wided the ADR information package identified
(2) For self-represented parties: Party has has not reviewed the AD	R 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 mediation under Code of Civil Procedure section 1775.3 because the an statutory limit. 	vil Procedure section 1141.11 or to civil action nount in controversy does not exceed the
(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit Civil Procedure section 1141.11.	recovery to the amount specified in Code of
(3) This case is exempt from judicial arbitration under rule 3.811 of the Calif mediation under Code of Civil Procedure section 1775 et seq. (specify et arbitration)	fornia Rules of Courtor from civil action exemption):

CASE MANAGEMENT STATEMENT

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 190 of 298

	•		 <u>.</u>	CM-110
PLAINTIFF/PETITIONER.	 ,		 CASE NUMBER:	
DEFENDANT/RESPONDENT:		••	 •	

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 (he 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		 Mediation session not yet scheduled Mediation session scheduled for (<i>date</i>): Agreed to complete mediation by (<i>date</i>): Mediation completed on (<i>date</i>):
(2) Settlement conference		 Settlement conference not yet scheduled Settlement conference scheduled for (date): Agreed to complete settlement conference by (date): Settlement conference completed on (date):
(3) Neutral evaluation		 Neutral evaluation not yet scheduled Neutral evaluation scheduled for (<i>date</i>): Agreed to complete neutral evaluation by (<i>date</i>): Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration		 Judicial arbitration not yet scheduled Judicial arbitration scheduled for (<i>date</i>): Agreed to complete judicial arbitration by (<i>date</i>): Judicial arbitration completed on (<i>date</i>):
(5) Binding private arbitration		 Private arbitration not yet scheduled Private arbitration scheduled for (<i>dato</i>): Agreed to complete private arbitration by (<i>dato</i>): Private arbitration completed on (<i>dato</i>):
(6) Other (<i>specify</i>):		 ADR session not yet scheduled ADR session scheduled for (<i>date</i>): Agreed to complete ADR session by (<i>date</i>): ADR completed on (<i>date</i>):

CM-110 (Rov. July 1, 2011)

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CASE MANAGEMENT STATEMENT

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				CASE NUMBER:		M-110
PLAINTIFF/PETITIONER:						
EFENDANT/RESPONDENT:				<u> </u>	, 	
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Jurisdiction Indicate any matters that may a Bankruptcy Dthe	affect the court's ju er (specify):	urisdiction or proce	ssing of this case	and describe the statu	5.	
Status:						
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Related cases, consolidation a There are companion	, and coordination. In underlying, or re	on elated cases.				•
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(2) Name of court:	•	•.				
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CASE MANAGEMENT STATEMENT

	<u>CM-110</u>
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	· .
17. Economic litigation	· · ·
 a. This is a limited civil case (i.e., the amount d of Civil Procedure sections 90-98 will apply t 	lemanded is \$25,000 or less) and the economic litigation procedures in Code to this case.
	ithdraw the case from the economic litigation procedures or for additional becifically why economic litigation procedures relating to discovery or trial
· ·	
 Other issues The party or parties request that the following a conference (specify): 	additional matters be considered or determined at the case management

19. Meet and confer

- a. [1] The party or partles have met and conferred with all partles on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- 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)	(BIGNATURE OF PARTY OR ATTORNEY)
•		
	(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY) Additional signatures are attached.
·		

CM-110 [Rev. July 1, 2011]

CASE MANAGEMENT STATEMENT

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EXHIBIT 3



Service of Process Transmittal 09/12/2018 CT Log Number 534043607

TO: Serviceof 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)

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. TITLE OF ACTION: 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, Serviceof Process Service_of_Process@cvs.com C T Corporation System SIGNED: 818 West Seventh Street ADDRESS: Los Angeles, CA 90017 213-337-4615 **TELEPHONE:**

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

Page 1 of 1 / JS

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Case 4:18-	cv-06278-HSG	Decement 272	Filed 10/12	/18 Page 195 of	298
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	SUIVIIVION	S <i>on First Amended</i> CIAL)	Complaint	(SOLO PARA USO DE L	
NOTICE TO DEFENDANT (AVISO AL DEMANDADO Island Corporation, GARFII CVS RX SERVICES. INC): Corporation, CVS P LD BEACH CVS, LL	HARMACY, INC., a R C, a California Corpora	hode tion, and		
YOU ARE BEING SUED I (LO ESTÁ DEMANDAND others similarly situated					
NOTICE! You have been sued.	The court may decide ag	ainst you without your being	heard unless you	respond within 30 days. Re	ad the information
below. You have 30 CALENDAR D/ served on the plaintiff. A letter of case. There may be a court for Online Self-Help Center (www. the court clerk for a fee waiver may be taken without further with There are other legal require referral service. If you cannot a these nonprofit groups at the (www.courtinfo.ca.gov/selfhelp) costs on any settlement or arbit (AVISOI Lo han demandado. S continuación. Tiene 30 DIAS DE CALEND corte y hacer que se entregue to en formato legal correcto si des Puede encontrar estos formular biblioteca de layes de su conda que le dé un formulario de exer podrá quitar su sueldo, cinero y Hay otros requisitos legales. I remisión a abogados. Si no pue programa de servicios legales. S (www.lawhelpcalifornia.org), en colegio de abogados locales. A cualquier recuperación de \$10, pagar el gravamen de la corte a	ar phone call will not protect in that you can use for your courtinfo.ca.gov/selfhelp), form. If you do not file your arning from the court. timents. You may want to c ford an attorney, you may alifornia Legal Services W , or by contacting your loc ration award of \$10,000 o cl no responde dentro de 3 ARIO después de que le e ina copia al demandante. ea que procesen su caso ios de la corte y más infor do o en la corte que le qui ción de pago de cuotas. S bienes sin más advertent Es recomendable que llam de pagar a un abogado. e in fines de lucro. Puede el el Centro de Ayuda de las VISO: Por ley, la corte tier DOD ó más de valor recibid intes de que la corte pued	ct you. Your written response r response. You can find th your county law library, or t r response on time, you ma call an attorney right away. be eligible for free legal se leb site (www.Jawhelpcalifor al court or county bar assoc r more in a civil case. The c 80 dias, la corte puede deci ntreguen esta citación y pa Una carta o una llamada le en la corte. Es posible que madón en el Centro de Ayu ede más cerca. Si no puede si no presenta su respuesta cia. te a un ebogado inmediatar is posible que cumpla con l ncontrar estos grupos sin fi s Cortes de California, (www. te derecho a reclamar las co la mediante un acuerdo o u	se must be in prop ese court forms at he courthouse net y lose the case by if you do not know rvices from a non mia.org), the Califo ciation. NOTE: The ourt's lien must be dir en su contra si peles legales para lefónica no lo prof haya un formulari ida de las Cortes o pagar la cuota di a tiempo, puede i mente. Si no cono pos requisitos para nes de lucro en el v.sucorte.ca.gov) uotas y los costos na concesión de a	er legal form if you want the nd more information at the C arest you. If you cannot pay for default, and your wages, more y an attorney, you may want if profit legal services program, omia Courts Online Self-Help e court has a statutory lien for e paid before the court will di e paid before the court will di e nescuchar su versión. Leg la presentar una respuesta por egen. Su respuesta por escri o que usted puede usar para de California (vr.w.sucorte.c. e presentación, pida l secre perder el caso por incumplimi ce a un abogado, puede llarr ostiener servicios legales grá sitio web de California Legal o poniéndose en contacto co exentos por imponer un gra	court to hear your alifornia Courts he filing fee, ask oney, and property to call an attorney You can locate center r valved fees and smiss the case. a información a r escrito en esta ito tiene que estar su respuesta. a gov), en la tario de la corte tento y la corte le har a un servicio de atuitos de un Services, n la corte o el vamen sobre ho civil. Tiene que
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400 McAllister Street	• •			· · · · · · · · · · · · · · · · · · ·	
San Francisco, California 94 The name, address, and telep (El nombre, la dirección y el r GUNN COBLE LLP	phone number of plainti	ff's attorney, or plaintiff v abogado del demandant	vithout an attorn e, o del demano	ey, is: Catherine J. Coble lante que no tiene abogad	io, es):
101 S. 1st Street, Suite 407, E	URBANK, CA 91502			(818)	00-0695
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Judicial Council of Cattornia SUM-100 [Rev. July 1, 2009]

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1 . 2	BETH GUNN, CA Bar No. 218889 beth@gunncoble.com CATHERINE J. COBLE, CA Bar No. 223461 cathy@gunncoble.com	ELECTRONICALLY FILED Suporior Court of California, County of San Francisco
3.	GUNN COBLE LLP	09/07/2018
4	101 S. 1st Street, Suite 407 Burbank, CA 91502 Telephone: 818.900.0695	Clerk of the Court BY:BOWMAN LIU Deputy Clork
5	Facsimile: 818.900.0723	
6 7	Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly situat	ted
8	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
9	FOR THE COUNTY (OF SAN FRANCISCO
10		
t f	RYAN HYAMS, an individual, on behalf of himself, and all others similarly situated,	Case No. <u>CGC-18-569060</u>
12	Plaintiff,	CLASS ACTION FIRST AMENDED COMPLAINT
13		1. Failure To Provide Required Meal Periods;
14	VS.	2. Failure To Authorize And Permit Required
ļ	CVS HEALTH CORPORATION, a Rhode	Rest Breaks;
15	Island Corporation, CVS PHARMACY, INC., a	3. Failure To Pay Overtime;
16	Rhode Island Corporation, GARFIELD BEACH CVS, LLC, a California Corporation, and CVS RX SERVICES, INC a New York Corporation,	 Failure To Pay Minimum Wages; Failure To Pay Timely Wages Due At Transistion (Waiting Time Papaltias)
17	DOES 1 through 25, inclusive,	Termination/Waiting Time Penalties; 6. Failure To Timely Pay All Wages;
18	Defendants.	 Failure To Reimburse For Employment Related Expenses;
19		8. Failure To Maintain Required Records;
20		 Failure To Furnish Accurate Itemized Wage Statements;
21		10. Failure To Provide Written Notice Of Paid
22		Sick Leave 11. Failure To Provide One Day's Rest In
23		Seven 12. Failure to Comply With California Labor
24	· ·	Code Sections 850 and 851 13. Unfair And Unlawful Business Practices;
25		14. Penalties Under The California Labor
26		Code Private Attorneys General Act, As Representative Action
27		DEMAND FOR JURY TRIAL.
. 28		
		1
	CLASS AND REPRESENTATIVE AC	TION FIRST AMENDED COMPLAINT

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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

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

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PLAINTIFF

PLAINTIFF is a former non-exempt employee who worked as a pharmacist for 13 5. DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS, 14 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California. 15 As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately 16 6. dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This 17 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone); 18 checking for drug interactions and precautions, contacting physicians where appropriate, advising 19 patients regarding the use of their prescriptions pursuant to California law, entering information in 20DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS' 21 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the 22 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A ·23 pharmacist was required to be on the premises during all hours of operation, to comply with 24 operational policies and procedures. 25

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

. CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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

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

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
 pharmacies to ensure their business needs were met, which required PLAINTIFF to drive great
 distances, stay at a hotel, and staff a pharmacy by himself for days at a time. At all locations,
 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.

13. For a portion of his employment, in violation of Labor Code Section 246(i),
DEFENDANTS failed to provide PLAINTIFF, 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. PLAINTIFF did not receive all of the sick time to which he was entitled.

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

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take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with
 pharmacy questions. PLAINTIFF 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. PLAINTIFF
 was not paid any penalties for these interrupted meal and/or rest breaks.

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 5
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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

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

DEFENDANTS

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

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

a. DEFENDANT CVS HEALTH CORPORATION is a corporation organized 20under the laws of the State of Rhode Island that is engaged in the business of 21 operating retail stores that sell pharmaceuticals and general merchandise and 22 provide pharmacy services throughout the State of California. 23b. DEFENDANT CVS PHARMACY, INC. is a corporation organized under the 24 laws of the State of Rhode Island that is engaged in the business of operating 25 retail stores that sell pharmaceuticals and general merchandise and provide 26 .27 pharmacy services throughout the State of California. c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with 28

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

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

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

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

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DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby creating an employment relationship with PLAINTIFF. See Castaneda v. Ensign Group, Inc. (2014) 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.

All DEFENDANTS compelled, coerced, aided, and/or abetted the illegal conduct 25. 8 9 alleged in this Complaint, which conduct is prohibited under the Labor Code. All DEFENDANTS were responsible for the events and damages alleged herein, including on the following bases: (a) 10 DEFENDANTS committed the acts alleged; (b) at all relevant times, one or more of the 11 DEFENDANTS was the agent or employee, and/or acted under the control or supervision of, one or 12 more of the remaining DEFENDANTS and, in committing the acts alleged, acted within the course 13 and scope of such agency and employment and/or is or are otherwise liable for PLAINTIFF's 14 15 damages; (c) at all relevant times, there existed a unity of ownership and interest between or among those DEFENDANTS such that any individuality and separateness between or among these 16 DEFENDANTS has ceased, and DEFENDANTS are the alter egos of one another. DEFENDANTS 1.7 exercised domination and control over one another to such an extent that any individuality or 18 separateness of DEFENDANTS does not, and at all times herein mentioned did not, exist. Adherence 19 to the fiction of the separate existence of DEFENDANTS would permit abuse of the corporate 20 privilege and would sanction fraud and promote injustice. All actions of all DEFENDANTS were 2.122taken by employees, supervisors, executives, officers, and directors during employment with all DEFENDANTS, were taken on behalf of all DEFENDANTS, and were engaged in, authorized, 23 ratified, and approved of by all other DEFENDANTS. 24

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

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CLASS ACTION ALLEGATIONS

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

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

> a. Routinely working through meal and/or rest breaks without proper compensation for the same, including the payment of penalties for interrupted meal and/or rest breaks;

 Routinely working off-the-clock when answering work-related text messages and/or when forced by management to continue to work while clocked out, without receiving wages, premium pay, or minimum wages for the off-the-clock time worked;

 No compensation for unpaid wages and/or premium pay at the time of termination;

d. Use of personal cell phones without adequate reimbursement;

e. Receipt of inaccurate wage statements;

f. Lack of receipt of adequate written notice of paid sick leave;

g. Routinely working without receiving one day's rest in seven; and

h. Routinely working in excess of the prescribed time limitations set forth in Labor Code sections 850 and 851.

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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

employees, including the provision of wage statements; reimbursements of necessary business
expenses; time and pay recordkeeping; and notice to employees of paid sick leave.

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

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1 procedures applied on a class-wide basis.

31. Upon information and belief, DEFENDANTS maintain a single, centralized Human
Resources department, which is responsible for the hiring of new employees, collecting and
processing all new hire paperwork, and communicating and implementing DEFENDANTS'
company-wide policies and practices, including timekeeping policies, meal and rest break policies,
sick time policies, vacation time policies, and payroll policies and practices applicable to their
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 knew or should have known that PLAINTIFF and CLASS MEMBERS were entitled to meal 13 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, uninterrupted, thirty (30) minute meal periods and that PLAINTIFF and CLASS MEMBERS were 16 not provided with all meal periods or payment of one (1) additional hour of pay at their regular rate 17 when PLAINTIFF and CLASS MEMBERS did not receive a timely, uninterrupted thirty (30) -18 19 minute meal period.

20 34. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS 21knew 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 PLAINTIFF and CLASS MEMBERS were not authorized and permitted to take compliant rest 24 25periods 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.

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35. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS 10

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

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

9 37. PLAINTIFF is informed and believes, and thereon alleges, that DEPENDANTS
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.

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

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

scope of their employment, and that they did not receive full reimbursement of applicable business 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.

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

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.

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

45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were not to 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, and that DEFENDANTS should not have required PLAINTIFF and

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

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.

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

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

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

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

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

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

FIRST CAUSE OF ACTION

Failure To Provide Required Uninterrupted Meal Periods

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

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

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived

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

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

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

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

27 55. At all relevant times herein, DEFENDANTS had, and continue to have, a company28 wide policy of failing to schedule and provide uninterrupted meal breaks for PLAINTIFF and

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

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

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

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

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

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

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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)

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.

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 72001, 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

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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), codified at Cal. Code Regs. tit. 8 § 110501; see also Cal. Lab. Code § 226.7. 5

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 rate of compensation for each workday that the meal or rest or recovery period is not provided." 9 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 practice of not paying PLAINTIFF and CLASS MEMBERS rest period premiums when rest 12 13 periods were missed, late and/or interrupted.

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

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

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(Against ALL DEFENDANTS and DOES 1 to 25)

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

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174. At all relevant times herein, Labor Code section 510 has mandated that any time2worked beyond eight hours in one workday or beyond 40 hours in any workweek must be3compensated at no less than one and one-half times the regular wage. See Cal. Lab. Code § 510(a).

75. IWC Wage Order 7-2001 further provides that employees "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), *codified* at Cal. Code
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 double13 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.

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

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

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

At all times herein, DEFENDANTS failed to properly calculate the regular rate of
 pay for purposes of paying overtime to PLAINTIFF and CLASS MEMBERS by including all
 compensation, such as shift differential pay and other compensation, as required by the Labor
 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.

FOURTH CAUSE OF ACTION 20Failure To Pay Minimum Wages 21 (Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198; 22 and Cal. Code Regs. Tit. 8, § 11050) 23 (Against ALL DEFENDANTS and DOES 1 to 25) 24 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 25 84. 26 and every allegation set forth above. At all relevant times herein, employers operating under California law must pay at 27 85. least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), codified 28 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an 2 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 penalty of \$100 for the initial pay period and \$250 for each subsequent pay period during which such violations occurred. Cal. Lab. Code § 1197.1. 6

86. At all relevant times herein, as a result of DEFENDANTS' staffing and scheduling 7 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; requiring, permitting or suffering PLAINTIFF and CLASS MEMEBERS to work off-the-clock 15 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 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees 22 23 and costs of suit.

24 **FIFTH CAUSE OF ACTION** Failure To Pay Timely Wages Due At Termination/Waiting Time Penalties 25 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 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

1 and every allegation set forth above.

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

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

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

1794.When PLAINTIFF and the FORMER EMPLOYEE SUBCLASS separated from18employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed.

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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).

97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
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)

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 earned by any person in any employment between the first (1st) and the fifteenth (15th) ddays, 9 inclusive, of any calendar month, other than those wages due upon termination of an employee, are 10 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 calendar month, other than those wages due upon termination of an employee, are due and payable 14 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).

101. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage
Order is the minimum wage to be paid to employees, and the payment of a wage less than the
minimum wage set by the IWC is unlawful. "Hours worked," and therefore compensable time, is
defined in IWC Wage Order 7-2001 as "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..." IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8
\$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.

19106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS20MEMBERS all wages owed at their legally prescribed regular rate of pay.

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 107.
 DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,

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 1197, 1198, and IWC Order No. 7-2001, codified at Cal. Code Regs. tit. 8 § 11050.

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

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SEVENTH CAUSE OF ACTION.

Failure To Reimburse For Employment Related Expenses

(Cal. Lab. Code section 2802)

(Against ALL DEFENDANTS and DOES 1 to 25)

5 109. PLAINTIFF incorporates by reference and realleges as if fully stated herein each
6 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).

14 111. At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE 15 SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by 16 DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the 17 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange 18 text messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFF 19 or the BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed 20 PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred 21 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.

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

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fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

114. PLAINTIFF incorporates by reference and realleges as if fully stated herein each 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
records including, but not limited to, when the employee begins and ends each work period and
meal period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the
CLASS PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop
times for PLAINTIFF and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code
§1198.5; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

At all relevant times herein, Labor Code section 226 provides that an employer is to 21 117. 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 to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); see also 28 26

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•	
i	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)
<u>9</u>	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), <i>codified</i> at Cal. Code Regs. tit. 8 § 11050. 27
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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).

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

129. PLAINTIFF and CLASS MEMBERS have been damaged in an amount according
to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses,
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 28
	CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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1 and every allegation set forth above.

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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.

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.

TWELFTH CAUSE OF ACTION 20Failure To Comply with Labor Code Sections 850 and 851 21 (Cal. Lab. Code sections 850 and 851) 22 (Against ALL DEFENDANTS and DOES 1 to 25) 23 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 24 137. and every allegation set forth above. 25 At all times herein, Labor Code section 850 has provided, in pertinent part, that 26 138. "[n]o person employed to sell at retail drugs and medicines or to compound physicians' 27 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for 28 CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

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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.

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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.

THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

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

(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.

145. At all times herein, DEFENDANTS' conduct, as alleged herein, has been, and
continues to be, unfair, unlawful and harmful to PLAINTIFF, CLASS MEMBERS, the general
public, and DEFENDANTS' competitors. PLAINTIFF and CLASS MEMBERS have suffered
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.

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ł Each and every one of the DEFENDANTS' acts and omissions in violation of the 147. 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' failure to authorize and permit uninterrupted rest periods; DEFENDANTS' failure to pay overtime 4 compensation; DEFENDANTS' failure to pay premium compensation at the legally prescribed -5 regular rate of pay; DEFENDANTS' failure to pay minimum wages; DEFENDANTS' failure to 6 pay all wages due to terminated employees; DEFENDANTS' failure to furnish accurate wage 7 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 seven; and DEFENDANTS' failure to comply with Labor Code Sections 850 and 851 constitutes 10 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.

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

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FOURTEENTH CAUSE OF ACTION

Representative Action for Civil Penalties

(Cal. Lab. Code sections 2698-2699.5).

(Against ALL DEFENDANTS and DOES 1 to 25)

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, 8531174, 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).

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

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

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Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 228 of 298

1	PRAYER FOR RELIEF
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
28	

		Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 229 of 298
.•	•	
	i	13. For such further relief that the Court may deem just and proper.
•	2	
	3	DATED: September 7, 2018 GUNN COBLE LLP
	4	
	5	Polot
	6	By: Been Gurin
	7	Catherine J. Coble Attorneys for Plaintiff RYAN HYAMS,
	8	on behalf of himself, and all others similarly situated
	9	Situated
	10	
•.	11	DEMAND FOR JURY TRIAL
	12	PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a jury
	13	trial with respect to all issues triable of right by jury.
	14 15	
	16	DATED: September 7, 2018 GUNN COBLE LLP
	17	and ha
	18	By DUDI
	19	Beth Gunn Cathy Coble
•	20	Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly
	21	situated
	22	
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		CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT
		II · · · · · · · · · · · · · · · · · ·

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Exhibit A

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Beth Gunn 818.573.6389 beth@gunncoble.com

Cathy Coble 818.573.6392 cathy@gunncoble.com



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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 nonexempt employees of CVS who have worked for CVS during the one year preceding the date of this letter through the present date.

Page | 2

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. <u>Facts</u>

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

Page | 3

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. <u>CVS Violated Labor Code Section 204 by Failing to Pay Employees for All Hours</u> 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.

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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. <u>CVS Violated Labor Code Sections 246(i) and 246.5.</u>

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. Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 235 of 298

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

4. <u>CVS Violated Labor Code Sections 512 and 226.7 and IWC 7-2001 (11 & 12) by Failing</u> 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 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. <u>Failure to Provide Accurate Itemized Wage Statements in Violation of California</u> 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. <u>CVS Violated Labor Code Section 2802 by Failing to Reimburse Employees for Costs</u> Incurred Related to the Use of Personal Cell Phones for Necessary Work-Related <u>Purposes.</u>

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 Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 238 of 298

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 Page | 8 :

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 239 of 298

		CM-010		
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar nut		ENDOHSED USE ONLY		
Catherine J. Coble	SBN: 223461	FILED		
GUNN COBLE LLP		Sen Francisco County Superior Court		
101 S. 1st Street, Suite 407, BURBANK, CA 9	1502			
TELEPHONE NO.: (818) 900-0695	FAX NO.:(818) 900-0723	AUG 2 1 2018		
ATTORNEY FOR (Name): Ryan Hyams on behalf of hi	miself and others similarly situated			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN STREET ADDRESS: 400 McAllister Street	FRANCISCO	CLERK OF THE COURT		
MALING ADDRESS: 400 MCAllister Street		BY. ROSSALY DE LA VEGA		
CITY AND ZP CODE: San Francisco, 94102		Deputy Clerk		
		USPUTY CASK		
BRANCH NAME: Civic Center Courthouse	OPATION d al			
CASE NAME: Hyams v. CVS HEALTH CORP	OKATION, et al.			
		GASE NUMBER:		
CIVIL CASE COVER SHEET	Complex Case Designation	CGC-18-560060		
X Unlimited Limited	Counter Joinder	<u>CGC-18-569060</u>		
(Amount (Amount demanded is	Filed with first appearance by defen	dant Judge:		
demanded demanded is exceeds \$25,000) \$25,000 or less)	(Cal. Rules of Court, rule 3.402)			
exceeds \$25,0007 \$25,000 01 10007	w must be completed (see Instructions			
1. Check one box balow for the case type that				
Auto Tort	Contract	Provisionally Complex Civil Litigation		
	Breach of contract/warranty (06)	(Cal. Rules of Court, rules 3.400-3.409)		
Uninsured motorist (48)	Rule 3.740 collections (09)	Antitrust/Trade regulation (03)		
Other PI/PD/WD (Personal Injury/Property	Cither collections (09)	Construction defect (10)		
Damage/Wrongtul Death) Tort	tinsurance coverage (18)	Mass tort (40)		
Asbestos (04)	Cither contract (37)	Securities (tigation (28)		
Product liability (24)	Real Property	Environmental/Toxic tort (30)		
Medical malpractice (45)	Eminent domain/Inverse	Insurance coverage claims arising from the		
Other PI/PO/WD (23)	condemnation (14)	above fisted provisionally complex case types (41)		
Non-PUPD/WD (Other) Tort	Wrongful eviction (33)			
Business tort/unfair business practice (07)	Other real property (26)	Enforcement of Judgment		
Civil rights (08)	Uniewhii Detainer	Entorcement of judgment (20)		
Octamation (13)	Commercial (31)	Miscellaneous Civil Complaint		
Fraud (16)	Plesidential (32)	RICO (27)		
Intellectual property (19)	Drugs (38)	Ciher complaini (not specified above) (42)		
Professional negligence (25)	Judictal Review	Miscellaneous Civil Petition		
Other non-Pl/PD/WD tort (35)	Asset forteiture (05)	Partnership and corporate governance (21)		
Employment	Petition re: arbitration award (11)	Other petition (not specified above) (43)		
Wrongful termination (38)	Writ of mandate (02)			
X Other employment (15)	Other judicial review (39)			
2. This case X is is not com	olex under rule 3.400 of the California I	Rules of Court. If the case is complex, mark the		
factors requiring exceptional judicial mana	gement			
, a Large number of separately repre	sented parties d. X Large numt	per of witnesses		
b. Extensive motion practice raising	difficutt or novel e. Coordinatio	n with related actions pending in one or more court		
issues that will be time-consuming	a to resolve in other cau	intles, states, or countries, or in a federal court		
c. X Substantial amount of documenta		postjudgment judicial supervision		
3. Remedies sought (check all that apply): a	. X monetary b. X nonmonetary	declaratory or injunctive relief C. X punitive		
4. Number of causes of acton (specify): 13		7		
5 This case Xits. is not a cla	ss action suit.			
6. If there are any known related cases, file a	and serve a notice of related case. (Yo	u may use form CM-015.)		
• •				
Date: August 21, 2018		NJ.Y		
Catherine L. Coble	¥	EGNATURE OF PARTY OR ATTORNEY FOR PARTY)		
	NOTICE	bill access ar mail datus more ar more filed		
 Plaintiff must file this cover sheet with the 	thrst paper filed in the action of procee	ding (except small claims cases or cases filed Bules of Court, rule 3 220) Failure to file may result		
under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Hules or Court, rule 3.20.) Failure to the may resolu				
 In sanctions. File this cover sheet in addition to any co 	ver sheet required by local court rule.	. sanata sa ta		
 If this case is complex under rule 3.400 e 	t seq. of the California Hules of Count,	you must serve a copy of this cover sheet on all		
athor and as to the policy of Diocephiles	· · · · · · · · · · · · · · · · · · ·			
 Unless this is a collections case under rule 	is 3.740 or a complex case, this cover	sheet will be used for statistical purposes only.		
Form Adapted for Mandatory Uso	CIVIL CASE COVER SHEET	Cut. Rutes of Casis, siles 2.30, 3.220, 3.400-3.400, 3.74		
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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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 complet 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 delendant 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

Breach of Contract/Warranty (06)

Contract

the case is complex. Auto Tort Auto (22)-Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice-Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of **Emotional Distress** Negligent Infliction of **Emotional Distress** Other PI/PD/WD Non-PI/PD/WD (Other) Tort **Business Tort/Unfair Business** Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Detamation (e.g., stander, libel) (13)Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35) Employment Wrongful Termination (36) Other Employment (15)

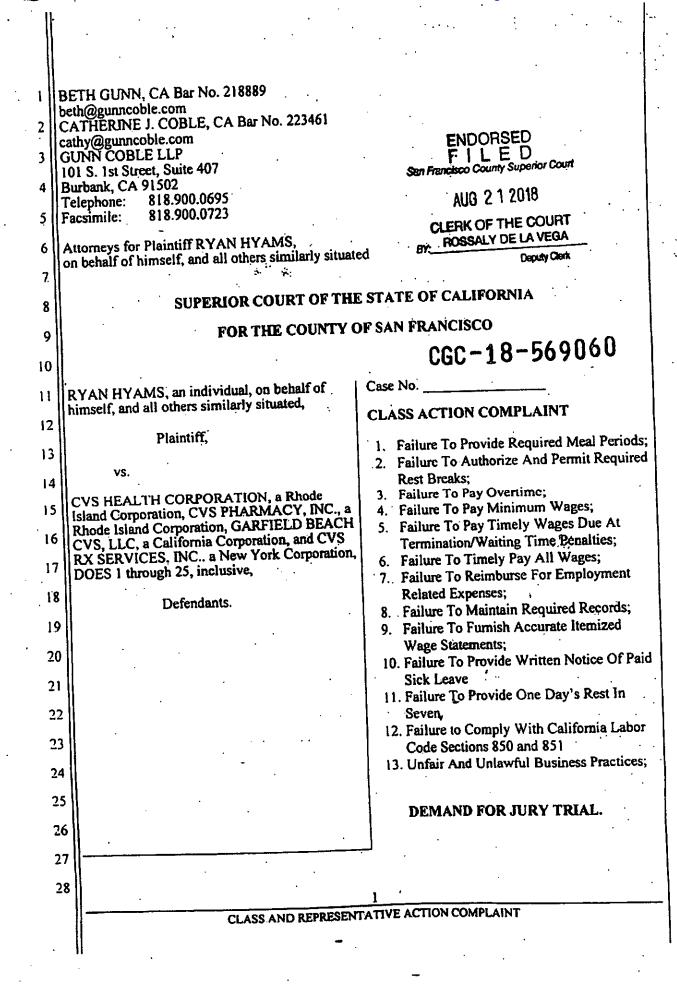
GM-010 [Rev. July 1, 2007]

Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach-Seller Plaintill (not fraud or neoligence) Negligent Breach of Contract/ Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case-Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud **Other Contract Dispute** Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure **Ouiet Title** Other Real Property (not eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asset Forfeiture (05) Pelition Re: Arbitration Award (11) Writ of Mandate (02) Writ-Administrative Mandamus Writ-Mandamus on Limited Court Case Matter Writ-Other Limited Court Case Review Other Judicial Review (39) **Review of Health Officer Order** Notice of Appeal-Labor **Commissioner** Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (nondomestic relations). Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (nonharassment) Mechanics Lien Other Commercial Complaint Case (non-ton/non-complex) Other Civil Complaint (non-tort/non-complex) **Miscellaneous Civil Petitlon** Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition

CIVIL CASE COVER SHEET

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

INTRODUCTION

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

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JURISDICTION AND VENUE

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

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

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

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

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PLAINTIFF

PLAINTIFF is a former non-exempt employee who worked as a pharmacist for 5. 13 DEFENDANTS for more than two years. At the end of his employment with DEFENDANTS, 14 PLAINTIFF was earning \$76/hour. PLAINTIFF is a resident of San Francisco County, California. 15 As a pharmacist, PLAINTIFF'S primary duties were to safely and accurately 6. 16 dispense approximately 250-300 prescriptions per day to DEFENDANTS' customers. This 17 included reviewing prescriptions provided to the pharmacy (either in writing or over the phone), 18 checking for drug interactions and precautions, contacting physicians where appropriate, advising 19 patients regarding the use of their prescriptions pursuant to California law, entering information in 20DEFENDANTS' systems, and dispensing and packaging medications to DEFENDANTS' 21 customers. When pharmacy technicians were unavailable, PLAINTIFF would also work at the 22 pharmacy cash register to ring up sales of prescriptions and other items at the pharmacy. A 23 pharmacist was required to be on the premises during all hours of operation, to comply with 24 operational policies and procedures. 25

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

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

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

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

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

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

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

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

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

CLASS AND REPRESENTATIVE ACTION COMPLAINT

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take, after clocking out and before clocking back in, PLAINTIFF was routinely interrupted with pharmacy questions. PLAINTIFF 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. PLAINTIFF was not paid any penalties for these interrupted meal and/or rest breaks.

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:

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

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

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.

DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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

Finally, at all relevant times mentioned herein, all DEFENDANTS acted as agents of 2526. all other DEFENDANTS in committing the acts alleged herein. 26

CLASS ACTION ALLEGATIONS

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

California during the last four (4) years.

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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:

a. Routinely working through meal and/or rest breaks without proper compensation for the same, including the payment of penalties for interrupted meal and/or rest breaks;
b. Routinely working off-the-clock when answering work-related text messages and/or when forced by management to continue to work while clocked out,

without receiving wages, premium pay, or minimum wages for the off-the-clock time worked;

 No compensation for unpaid wages and/or premium pay at the time of termination;

d. Use of personal cell phones without adequate reimbursement;

e. Receipt of inaccurate wage statements;

f. Lack of receipt of adequate written notice of paid sick leave;

g. Routinely working without receiving one day's rest in seven; and

h. Routinely working in excess of the prescribed time limitations set forth in Labor

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.

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

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Upon information and belief, DEFENDANTS maintain a single, centralized Human

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

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

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

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

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

known was performed.

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

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

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

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

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

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

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

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

45. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
knew or should have known that PLAINTIFF and CLASS MEMBERS were not to 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, and that DEFENDANTS should not have required PLAINTIFF and
CLASS MEMBERS to do so, but that PLAINTIFF and CLASS MEMBERS did work an average
of more than nine hours per day and/or more than 108 hours in any two consecutive weeks or more

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

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.

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

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

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

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

1D.Superiority: The nature of this action makes the use of class action2adjudication superior to other methods. A class action will achieve economies of time, effort, and3expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the4same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

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Failure To Provide Required Uninterrupted Meal Periods

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

(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.

51. At all relevant times herein, Labor Code section 512 has provided 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," except that if the total
work period per day of the employee is not more than six (6) hours, the meal period may be waived
by mutual consent of both the employer and employee. Cal. Lab. Code § 512(a). During this meal
period of not less than thirty (30) minutes, the employee is to be completely free of the employer's

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

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

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

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

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

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

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

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

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

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

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

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 257 of 298 SECOND CAUSE OF ACTION 1 Failure To Authorize And Permit Required Rest Breaks 2 (Cal. Lab. Code sections 226.7, 1198; Cal. Code Regs. tit. 8 § 11050.) 3 (Against ALL DEFENDANTS and DOES 1 to 25) 4 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 5 61. and every allegation set forth above. 6 At all relevant times herein, Labor Code sections 226.7 and 1198 and IWC Wage 7 62. Order 7-2001 were applicable to PLAINTIFF and CLASS MEMBERS employed by 8 9 DEFENDANTS. At all relevant times herein, IWC Wage Order 7-2001 has stated that "[e]very 63. 10 employer shall authorize and permit all employees to take rest periods ... at the rate of ten (10) 11 minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time 12 is less than three and one-half (3.5) hours. IWC Order No. 7-2001(12), codified at Cal. Code Regs. 13 tit. 8 § 11050. 14 At all relevant times herein, Labor Code section 226.7 provides that "[a]n employer 64. 15 shall not require an employee to work during a meal or rest or recovery period mandated pursuant 16 to an applicable statute " Cal. Lab. Code § 226.7(b). 17 At all relevant times herein, DEFENDANTS regularly failed to authorize or permit 18 65.⁻ PLAINTIFF and CLASS MEMBERS to take ten (10) minute uninterrupted rest periods for each 19 four (4) hours worked, or major fraction thereof: PLAINTIFF and CLASS MEMBERS were 20regularly denied uninterrupted rest periods in violation of the Labor Code. IWC Wage Order 7-21 2001, codified at Cal. Code Regs. tit. 8 § 11050; see also Cal. Lab. Code § 226.7(b). 22At all relevant times herein, DEFENDANTS' staffing policies and scheduling 2366. practices prevented PLAINTIFF and CLASS MEMBERS from being relieved of all duties in order 24 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how 25employees spend their break time. See Augustus v. ABM Security Systems, Inc., 2 Cal. 5th 257, 260 26 (2016). As a result, PLAINTIFF and CLASS MEMBERS would work shifts in excess of 3.5 27 hours, in excess of six (6) hours, and in excess of ten (10) hours, without receiving the 28 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

67. By DEFENDANTS' failure to authorize and permit PLAINTIFF and CLASS MEMBERS to take uninterrupted rest breaks for every four (4) hours or major fraction thereof worked per day, DEFENDANTS willfully violated the Labor Code. IWC Wage Order 7-2001(12), 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.

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

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

2172.PLAINTIFF and CLASS MEMBERS have been damaged in an amount according22to proof at trial, and seek all wages earned and due, penalties, interest, expenses, and costs of suit.

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

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(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.

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

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IWC Wage Order 7-2001 further provides that employees "shall not be employed 75. 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 1/2) 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), codified at Cal. Code Regs. tit. 8 § 11050; see also Cal. Lab. Code § 1198.

At all relevant times herein, DEFENDANTS were required to compensate 9 76. PLAINTIFF and CLASS MEMBERS for all overtime, calculated at one and one-half (1 1/2) times 10 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) 11 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-12 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked 13 in excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. 14 Code §§ 510, 1194, 1WC Wage Order 7-2001(3), codified at Cal. Code Regs. tit. 8 § 11050. 15

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION 20Failure To Pay Minimum Wages 21 (Cal. Lab. Code sections 1182.12, 1194, 1197, 1197.1, and 1198; 22 and Cal. Code Regs. Tit. 8, § 11050) 23 (Against ALL DEFENDANTS and DOES 1 to 25) 24 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 25 84. and every allegation set forth above. 26 At all relevant times herein, employers operating under California law must pay at 27 85. least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), codified 28 20

at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to
recover the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an
employee is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well
as interest. Cal. Lab. Code §1194.2. 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. Cal. Lab. Code § 1197.1.

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

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

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 88.
 DEFENDANTS' conduct violates Labor Code sections 1182.12, 1194, 1197,

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 1197.1, and 1198 and IWC Order No. 7-2001(4), codified at Cal. Code Regs. tit. 8 § 11050.

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

FIFTH CAUSE OF ACTION

25	Failure To Pay Timely Wages Due At Termination/Waiting Time Penaltics
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 21
	CLASS AND REPRESENTATIVE ACTION COMPLAINT

and every allegation set forth above.

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

At all relevant times herein, PLAINTIFF and the FORMER EMPLOYEE
SUBCLASS were entitled to, but did not receive, meal and rest period premium wages, overtime
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.

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

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

97. PLAINTIFF and the FORMER EMPLOYEE SUBCLASS have been damaged in an
amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
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)

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) ddays, inclusive, of any calendar month, other than those wages due upon termination of an employee, are 10 11 due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by 12 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 wages earned for labor in excess of the normal work period shall be paid no later than the payday 17 for the next regular payroll period. Cal. Lab. Code § 204(b). Alternatively, at all times relevant 18 herein, Labor Code section 204 has provided that the requirements of this section arc deemed 19 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are 20paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. 21 22Code § 204(d).

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At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and 101. 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 26minimum 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,

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

At all relevant times herein, DEFENDANTS willfully failed to pay PLAINTIFF and
CLASS MEMBERS all wages due including, but not limited to overtime wages, minimum wages,
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.

19106. At all times herein, DEFENDANTS failed to pay PLAINTIFF and CLASS20MEMBERS all wages owed at their legally prescribed regular rate of pay.

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 107.
 DEFENDANTS' conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,

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 1197, 1198, and IWC Order No. 7-2001, codified at Cal. Code Regs. tit. 8 § 11050.

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

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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).

At all relevant times herein, PLAINTIFF and the BUSINESS EXPENSE 14 111. SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by 15 DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFF and the 16 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange 17 18 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 19 20 PLAINTIFF and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred in using their personal cell phones for DEFENDANTS' business. 21

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.

27 113. PLAINTIFF and the BUSINESS EXPENSE SUBCLASS have been damaged in an
 28 amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' 25

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fees, expenses, and costs of suit.

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EIGHTH CAUSE OF ACTION

Failure To Maintain Required Records

(Cal. Lab. Code sections 226(a), 226.3, 1174(d), and 1198.5; and Cal. Code Regs. tit. 8

§ 11050.)

(Against ALL DEFENDANTS and DOES 1 to 25)

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

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

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

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

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

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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.

TENTH CAUSE OF ACTION

Failure To Provide Written Notice of Paid Sick Leave

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

(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
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." Cal. Lab. Code § 246(i).

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

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 28 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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and every allegation set forth above.

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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.

At all times herein, DEFENDANTS failed to provide to PLAINTIFF and CLASS
 MEMBERS the legally-mandated rest days as required by California law. 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). DEFENDANTS failed to provide this notice to PLAINTIFF and CLASS
 MEMBERS.

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.

TWELFTH CAUSE OF ACTION 20Failure To Comply with Labor Code Sections 850 and 851 21 (Cal. Lab. Code sections 850 and 851) 22 (Against ALL DEFENDANTS and DOES 1 to 25) 23 24 PLAINTIFF incorporates by reference and realleges as if fully stated herein each 137. 25 and every allegation set forth above. At all times herein, Labor Code section 850 has provided, in pertinent part, that 26 138. "[n]o person employed to sell at retail drugs and medicines or to compound physicians' 27 prescriptions shall perform any work in any store, dispensary, pharmacy, laboratory, or office for 28 CLASS AND REPRESENTATIVE ACTION COMPLAINT

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.

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

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

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THIRTEENTH CAUSE OF ACTION

Unfair And Unlawful Business Practices

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

(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.

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

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

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

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

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

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

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

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28 III

CLASS AND REPRESENTATIVE ACTION COMPLAINT

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	PRAYER FOR RELIEF					
2	Wherefore PLAINTIFF, individually and on behalf of all other persons similarly situated,					
3	respectfully p	rays 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), and 853;					
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	2802, California Civil Code section 1021.5, and any other applicable provisions providing for					
22	attorneys' fees and costs;					
23	10.	For declaratory relief;				
24	11.	For an order requiring and certifying the thirteen Causes of Action pled in this				
25	COMPLAINT as a class action;					
26	12.	For an order appointing PLAINTIFF as class representative, and PLAINTIFF's				
27	counsel as c	lass counsel; and				
28	111	32				
		CLASS AND REPRESENTATIVE ACTION COMPLAINT				

1	13. For such further relief that the C	Court may deem just and proper.	
2			
3	DEMAND F	OR JURY TRIAL	
4	PLAINTIFF, on behalf of himself and all others similarly situated, hereby demands a ju		
5	trial with respect to all issues triable of right by jury.		
6			
7	DATED: August 21, 2018	GUNN COBLE LLP	
8			
9		\bigcirc \land \land	
0		By: Beth Gunn	
1	· ·	Cathy Coble	
2		Attorneys for Plaintiff RYAN HYAMS, on behalf of himself, and all others similarly	
3		situated	
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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 Yuhos, 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



PROCEDURES, PODCASTS, FORMS, MEDIATOR BIOGRAPHIES AND PHOTOGRAPHS: www.sfbar.org/mediation

adr@sfbar.org or 415-982-1600



MEDIATION SERVICES



THE BAR ASSOCIATION OF

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WHAT IS BASF'S MEDIATION SERVICE?

QUALITY

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.

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.

HOW DO I LEARN MORE ABOUT THE MEDIATORS?

BASF's website at www.slbar.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.

WWW.SFBAR.ORG MELIATION • ADR@SFBAR ORG • 415.982.1600

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 276 of 298 CASE NUMBER: CGC-18-569060 RYAN HYAMS VS. CVS HEALTH CORPORATION, A RHODE

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

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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 <u>www.sfbar.org/adr</u> 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

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Page 1

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 partles, 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: <u>www.sfbar.org/esp</u>.

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 <u>adr@sfbar.org</u> 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 <u>www.sfbar.org/mediation</u> or BASF can assist with mediator selection. The BASF website contains photographs, blographies, 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%.

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Page 2

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 <u>adr@sfbar.org</u> 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 BASE TO ENROLL IN THE LISTED BASE PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASE.

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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

EUTEOOAHINFOX

Expedited Jury Trial Information Sheet

(3)

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).

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.

Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only threequarters 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.

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.

Judicial Council of California, www.courts.co.gov Ravised July 1, 2018, Mandatory Form Code el Civil Procedure, 5 630.01–630,10 Cal: Rules el Court, rules 3 1545–3,1553 **Expedited Jury Trial Information Sheet**

MENEO 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.

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.

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 meterially 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.

Expedited Jury Trial Information Sheet

EJT-001-INFO, Page 2 of 2

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 283 of 298

	RNEY OR PARTY WITHOUT ATTORNEY (Name and address)	FOR	COURT USE ONLY
			•
TELE	PHONE NO	· · .	
ATTO	RNEY FOR (Name):		
400 M San F	RIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO IcAllister Street irencisco, CA 94102-4514		
PLAIN	WTIFF/PETITIONER:		• •
DEFE	NDANT/RESPONDENT:		· ·
• •	STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER:	PARTMENT 610
		lowing ADR process:	
	Early Settlement Program of the Bar Association of San Francisco (a minimum of 2 hours of settlement conference time for a BASF administ those who qualify. BASF handles notification to all parties, co	BASF) - Pre-screened rative fee of \$295 per j	party. Waivers are available
	Early Settlement Program of the Bar Association of San Francisco (a minimum of 2 hours of settlement conference time for a BASF administ those who qualify. BASF handles notification to all parties, co management. <u>www.sfbar.org/esp</u> Mediation Services of BASF - Experienced professional mediators, scre and the first two hours of mediation time for a BASF administrative fee of s at the mediator's hourly rate. Waivers of the administrative fee are avail	BASF) - Pre-screened rative fee of \$295 per j inflict checks with the eened and approved, p \$295 per party. Mediati able to those who qua	party. Waivers are available the panelists, and full ca rovide one hour of preparation on time beyond that is charg
	Early Settlement Program of the Bar Association of San Francisco (a minimum of 2 hours of settlement conference time for a BASF administ those who qualify. BASF handles notification to all parties, co management. <u>www.sfbar.org/esp</u> Mediation Services of BASF - Experienced professional mediators, scre and the first two hours of mediation time for a BASF administrative fee of s	BASF) - Pre-screened rative fee of \$295 per p inflict checks with the eened and approved, p \$295 per party. Mediati able to those who qua <u>ur.org/mediation</u> by the hour or by the d	barty. Waivers are available ne panelists, and full ca rovide one hour of preparati on time beyond that is charg lify. BASF assists parties w ay, current market rates. At
_	Early Settlement Program of the Bar Association of San Francisco (a minimum of 2 hours of settlement conference time for a BASF administ those who qualify. BASF handles notification to all partles, co management. <u>www.sfbar.org/esp</u> Mediation Services of BASF - Experienced professional mediators, scree and the first two hours of mediation time for a BASF administrative fee of S at the mediator's hourly rate. Waivers of the administrative fee are avail mediator selection, conflicts checks and full case management. <u>www.sfba</u> Private Mediation - Mediators and ADR provider organizations charge b	BASF) - Pre-screened rative fee of \$295 per p inflict checks with the eened and approved, p \$295 per party. Mediati lable to those who qua <u>ar.org/mediation</u> by the hour or by the d erienced mediators and h the amount in control	barty. Waivers are available ne panelists, and full ca rovide one hour of preparati on time beyond that is charg lify. BASF assists parties w ay, current market rates. At I organizations on the Internet versy is \$50,000 or less and it

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 or Attorney Executing Stipulation
Signature of Party or Attorney
🗋 Plaintiff 🔲 Defendant 门 Cross-defendant
Dated:
signature(s) attached
IVE DISPUTE RESOLUTION

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and editoss):	FOR COURT USE ONLY
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TELEPHONE ND : FAX NO. (Optional):	
HALL ADDRESS (Optional);	· ·
ATTORNEY FOR (Name):	
UPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	•
ITY AND ZIP CODE:	· · ·
BRANCH NAME:	
PLAINTIFF/PETITIONER:	
FENDANT/RESPONDENT:	
	CASE NUMBER:
heck one): UNLIMITED CASE LIMITED CASE	
(Amount demanded (Amount demanded is \$25,00) exceeds \$25,000) or less)	• · · · ·
exceeds \$25,000) or less)	· ·
CASE MANAGEMENT CONFERENCE is scheduled as follows:	;
ite: Time: Dept.;	Div.: Room:
dress of court (if different from the address above):	•
Notice of Intent to Appear by Telephone, by (name):	· .
 a This statement is submitted by party (name): b This statement is submitted jointly by parties (names): 	· · · ·
	nts only)
 b. This statement is submitted jointly by parties (names): Complaint and cross-complaint (to be answered by plaintiffs and cross-complaina a. The complaint was filed on (date): b. The cross-complaint, if any, was filed on (date): 	
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PLAINTIFF/PETITIONER:	CM
DEFENDANT/RESPONDENT:	
 Provide a brief statement of the case, including any damages. (If personal injury damages claimed, including medical expenses to date [indicate source and amour earnings to date, and estimated future lost earnings. If equilable relief is sought, data and an an], estimated future medical expenses, lo:
(If more space is needed, check this box and attach a page designated as Attac	hment 4b.)
Jury or nonjury trial	
	one party, provide the name of each pa
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 on <i>not</i>, explain): 	f the date of the filing of the complaint <i>(if</i>
c. Dates on which parties or attorneys will not be available for trial (specify dates and	explain reasons for unavailability):
 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):	1
	,
The party or parties will be represented at trial by the attorney or party listed in a. Attorney: b. Firm: c. Address:	the caption by the following:
d. Telephone number: f. Fax num	
e. E-mail address: . g. Party re	resented:
Preference	
This case is entitled to preference (specify code section):	•
). Alternative dispute resolution (ADR)	<i>.</i>
a. ADR information package. Please note that different ADR processes are availab the ADR information package provided by the count under rule 3.221 for informatio court and community programs in this case.	e in different courts and communities; rea about the processes available through t
(1) For parties represented by counsel: Counsel has has has not prov in rule 3.221 to the client and reviewed ADR options with the client.	led the ADR information package identifi
(2) For self-represented parties: Party D has has not reviewed the ADR	information package identified in rule 3.2
b. Referral to judicial arbitration or civil action mediation (if available).	· · ·
(1) This matter is subject to mandatory judicial arbitration under Code of Civil mediation under Code of Civil Procedure section 1775.3 because the amostatutory limit.	unt in controversy does not exceed the
(2) Plaintiff elects to refer this case to judicial arbitration and agrees to limit re Civil Procedure section 1141.11.	covery to the amount specified in Code o
(3) This case is exempt from judicial arbitration under rule 3.811 of the Califo mediation under Code of Civil Procedure section 1775 et seq. (specify ex	nia Rules of Courtor from civil action amplion):
· · · ·	

Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 286 of 298

	•	•	<u> </u>
PLAINTIFF/PETITIONER:	•		CASE NUMBER:
EFENDANT/RESPONDENT:			

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 (he 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		 Mediation session not yet scheduled Mediation session scheduled for (<i>date</i>): Agreed to complete mediation by (<i>date</i>): Mediation completed on (<i>date</i>):
(2) Settlement conference		 Settlement conference not yet scheduled Settlement conference scheduled for (<i>date</i>): Agreed to complete settlement conference by (<i>date</i>): Settlement conference completed on (<i>date</i>):
(3) Neutral evaluation		 Neutral evaluation not yet scheduled Neutral evaluation scheduled for (<i>date</i>): Agreed to complete neutral evaluation by (<i>date</i>): Neutral evaluation completed on (<i>date</i>):
(4) Nonbinding judicial arbitration		Judicial arbitration not yet scheduled Judicial arbitration scheduled for (date): Agreed to complete judicial arbitration by (date): Judicial arbitration completed on (date):
(5) Binding private arbitration		 Private arbitration not yet scheduled Private arbitration scheduled for (<i>date</i>): Agreed to complete private arbitration by (<i>date</i>): Private arbitration completed on (<i>date</i>):
(6) Other (<i>specify</i>):		 ADR session not yet scheduled ADR session scheduled for (<i>date</i>): Agreed to complete ADR session by (<i>date</i>): ADR completed on (<i>date</i>):

CM-110 (Rov. July 1, 2011)

CASE MANAGEMENT STATEMENT

Page 3 of 6

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	•	•		CM-110
PLAINTIFF/PETITIONER:		· · · · · · · · · · · · · · · · · · ·	CASE NUMBER:	
- DEFENDANT/RESPONDENT:				
Insurance a Insurance carrier, if any, for pa b. Reservation of rights: Yes c Coverage issues wll significan	No No		•	
·			•	· .
2. Jurisdiction Indicate any matters that may affect the c		essing of this case an	d describe the status.	- .
Status:	<i>)</i> •	· *		
3. Related cases, consolidation, and coor a, There are companion, underlying				
(1) Name of case: (2) Name of court: (3) Case number: (4) Status:		· · ·		
Additional cases are described	in Attachment 13a.		•	· ·
b. 🔲 A motion to 🛛 consolida	ate 🔲 coordinate	will be filed by (i	name party):	
The party or parties intend to file a n action <i>(specify moving party, lype o</i>	motion for an order bifurd of motion, and reasons):	cating, severing, or coo	rdinating the following iss	ues or causes of
5. Other motions	o falloudag mationa hafa	n trial (an acity may free	note two of motion and	d laavaala
· · · · · · · · · · · · · · · · · · ·	le lonowing motons pero	re that (specky moving	pany, type or mouon, and	i issuesj.
· · ·				. ·
 Discovery a. The party or parties have comp 	pleted all discovery.			
b The following discovery will be		pecified (describe all a	nlicipaled discovery):	
Party	Description		Date	
·	•			
· · · ·		•		
• •	· .	•		
c. The following discovery Issues, anticipated (specify):	Including issues regarding	ng the discovery of ele	ctronically stored informati	on, are
	• •	-		
	•			

CM-110 (Rev July 1, 2011)

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CASE MANAGEMENT STATEMENT

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PLAINTIFF/PETITIONER:	CM-11
	CASE NUMBER:
FENDANT/RESPONDENT:	· · ·
· · ·	
Economic litigation	
a This is a limited civil case (i.e., the amount demanded is \$25,0	no or less) and the economic litigation procedures in Code
of Civil Procedure sections 90-98 will apply to this case.	or of ress) and the economic negation procedules in Code
b. This is a limited civil case and a motion to withdraw the case fr	om the economic litigation procedures or for additional
discovery will be filed (if checked, explain specifically why eco	nomic litigation procedures relating to discovery or trial
should not apply to this case):	
	· · ·
,	
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. Other issues	
The party or parties request that the following additional matters b	e considered or determined at the case management
conference (specify):	-
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	·
•	
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 Califor	nia Rules of Court, the parties agree on the following
(specify):	•
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	• •
	· · · · · · · · · · · · · · · · · · ·
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m completely familiar with this case and will be fully prepared to discuss the	ne status of discovery and alternative dispute resolution,
m completely familiar with this case and will be fully prepared to discuss the well as other issues raised by this statement, and will possess the author	ty to enter into stigulations on these issues at the time of
m completely familiar with this case and will be fully prepared to discuss the well as other issues raised by this statement, and will possess the author	ty to enter into stipulations on these issues at the time of
m completely familiar with this case and will be fully prepared to discuss the well as other issues raised by this statement, and will possess the authority of the party case management conference, including the written authority of the party	ty to enter into stipulations on these issues at the time of
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TYPE OR PRINT NAME)	ty to enter into stipulations on these issues at the time of where required. (GIGNATURE OF PARTY OR ATTORNEY)
m completely familiar with this case and will be fully prepared to discuss the well as other issues raised by this statement, and will possess the authority of the party access management conference, including the written authority of the party ate:	(SIGNATURE OF PARTY OR ATTORNEY)

CH4-110 [Rev. July 1, 2011]

CASE MANAGEMENT STATEMENT

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Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 289 of 298

EXHIBIT 4

	Case 4:18-cv-06278-HSG Document 1-4	Filed 10/12/18 Page 290 of 298	
1	Jennifer B. Zargarof (SBN 204382)		
2	jzargarof@sidley.com Sonia A. Vucetic (SBN 307414)		
3	svucetic@sidley.com SIDLEY AUSTIN LLP		
4	555 West Fifth Street Los Angeles, CA 90013		
5	Telephone: +1 213 896 6058 Facsimile: +1 213 896 6600		
6			
7	Attorneys for Defendants CVS Health Corporation; CVS Pharmacy, Inc.;		
8	Garfield Beach CVS, LLC; and CVS Rx Services, Inc.		
9	SUPERIOR COURT OF THI	E STATE OF CALIFORNIA	
10	FOR THE COUNTY O	DF SAN FRANCISCO	
11	RYAN HYAMS, an individual, on behalf of	Case No. CGC-18-569060	
12	himself, and all others similarly situated, ,	Assigned to: Hon. Teri L. Jackson	
13	Plaintiff,	Dept. 610	
14	VS.	ANSWER TO FIRST AMENDED COMPLAINT	
15	CVS HEALTH CORPORATION, a Rhode Island Corporation; CVS PHARMACY, INC., a Rhode		
16	Island Corporation; GARFIELD BEACH CVS, LLC, a California Corporation; and CVS RX		
17	SERVICES, INC., a New York Corporation; DOES 1 through 25, inclusive, ,	Complaint Filed: August 21, 2018	
18	Defendants.	FAC Filed: September 7, 2018	
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	ANS	WER	

1	Defendants CVS Health Corporation, CVS Pharmacy, Inc., Garfield Beach CVS, LLC and					
2						
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.					
27	///					
28	- ///					
ACTIVE 236262861v.1	2					
	ANSWER					

	Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 292 of 298				
1	FOURTH AFFIRMATIVE DEFENSE				
2	(Waiver/Release)				
3	4. Defendants are informed and believe, and based upon such information and				
4	belief aver, that by their conduct and/or based on a written waiver or release, Plaintiffs and				
5	putative class members have waived and/or released some or all of the causes of action asserted in				
6	the Complaint.				
7	FIFTH AFFIRMATIVE DEFENSE				
8	(Misrepresentation)				
9	5. Defendants are informed and believe, and on that basis alleges that Plaintiffs'				
10	Complaint is barred, in whole or in part, by misrepresentations made by Plaintiffs and/or putative				
11	class members.				
12	SIXTH AFFIRMATIVE DEFENSE				
13	(Consent)				
14	6. Plaintiff's causes of action are barred, in whole or in part, because of the				
15	ratification, agreement, acquiescence or consent to Defendants' alleged conduct by Plaintiff and/or				
16	putative class members.				
17	SEVENTH AFFIRMATIVE DEFENSE				
18	(Unclean Hands)				
19	7. Defendants are informed and believe, and based upon such information and				
20	belief aver, that the Complaint, and each cause of action therein, is barred by the doctrine of				
21	unclean hands.				
22	EIGTH AFFIRMATIVE DEFENSE				
23	(Laches)				
24	8. Defendants are informed and believe, and based upon such information and				
25	belief avers, that the Complaint, and each and every claim therein, is barred by the doctrine of				
26	laches, in that Plaintiff unreasonably delayed bringing the action.				
27	///				
28					
ACTIVE 236262861v.1	3				
	ANSWER				

	Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 293 of 298					
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	ir 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.					
25	///					
26	///					
27	///					
28						
ACTIVE 236262861v.1	4					
	ANSWER					

	Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 294 of 298				
1	FOURTEENTH AFFIRMATIVE DEFENSE				
2	(Claims Subject to Arbitration Agreement)				
.3	14. As to some members of the putative class, the Court lacks jurisdiction over				
4	the Complaint, and each and every purported cause of action alleged therein, because they are				
5	subject to a binding arbitration agreement with Defendants.				
6	FIFTEENTH AFFIRMATIVE DEFENSE				
7	(Lack of Specificity)				
8	15. The Complaint's claim for unfair competition in violation of California				
9	Business and Professions Code Section 17200, et seq., is barred because it fails to plead specific				
10	facts capable of stating a claim for violation of the unfair competition act.				
11	SIXTEENTH AFFIRMATIVE DEFENSE				
12	(No Loss/Unjust Enrichment)				
13	16. Plaintiff and/or putative class members have not suffered any loss and				
14	Defendant has not been unjustly enriched as a result of any action or inaction of Defendants and				
15	its agents. Hence, Plaintiffs and/or putative class members are not entitled to any restitution.				
16	SEVENTÉENTH AFFIRMATIVE DEFENSE				
17	17. With respect to Defendants CVS Health Corporation, CVS Pharmacy, Inc.,				
18	and Garfield Beach CVS, LLC, Plaintiff's causes of action are barred, in whole or in part, because				
19	no employment relationship exists.				
20	RESERVATION OF RIGHT TO AMEND ANSWER				
21	Defendant hereby gives notice that it intends to rely on such other and further defenses as				
22	may become available during discovery in this action and reserves the right to amend its Answer				
23	to assert any such defenses.				
24	WHEREFORE, Defendant prays as follows:				
25	1. That the Complaint be dismissed in its entirety;				
26	2. That Plaintiff's request for injunctive relief be denied in its entirety;				
27	3. That Plaintiff's requests for monetary relief be denied it its entirety;				
28	4. That Plaintiff takes nothing by reason of his Complaint and that judgment be				
ACTIVE 236262861v.	5				
	ANSWER				

	Case 4:18-cv-062	78-HSG Docun?	nent 1-4 Filed	10/12/18 F	Page 295 of 2	98	
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 actio				2		
4	6.	For such other ar	nd further relief	as this court d	eems just and	proper.	
5				DLEY AUSTI		•	
6							
7	Date: October 10, 2	2018	By	: Jennifer B. Z	argarof		
8				Sonia A. Vuo	cetic		
9				Attorneys for	rDefendants		
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	Case 4:18-cv-06278-HSG Document 1-4 Filed 10/12/18 Page 296 of 298			
	PROOF OF SERVICE			
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5				
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7	On October 10, 2018, I served the foregoing document described as ANSWER TO FIRST			
8				
9				
10	Catherine J. Coble Gunn Coble LLP			
11	101 S. First Street, Suite 407 Burbank, CA 91502			
12	I served the foregoing document by U.S. Mail, as follows: I placed true copies of the			
13	document in a sealed envelope addressed to each interested party as shown above. I placed each			
14	such envelope with postage thereon fully prepaid, for collection and mailing at Sidley Austin LLP,			
15	Los Angeles, California. Under that practice, the correspondence would be deposited in the United			
16	States Postal Service on that same day in the ordinary course of business.			
17	I declare under penalty of perjury under the laws of the State of California that the above is			
18	true and correct.			
19	Executed on October 10, 2018, at Los Angeles, California.			
20				
21	Rustmalurecor			
22	Kristina Wilcox			
23				
24				
25				
26				
27				
28	PROOF OF SERVICE			
	236514893v.1			



Order #12386796: eFiling

Submitted: 10/10/2018 4:23 PM PT | Attorney: Jennifer Zargarof | Contact: Daniel Tamayo



Under court clerk review

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: -

10/10/2018 4:23 PM PT

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

10/11/2018 Case 4:18-cv-06278-HS@ttps://www.endegal.com/@iegs/peigle/12386766 298 of 298 Version: 7.0.5775.7-at1110

JS-CAND 44 (Rev. 06/17) Case 4:18-cv-06278-HSG Document 1-5 Filed 10/12/18 Page 1 of 1

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	DEFENDANTS CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; CVS Rx Services, Inc.	DEFENDANTS CVS Health Corporation; CVS Pharmacy, Inc.; Garfield Beach CVS, LLC; CVS Rx Services, Inc.				
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant Providence County, Rhode Island (IN U.S. PLAINTIFF CASES ONLY)					
	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.					
(c) Attorneys (Firm Name, Address, and Telephone Number) Catherine Coble, SBN 223461 Gunn Coble LP, 101 S. 1st Street, Suite 407 Burbank, CA 91502	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)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)					
	PTF DEF PTF DEF					
1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)	Citizen of This State X 1 1 Incorporated <i>or</i> Principal Place 4 4 of Business In This State					
2 U.S. Government Defendant × 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State 2 2 Incorporated and Principal Place 5 x 5 of Business In Another State					
(maicale Chizenship of Farnes in hem in)	Citizen or Subject of a 3 3 Foreign Nation 6 6					

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT TORTS FORFEITURE/PENALTY BANKRUPTCY **OTHER STATUTES** 110 Insurance 625 Drug Related Seizure of 422 Appeal 28 USC § 158 375 False Claims Act PERSONAL INJURY PERSONAL INJURY Property 21 USC § 881 120 Marine 423 Withdrawal 28 USC 376 Qui Tam (31 USC 310 Airplane 365 Personal Injury - Product 690 Other \$ 157 § 3729(a)) 130 Miller Act Liability 315 Airplane Product Liability LABOR 400 State Reapportionment PROPERTY RIGHTS 367 Health Care 140 Negotiable Instrument 320 Assault, Libel & Slander Pharmaceutical Personal 410 Antitrust 150 Recovery of 330 Federal Employers' 710 Fair Labor Standards Act 820 Copyrights Injury Product Liability 430 Banks and Banking Overpayment Of Liability 720 Labor/Management 830 Patent 368 Asbestos Personal Injury Veteran's Benefits 450 Commerce 340 Marine Relations 835 Patent-Abbreviated New Product Liability 151 Medicare Act 460 Deportation 345 Marine Product Liability 740 Railway Labor Act Drug Application PERSONAL PROPERTY 152 Recovery of Defaulted 470 Racketeer Influenced & 751 Family and Medical 350 Motor Vehicle 840 Trademark Student Loans (Excludes 370 Other Fraud Corrupt Organizations 355 Motor Vehicle Product Leave Act Veterans) SOCIAL SECURITY 371 Truth in Lending 480 Consumer Credit × 790 Other Labor Litigation Liability 153 Recovery of 861 HIA (1395ff) 380 Other Personal Property 490 Cable/Sat TV 360 Other Personal Injury 791 Employee Retirement Overpayment Damage 862 Black Lung (923) Income Security Act 850 Securities/Commodities/ 362 Personal Injury -Medical of Veteran's Benefits 385 Property Damage Product Exchange 863 DIWC/DIWW (405(g)) Malpractice 160 Stockholders' Suits IMMIGRATION Liability 864 SSID Title XVI 890 Other Statutory Actions 190 Other Contract 462 Naturalization CIVIL RIGHTS PRISONER PETITIONS 865 RSI (405(g)) 891 Agricultural Acts Application 195 Contract Product Liability 893 Environmental Matters 440 Other Civil Rights HABEAS CORPUS FEDERAL TAX SUITS 465 Other Immigration 196 Franchise 895 Freedom of Information 441 Voting 463 Alien Detainee Actions 870 Taxes (U.S. Plaintiff or REAL PROPERTY Act 442 Employment 510 Motions to Vacate Defendant) 896 Arbitration 210 Land Condemnation 443 Housing/ Sentence 871 IRS-Third Party 26 USC 899 Administrative Procedure Accommodations 530 General 220 Foreclosure \$ 7609 Act/Review or Appeal of 445 Amer. w/Disabilities-535 Death Penalty 230 Rent Lease & Ejectment Agency Decision Employment 240 Torts to Land OTHER 950 Constitutionality of State 446 Amer. w/Disabilities-Other 245 Tort Product Liability 540 Mandamus & Other Statutes 448 Education 290 All Other Real Property 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement **ORIGIN** (Place an "X" in One Box Only) V. Original Removed from Remanded from Multidistrict 8 Multidistrict 1 \mathbf{X} 2 3 4 Reinstated or 5 Transferred from 6 Proceeding State Court Appellate Court Reopened Another District (specify) Litigation-Transfer Litigation-Direct File Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): VI. CAUSE OF 28 U.S.C. Sections 1332(d)(the Class Action Fairness Act); 1441(b), and 1446(b). ACTION 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. **REOUESTED IN** < CHECK IF THIS IS A CLASS ACTION **DEMAND \$** CHECK YES only if demanded in complaint: UNDER RULE 23, Fed. R. Civ. P. JURY DEMAND: × Yes No **COMPLAINT:** VIII. RELATED CASE(S), JUDGE Alsup; Birotte; Aenlle-Rocha DOCKET NUMBER 17-cv-05803-WHA; 16-cv-08979-AB-AGR; BC 702290 **IF ANY** (See instructions): IX. **DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

DATE 10/12/2018

(Place an "X" in One Box Only)

SIGNATURE OF ATTORNEY OF RECORD

× SAN FRANCISCO/OAKLAND

/s/ Sonia A. Vucetic

EUREKA-MCKINLEYVILLE

SAN JOSE

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