

1 MORGAN, LEWIS & BOCKIUS LLP  
Jennifer B. Zargarof, Bar No. 204382  
2 jennifer.zargarof@morganlewis.com  
300 South Grand Avenue  
3 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
4 Tel: +1.213.612.2500  
Fax: +1.213.612.2501

5 Attorneys for Defendants  
6 CVS Health Corporation and CVS Pharmacy, Inc.

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 FELIX PEREZ, an individual, on his own  
12 behalf and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a Delaware  
corporation a/d/a CVS Caremark; CVS  
17 PHARMACY, INC., a Rhode Island  
corporation; and DOES 1-100, inclusive,

18 Defendant.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 1:19-at-249

**DEFENDANTS' NOTICE OF  
REMOVAL**

State Case No.: \_CV-19-00292\_

State Complaint Filed: January 16, 2019 \_

State Action Served: \_March 6, 2019 \_

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN**  
2 **DISTRICT OF CALIFORNIA AND PLAINTIFF AND HIS COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendants CVS Health Corporation and CVS  
4 Pharmacy, Inc. (collectively, “Defendants”), hereby remove the state court action described  
5 below to this the United States District Court for the Eastern District of California. Removal is  
6 warranted under 28 U.S.C. §§ 1441(a)-(b), and 1446 because this is a civil action over which this  
7 Court has original jurisdiction under 28 U.S.C. § 1332(a) and (d). Defendants provide “a short  
8 and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).

9 **I. PROCEDURAL BACKGROUND**

10 1. On January 16, 2019, Plaintiff Felix Perez (“Plaintiff”) filed an unverified putative  
11 class action complaint for damages in the Superior Court of the State of California, County of  
12 Stanislaus, entitled *Felix Perez, an individual, on his own behalf and on behalf of all others*  
13 *similarly situated, v. CVS HEALTH CORPORATION, a Delaware corporation a/d/a CVS*  
14 *Caremark; CVS Pharmacy Inc., a Rhode Island corporation; and DOES 1-100, inclusive*, Case  
15 No. CV-19-000292 (the “Complaint”).

16 2. On March 6, 2019, Plaintiff served Defendants with a copy of Plaintiff’s  
17 Complaint, Summons, and accompanying service documents. A copy of Plaintiff’s Complaint,  
18 Summons and accompanying service documents is attached as **Exhibit A** to the Declaration of  
19 Megan McDonough (“McDonough Decl.”), concurrently filed herewith.

20 3. On April 3, 2019, Defendants filed an Answer to Plaintiff’s Complaint in the  
21 Superior Court for the State of California, County of Stanislaus. A copy of Defendants’ Answer  
22 is attached as **Exhibit B** to the McDonough Decl., concurrently filed herewith.

23 4. On April 4, 2019, Plaintiffs served Defendants with a copy of Plaintiff’s First  
24 Amended Complaint (“FAC”). A copy of Plaintiff’s FAC is attached as **Exhibit C** to the  
25 McDonough Decl., concurrently filed herewith.

26 5. Plaintiff has brought a putative class action on behalf of current and former non-  
27 exempt employees who worked in Defendants’ California distribution centers. McDonough  
28 Decl., Ex. C, FAC ¶ 45. Plaintiff claims that he and alleged putative class members were not

1 compensated for time spent undergoing security checks when arriving at and leaving the  
2 distribution center, that waiting in line for security checks caused him and alleged putative class  
3 members to work uncompensated overtime hours, and that meal and rest periods were short,  
4 missed or late due to security checks. *Id.* ¶¶ 13-16. Plaintiff also claims that he and alleged  
5 putative class members were not paid vested vacation wages at the end of their employment and  
6 were not paid all wages due at the time of termination of their employment. *Id.* ¶ 27-33.

7 6. Plaintiff allege the following violations in seven causes of action against  
8 Defendants in the original Complaint: (1) Failure to Pay All Wages; (2) Failure to Pay Overtime  
9 Compensation; (3) Missed Meal and Rest Breaks; (4) Failure to Provide Paid Time Off; (5)  
10 Failure to Provide Proper Wage Statements; (6) Failure to Pay Wages at Time of Termination; (8)  
11 Unfair Business Practices. *Id.*, Ex. A, Compl. ¶¶ 49-108. Plaintiff's FAC alleges Violation of  
12 California Labor Code §§ 2698, *et seq.* (The Private Attorney General Act "PAGA") as the eighth  
13 cause of action against Defendants. *Id.*, Ex. C, FAC ¶¶ 115-131.

14 **II. REMOVAL IS TIMELY**

15 7. Defendants were served with the Summons and Complaint on March 6, 2019.  
16 Because this Notice of Removal is filed within thirty days of service of the Summons and  
17 Complaint, it is timely under 28 U.S.C. §§ 1446(b) and 1453. *See Murphy Bros., Inc. v. Michetti*  
18 *Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). No previous Notice of Removal has been filed or  
19 made with this Court for the relief sought in this removal notice.

20 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION UNDER**  
21 **CAFA**

22 8. Plaintiff seeks to bring this action as a putative class action on behalf of the all  
23 current and former, non-exempt distribution center employees of Defendants under Cal. Code  
24 Civ. Proc. § 382. *See McDonough Decl.*, Ex. C, FAC ¶¶ 1, 45. Here, removal based on Class  
25 Action Fairness Act ("CAFA") diversity jurisdiction is proper pursuant to 28 U.S.C. §§ 1441,  
26 1446, and 1453 because (i) the aggregate number of putative class members is 100 or greater; (ii)  
27 diversity of citizenship exists between one or more Plaintiffs and one or more Defendants; and  
28 (iii) the amount placed in controversy by the Complaint exceeds, in the aggregate, \$5 million,

1 exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), and 1453. Defendants  
2 deny Plaintiff’s factual allegations and deny that Plaintiff, or any class he purports to represent, is  
3 entitled to the relief requested. However, based on Plaintiff’s allegations in the Complaint and his  
4 respective prayer for relief, all requirements for jurisdiction under CAFA have been met.<sup>1</sup>  
5 Accordingly, diversity of citizenship exists under CAFA, and this Court has original jurisdiction  
6 over this action pursuant to 28 U.S.C. § 1332(d)(2).

7 **A. The Proposed Class Contains At Least 100 Members.**

8 9. Plaintiffs assert claims on behalf himself and all “[a]ll persons who have been, or  
9 currently are, employed by Defendants in distribution centers in the State of California and  
10 classified as ‘non-exempt’ employees” (the “Plaintiff Class”) and “[a]ll members of the Plaintiff  
11 class whose employment ended during the Class Period” (the “Terminated Sub Class”), where  
12 “Class Period” is defined as January 16, 2019 “through and including the date judgment is  
13 rendered in this matter.” McDonough Decl., Ex. C, FAC ¶¶ 45-46. A review of CVS’ records  
14 shows that, based on Plaintiff’s definition, the proposed class contains well over 100 and former  
15 employees. McDonough Decl., ¶ 10.

16 **B. Diversity of Citizenship Exists.**

17 10. To satisfy CAFA’s diversity requirement, a party seeking removal need only show  
18 that minimal diversity exists; that is, one putative class member is a citizen of a state different  
19 from that of one defendant. 28 U.S.C. § 1332(d)(2); *United Steel, Paper & Forestry, Rubber,*  
20 *Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602  
21 F.3d 1087, 1090–91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides  
22 expanded original diversity jurisdiction for class actions meeting the minimal diversity  
23 requirement set forth in 28 U.S.C. § 1332(d)(2)); *United Steel, Paper & Forestry, Rubber, Mfg.,*  
24 *Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d  
25 1087, 1090–91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded

26 <sup>1</sup> Defendants do not concede, and reserve the right to contest at the appropriate time, Plaintiff’s  
27 allegations that this action can properly proceed as a class action. Indeed, Plaintiff’s claims are  
28 subject to binding arbitration, including a class action waiver. Further, Defendants do not  
concede that any of Plaintiff’s allegations constitute a cause of action against it under applicable  
California law.

1 original diversity jurisdiction for class actions meeting the minimal diversity requirement set forth  
2 in 28 U.S.C. § 1332(d)(2)).

3 11. “An individual is a citizen of the state in which he is domiciled . . . .” *Boon v.*  
4 *Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert*  
5 *Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For purposes of diversity of citizenship jurisdiction,  
6 citizenship is determined by the individual’s domicile at the time that the lawsuit is filed. *Lew v.*  
7 *Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Evidence of continuing residence creates a presumption  
8 of domicile. *Washington v. Havensa LLC*, 654 F.3d 340, 345 (3rd Cir. 2011).

9 12. Plaintiff admits that he is a resident of Patterson, California. McDonough Decl.,  
10 Ex. A, C, FAC ¶ 5. The Complaint does not allege any alternate state citizenship. CVS’ records  
11 show that Plaintiff’s last known address is in California. McDonough Decl. ¶ 8. Therefore, the  
12 Plaintiff is a citizen of California for diversity jurisdiction purposes.

13 13. Moreover, Plaintiff has brought claims on behalf of alleged putative class  
14 members who worked for Defendants in distribution centers in California. McDonough Decl., Ex  
15 Ex. C, FAC ¶ 45. Thus, at least one putative class member is a citizen of California for diversity  
16 jurisdiction purposes.

17 14. Pursuant to 28 U.S.C. § 1332, “a corporation shall be deemed to be a citizen of  
18 every State and foreign state by which it has been incorporated and of the State or foreign state  
19 where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). The “principal place of  
20 business” for the purpose of determining diversity subject matter jurisdiction refers to “the place  
21 where a corporation’s officers direct, control, and coordinate the corporation’s activities...[I]n  
22 practice it should normally be the place where the corporation maintains its headquarters-  
23 provided that the headquarters is the actual center of direction, control, and coordination, i.e., the  
24 ‘nerve center,’ and not simply an office where the corporation holds its board meetings[.]” *See*  
25 *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S. Ct. 1181, 1192 (2010).

26 15. CVS Health Corporation is now, and was at the time Plaintiff filed the Complaint,  
27 a corporation organized under the laws of the State of Rhode Island, with its principal place of  
28 business in Woonsocket, Rhode Island. McDonough Decl., ¶ 6. CVS Health Corporation’s

1 corporate decisions generally are made in Woonsocket, Rhode Island, including its operation,  
2 executive, administrative, and policymaking decisions. *Id.* The majority of CVS Health  
3 Corporation’s executive officers principally conduct their business from headquarters in Rhode  
4 Island. *Id.* Thus, at all times relevant hereto, CVS Health Corporation has been a citizen of  
5 Rhode Island, and not a citizen of California. 28 U.S.C. § 1332(c)(1).

6 16. CVS Pharmacy, Inc. is now, and was at the time Plaintiff filed the Complaint, a  
7 corporation organized under the laws of the State of Rhode Island, with its principal place of  
8 business in Woonsocket, Rhode Island. McDonough Decl., ¶ 7. CVS Pharmacy Inc.’s corporate  
9 decisions are generally made in Woonsocket, Rhode Island, including its operational, executive,  
10 administrative, and policymaking decisions. *Id.* The majority of CVS Pharmacy, Inc.’s executive  
11 officers principally conduct their business from headquarters in Rhode Island. *Id.* Thus, at all  
12 times relevant hereto, CVS Pharmacy, Inc. has been a citizen of Rhode Island, and not a citizen of  
13 California. 28 U.S.C. § 1332(c)(1).

14 17. In determining whether a civil action is properly removable on the basis of  
15 diversity jurisdiction under 28 U.S.C. § 1332, courts disregard the citizenship of defendants sued  
16 under fictitious names. 28 U.S.C. § 1441(b)(1). The citizenship of “Does 1-100” named in the  
17 Complaint is therefore immaterial with respect to removal.

18 18. Because Plaintiff is, and was at the time he filed the Complaint, a citizen of  
19 California; because CVS Health Corporation is, and was at the time Plaintiff filed the Complaint,  
20 a citizen of Rhode Island; because CVS Pharmacy Inc. is, and was at the time Plaintiff filed the  
21 Complaint, a citizen of Rhode Island, diversity of citizenship exists between the parties and  
22 existed at the time the Complaint was filed, diversity of citizenship is satisfied and diversity  
23 jurisdiction exists under CAFA. 28 U.S.C. § 1332(d)(2)(A) (requiring only “minimal diversity”  
24 under which “any member of a class of plaintiffs is a citizen of a State different from any  
25 Defendant”).

26 **C. The Amount In Controversy Exceeds \$5 Million.**

27 19. Pursuant to CAFA, the claims of the individual members in a class action are  
28 aggregated to determine if the amount in controversy exceeds \$5,000,000, exclusive of interest

1 and costs. 28 U.S.C. § 1332(d)(6). Because Plaintiff does not expressly plead a specific amount  
2 of damages, a removing party need only show that it is more likely than not that the amount in  
3 controversy exceeds \$5 million. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376  
4 (9th Cir. 1997).

5 20. A removing party seeking to invoke CAFA jurisdiction “need include only a  
6 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*  
7 *Cherokee*, 135 S. Ct. at 554. “If a federal court is uncertain about whether ‘all matters in  
8 controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of  
9 \$5,000,000,’ the court should err in favor of exercising jurisdiction over the case.” Senate  
10 Judiciary Report, S. REP. 109-14, at 42 (2005) (citation omitted).

11 21. A removing defendant is “not required to comb through its records to identify and  
12 calculate the exact frequency of violations.” *Oda, et al. v. Gucci Am., Inc.*, 2015 U.S. Dist.  
13 LEXIS 1672, at \*12 (C.D. Cal. Jan. 7, 2015); *see Sanchez v. Russell Sigler, Inc.*, 2015 WL  
14 12765359, \*2 (C.D. Cal. April 28, 2015) (“[A] removing defendant is not obligated to research,  
15 state and prove the plaintiff’s claims for damages.”) (citation omitted). *See also LaCross v.*  
16 *Knight Transportation Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting plaintiff’s argument  
17 for remand based on the contention that the class may not be able to prove all amounts claimed:  
18 “Plaintiffs are conflating the amount in controversy with the amount of damages ultimately  
19 recoverable.”); *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in  
20 alleging the amount in controversy, Defendants “are not stipulating to damages suffered, but only  
21 estimating the damages in controversy.”). The ultimate inquiry is what amount is put “in  
22 controversy” by the plaintiff’s complaint, not what a defendant will actually owe. *LaCross*, 775  
23 F.3d at 1202 (internal citation omitted) (explaining that courts are directed “to first look to the  
24 complaint in determining the amount in controversy.”).

25 22. Although Defendants deny Plaintiff’s factual allegations and deny that he or the  
26 class he seeks to represent are entitled to the relief for which Plaintiff has prayed, as detailed  
27 below, Plaintiff’s allegations and prayer for relief have “more likely than not” put into  
28

1 controversy an amount that easily exceeds the \$5 million threshold when aggregating the claims  
2 of the putative class members as set forth in 28 U.S.C. § 1332(d)(6).<sup>2</sup>

3 1. **Demonstrating The Amount In Controversy.**

4 23. Plaintiff seeks to represent all current and former employees who were “employed  
5 by Defendants in distribution centers in the State of California and classified as ‘non-exempt’  
6 employees[.]” McDonough Decl., Ex. C, FAC ¶ 45. Plaintiff further alleges that his claims “are  
7 typical of the claims of the members of the class” (*Id.* ¶ 49) and seeks, among other things,  
8 compensatory and punitive damages, restitution, penalties, injunctive relief, and attorneys’ fees,  
9 costs and interest. *Id.* ¶¶ 59, 66, 83, 89, 96, 101 at Prayers 1, 2, 4, 5, 6, 7.

10 a. **Plaintiff’s Sixth Cause of Action For “Failure To Pay Wages At  
11 Time Of Termination” (Waiting Time Penalties) Puts More  
12 Than \$5,000,000 in Controversy.**

13 24. Plaintiff alleges that “[he] and the members of the Plaintiff Class who have  
14 separated from employment are entitled to compensation pursuant to California Labor Code §  
15 203.” *Id.* ¶ 101. Under California Labor Code § 203, if an employer fails to pay all wages due  
16 upon termination in a timely manner, “the wages of the employees shall continue as a penalty  
17 from the due date thereof at the same rate until paid or until an action therefor is commenced” for  
18 up to 30 days. Cal. Labor Code § 203.

19 25. According to CVS’ records, of the individuals who fall within Plaintiff’s class  
20 definition, 995 are former employees, *i.e.*, potentially entitled to waiting time penalties pursuant  
21 to Cal. Labor Code § 203. McDonough Decl. ¶ 10. The weighted average hourly rate of pay for  
22 individuals within Plaintiff’s class definition is \$23.19. *Id.* As such, the amount in controversy

---

23 <sup>2</sup> This Notice of Removal discusses the nature and amount of damages placed at issue by  
24 Plaintiff’s Complaint. Defendants’ references to specific damage amounts and citation to  
25 comparable cases are provided solely for establishing that the amount in controversy is more  
26 likely than not in excess of the jurisdictional minimum. Defendants maintain that each of  
27 Plaintiff’s claims is without merit and that Defendants are not liable to Plaintiff or any putative  
28 class member. Defendants expressly deny that Plaintiff or any putative class member are entitled  
to recover any of the penalties they seek in the Complaint. In addition, Defendants deny that  
liability or damages can be established on a class-wide basis. No statement or reference  
contained in this removal notice shall constitute an admission of liability or a suggestion that  
Plaintiff will or could actually recover any damages based upon the allegations contained in the  
Complaint or otherwise. “The amount in controversy is simply an estimate of the total amount in  
dispute, not a prospective assessment of [Defendants’] liability.” *Lewis v. Verizon Communs.,  
Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).



1 by Plaintiff's cause of action for Failure to Pay Wages At Time Of Termination (Labor Code §§  
2 201-203) can be calculated as follows:

3 **\$23.19 per hour \* 8 hours per day \* 30 days \* 995 individuals = \$5,537,772.**

4 26. Thus, Plaintiff's cause of action for Failure to Pay Wages At Time Of Termination  
5 alone puts over \$5 million at issue, thereby satisfying the CAFA's amount in controversy  
6 requirement.

7 **b. Plaintiff's Other Causes of Action Put Additional Amounts in**  
8 **Controversy, Clearly Exceeding the CAFA Threshold.**

9 27. In addition to the foregoing amount, Plaintiff's other causes of action place yet  
10 more amounts in controversy, further demonstrating that the CAFA threshold is satisfied.  
11 Plaintiff's First, Second, Third, Fourth, Fifth, and Seventh Causes of Action all place additional  
12 amounts in controversy. Plaintiff's First Cause of Action for Failure to Pay All Wages alleges  
13 that "Defendants implemented policies that actively prevented employees from being  
14 compensated for all time worked by employing the use of a rounding program that rounded the  
15 actual recorded start and stop time of hourly employees when calculating their wages," and  
16 therefore, "Plaintiff and the members of the Plaintiff class are entitled to recover compensation  
17 for all hours worked, but not paid" during the statute of limitations period. McDonough Decl., Ex.  
18 C, FAC ¶¶ 53-60.

19 28. Plaintiff's Second Cause of Action for Failure to Overtime Compensation (Labor  
20 Code §§ 1194, *et seq.*) alleges that Defendants "failed and refused to pay Plaintiff and each  
21 member of the Plaintiff Class all overtime wages due to them," and therefore, "Plaintiffs and  
22 members of the plaintiff class are entitled to each recover the unpaid overtime wages in an  
23 amount equal to the overtime wages unlawfully paid, plus interest, fees and costs." *Id.* ¶¶ 61-66.

24 29. Plaintiff's Third Cause of Action for Missed Meal and Rest Breaks (Labor Code  
25 §§ 200, 226.7, 512) alleges that Defendants failed to timely provide Plaintiff and the alleged  
26 putative class members with meal and rest breaks and failed to provide premium wages when  
27 meal periods were missed, and therefore, "Plaintiff and all Class Members are entitled to recover  
28 he unpaid meal and rest period wages, plus interest, fees and costs thereon." *Id.* ¶¶ 67-83.

1           30. Plaintiff’s Fourth Cause of Action for Failure to Provide Paid Time Off (Labor  
2 Code § 227.3) alleges that Defendants failed to pay “Plaintiff and the members of the Plaintiff  
3 Class all vested vacation wages,” which “creates an entitlement to recovery by Plaintiff and each  
4 member of the plaintiff class for damages and wages owed and for penalties, interest, costs and  
5 attorneys fees.” *Id.* ¶¶ 84-89. Plaintiff’s allegations place in controversy every single wage  
6 statement received by Defendants’ employees during the statute of limitations period of a wage  
7 statement claim (one year from date of filing of this lawsuit to present) because Plaintiff alleges  
8 that the wage statements provided by Defendants did not contain an accurate reflection of  
9 employees’ wages earned. Plaintiff places no limitations on these allegations.

10           31. Plaintiff’s Fifth Cause of Action for Failure to Provide Accurate Wage Statements  
11 (Labor Code § 226) alleges that Defendants “failed to accurately report the gross wages earned  
12 and the net wages earned by Plaintiff and the members of the Plaintiff Class on their wage  
13 statements,” and therefore, are entitled to “penalties...interest, attorneys’ fees and costs.” *Id.* ¶¶  
14 90-96.

15           32. Plaintiff’s Seventh Cause of Action for Unfair Business Practices (Labor Code §§  
16 17200 *et seq.*) alleges that Defendants “unfairly obtained monies due to Plaintiff and members of  
17 the Plaintiff Class [by denying them wages due and payable and failing to provide proper wage  
18 statements]” and therefore, “the Class Members are entitled to restitution of monies due and  
19 obtained by Defendants.” *Id.* ¶¶ 102-114.

20           33. Additionally, Plaintiff seeks recovery of attorneys’ fees. McDonough Decl., Ex. C  
21 FAC., Prayer ¶ 7. Attorneys’ fees are properly included in determining the amount in  
22 controversy. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th Cir. 2007).  
23 Estimated future attorneys’ fees are properly included in determining the amount in controversy,  
24 including for class actions seeking fees under Labor Code Section 226. *See Fritsch v. Swift*  
25 *Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793-794 (9th Cir. 2018) (“Because the law  
26 entitles [the plaintiff] to an award of attorneys’ fees if he is successful, such future attorneys’ fees  
27 are at stake in the litigation, and must be included in the amount in controversy.”). The Ninth  
28 Circuit held that future fee estimates can be based on “customary rates and proper fees,” and that

1 “a percentage-based method,” such as 25% of the amount in controversy, may also be relevant  
2 when estimating the amount of fees included in the amount in controversy. *Id.* at 795 and 796, fn.  
3 6.

4 34. Defendants deny Plaintiff’s claim for attorneys’ fees. However, for purposes of  
5 removal, even though Defendants have already demonstrated by a preponderance of the evidence  
6 that the amount in controversy exceeds \$5,000,000, Defendants note that the inclusion of future  
7 attorneys’ fees would increase the amount in controversy by a material amount.

8 **IV. VENUE**

9 35. This action was originally filed in the Superior Court for the County of Stanislaus.  
10 Initial venue is therefore proper in this district, pursuant to 28 U.S.C. § 1441(a), because it  
11 encompasses the county in which this action has been pending.

12 **V. NOTICE**

13 36. Defendants will promptly serve this Notice of Removal on all parties and will  
14 promptly file a copy of this Notice of Removal with the clerk of the state court in which the  
15 action is pending, as required under 28 U.S.C. § 1446(d).

16 **VI. CONCLUSION**

17 37. Based on the foregoing, Defendants request that this action be removed to this  
18 Court. If any question arises as to the propriety of the removal of this action, Defendants  
19 respectfully request the opportunity to present a brief and oral argument in support of their  
20 position that this case is subject to removal.

21  
22 Dated: April 5, 2019

MORGAN, LEWIS & BOCKIUS LLP

23  
24  
25 By /s/ Jennifer B. Zargarof  
26 Jennifer B. Zargarof  
27 Attorneys for Defendants  
28 CVS Health Corporation and CVS  
Pharmacy, Inc.

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Felix Perez

(b) County of Residence of First Listed Plaintiff Stanislaus County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Marcus J. Bradley, SBN 174156, Kiley L. Grombacher SBN 245960 T2815 Townsgate Rd, Suite 130, Westlake Village, CA 91361; (805) 270-7100

DEFENDANTS

CVS Health Corporation and CVS Pharmacy, Inc.

County of Residence of First Listed Defendant Providence County, RI (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Morgan, Lewis & Bockius, LLP; Jennifer Zargarof (SBN 204382); Megan McDonough (SBN 317402); 300 S. Grand. Ave., Los Angeles, CA 90017; (213) 612-2500

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): §§ 1441, 1446 and 1453.

Brief description of cause: Defendants remove Plaintiff's putative class action pursuant to the Class Action Fairness Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/05/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Jennifer B. Zargarof

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:19-at-00249 Document 1-1 Filed 04/05/19 Page 2 of 2  
**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

1 MORGAN, LEWIS & BOCKIUS LLP  
 Jennifer B. Zargarof, Bar No. 204382  
 2 jennifer.zargarof@morganlewis.com  
 300 South Grand Avenue  
 3 Twenty-Second Floor  
 Los Angeles, CA 90071-3132  
 4 Tel: +1.213.612.2500  
 Fax: +1.213.612.2501  
 5  
 6 Attorneys for Defendants  
 CVS Health Corporation and CVS Pharmacy, Inc.

7  
 8  
 9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA

11 FELIX PEREZ, an individual, on his own  
 12 behalf and on behalf of all others similarly  
 13 situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a Delaware  
 corporation a/d/a CVS Caremark; CVS  
 17 PHARMACY, INC., a Rhode Island  
 corporation; and DOES 1-100, inclusive,

18 Defendant.

Case No. 1:19-at-249

**DECLARATION OF MEGAN  
 MCDONOUGH IN SUPPORT OF  
 DEFENDANTS' NOTICE OF  
 REMOVAL**

State Case No.: \_CV-19-00292\_

State Complaint Filed: January 16, 2019 \_

State Action Served: \_March 6, 2019 \_

**DECLARATION OF MEGAN MCDONOUGH**

I, Megan McDonough, declare as follows:

1. I am an associate with the law firm of Morgan, Lewis & Bockius LLP, counsel for Defendants CVS Health Corporation and CVS Pharmacy, Inc. (collectively, “Defendants” or the “Company”). I make this Declaration in support of Defendants’ Notice of Removal. 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 and other information that is publically available or provided to me by the Company. If called and sworn as a witness, I could and would competently testify thereto. As counsel for Defendants, Morgan, Lewis & Bockius LLP maintains in the ordinary course of its business all pleadings served on or by Defendants in the above-captioned action.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint and related case commencement documents in this action, filed on January 16, 2019, and served personally on Defendants via CT Corporation on March 6, 2019.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Answer Defendants filed in this action on April 3, 2019 in the Stanislaus County Superior Court.

4. Attached hereto as **Exhibit C** is a true and correct copy of the First Amended Complaint filed served on Defendants by Plaintiff on April 4, 2019.

5. Exhibits A through C constitute all process, pleadings, and orders filed by and/or served by Defendants or on Defendants to date in the Action.

6. CVS Health Corporation is now, and was at the time Plaintiff filed the Complaint, a corporation organized under the laws of the State of Rhode Island, with its principal place of business in Woonsocket, Rhode Island. CVS Health Corporation’s corporate decisions generally are made in Woonsocket, Rhode Island, including its operation, executive, administrative, and policymaking decisions. The majority of CVS Health Corporation’s executive officers principally conduct their business form headquarters in Rhode Island.

1           7.       CVS Pharmacy, Inc. is now, and was at the time Plaintiff filed the Complaint, a  
2 corporation organized under the laws of the State of Rhode Island, with its principal place of  
3 business in Woonsocket, Rhode Island. CVS Pharmacy Inc.'s corporate decisions are generally  
4 made in Woonsocket, Rhode Island, including its operational, executive, administrative, and  
5 policymaking decisions. The majority of CVS Pharmacy, Inc.'s executive officers principally  
6 conduct their business from headquarters in Rhode Island.

7           8.       The Company's records show that Plaintiff's last known address is in California.

8           9.       In support of Defendants' Notice of Removal, I was provided with the following  
9 payroll data generated from the Company's payroll system: (1) the names of all employees who  
10 worked as non-exempt employees at distribution center locations in California from January 16,  
11 2015 to the present; (2) their employment status; (3) their last or current rate of pay; (4) their date  
12 of hire; and (5) their termination date if applicable. All of the following statements are based on  
13 my review of the payroll and personnel data for the alleged class that I received from the  
14 Company.

15          10.       According to the Company's records, there are over 2,700 individuals who fall  
16 within Mr. Perez's class definition. Of these individuals, 995 are former employees. The  
17 weighted average hourly rate of pay of the individuals who fall within Mr. Perez's class definition  
18 is \$23.19.

19  
20           I declare under penalty of perjury, under the laws of the United States of America and the  
21 State of California, that the foregoing is true and correct. Executed on this 5th day of April, 2019  
22 in Los Angeles, California.

23 

24 Megan McDonough



# **EXHIBIT A**

**SUMMONS  
(CITACION JUDICIAL)**

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

**NOTICE TO DEFENDANT: CVS HEALTH CORPORATION, a Delaware (AVISO AL DEMANDADO):** corporation a/d/a CVS Caremark; CVS PHARMACY, INC., a Rhode Island corporation; and DOES 1-100 inclusive

*CVS Health Corporation  
c/o CVS Pharmacy, Inc.*

Electronically Filed  
1/16/2019 4:17 PM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Lindsey Stringfellow, Deputy

A TRUE COPY ATTEST SERVED  
*James F. Mallinson*  
RI Constable #6174  
James F. Mallinson

**YOU ARE BEING SUED BY PLAINTIFF: FELIX PEREZ (LO ESTÁ DEMANDANDO EL DEMANDANTE):** an individual, on his own behalf and on behalf of all others similarly situated.

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

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

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

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

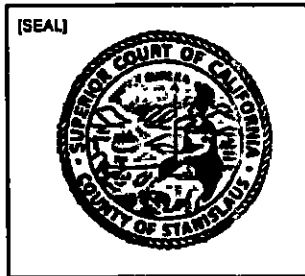
The name and address of the court is:  
**(El nombre y dirección de la corte es):**  
Stanislaus Superior Court of the State of California  
800 11th Street 801 10TH ST, 4TH FL  
Modesto, CA 95354

CASE NUMBER:  
**(Número del Caso): CV-19-000292**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
**(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):**  
Bradley/Grombacher, LLP T: (805) 270-7100 F: (805) 270-7589  
Marcus J. Bradley, Esq., 2815 Townsgate Rd., Suite 130, Westlake Village, CA 91361  
Kiley L. Grombacher, Esq.  
Taylor L. Emerson, Esq.

DATE: 1/16/2019 4:17 PM  
**(Fecha)** Clerk, by *Lindsey Stringfellow* Deputy  
**(Secretario)** **(Adjunto)**

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



**NOTICE TO THE PERSON SERVED:** You are served  
1.  as an individual defendant.  
2.  as the person sued under the fictitious name of (specify):  
3.  on behalf of (specify): CVS HEALTH CORPORATION, a Delaware corporation a/d/a CVS Caremark  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):  
4.  by personal delivery on (date):

**Case Information**

**CV-19-000292 | PEREZ, FELIX vs CVS HEALTH CORPORATION**

<b>Case Number</b> CV-19-000292	<b>Court</b> Civil Unlimited	<b>Judicial Officer</b> Beauchesne, Roger M.
<b>File Date</b> 01/16/2019	<b>Case Type</b> Other Complaint: Unlimited	<b>Case Status</b> Open

**Party**

**Plaintiff**  
PEREZ, FELIX

**Inactive Attorneys** ▾  
Lead Attorney  
BRADLEY,  
MARCUS J, Esq.  
Retained

**Work Phone**  
805-270-7100

**Fax Phone**  
805-270-7589

---

**Attorney**  
MAJARAN, SAHAG,  
Esq.  
Retained

**Work Phone**  
8186090807

**Fax Phone**  
818-609-0892

---

---

**Defendant**  
CVS HEALTH CORPORATION

---

Case 1:19-at-00249 Document 1-3 Filed 04/05/19 Page 4 of 33  
 Defendant:  
 CVS PHARMACY INC

**Events and Hearings**

<b>01/16/2019 Civil Complaint</b>
<b>01/16/2019 Summons Issued / Filed</b>
<b>01/16/2019 Civil Case Cover Sheet - Plaintiff(s)</b>
<b>01/16/2019 Complex Case Designation - Plaintiffs</b>
<b>05/20/2019 Case Management Conference ▾</b>
<b>Judicial Officer</b> Beauchesne, Roger M.
<b>Hearing Time</b> 8:30 AM

**Financial**

<b>PEREZ, FELIX</b>			
Total Financial Assessment		\$1,435.00	
Total Payments and Credits		\$1,435.00	
<hr/>			
1/17/2019	Transaction	\$1,435.00	
	Assessment		
<hr/>			
1/17/2019	eFile	Receipt #	PEREZ, (\$1,435.00)
	Payment	CV-2019-	FELIX
		00001017	

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number, and Address)  <b>BRADLEY/GROMBACHER, LLP</b>                  Marcus J. Bradley, Esq. (SBN 174156) mbradley@bradleygromba                  Kiley L. Grombacher, Esq. (SBN 245960)                  Taylor L. Emerson, Esq. (SBN 225303)                  2815 Townsgate Road, Suite 130, Westlake Village, CA 91361                  TELEPHONE NO.: (805) 270-7100 FAX NO.: (805) 270-7589                  ATTORNEY FOR (Name): Plf, Victor A. Paz</p>	<p><b>COURT USE ONLY</b></p> <p>Electronically Filed                  1/16/2019 4:17 PM                  Superior Court of California                  County of Stanislaus                  Clerk of the Court                  By: Lindsey Stringfellow, Deputy</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS</b>                  STREET ADDRESS: <del>800 11th Street</del> 801 10TH ST, 4TH FL                  MAILING ADDRESS: 800 11th Street                  CITY AND ZIP CODE: Modesto, CA 95354                  BRANCH NAME:</p>	
<p><b>CASE NAME:</b> Felix Perez v. CVS Health Corporation, et al.</p>	
<p><b>CIVIL CASE COVER SHEET</b>  <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)  <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)</p>	<p><b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b>                  Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)</p>
	<p><b>CASE NUMBER:</b> CV-19-000292  <b>JUDGE:</b> Beauchesne, Roger M.                  Dept. 24</p>

*Items 1-6 below must be completed (see instructions on page 2).*

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

<p><b>Auto Tort</b>  <input type="checkbox"/> Auto (22)  <input type="checkbox"/> Uninsured motorist (46)  <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>  <input type="checkbox"/> Asbestos (04)  <input type="checkbox"/> Product liability (24)  <input type="checkbox"/> Medical malpractice (45)  <input type="checkbox"/> Other PI/PD/WD (23)  <b>Non-PI/PD/WD (Other) Tort</b>  <input type="checkbox"/> Business tort/unfair business practice (07)  <input type="checkbox"/> Civil rights (08)  <input type="checkbox"/> Defamation (13)  <input type="checkbox"/> Fraud (16)  <input type="checkbox"/> Intellectual property (19)  <input type="checkbox"/> Professional negligence (25)  <input type="checkbox"/> Other non-PI/PD/WD tort (35)  <b>Employment</b>  <input type="checkbox"/> Wrongful termination (36)  <input checked="" type="checkbox"/> Other employment (15)</p>	<p><b>Contract</b>  <input type="checkbox"/> Breach of contract/warranty (06)  <input type="checkbox"/> Rule 3.740 collections (09)  <input type="checkbox"/> Other collections (09)  <input type="checkbox"/> Insurance coverage (18)  <input type="checkbox"/> Other contract (37)  <b>Real Property</b>  <input type="checkbox"/> Eminent domain/Inverse condemnation (14)  <input type="checkbox"/> Wrongful eviction (33)  <input type="checkbox"/> Other real property (26)  <b>Unlawful Detainer</b>  <input type="checkbox"/> Commercial (31)  <input type="checkbox"/> Residential (32)  <input type="checkbox"/> Drugs (38)  <b>Judicial Review</b>  <input type="checkbox"/> Asset forfeiture (05)  <input type="checkbox"/> Petition re: arbitration award (11)  <input type="checkbox"/> Writ of mandate (02)  <input type="checkbox"/> Other judicial review (39)</p>	<p><b>Provisionally Complex Civil Litigation</b>                  (Cal. Rules of Court, rules 3.400-3.403)  <input type="checkbox"/> Antitrust/Trade regulation (03)  <input type="checkbox"/> Construction defect (10)  <input type="checkbox"/> Mass tort (40)  <input type="checkbox"/> Securities litigation (28)  <input type="checkbox"/> Environmental/Toxic tort (30)  <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)  <b>Enforcement of Judgment</b>  <input type="checkbox"/> Enforcement of judgment (20)  <b>Miscellaneous Civil Complaint</b>  <input type="checkbox"/> RICO (27)  <input type="checkbox"/> Other complaint (not specified above) (42)  <b>Miscellaneous Civil Petition</b>  <input type="checkbox"/> Partnership and corporate governance (21)  <input type="checkbox"/> Other petition (not specified above) (43)</p>
--	---	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a.  Large number of separately represented parties      d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence      f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary      b.  nonmonetary; declaratory or injunctive relief      c.  punitive

4. Number of causes of action (specify): Seven (7)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)  
 Date: January 16, 2019  
 Marcus J. Bradley, Esq.

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

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

Page 1 of 2

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

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

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

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- 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)
- 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)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease
  - Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach—Seller Plaintiff (*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 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)
- Petition 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 (*non-domestic 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 (*non-harassment*)
  - 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



**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF STANISLAUS**  
 801 10<sup>th</sup> Street 4<sup>th</sup> Floor  
 Modesto, CA 95354  
 ADR clerk: (209) 530-3103  
[www.stanct.org](http://www.stanct.org)

## **Alternative Dispute Resolution Information Packet**

Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the Superior Court of California, County of Stanislaus, strongly encourages parties in general civil cases to explore and pursue the use of Alternative Dispute Resolution.

### **What is Alternative Dispute Resolution?**

Alternative Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Trained impartial persons, called "neutrals", resolve disputes or help parties resolve disputes themselves. The types of ADR options available are:

- Arbitration
- Mediation
- Neutral Evaluation

All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes. At the present time, Stanislaus County Superior Court offers Mediation and Arbitration.

### **What are the advantages of using ADR?**

- **ADR can save time (FASTER).** Even in complex cases, a dispute can often be resolved in a matter of months, even weeks through ADR, while a lawsuit can take years.
- **ADR can save money (CHEAPER).** By resolving cases earlier, ADR can save parties money that might otherwise be spent on litigation costs (court, attorney and expert witness fees).
- **ADR encourages participation.** Parties have the opportunity to work together, rather than against each other by expressing their own interest and concerns to resolve the dispute.
- **ADR provides control and flexibility.** Parties can choose the ADR method most appropriate for their situation that will best serve their needs.
- **ADR can provide greater satisfaction and improved outcomes.** Surveys indicate that people who have used ADR are more satisfied than people who went through traditional litigation. The ADR atmosphere encourages cooperation and communication rather than the adversarial atmosphere found in litigation.

**ADR may not be suitable for every dispute and may not be to your advantage.**

- The neutral will charge a fee for their services if the dispute is not resolved within the allotted time.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in the ADR process.
- If a dispute is not resolved through ADR, the parties may still have to put time and money into a lawsuit.

### **What are my ADR Options?**

Stanislaus County Superior Court currently offers pre-screened panelists with experience and training in each of the following areas. It is the policy of the Superior Court of California that all parties are required to meet-and-confer with the opposing side before the Case Management Conference pursuant to rule 3.724 of the California Rules of Court.

## ❖ ARBITRATION

In arbitration, a neutral person called an "arbitrator" presides at the hearing. The arbitrator hears arguments, makes legal rulings, and evaluates the evidence determining the facts from each side. The arbitrator applies the law to the facts of each case and makes an award based upon the merits. Arbitration awards may be entered as judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with the California statutes. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. These hearings are not held in court.

1. **Binding arbitration** means that the parties waive their right to a trial and agree to accept the arbitrator's final decision. Generally, there is no right to appeal an arbitrator's decision.
2. **Non-Binding arbitration** means that the parties are free to request a trial with the court if they do not accept the arbitrator's decision.

**Cases for which Arbitration may be appropriate:** Arbitration is best for cases where the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time and expense of a trial. It may also be appropriate for complex matters.

**Operation/Court Policy.** Pursuant to Code of Civil Procedures § 1141.11, all civil actions in which the amount in controversy will not exceed \$50,000 shall be submitted to arbitration. A case is ordered to arbitration after the Case Management Conference. The neutral is chosen from the Courts approved panel, located on our website at [www.stanct.org](http://www.stanct.org).

**Cost.** There is no cost to the parties for judicial arbitration. [Local Rule 3.07 (1)]

## ❖ MEDIATION

In mediation, a neutral person called a "mediator" facilitates communication among parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution. Mediation is a voluntary, informal and confidential process held out of court.

**Cases for which Mediation may be appropriate:** Mediation may be particularly useful when parties have a relationship they want to preserve. If family members, neighbors or business partners have a dispute, mediation may be the best process to use.

**Operation/Court Policy.** All parties to a dispute may voluntarily agree to submit their case to mediation, either through a court appointment or through a private arrangement. A list of neutral providers who are trained and experienced have been reviewed and approved by the Court. The list can be found at [www.stanct.org](http://www.stanct.org). Litigants are not limited to a mediator on the court list and may select any mediator agreed upon by all the parties in private mediation. A mediation provider need not be an attorney.

1. **Private Mediation.** Parties to a civil action can agree to mediate their dispute with a mediator of their choice without court assistance.
2. **Court Mediation.** Upon stipulation of the parties, the parties may either personally select their mediator from the court approved list of neutrals or request the court to make the selection from the said list. The court will confirm the selected mediator and notice parties by mail.

**Cost.** Generally the cost of *private mediation* ranges from \$100-\$300 per hour and is shared equally by the parties. The cost of *court mediation* is \$400 total (\$200 per side) for the first two hours. In the event that mediation extends beyond two hours and parties determine it would be beneficial to continue the mediation process, the parties will independently be responsible for compensating the mediator in an amount set by the mediator.

## ❖ Additional Information

Under the Dispute Resolution Program Act (DRPA) funding, the court partners with Stanislaus County Mediation Center to provide free mediation services to litigants in small claims matters and cases involving unlawful detainer. For more information on the specific ADR programs of the Stanislaus County Superior Court, please review the Local Rules available on the Court's website at [www.stanct.org](http://www.stanct.org).





**BRADLEY/GROMBACHER, LLP**  
Marcus J. Bradley, Esq. (SBN 174156)  
Kiley L. Grombacher, Esq. (SBN 245960)  
Taylor L. Emerson, Esq. (SBN 225303)  
2815 Townsgate Road, Suite 130  
Westlake Village, California 91361  
Telephone: (805) 270-7100  
Facsimile: (805) 270-7589  
mbradley@bradleygrombacher.com  
kgrombacher@bradleygrombacher.com  
temerson@bradleygrombacher.com

Electronically Filed  
1/16/2019 4:17 PM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Lindsey Stringfellow, Deputy

**LAW OFFICES OF SAHAG MAJARIAN II**  
Sahag Majarian II, Esq. (SBN 146621)  
18250 Ventura Boulevard  
Tarzana, California 91356  
Telephone: (818) 609-0807  
Facsimile: (818) 609-0892  
Email: sahagii@aol.com

\$1435.00 PD

Attorneys for Plaintiff FELIX PEREZ

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF STANISLAUS**

FELIX PEREZ, an individual, on his own behalf and on behalf of all others similarly situated,

Plaintiff,

v.

CVS HEALTH CORPORATION, a Delaware corporation a/d/a CVS Caremark; CVS PHARMACY, INC., a Rhode Island corporation; and DOES 1-100, inclusive,

Defendants.

CASE NO. CV-19-000292

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay All Wages;
2. Failure to Pay Overtime Compensation in Violation of Cal. Labor Code Section 1194, et seq.
3. Missed Meal and Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512, and 12 CCR § 11040;
4. Failure to Provide Paid Time Off in Violation of California Labor Code § 227.3;
5. Failure to Provide Proper Wage Statements (California Labor Code § 226);
6. Failure to Pay Wages at Time of Termination (California Labor Code §§ 201-203); and
7. Unfair Business Practices (California Business and Professions Code § 17200)

**DEMAND FOR JURY TRIAL**

This case has been assigned to Judge Beauchesne, Roger M.  
Dept. 24  
Department \_\_\_\_\_, for all purposes including Trial.

1 All allegations in this Class Action Complaint ("Complaint") are based upon information  
2 and belief, except for those allegations which pertain to the Plaintiff Felix Perez ("Plaintiff")  
3 named herein and his counsel. Plaintiff's information and belief is based upon, *inter alia*, the  
4 investigation conducted to date by Plaintiff and his counsel. Each allegation in this Complaint  
5 either has evidentiary support or is likely to have evidentiary support after a reasonable  
6 opportunity for further investigation and discovery. Plaintiff, on behalf of himself and all others  
7 similarly situated, alleges as follows:

8 **INTRODUCTION**

9 1. This matter is brought as a class action pursuant to California *Code of Civil*  
10 *Procedure* § 382, on behalf of Plaintiff and the members of the plaintiff class, which is defined  
11 more specifically below, but which is comprised, generally, of all current and former employees  
12 who were employed by Defendants CVS HEALTH CORPORATION, a Delaware corporation  
13 a/d/a CVS Caremark; CVS PHARMACY, INC., a Rhode Island corporation; and DOES 1  
14 through 100, inclusive (collectively, "Defendants").

15 2. The Class Period is from January 16, 2015, to the date judgment is rendered  
16 herein.

17 3. Plaintiff seeks relief on behalf of himself and the members of the plaintiff class  
18 as a result of employment policies, practices and procedures more specifically described below,  
19 which violate the California *Labor Code*, and the orders and standards promulgated by the  
20 California Department of Industrial Relations, Industrial Welfare Commission, and Division of  
21 Labor Standards, and which have resulted in the failure of Defendants to pay Plaintiff and  
22 members of the plaintiff class all compensation due to them. Said employment policies,  
23 practices and procedures are generally described as follows:

- 24 a. Whether Defendants subjected Plaintiff and the members of the plaintiff class to  
25 security checks at meal breaks, rest breaks and at the end of the work shifts  
26 without proper compensation;
- 27 b. Defendants failed to provide Plaintiff and members of the plaintiff class with timely  
28 meal and rest breaks (California Labor Code §§ 200, 226.7, 512, and 12 CCR

1 § 11040);

- 2 c. Whether Defendants failed to provide proper meal periods to Plaintiff and  
3 members of the plaintiff class as a result of subjecting Plaintiff and members of  
4 the plaintiff class to security checks as the consequential wait time reduced the  
5 amount of the meal period and Defendants failed to compensate Plaintiff and  
6 members of the plaintiff class with one hour's wages in lieu of said full meal  
7 periods;
- 8 d. Whether Defendants failed to provide rest breaks to Plaintiff and members of the  
9 plaintiff class as a result of subjecting Plaintiff and members of the plaintiff class  
10 to security checks as the consequential wait time reduced the amount of the rest  
11 break and Defendants and failed to compensate Plaintiff and members of the  
12 plaintiff class with one hour's wages in lieu of said full rest break;
- 13 d. Whether Defendants failed to compensate Plaintiff and members of the plaintiff  
14 class with minimum wages and overtime compensation;
- 15 e. Whether Defendants failed to provide accurate itemized wage statements to  
16 Plaintiff and members of the plaintiff class;
- 17 1. Whether Defendants failed to timely pay all wages due to Plaintiff and former  
18 employees upon termination or within 72 hours of resignation;
- 19 g. Whether Defendants' conduct was willful or reckless; and
- 20 h. Whether Defendants engaged in unfair business practices in violation of *Business*  
21 *and Professions Code* §§ 17200, *et seq.*

22 **JURISDICTION AND VENUE**

23 4. This Court has jurisdiction over this matter pursuant to the provisions of the  
24 *California Labor Code*, as well as *California Business & Professions Code* § 17200. Venue is  
25 proper in Sacramento County because the acts which give rise to this litigation occurred in this  
26 county and Defendants do business in Sacramento County.

27 ///

28

**THE PARTIES**

1  
2 5. Plaintiff is a resident of Patterson in Stanislaus County, California. Plaintiff was  
3 employed as a full-time exempt employee by Defendants. Plaintiff was employed by  
4 Defendants as an "Order Selector" from approximately October 11, 2014 to August 20, 2018.

5 6. Defendant CVS HEALTH CORPORATION is a Delaware corporation a/d/a  
6 CVS Caremark that conducts business in California.

7 7. Defendant CVS PHARMACY, INC., is a Rhode Island corporation that conducts  
8 business in California.

9 8. The members of the plaintiff class are likewise former employees of Defendants  
10 within the State of California during the Class Period.

11 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
12 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through  
13 100, inclusive, but on information and belief, alleges that said Defendants are in some manner  
14 legally responsible for the unlawful actions, policies, and practices alleged herein, and therefore  
15 sues such Defendants by such fictitious names. Plaintiff is informed and believes, and thereon  
16 alleges, that each Defendant named herein was the agent of the other, and the agent of all  
17 Defendants. Plaintiff is further informed and believes, and thereon alleges, that each Defendant  
18 was acting within the course and scope of said agency at all relevant times herein, for the  
19 benefit of themselves, each other, and the other Defendants, and that each Defendant's actions  
20 as alleged herein was authorized and ratified by the other Defendants.

21 **FACTUAL ALLEGATIONS**

22 10. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 11. Plaintiff and the members of the plaintiff class were classified by Defendants as  
24 non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders  
25 and standards promulgated by the California Department of Industrial Relations, Industrial  
26 Welfare Commission, and Division of Labor Standards.

27 ///

28 ///

1 ***Defendants' Failure to Pay for All Hours Worked***

2 12. Defendants did not compensate their hourly non-exempt employees for all the  
3 minutes that they worked as described above, including but not limited to the time that the  
4 employees were subject to the control and direction of Defendants; and/or the time that the  
5 employees were suffered or permitted to work.

6 ***Security Checks***

7 13. Pursuant to a uniform policy originated by Defendants, all hourly employees are  
8 subject to personal package and bag searches. Hourly employees were and are required to wait  
9 in line and be searched for potential or possible items or merchandise taken without permission  
10 and/or other contraband. Thus, at the discretion and control of the Defendants and solely for  
11 their benefit, Plaintiff and members of the plaintiff class were and are required to wait in line  
12 for security checks for each day before leaving for their meal break, rest break and at the end of  
13 their shift after they had already clocked out. This daily uncompensated waiting time during  
14 security checks was done in order to undergo searches for possible contraband and/or pilferage  
15 of inventory. Because such screening is designed to prevent and deter employee theft, a  
16 concern that stems from the nature of the employee's work, the security checks and  
17 consequential wait time are necessary to the employee's primary work and done solely for  
18 Defendants' benefit.

19 14. A large number of hourly employees leave for breaks at the same time and/or  
20 end their shift at the same time. This creates lengthy lines and backups for employees  
21 authorized to conduct security screenings who are often times engaged in other job-related  
22 duties. As a result, employees are forced to wait in these lines and undergo lengthy off-the-  
23 clock security screenings before they are allowed to leave the premises. This work, done solely  
24 for the employer's benefit, is time which employees should be, but are not, compensated for  
25 both straight hours and overtime hours worked in excess of 40 in a week or, in California, in  
26 excess of 8 in a day.

27 15. Throughout Plaintiff's employment with Defendants, he was required to  
28 undergo personal package and bag searches before he was permitted to leave the store for his

1 meal breaks, rest breaks and before he was permitted to leave the store after he had clocked out  
2 at the end of his shifts. These security checks were significant, integral, indispensable, not a de  
3 minimis task or request and done solely for Defendants' benefit to prevent employee pilferage.  
4 Because of Defendants' improper uncompensated security check policies as described more  
5 fully below, Plaintiff was deprived of wages as required by California state law.

6 16. Supervisors employed by Defendants had knowledge of and required Plaintiff to  
7 undergo these uncompensated security screenings in accordance with Defendants' corporate  
8 policy. Supervisors required and enforced the corporately derived and mandated security  
9 checks and requested that Plaintiff perform these integral and indispensable duties without  
10 proper wages or overtime compensation.

11 ***Defendants' Failure to Pay Overtime Compensation***

12 17. California *Labor Code* § 1194 provides that an employee receiving less than the  
13 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full  
14 amount of this minimum wage or overtime compensation, including interest thereon, reasonable  
15 attorney's fees, and costs of suit.

16 18. California *Labor Code* § 510(a) states: "Any work in excess of eight hours in one  
17 workday and any work in excess of 40 hours in any one workweek and the first eight hours  
18 worked on the seventh day of work in any one workweek shall be compensated at the rate of no  
19 less than one and one-half times the regular rate of pay for an employee." California *Labor*  
20 *Code* § 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated  
21 at the rate of no less than twice the regular rate of pay for an employee." California *Labor Code*  
22 § 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek  
23 shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

24 19. Throughout the Class Period, Wage Order No. 5-2001, Section (3) provided for  
25 payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate  
26 of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek,  
27 and/or for payment of overtime wages equal to double the employee's regular rate of pay for all  
28 hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in

1 excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

2 20. Defendants classified Plaintiff and members of the plaintiff class as non-exempt,  
3 therefore they were entitled to overtime compensation for all hours worked in excess of the  
4 hours and time specified in the Wage Order, statutes and regulations identified herein.

5 21. As a matter of policy and/or practice, Defendants routinely suffered or permitted  
6 Plaintiff and members of the plaintiff class to work portions of the day during which they were  
7 subject to Defendants' control and failed to compensate them. Accordingly, Defendants failed  
8 to properly record the actual hours worked by Plaintiff and members of the plaintiff class, and  
9 thus failed to pay overtime wages for the actual amount of overtime hours worked.

10 ***Defendants' Failure to Provide Meal and Rest Breaks***

11 23. As detailed above under "Security Checks," Plaintiff alleges that the meal and rest  
12 breaks were short as a result of the security checks thereby depriving plaintiff and  
13 the members of the plaintiff class of the full meal and rest breaks as required.

14 24. Plaintiff alleges that throughout the Class Period, Defendants regularly:

- 15 a. Failed to provide Plaintiff and the members of the plaintiff class with a  
16 first meal period of not less than thirty (30) minutes during which they  
17 are relieved of all duty before working more than five (5) hours;
- 18 b. Failed to provide Plaintiff and the members of the plaintiff class with a  
19 second meal period of not less than thirty (30) minutes during which they  
20 are relieved of all duty before working more than ten (10) hours per day;
- 21 c. Failed to pay Plaintiff and the members of the plaintiff class one hour of  
22 pay at their regular rate of compensation for each workday that a meal  
23 period was not provided; and
- 24 d. Failed to accurately record all meal periods.

25 22. At all times, relevant hereto, California *Labor Code* § 226.7 and the applicable  
26 wage order, required employers to authorize, permit, and provide a ten (10) minute paid rest for  
27 each four (4) hours of work, during which employees are relieved of all duty.

28 At all times, relevant hereto, California *Labor Code* § 226.7(b) and the applicable wage



1 order required employers to pay one hour of additional pay at the regular rate of compensation  
2 for each employee and each workday that a proper rest period is not provided.

3 Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to  
4 effectively communicate California rest period requirements to Plaintiff and the members of the  
5 plaintiff class. Plaintiff is further informed and believes and based thereon alleges that  
6 throughout the Class Period Defendants failed to provide rest periods.

7 23. Throughout the Class Period, Plaintiff and the members of the plaintiff class  
8 were routinely denied the rest breaks they were entitled to under California law.

9 24. Specifically, throughout the Class Period, Defendants regularly:

10 a. Failed to provide paid rest periods of ten (10) minutes during which  
11 Plaintiff and the members of the plaintiff class were relieved of all duty  
12 for each four (4) hours of work and able to take rest periods within the  
13 middle of the shift; and

14 b. Failed to pay Plaintiff and the members of the plaintiff class one (1) hour  
15 of pay at their regular rate of compensation for each workday that a rest  
16 period was not permitted.

17 ***Defendants' Failure to Provide Pay Vacation Wages***

18 25. Plaintiff alleges that Defendants failed to pay his all vacation compensation due  
19 as of his final date of employment of May 17, 2017.

20 26. California *Labor Code* § 227.3, prohibits employers from forfeiting payment of  
21 the vested vacation wages of their employees.

22 27. Defendants failed to pay out Plaintiff for unused vested vacation wages  
23 (including, but not limited to, vacation pay, paid time off pay, personal day pay, personal  
24 holiday pay, incidental time off, and/or floating holiday pay) in a timely fashion as he was  
25 terminated by Defendant all in violation of California *Labor Code* § 227.3.

26 28. As a matter of uniform corporate policy, procedure and practice Defendants  
27 violated California *Labor Code* § 227.3 by failing to pay Plaintiff and members of the plaintiff  
28 class all vested vacation wages at the end of their employment. The uniform policy of not

1 paying Plaintiff and the members of the plaintiff class all vested vacation wages at the end of  
2 their employment resulted in a forfeiture of vested vacation wages in violation of California  
3 *Labor Code* § 227.3.

4 29. Defendants' Failure to Pay All Wages Due at Termination of Employment

5 30. At all times relevant hereto, California *Labor Code* § 201 required an employer  
6 that discharges an employee to pay compensation due and owing to said employee immediately  
7 upon discharge. California *Labor Code* § 202 requires an employer to pay an employee who  
8 quits any compensation due and owing to said employee within seventy-two (72) hours of an  
9 employee's resignation. California *Labor Code* § 203 provides that if an employer willfully fails  
10 to pay compensation promptly upon discharge or resignation, as required under Sections 201  
11 and 202, then the employer is liable for waiting time penalties in the form of continued  
12 compensation for up to thirty (30) work days.

13 31. Defendants willfully and knowingly failed to pay Plaintiff and the members of  
14 the plaintiff class, upon termination of employment, all accrued compensation including  
15 vacation wages.

16 32. Defendant's Failure to Provide Accurate, Itemized Wage Statements

17 33. At all times relevant hereto, California *Labor Code* § 226 and the applicable  
18 wage order required employers to maintain adequate employment records and provide  
19 employees with accurate itemized wage statements showing.

20 34. Wage statements provided to Plaintiff and the members of the plaintiff class by  
21 Defendants do not show all wages earned in violation of California *Labor Code* § 226,  
22 applicable wage order, and the UCL.

23 ***Facts Regarding Willfulness.***

24 35. Plaintiff is informed and believes and based thereon alleges that Defendants are  
25 and were advised by skilled lawyers, other professionals, employees with human resources  
26 background and advisors with knowledge of the requirements of California wage and hour laws.

27 ***Unfair Business Practices***

28 36. Defendants have engaged in, and continue to engage in, unfair business practices

1 in California by practicing, employing and utilizing the employment practices and policies  
2 outlined above.

3 37. Defendants' utilization of such unfair business practices constitutes unfair  
4 competition and provides an unfair advantage over Defendants' competitors.

5 38. Defendants' utilization of such unfair business practices deprives Plaintiff and  
6 members of the plaintiff class of the general minimum working standards and entitlements due  
7 them under California law and the Industrial Welfare Commission wage orders as described  
8 herein.

9 39. As a direct result of the wage and hour violations herein alleged, Plaintiff and  
10 members of the plaintiff class have suffered, and continue to suffer substantial losses related to  
11 the use and enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in  
12 seeking to compel Defendants to fully perform their obligations under state law, all to her  
13 respective damage in amounts according to proof at the time of trial.

14 **CLASS ACTION ALLEGATIONS**

15 40. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

16 41. Plaintiff brings this action on behalf of himself and all others similarly situated  
17 as a class action, pursuant to California *Code of Civil Procedure* §382. The classes which  
18 Plaintiff seeks to represent are composed of, and defined as follows:

19 **Plaintiff Class**

20 All persons who have been, or currently are, employed by Defendants in  
21 distribution centers in the State of California and classified as "non-  
22 exempt" employees.

23 **Terminated Sub Class**

24 All members of the Plaintiff Class whose employment ended during the Class  
25 Period. (collectively, "Plaintiff Class" "Class Members")

26 42. The Class Period is the period from January 16, 2015, through and  
27 including the date judgment is rendered in this matter.

28 43. The class is so numerous that the individual joinder of all members is

1 impracticable. While the exact number and identification of class members are unknown  
2 to Plaintiff at this time and can only be ascertained through appropriate discovery directed to  
3 Defendants, Plaintiff is informed and believes that the class includes potentially hundreds of  
4 members.

5 44. Common questions of law and fact exist as to all members of the class which  
6 predominate over any questions affecting only individual members of the class. These  
7 common legal and factual questions, which do not vary from class member to class member,  
8 and which may be determined without reference to the individual circumstances of any class  
9 member, include, but are not limited to, the following:

- 10 a. Whether Plaintiff and the members of the Plaintiff Class are subject to  
11 and entitled to the benefits of California wage and hour statutes;
- 12 b. Whether Defendants' systematic rounding of hours worked resulted in  
13 failure to pay wages for all hours worked;
- 14 c. Whether Plaintiff and the members of the Plaintiff Class were paid all  
15 vacation wages due;
- 16 d. Whether Plaintiff and the members of the Plaintiff Class are entitled to  
17 overtime compensation;
- 18 e. Whether Defendants maintained accurate records of the hours worked by  
19 Plaintiff and the members of the Plaintiff Class;
- 20 f. Whether Defendants had a standard policy of not providing meal and rest  
21 breaks to Plaintiff and members of the Plaintiff Class;
- 22 g. Whether Defendants had a standard policy and practice of failing to  
23 provide Plaintiff and the members of the Plaintiff Class with true and  
24 accurate wage statements upon payment of wages, in violation of  
25 California *Labor Code* § 226(a);
- 26 h. Whether Defendants had a standard policy and practice of failing to pay  
27 all wages owed upon termination in violation of California *Labor Code*  
28 §201-203;

- 1           i.       Whether Defendants unlawfully and/or willfully deprived Plaintiff and  
2                   the members of the Plaintiff Class of meal and rest breaks and pay for  
3                   missed breaks pursuant to California Labor Code §§ 200, 226.7, 512, and  
4                   12 CCR § 11040;
- 5           j.       Whether Plaintiff and the members of the Plaintiff Class sustained  
6                   damages, and if so, the proper measure of such damages, as well as  
7                   interest, penalties, costs, attorneys' fees, and equitable relief; and
- 8           k.       Whether Defendants' conduct as alleged herein violates the Unfair  
9                   Business Practices Act under California *Business & Professions Code* §  
10                  17200, *et seq.*

11           45.     The claims of the named Plaintiff are typical of the claims of the members of the  
12           Plaintiff Class. Plaintiff and the members of the Plaintiff Class sustained losses, injuries and  
13           damages arising from Defendants' common policies, practices, procedures, protocols, routines,  
14           and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks  
15           recovery for the same type of losses, injuries, and damages as were suffered by other members  
16           of the Plaintiff Class.

17           46.     Plaintiff is an adequate representative of the Plaintiff Class because he is a  
18           member of the class, and his interests do not conflict with the interests of the members he seeks  
19           to represent. Plaintiff has retained competent counsel, experienced in the prosecution of  
20           complex class actions, and together Plaintiff and his counsel intend to prosecute this action  
21           vigorously for the benefit of the classes. The interests of the class members will fairly and  
22           adequately be protected by Plaintiff and his attorneys.

23           47.     A class action is superior to other available methods for the fair and efficient  
24           adjudication of this litigation since individual litigation of the claims of all class members is  
25           impracticable. It would be unduly burdensome to the courts if these matters were to proceed on  
26           an individual basis because this would potentially result in hundreds of individuals, repetitive  
27           lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory  
28           judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of

1 recovery among those with equally meritorious claims. By contrast, the class action device  
2 presents far fewer management difficulties, and provides the benefit of a single adjudication,  
3 economics of scale, and comprehensive supervision by a single court.

4 48. The various claims asserted in this action are additionally or alternatively  
5 certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

6 a. The prosecution of separate actions by hundreds of individual class  
7 members would create a risk of varying adjudications with respect to  
8 individual class members, thus establishing incompatible standards of  
9 conduct for Defendants, and

10 b. The prosecution of separate actions by individual class members would  
11 also create the risk of adjudications with respect to them that, as a  
12 practical matter, would be dispositive of the interest of the other class  
13 members who are not a party to such adjudications and would  
14 substantially impair or impede the ability of such non-party class  
15 members to protect their interests.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY FOR ALL HOURS WORKED**

18 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

19 49. Plaintiff incorporate herein by reference the allegations set forth above.

20 50. At all times relevant herein, which comprise the time period not less than four (4)  
21 years preceding the filing of this action, Defendants were required to compensate their hourly  
22 employees for all hours worked upon reporting for work at the appointed time stated by the  
23 employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code*  
24 §§200, 226, 500, 510, 1197, and 1198.

25 51. For at least the four (4) years preceding the filing of this action, Defendants  
26 failed to compensate employees for all hours worked. Defendants implemented policies that  
27 actively prevented employees from being compensated for all time worked by employing the  
28 use of a rounding program that rounded the actual recorded start and stop time of hourly

1 employees when calculating their wages. In addition, Defendants failed to pay hourly  
2 employees for all time worked when the timekeeping system malfunctioned, by recording the  
3 time that employees' timecards were manually corrected, rather than the time they actually  
4 began work.

5 52. Under the above-mentioned wage order and state regulations, Plaintiff and the  
6 members of the Plaintiff Class are entitled to recover compensation for all hours worked, but  
7 not paid, for the four (4) years preceding the filing of this action, in addition to reasonable  
8 attorney's fees and costs of suit in accordance with California *Labor Code* § 218.5, and penalties  
9 pursuant to California *Labor Code* §203 and 206.

10 53. Defendants have knowingly and willfully refused to perform their obligations to  
11 compensate Plaintiff and the members of the Plaintiff Class for all wages earned and all hours  
12 worked, in violation of state law. As a direct result, Plaintiff and the members of the plaintiff  
13 class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of  
14 such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel  
15 Defendants to fully perform their obligation under state law, in accordance with Plaintiff's and  
16 the members of the Plaintiff Class respective damage amounts according to proof at time of  
17 trial.

18 54. Defendants committed such actions alleged knowingly and willfully, with the  
19 wrongful and deliberate intention of injuring Plaintiff and the members of the Plaintiff Class  
20 from improper motives amounting to malice, and in conscious disregard the rights of the  
21 Plaintiff and members of the Plaintiff Class.

22 55. Plaintiff and the members of the Plaintiff Class are thus entitled to recover  
23 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof  
24 at the time of trial.

25 56. As a proximate result of the above-mentioned violations. Plaintiff and the  
26 members of the Plaintiff Class have been damaged in an amount according to proof at time of  
27 trial.

28 ///

**SECOND CAUSE OF ACTION**

**FAILURE TO PAY OVERTIME WAGES**

**(By Plaintiff and Plaintiff Class Against All Defendants)**

1  
2  
3  
4 57. Plaintiff incorporate all preceding paragraphs as though fully set forth  
5 herein.

6 58. California *Labor Code* § 510(a) states: "Any work in excess of eight hours in  
7 one workday and any work in excess of 40 hours in any one workweek and the first eight hours  
8 worked on the seventh day of work in any one workweek shall be compensated at the rate of no  
9 less than one and one-half times the regular rate of pay for an employee." California *Labor*  
10 *Code* § 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated  
11 at the rate of no less than twice the regular rate of pay for an employee." California *Labor Code*  
12 § 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek  
13 shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

14 59. Defendants have failed and refused to pay to Plaintiff and each member of the  
15 Plaintiff Class all overtime wages due to them in compliance with California *Labor Code*  
16 including, but not limited to, failing to pay all overtime accrued. Based upon information and  
17 belief, Plaintiff and the other members of the Plaintiff Class were not paid overtime when they  
18 worked in excess of eight (8) hours in a given day. Plaintiff alleges that Defendants' policy was  
19 not to pay overtime wages until an employee had worked forty (40) hours in a workweek.

20 60. As a direct and proximate result of the acts and/or omissions of each Defendant,  
21 Plaintiff and each member of the Plaintiff Class has been deprived of overtime wages due in  
22 amounts to be determined at trial.

23 61. The applicable overtime requirements fixed by the commission for Plaintiff and  
24 the Plaintiff Class, are found in Wage Order 5-2001.

25 62. Pursuant to California *Labor Code* §§ 1194 and 1194.2 as a result of  
26 Defendants' failure to pay Plaintiff and the members of the Plaintiff Class all overtime wages  
27 due, Plaintiff and members of the plaintiff class are entitled to each recover the unpaid overtime  
28 wages in an amount equal to the overtime wages unlawfully unpaid, plus interest, fees and costs



1 thereon.

2 **THIRD CAUSE OF ACTION**

3 **MEAL AND REST BREAK VIOLATIONS**

4 **(California Labor Code §§ 200, 226.7, 512, and 12 CCR § 11040)**

5 **(By Plaintiff and Members of the Plaintiff Class Against All Defendants)**

6 63. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7 California Labor Code § 226.7(a) provides that “No employer shall require any  
8 employee to work during any meal or rest period mandated by an applicable order of the  
9 Industrial Welfare Commission.”

10 64. California Labor Code § 512 provides that “An employer may not employ an  
11 employee for a work period of more than five hours per day without providing the employee  
12 with a meal period of not less than 30 minutes, except that if the total work period per day of the  
13 employee is no more than six hours, the meal period may be waived by mutual consent of both  
14 the employer and employee.”

15 65. California Labor Code § 512 further provides that “An employer may not  
16 employ an employee for a work period of more than 10 hours per day without providing the  
17 employee with a second meal period of not less than 30 minutes, except that if the total hours  
18 worked is no more than 12 hours, the second meal period may be waived by mutual consent of  
19 the employer and the employee only if the first meal period was not waived.”

20 66. The applicable wage order provides that “Unless the employee is relieved of all  
21 duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal  
22 period and counted as time worked. An “on duty” meal period shall be permitted only when the  
23 nature of the work prevents an employee from being relieved of all duty and when by written  
24 agreement between the parties an on-the-job paid meal period is agreed to. The written  
25 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

26 67. The applicable wage order provides that “If an employer fails to provide an  
27 employee a meal period in accordance with the applicable provisions of this order, the employer  
28 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for

1 each workday that the meal period is not provided.”

2 68. California *Labor Code* § 226.7(a) provides that “No employer shall require any  
3 employee to work during any meal or rest period mandated by an applicable order of the  
4 Industrial Welfare Commission.”

5 69. The applicable wage order required employers to authorize, permit, and provide  
6 a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved  
7 of all duty.

8 70. At all times, relevant hereto, California *Labor Code* § 226.7(b) and the  
9 applicable wage order required employers to pay one hour of additional pay at the regular rate  
10 of compensation for each employee and each workday that a proper rest period is not provided.

11 71. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class  
12 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal  
13 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

14 72. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class did  
15 not waive their meal periods, by mutual consent with Defendants or otherwise.

16 Defendants failed to comply with the required meal periods established by California  
17 *Labor Code* § 226.7, California *Labor Code* § 512, and the applicable Wage Order.

18 Defendants failed to compensate Plaintiff and members of the Plaintiff Class with  
19 premium wages when meal periods were missed.

20 73. Pursuant to the applicable wage order, and California *Labor Code* § 226.7(b)  
21 (which requires, in the event that “an employer fails to provide an employee a meal or rest  
22 period in accordance with an applicable order of the industrial Welfare Commission, the  
23 employer shall the employee one additional hour of pay at the employee’s regular rate of  
24 compensation for each work day that the meal or rest period is not provided”), the members of  
25 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal  
26 period, in a sum to be proven at trial.

27 74. At all times relevant to this Complaint, each Defendants failed, and has continued to  
28 fail, to timely provide Plaintiff and members of the Plaintiff Class with meal periods.

1 75. Thus, throughout the Class Period, Defendants regularly:

2 (a) Failed to provide paid rest periods of ten (10) minutes during which  
3 Plaintiff and the members of the Plaintiff Class were relieved of all duty  
4 for each four (4) hours of work; and

5 (b) Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour  
6 of pay at their regular rate of compensation for each workday that a rest  
7 period was not permitted.

8 76. As a direct and proximate result of the acts and/or omissions of each Defendant,  
9 Plaintiff and Class Members have been deprived of meal and rest period wages due in amounts to be  
10 determined at trial.

11 77. Pursuant to California *Labor Code* §§ 226.7, 512, and the applicable wage order, as a  
12 result of Defendants' failure to pay Plaintiff and Class Members for all meal periods and rest periods,  
13 Plaintiff and all Class Members are entitled to recover the unpaid meal and rest period wages, plus  
14 interest, fees and costs thereon.

15 **FOURTH CAUSE OF ACTION**

16 **FORFEITURE OF VACATION PAY (California *Labor Code* § 227.3)**

17 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

18 78. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
19 forth herein.

20 79. This cause of action is brought pursuant to California *Labor Code* § 227.3, which  
21 prohibits employers from forfeiting payment of the vested vacation wages of their employees.

22 80. Plaintiff's employment by Defendants has been terminated. Plaintiff had unused  
23 vested vacation wages (including, but not limited to, vacation pay, paid time off pay, personal  
24 day pay, personal holiday pay, incidental time off, and/or floating holiday pay) that were not  
25 paid out to him in a timely fashion at the end of his employment in violation of California *Labor*  
26 *Code* § 227.3.

27 81. As a matter of uniform corporate policy, procedure and practice Defendants  
28 violated California *Labor Code* § 227.3 by failing to pay Plaintiff and the members of the

1 Plaintiff Class all vested vacation wages. The uniform policy of not paying Plaintiff and  
2 members of the plaintiff class all vested vacation wages at the end of their employment resulted  
3 in a forfeiture of vested vacation wages in violation of California *Labor Code* § 227.3.

4 82. The conduct of Defendants, their agents and employees as described herein was  
5 willful and was taken in conscious disregard of the rights of Plaintiff and the rights of the  
6 individual members of the plaintiff class. Such conduct, taken by Defendants' managerial  
7 employees, supports an award of up to thirty (30) days of pay, pursuant to California *Labor*  
8 *Code* § 203, as penalties for Plaintiff and each member of the Plaintiff Class who were not  
9 compensated for all vested vacation time at the conclusion of their employment with  
10 Defendants.

11 83. Such a pattern, practice and uniform administration of unlawful corporate policy  
12 regarding employee compensation as described herein creates an entitlement to recovery by  
13 Plaintiff and each member of the plaintiff class for damages and wages owed and for penalties,  
14 interest, costs and attorney's fees.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

17 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

18 84. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19 85. California *Labor Code* § 226(a) sets forth reporting requirements for employers  
20 when they pay wages, as follows:

21 "Every employer shall . . . at the time of each payment of wages, furnish his or her  
22 employees . . . an itemized statement in writing showing (1) gross wages earned;  
23 (2) total hours worked by the employee . . . (4) all deductions, provided that all  
24 deductions made on written orders of the employee may be aggregated and shown as  
25 one item... (9) all applicable hourly rates in effect during the pay period and the  
26 corresponding number of hours worked at each hourly rate by the employee and,  
27 beginning July 1, 2013, if the employer is a temporary services employer as defined in  
28 Section 201.3, the rate of pay and the total hours worked for each temporary services  
assignment." Section (e) provides: "An employee suffering injury as a result of a  
knowing and intentional failure by an employer to comply with subdivision (a) shall be  
entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial  
pay period in which a violation occurs and one hundred dollars (\$100) per employee for  
each violation in a subsequent pay period, not exceeding an aggregate penalty of four  
thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable  
attorney's fees."

1  
2 86. Furthermore, California *Labor Code* § 1174 requires that the employer maintain  
3 accurate records showing the hours worked, and wages due to his or her employees.

4 87. Defendants failed to accurately report the gross wages earned and the net wages  
5 earned by Plaintiff and the members of the Plaintiff Class on their wage statements.

6 88. Defendants failed to accurately represent the total hours worked by Plaintiff and  
7 the members of the Plaintiff Class in that all hours worked are not accurately reflected on their  
8 wage statements.

9 89. Plaintiff and members of the Plaintiff Class were damaged by this failure to  
10 provide accurate wage statements because, among other things, they were and are unable to  
11 determine the proper amount of wages (including vacation wages) actually owed to them, and  
12 whether they have received full compensation therefore.

13 90. Plaintiff and members of the Plaintiff Class are entitled to, and hereby claim,  
14 penalties as provided by California *Labor Code* § 226(e), as well as interest, attorneys' fees and  
15 costs pursuant to California *Labor Code* § 226(e), and all other damages, attorneys' fees, costs,  
16 expenses and interest permitted by statute.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES AT TIME OF**

19 **TERMINATION (CALIFORNIA LABOR CODE §§ 201-203)**

20 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

21 91. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
22 forth herein.

23 92. At all times relevant herein, Defendants was required to pay its employees all  
24 wages owed in a timely fashion during and at the end of their employment, pursuant to  
25 California *Labor Code* §§ 201-203.

26 93. As a pattern and practice, Defendants regularly failed to pay Plaintiff and  
27 members of the Plaintiff Class their final wages pursuant to California *Labor Code* §§ 201-203,  
28 and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

1 94. The conduct of Defendants and their agents and managerial employees as  
2 described herein was willful, and in violation of the rights of Plaintiff and the individual  
3 members of the Plaintiff Class.

4 95. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
5 willful failure to pay wages due and owing them upon separation from employment results in a  
6 continued payment of wages up to thirty (30) days from the time the wages were due.  
7 Therefore, Plaintiff and the members of the Plaintiff Class who have separated from  
8 employment are entitled to compensation pursuant to California *Labor Code* § 203.

9 **SEVENTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION: CALIFORNIA BUSINESS AND**

11 **PROFESSIONS CODE § 17200, etc.**

12 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

13 96. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
14 forth herein.

15 97. Section 17200 of the California *Business and Professions Code* prohibits any  
16 unlawful, unfair or fraudulent business act or practice.

17 98. Plaintiff brings this cause of action in a representative capacity on behalf of the  
18 general public and the persons affected by the unlawful and unfair conduct described herein.  
19 Plaintiff and members of the plaintiff class have suffered, and continue to suffer, injury in fact  
20 and monetary damages as a result of Defendants' actions.

21 99. The actions by Defendants as herein alleged amount to conduct which is  
22 unlawful and a violation of law. As such, said conduct amounts to unfair business practices in  
23 violation of California *Business and Professions Code* § 17200, *et seq.*

24 100. Defendants' conduct as herein alleged has damaged Plaintiff and the members of  
25 the Plaintiff Class by denying them wages due and payable, and by failing to provide proper  
26 wage statements. Defendants' actions are thus substantially injurious to Plaintiff and the  
27 members of the Plaintiff Class, causing them injury in fact and loss of money.

28 101. As a result of such conduct, Defendants have unlawfully and unfairly obtained

1 monies due to the Plaintiff and the members of the Plaintiff Class.

2 102. All members of the Plaintiff Class can be identified by reference to payroll and  
3 related records in the possession of the Defendants. The amount of wages due Plaintiff and  
4 members of the plaintiff class can be readily determined from Defendants' records. The Class  
5 Members are entitled to restitution of monies due and obtained by Defendants during the Class  
6 Period as a result of Defendants' unlawful and unfair conduct.

7 103. During the Class Period, Defendants committed, and continues to commit, acts  
8 of unfair competition as defined by § 17200, *et seq.*, of the California *Business and Professions*  
9 *Code*, by and among other things, engaging in the acts and practices described above.

10 104. Defendants' course of conduct, acts, and practices in violation of the California  
11 law as mentioned in each paragraph above constitutes a separate and independent violation of §  
12 17200, etc., of the California *Business and Professions Code*.

13 105. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully  
14 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies  
15 and practices and, therefore, Defendants' actions described herein constitute an unfair business  
16 practice or act within the meaning of California *Business and Professions Code* § 17200.

17 106. Defendants' conduct described herein threatens an incipient violation of  
18 California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise  
19 significantly threatens or harms competition.

20 107. Defendants' course of conduct described herein further violates California  
21 *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

22 108. The unlawful, unfair, and fraudulent business practices and acts of Defendants as  
23 described herein-above have injured Plaintiff and the members of the Plaintiff Class in that they  
24 were wrongfully denied the timely and full payment of wages due to them.

25 **PRAYER FOR RELIEF**


26 WHEREFORE, Plaintiff, on behalf of himself, and on behalf of the members of the  
27 Plaintiff Class, prays for judgment against Defendants as follows:

- 28 1. For an order certifying the Plaintiff Class;

- 1       2.     For nominal damages;
- 2       3.     For equitable relief in the nature of declaratory relief, restitution of all monies
- 3 due to Plaintiff and members of the plaintiff class, and disgorgement of profits from the
- 4 unlawful business practices of Defendants;
- 5       4.     For penalties as permitted by the California *Labor Code*, and the regulations,
- 6 standards and applicable wage orders promulgated thereunder, specifically including, but not
- 7 limited to, California *Labor Code* §§ 201-203, 226(a), and 227.3;
- 8       6.     For interest as permitted by statute, including California *Labor Code* § 218.6;
- 9       7.     For costs of suit and expenses incurred herein as permitted by statute, including
- 10 California *Labor Code* §§ 226 and 1194;
- 11       8.     For attorney's fees as permitted by statute, including California *Labor Code* §§
- 12 226 and 1194; and
- 13       9.     For all such other and further relief that the Court may deem just and proper.

14 DATED: January 16, 2019

**BRADLEY/GROMBACHER, LLP**  
**LAW OFFICES OF SAHAG MAJARIAN II**

15  
16  
17 By:   
18 \_\_\_\_\_  
19 Marcus J. Bradley, Esq.  
20 Kiley Grombacher, Esq.  
21 Taylor L. Emerson, Esq.  
22 Sahag Majarian II, Esq.  
23 Attorneys for Plaintiff

24  
25  
26 ///

27 ///

28 ///




1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: January 16, 2019

**BRADLEY/GROMBACHER, LLP  
LAW OFFICES OF SAHAG MAJARIAN II**

By:   
\_\_\_\_\_  
Marcus J. Bradley, Esq.  
Kiley Grombacher, Esq.  
Taylor L. Emerson, Esq.  
Sahag Majarian II, Esq.  
Attorneys for Plaintiff

**EXHIBIT B**

1 MORGAN, LEWIS & BOCKIUS LLP  
Jennifer B. Zargarof, Bar No. 204382  
2 Megan McDonough, Bar No. 317402  
300 South Grand Avenue  
3 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
4 Tel: +1.213.612.2500  
5 Fax: +1.213.612.2501  
jennifer.zargarof@morganlewis.com

6 Attorneys for Defendants  
CVS Health Corporation and CVS Pharmacy, Inc.  
7

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF STANISLAUS

11 FELIX PEREZ, an individual, on his own  
12 behalf and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a Delaware  
17 corporation a/d/a CVS Caremark; CVS  
18 PHARMACY, INC., a Rhode Island  
19 corporation; and DOES 1-100, inclusive,,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CV-19-000292

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S COMPLAINT**

1 Defendants CVS Health Corporation and CVS Pharmacy, Inc. (collectively,  
2 “Defendants”), by and through their undersigned counsel, hereby answer the allegations  
3 contained in Plaintiff Felix Perez’s (“Plaintiff”) unverified Complaint (“Complaint”), as follows:

4 **GENERAL DENIAL**

5 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants  
6 generally deny each and every allegation of the Complaint, each and every purported cause of  
7 action set forth therein, and the whole thereof. Defendants further denies that Plaintiff or any  
8 other individuals sought to be represented have been damaged in any amount, or at all.

9 **DEFENSES**

10 Defendants have not completed their investigation of the facts of this case, have not  
11 completed discovery in this matter, and have not completed their preparation for trial. The  
12 defenses asserted herein are based on Defendants’ knowledge, information, and belief as of this  
13 writing, and Defendants specifically reserve the right to modify, amend, or supplement any  
14 defense contained herein at any time. Without conceding the burden of proof or persuasion as to  
15 any one of them, Defendants allege the following separate defenses to the Complaint:

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Cause of Action)**

18 1. Neither the Complaint, nor any purported cause of action alleged therein, states  
19 facts sufficient to constitute a cause of action upon which relief can be granted against  
20 Defendants.

21 **SECOND AFFIRMATIVE DEFENSE**

22 **(Statute of Limitations)**

23 2. The Complaint, and each purported cause of action alleged therein, is barred in  
24 whole or in part by applicable statutes of limitations, including but not limited to California Code  
25 of Civil Procedure sections 337, 338, 339, 340, and California Business & Professions Code  
26 section 17208, and California Labor Code section 203 and 226.

27 ////

28 ////

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Lack of Standing)**

3 3. Defendants are informed and believe, and based upon such information and belief  
4 aver, that the Complaint, and each purported cause of action alleged therein, is barred because  
5 Plaintiff lacks standing to assert any purported cause of action alleged in the Complaint.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Waiver/Release)**

8 4. Defendants are informed and believe, and based upon such information and belief  
9 aver, that by their conduct and/or based on a written waiver or release, Plaintiff and/putative class  
10 members have waived and/or released some or all of the causes of action asserted in the  
11 Complaint.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Consent)**

14 5. Plaintiffs' 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  
16 and/or putative class members.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 **(Misrepresentation)**

19 6. Defendants are informed and believe, and on that basis allege, that Plaintiff's  
20 Complaint is barred, in whole or in part, by misrepresentations made by Plaintiff and/or putative  
21 class members.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 **(Unclean Hands)**

24 7. Defendants are informed and believe, and based upon such information and belief  
25 aver, that the Complaint, and each cause of action therein, is barred by the doctrine of unclean  
26 hands.

27 ////

28 ////

1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Laches)**

3 8. Defendants are informed and believe, and based upon such information and belief  
4 aver, that the Complaint, and each and every claim therein, is barred by the doctrine of laches, in  
5 that Plaintiff unreasonably delayed bringing the action.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Estoppel)**

8 9. Defendants are informed and believe, and based upon such information and belief  
9 aver, that the Complaint, and each cause of action therein, is barred for the reason that, by their  
10 actions, Plaintiffs and/or putative class members are estopped from bringing any cause of action.

11 **TENTH AFFIRMATIVE DEFENSE**

12 **(Adequacy of Remedy at Law)**

13 10. The Complaint's claims for equitable relief fail because adequate legal remedies  
14 may be pursued.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(Setoff, Offset, Recoupment)**

17 11. Some or all of the purported causes of action in the Complaint seek damages that  
18 are subject to setoff, offset, and/or recoupment.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 **(No Penalties—Good Faith Dispute)**

21 12. Plaintiff and/or putative class members cannot recover California Labor Code  
22 Section 226(e) penalties because any alleged failure to pay wages or provide compliant wage  
23 statements was based on a good faith dispute regarding the applicable law or facts.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 **(No Loss/Unjust Enrichment)**

26 13. Plaintiff and the putative class members have not suffered any loss and Defendants  
27 have not been unjustly enriched as a result of any action or inaction of Defendants and their  
28 agents. Hence, Plaintiffs are not entitled to any restitution.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Non-Ascertainable Class Action)**

14. Plaintiff's claims are barred because the definition of the alleged putative class members is not ascertainable, and is uncertain, ambiguous, and conclusory.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate/Avoidable Consequences)**

15. Plaintiff's claims and/or the claims of some or all of the putative class members are barred in whole or in part to the extent they have not appropriately nor adequately mitigated their alleged damages, if any, or taken advantage of any preventative or corrective safeguards or otherwise to avoid harm.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Claims Subject to Arbitration Agreement)**

16. The Court lacks jurisdiction over the Complaint, and each and every purported cause of action therein, as to Plaintiff and some putative class members because they are subject to a binding arbitration agreement with Defendants.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Specificity)**

17. The Complaint's claim for unfair competition in violation of California Business and Professions Code Section 17200, *et seq.*, is barred because it fails to plead specific facts capable of stating a claim for violation of the unfair competition law.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(No Employment Relationship)**

18. Plaintiff's claims are barred because no employment relationship exists between Plaintiff and Defendants CVS Health Corporation and CVS Pharmacy, Inc.

////  
////  
////  
////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: April 3, 2019

MORGAN, LEWIS & BOCKIUS LLP

By 

Jennifer B. Zargarof  
Megan McDonough  
Attorneys for Defendants  
CVS Health Corporation and CVS  
Pharmacy, Inc.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Caridad F. Frutos-Williams, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On April 3, 2019, I served a copy of the within document(s):

**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.

Marcus J. Bradley, Esq.  
Kiley L. Grombacher, Esq.  
Taylor L. Emerson, Esq.  
Bradley/Grombacher, LLP  
2815 Townsgate Road, Suite 130  
Westlake Village, California 91361  
Tel: 805.270.7100  
Fax: 805.270.7589  
mbradley@bradleygrombacher.com  
kgrombacher@bradleygrombacher.com  
temerson@bradleygrombacher.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on April 3, 2019, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



---

Caridad F. Frutos-Williams

# **EXHIBIT C**

1 **BRADLEY/GROMBACHER, LLP**  
 2 Marcus J. Bradley, Esq. (SBN 174156)  
 3 Kiley L. Grombacher, Esq. (SBN 245960)  
 4 Taylor L. Emerson, Esq. (SBN 225303)  
 5 2815 Townsgate Road, Suite 130  
 6 Westlake Village, California 91361  
 7 Telephone: (805) 270-7100  
 8 Facsimile: (805) 270-7589  
 9 mbradley@bradleygrombacher.com  
 10 kgrombacher@bradleygrombacher.com  
 11 temerson@bradleygrombacher.com

8 **LAW OFFICES OF SAHAG MAJARIAN II**  
 9 Sahag Majarian II, Esq. (SBN 146621)  
 10 18250 Ventura Boulevard  
 11 Tarzana, California 91356  
 12 Telephone: (818) 609-0807  
 13 Facsimile: (818) 609-0892  
 14 Email: sahabi@aol.com

12 Attorneys for Plaintiff FELIX PEREZ

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF STANISLAUS**

15 FELIX PEREZ, an individual, on his own  
16 behalf and on behalf of all others similarly  
17 situated,

18 Plaintiff,

19 v.

20 CVS HEALTH CORPORATION, a Delaware  
21 corporation a/d/a CVS Caremark; CVS  
22 PHARMACY, INC., a Rhode Island  
23 corporation; and DOES 1-100, inclusive,

24 Defendants.

CASE NO. CV-19-000292

**CLASS ACTION FIRST AMENDED  
COMPLAINT FOR:**

1. Failure to Pay All Wages;
2. Failure to Pay Overtime Compensation in Violation of Cal. Labor Code Section 1194, et seq.
3. Missed Meal and Rest Breaks in Violation of California Labor Code §§ 200, 226.7, 512, and 12 CCR § 11040;
4. Failure to Provide Paid Time Off in Violation of California Labor Code § 227.3;
5. Failure to Provide Proper Wage Statements (California Labor Code § 226);
6. Failure to Pay Wages at Time of Termination (California Labor Code §§ 201-203);
7. Unfair Business Practices (California Business and Professions Code § 17200);

1 and,  
2 8. Violation of California *Labor Code* §§  
3 2698, et. seq.

4 **DEMAND FOR JURY TRIAL**

5  
6 All allegations in this Class Action First Amended Complaint ("Complaint") are based  
7 upon information and belief, except for those allegations which pertain to the Plaintiff Felix  
8 Perez ("Plaintiff") named herein and his counsel. Plaintiff's information and belief is based  
9 upon, *inter alia*, the investigation conducted to date by Plaintiff and his counsel. Each allegation  
10 in this Complaint either has evidentiary support or is likely to have evidentiary support after a  
11 reasonable opportunity for further investigation and discovery. Plaintiff, on behalf of himself  
12 and all others similarly situated, alleges as follows:

13 **INTRODUCTION**

14 1. This matter is brought as a class action pursuant to California *Code of Civil*  
15 *Procedure* § 382, on behalf of Plaintiff and the members of the plaintiff class, which is defined  
16 more specifically below, but which is comprised, generally, of all current and former employees  
17 who were employed by Defendants CVS HEALTH CORPORATION, a Delaware corporation  
18 a/d/a CVS Caremark; CVS PHARMACY, INC., a Rhode Island corporation; and DOES 1  
19 through 100, inclusive (collectively, "Defendants").

20 2. The Class Period is from January 16, 2015, to the date judgment is rendered  
21 herein.

22 3. Plaintiff seeks relief on behalf of himself and the members of the plaintiff class  
23 as a result of employment policies, practices and procedures more specifically described below,  
24 which violate the California *Labor Code*, and the orders and standards promulgated by the  
25 California Department of Industrial Relations, Industrial Welfare Commission, and Division of  
26 Labor Standards, and which have resulted in the failure of Defendants to pay Plaintiff and  
27 members of the plaintiff class all compensation due to them. Said employment policies,  
28 practices and procedures are generally described as follows:

- 1 a. Whether Defendants subjected Plaintiff and the members of the plaintiff class to  
2 security checks at meal breaks, rest breaks and at the end of the work shifts  
3 without proper compensation;
- 4 b. Defendants failed to provide Plaintiff and members of the plaintiff class with timely  
5 meal and rest breaks (California *Labor Code* §§ 200, 226.7, 512, and 12 CCR  
6 § 11040);
- 7 c. Whether Defendants failed to provide proper meal periods to Plaintiff and  
8 members of the plaintiff class as a result of subjecting Plaintiff and members of  
9 the plaintiff class to security checks as the consequential wait time reduced the  
10 amount of the meal period and Defendants failed to compensate Plaintiff and  
11 members of the plaintiff class with one hour's wages in lieu of said full meal  
12 periods;
- 13 d. Whether Defendants failed to provide rest breaks to Plaintiff and members of the  
14 plaintiff class as a result of subjecting Plaintiff and members of the plaintiff class  
15 to security checks as the consequential wait time reduced the amount of the rest  
16 break and Defendants and failed to compensate Plaintiff and members of the  
17 plaintiff class with one hour's wages in lieu of said full rest break;
- 18 d. Whether Defendants failed to compensate Plaintiff and members of the plaintiff  
19 class with minimum wages and overtime compensation;
- 20 e. Whether Defendants failed to provide accurate itemized wage statements to  
21 Plaintiff and members of the plaintiff class;
- 22 1. Whether Defendants failed to timely pay all wages due to Plaintiff and former  
23 employees upon termination or within 72 hours of resignation;
- 24 g. Whether Defendants' conduct was willful or reckless; and
- 25 h. Whether Defendants engaged in unfair business practices in violation of *Business*  
26 *and Professions Code* §§ 17200, *et seq.*

27 ///

28 ///

1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction over this matter pursuant to the provisions of the  
3 *California Labor Code*, as well as *California Business & Professions Code* § 17200. Venue is  
4 proper in Sacramento County because the acts which give rise to this litigation occurred in this  
5 county and Defendants do business in Sacramento County.

6 **THE PARTIES**

7 5. Plaintiff is a resident of Patterson in Stanislaus County, California. Plaintiff was  
8 employed as a full-time exempt employee by Defendants. Plaintiff was employed by  
9 Defendants as an "Order Selector" from approximately October 11, 2014 to August 20, 2018.

10 6. Defendant CVS HEALTH CORPORATION is a Delaware corporation a/d/a  
11 CVS Caremark that conducts business in California.

12 7. Defendant CVS PHARMACY, INC., is a Rhode Island corporation that conducts  
13 business in California.

14 8. The members of the plaintiff class are likewise former employees of Defendants  
15 within the State of California during the Class Period.

16 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
17 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through  
18 100, inclusive, but on information and belief, alleges that said Defendants are in some manner  
19 legally responsible for the unlawful actions, policies, and practices alleged herein, and therefore  
20 sues such Defendants by such fictitious names. Plaintiff is informed and believes, and thereon  
21 alleges, that each Defendant named herein was the agent of the other, and the agent of all  
22 Defendants. Plaintiff is further informed and believes, and thereon alleges, that each Defendant  
23 was acting within the course and scope of said agency at all relevant times herein, for the  
24 benefit of themselves, each other, and the other Defendants, and that each Defendant's actions  
25 as alleged herein was authorized and ratified by the other Defendants.

26 **FACTUAL ALLEGATIONS**

27 10. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

28 11. Plaintiff and the members of the plaintiff class were classified by Defendants as

1 non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders  
2 and standards promulgated by the California Department of Industrial Relations, Industrial  
3 Welfare Commission, and Division of Labor Standards.

4 ***Defendants' Failure to Pay for All Hours Worked***

5 12. Defendants did not compensate their hourly non-exempt employees for all the  
6 minutes that they worked as described above, including but not limited to the time that the  
7 employees were subject to the control and direction of Defendants; and/or the time that the  
8 employees were suffered or permitted to work.

9 ***Security Checks***

10 13. Pursuant to a uniform policy originated by Defendants, all hourly employees are  
11 subject to personal package and bag searches. Hourly employees were and are required to wait  
12 in line and be searched for potential or possible items or merchandise taken without permission  
13 and/or other contraband. Thus, at the discretion and control of the Defendants and solely for  
14 their benefit, Plaintiff and members of the plaintiff class were and are required to wait in line  
15 for security checks for each day before leaving for their meal break, rest break and at the end of  
16 their shift after they had already clocked out. This daily uncompensated waiting time during  
17 security checks was done in order to undergo searches for possible contraband and/or pilferage  
18 of inventory. Because such screening is designed to prevent and deter employee theft, a  
19 concern that stems from the nature of the employee's work, the security checks and  
20 consequential wait time are necessary to the employee's primary work and done solely for  
21 Defendants' benefit.

22 14. A large number of hourly employees leave for breaks at the same time and/or  
23 end their shift at the same time. This creates lengthy lines and backups for employees  
24 authorized to conduct security screenings who are often times engaged in other job-related  
25 duties. As a result, employees are forced to wait in these lines and undergo lengthy off-the-  
26 clock security screenings before they are allowed to leave the premises. This work, done solely  
27 for the employer's benefit, is time which employees should be, but are not, compensated for  
28 both straight hours and overtime hours worked in excess of 40 in a week or, in California, in

1 excess of 8 in a day.

2 15. Throughout Plaintiff's employment with Defendants, he was required to  
3 undergo personal package and bag searches before he was permitted to leave the store for his  
4 meal breaks, rest breaks and before he was permitted to leave the store after he had clocked out  
5 at the end of his shifts. These security checks were significant, integral, indispensable, not a de  
6 minimis task or request and done solely for Defendants' benefit to prevent employee pilferage.  
7 Because of Defendants' improper uncompensated security check policies as described more  
8 fully below, Plaintiff was deprived of wages as required by California state law.

9 16. Supervisors employed by Defendants had knowledge of and required Plaintiff to  
10 undergo these uncompensated security screenings in accordance with Defendants' corporate  
11 policy. Supervisors required and enforced the corporately derived and mandated security  
12 checks and requested that Plaintiff perform these integral and indispensable duties without  
13 proper wages or overtime compensation.

14 ***Defendants' Failure to Pay Overtime Compensation***

15 17. California *Labor Code* § 1194 provides that an employee receiving less than the  
16 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full  
17 amount of this minimum wage or overtime compensation, including interest thereon, reasonable  
18 attorney's fees, and costs of suit.

19 18. California *Labor Code* § 510(a) states: "Any work in excess of eight hours in one  
20 workday and any work in excess of 40 hours in any one workweek and the first eight hours  
21 worked on the seventh day of work in any one workweek shall be compensated at the rate of no  
22 less than one and one-half times the regular rate of pay for an employee." California *Labor*  
23 *Code* § 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated  
24 at the rate of no less than twice the regular rate of pay for an employee." California *Labor Code*  
25 § 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek  
26 shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

27 19. Throughout the Class Period, Wage Order No. 5-2001, Section (3) provided for  
28 payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate



1 of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek,  
2 and/or for payment of overtime wages equal to double the employee's regular rate of pay for all  
3 hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in  
4 excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

5 20. Defendants classified Plaintiff and members of the plaintiff class as non-exempt,  
6 therefore they were entitled to overtime compensation for all hours worked in excess of the  
7 hours and time specified in the Wage Order, statutes and regulations identified herein.

8 21. As a matter of policy and/or practice, Defendants routinely suffered or permitted  
9 Plaintiff and members of the plaintiff class to work portions of the day during which they were  
10 subject to Defendants' control and failed to compensate them. Accordingly, Defendants failed  
11 to properly record the actual hours worked by Plaintiff and members of the plaintiff class, and  
12 thus failed to pay overtime wages for the actual amount of overtime hours worked.

13 ***Defendants' Failure to Provide Meal and Rest Breaks***

14 22. As detailed above under "Security Checks," Plaintiff alleges that the meal and  
15 rest breaks were short as a result of the security checks thereby depriving plaintiff and the  
16 members of the plaintiff class of the full meal and rest breaks as required.

17 23. Plaintiff alleges that throughout the Class Period, Defendants regularly:

- 18 a. Failed to provide Plaintiff and the members of the plaintiff class with a  
19 first meal period of not less than thirty (30) minutes during which they  
20 are relieved of all duty before working more than five (5) hours;  
21 b. Failed to provide Plaintiff and the members of the plaintiff class with a  
22 second meal period of not less than thirty (30) minutes during which they  
23 are relieved of all duty before working more than ten (10) hours per day;  
24 c. Failed to pay Plaintiff and the members of the plaintiff class one hour of  
25 pay at their regular rate of compensation for each workday that a meal  
26 period was not provided; and  
27 d. Failed to accurately record all meal periods.

28 24. At all times, relevant hereto, California *Labor Code* § 226.7 and the applicable

1 wage order, required employers to authorize, permit, and provide a ten (10) minute paid rest for  
2 each four (4) hours of work, during which employees are relieved of all duty.

3 At all times, relevant hereto, California *Labor Code* § 226.7(b) and the applicable wage  
4 order required employers to pay one hour of additional pay at the regular rate of compensation  
5 for each employee and each workday that a proper rest period is not provided.

6 Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to  
7 effectively communicate California rest period requirements to Plaintiff and the members of the  
8 plaintiff class. Plaintiff is further informed and believes and based thereon alleges that  
9 throughout the Class Period Defendants failed to provide rest periods.

10 25. Throughout the Class Period, Plaintiff and the members of the plaintiff class  
11 were routinely denied the rest breaks they were entitled to under California law.

12 26. Specifically, throughout the Class Period, Defendants regularly:

- 13 a. Failed to provide paid rest periods of ten (10) minutes during which  
14 Plaintiff and the members of the plaintiff class were relieved of all duty  
15 for each four (4) hours of work and able to take rest periods within the  
16 middle of the shift; and  
17 b. Failed to pay Plaintiff and the members of the plaintiff class one (1) hour  
18 of pay at their regular rate of compensation for each workday that a rest  
19 period was not permitted.

20 ***Defendants' Failure to Provide Pay Vacation Wages***

21 27. Plaintiff alleges that Defendants failed to pay his all vacation compensation due  
22 as of his final date of employment of May 17, 2017.

23 28. California *Labor Code* § 227.3, prohibits employers from forfeiting payment of  
24 the vested vacation wages of their employees.

25 29. Defendants failed to pay out Plaintiff for unused vested vacation wages  
26 (including, but not limited to, vacation pay, paid time off pay, personal day pay, personal  
27 holiday pay, incidental time off, and/or floating holiday pay) in a timely fashion as he was  
28 terminated by Defendant all in violation of California *Labor Code* § 227.3.

1           30.    As a matter of uniform corporate policy, procedure and practice Defendants  
2 violated California *Labor Code* § 227.3 by failing to pay Plaintiff and members of the plaintiff  
3 class all vested vacation wages at the end of their employment. The uniform policy of not  
4 paying Plaintiff and the members of the plaintiff class all vested vacation wages at the end of  
5 their employment resulted in a forfeiture of vested vacation wages in violation of California  
6 *Labor Code* § 227.3.

7           31.    Defendants' Failure to Pay All Wages Due at Termination of Employment

8           32.    At all times relevant hereto, California *Labor Code* § 201 required an employer  
9 that discharges an employee to pay compensation due and owing to said employee immediately  
10 upon discharge. California *Labor Code* § 202 requires an employer to pay an employee who  
11 quits any compensation due and owing to said employee within seventy-two (72) hours of an  
12 employee's resignation. California *Labor Code* § 203 provides that if an employer willfully fails  
13 to pay compensation promptly upon discharge or resignation, as required under Sections 201  
14 and 202, then the employer is liable for waiting time penalties in the form of continued  
15 compensation for up to thirty (30) work days.

16           33.    Defendants willfully and knowingly failed to pay Plaintiff and the members of  
17 the plaintiff class, upon termination of employment, all accrued compensation including  
18 vacation wages.

19           34.    Defendants' Failure to Provide Accurate, Itemized Wage Statements

20           35.    At all times relevant hereto, California *Labor Code* § 226 and the applicable  
21 wage order required employers to maintain adequate employment records and provide  
22 employees with accurate itemized wage statements showing.

23           36.    Wage statements provided to Plaintiff and the members of the plaintiff class by  
24 Defendants do not show all wages earned in violation of California *Labor Code* § 226,  
25 applicable wage order, and the UCL.

26           ***Facts Regarding Willfulness.***

27           37.    Plaintiff is informed and believes and based thereon alleges that Defendants are  
28 and were advised by skilled lawyers, other professionals, employees with human resources

1 background and advisors with knowledge of the requirements of California wage and hour laws.

2 ***Unfair Business Practices***

3 38. Defendants have engaged in, and continue to engage in, unfair business practices  
4 in California by practicing, employing and utilizing the employment practices and policies  
5 outlined above.

6 39. Defendants' utilization of such unfair business practices constitutes unfair  
7 competition and provides an unfair advantage over Defendants' competitors.

8 40. Defendants' utilization of such unfair business practices deprives Plaintiff and  
9 members of the plaintiff class of the general minimum working standards and entitlements due  
10 them under California law and the Industrial Welfare Commission wage orders as described  
11 herein.

12 41. As a direct result of the wage and hour violations herein alleged, Plaintiff and  
13 members of the plaintiff class have suffered, and continue to suffer substantial losses related to  
14 the use and enjoyment of wages, lost interest on such wages, and expenses and attorney's fees in  
15 seeking to compel Defendants to fully perform their obligations under state law, all to her  
16 respective damage in amounts according to proof at the time of trial.

17 ***Plaintiff's Exhaustion of Administrative Remedies***

18 42. Plaintiff complied with the with the procedures for bringing suit specified in  
19 California *Labor Code* § 2699.3. By letter dated January 16, 2019 required notice to the Labor  
20 and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of  
21 the California *Labor Code* alleged to have been violated, including the facts and theories to  
22 support the alleged violations.

23 43. More than sixty (60) days have passed since the date the notice was mailed to  
24 Defendant and the LWDA and no response from the LWDA has been received.

25 **CLASS ACTION ALLEGATIONS**

26 44. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27 45. Plaintiff brings this action on behalf of himself and all others similarly situated  
28 as a class action, pursuant to California *Code of Civil Procedure* §382. The classes which

1 Plaintiff seeks to represent are composed of, and defined as follows:

2 **Plaintiff Class**

3 All persons who have been, or currently are, employed by Defendants in  
4 distribution centers in the State of California and classified as “non-  
5 exempt” employees.

6 **Terminated Sub Class**

7 All members of the Plaintiff Class whose employment ended during the Class  
8 Period. (collectively, “Plaintiff Class” “Class Members”)

9 46. The Class Period is the period from January 16, 2015, through and  
10 including the date judgment is rendered in this matter.

11 47. The class is so numerous that the individual joinder of all members is  
12 impracticable. While the exact number and identification of class members are unknown  
13 to Plaintiff at this time and can only be ascertained through appropriate discovery directed to  
14 Defendants, Plaintiff is informed and believes that the class includes potentially hundreds of  
15 members.

16 48. Common questions of law and fact exist as to all members of the class which  
17 predominate over any questions affecting only individual members of the class. These  
18 common legal and factual questions, which do not vary from class member to class member,  
19 and which may be determined without reference to the individual circumstances of any class  
20 member, include, but are not limited to, the following:

- 21 a. Whether Plaintiff and the members of the Plaintiff Class are subject to  
22 and entitled to the benefits of California wage and hour statutes;
- 23 b. Whether Defendants' systematic rounding of hours worked resulted in  
24 failure to pay wages for all hours worked;
- 25 c. Whether Plaintiff and the members of the Plaintiff Class were paid all  
26 vacation wages due;
- 27 d. Whether Plaintiff and the members of the Plaintiff Class are entitled to  
28 overtime compensation;

- 1 e. Whether Defendants maintained accurate records of the hours worked by
- 2 Plaintiff and the members of the Plaintiff Class;
- 3 f. Whether Defendants had a standard policy of not providing meal and rest
- 4 breaks to Plaintiff and members of the Plaintiff Class;
- 5 g. Whether Defendants had a standard policy and practice of failing to
- 6 provide Plaintiff and the members of the Plaintiff Class with true and
- 7 accurate wage statements upon payment of wages, in violation of
- 8 California *Labor Code* § 226(a);
- 9 h. Whether Defendants had a standard policy and practice of failing to pay
- 10 all wages owed upon termination in violation of California *Labor Code*
- 11 §201-203;
- 12 i. Whether Defendants unlawfully and/or willfully deprived Plaintiff and
- 13 the members of the Plaintiff Class of meal and rest breaks and pay for
- 14 missed breaks pursuant to California *Labor Code* §§ 200, 226.7, 512, and
- 15 12 CCR § 11040;
- 16 j. Whether Plaintiff and the members of the Plaintiff Class sustained
- 17 damages, and if so, the proper measure of such damages, as well as
- 18 interest, penalties, costs, attorneys' fees, and equitable relief; and
- 19 k. Whether Defendants' conduct as alleged herein violates the Unfair
- 20 Business Practices Act under California *Business & Professions Code* §
- 21 17200, *et seq.*

22 49. The claims of the named Plaintiff are typical of the claims of the members of the

23 Plaintiff Class. Plaintiff and the members of the Plaintiff Class sustained losses, injuries and

24 damages arising from Defendants' common policies, practices, procedures, protocols, routines,

25 and rules which were applied to other class members as well as Plaintiff. Plaintiff seeks

26 recovery for the same type of losses, injuries, and damages as were suffered by other members

27 of the Plaintiff Class.

28 50. Plaintiff is an adequate representative of the Plaintiff Class because he is a

1 member of the class, and his interests do not conflict with the interests of the members he seeks  
2 to represent. Plaintiff has retained competent counsel, experienced in the prosecution of  
3 complex class actions, and together Plaintiff and his counsel intend to prosecute this action  
4 vigorously for the benefit of the classes. The interests of the class members will fairly and  
5 adequately be protected by Plaintiff and his attorneys.

6 51. A class action is superior to other available methods for the fair and efficient  
7 adjudication of this litigation since individual litigation of the claims of all class members is  
8 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on  
9 an individual basis because this would potentially result in hundreds of individuals, repetitive  
10 lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory  
11 judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of  
12 recovery among those with equally meritorious claims. By contrast, the class action device  
13 presents far fewer management difficulties, and provides the benefit of a single adjudication,  
14 economics of scale, and comprehensive supervision by a single court.

15 52. The various claims asserted in this action are additionally or alternatively  
16 certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

- 17 a. The prosecution of separate actions by hundreds of individual class  
18 members would create a risk of varying adjudications with respect to  
19 individual class members, thus establishing incompatible standards of  
20 conduct for Defendants, and
- 21 b. The prosecution of separate actions by individual class members would  
22 also create the risk of adjudications with respect to them that, as a  
23 practical matter, would be dispositive of the interest of the other class  
24 members who are not a party to such adjudications and would  
25 substantially impair or impede the ability of such non-party class  
26 members to protect their interests.

27 ///

28 ///

**FIRST CAUSE OF ACTION**

**FAILURE TO PAY FOR ALL HOURS WORKED**

**(By Plaintiff and the Plaintiff Class Against All Defendants)**

53. Plaintiff incorporate herein by reference the allegations set forth above.

54. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§200, 226, 500, 510, 1197, and 1198.

55. For at least the four (4) years preceding the filing of this action, Defendants failed to compensate employees for all hours worked. Defendants implemented policies that actively prevented employees from being compensated for all time worked by employing the use of a rounding program that rounded the actual recorded start and stop time of hourly employees when calculating their wages. In addition, Defendants failed to pay hourly employees for all time worked when the timekeeping system malfunctioned, by recording the time that employees' timecards were manually corrected, rather than the time they actually began work.

56. Under the above-mentioned wage order and state regulations, Plaintiff and the members of the Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code* §203 and 206.

57. Defendants have knowingly and willfully refused to perform their obligations to compensate Plaintiff and the members of the Plaintiff Class for all wages earned and all hours worked, in violation of state law. As a direct result, Plaintiff and the members of the plaintiff class have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their obligation under state law, in accordance with Plaintiff's and



1 the members of the Plaintiff Class respective damage amounts according to proof at time of  
2 trial.

3 58. Defendants committed such actions alleged knowingly and willfully, with the  
4 wrongful and deliberate intention of injuring Plaintiff and the members of the Plaintiff Class  
5 from improper motives amounting to malice, and in conscious disregard the rights of the  
6 Plaintiff and members of the Plaintiff Class.

7 59. Plaintiff and the members of the Plaintiff Class are thus entitled to recover  
8 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof  
9 at the time of trial.

10 60. As a proximate result of the above-mentioned violations. Plaintiff and the  
11 members of the Plaintiff Class have been damaged in an amount according to proof at time of  
12 trial.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME WAGES**

15 **(By Plaintiff and Plaintiff Class Against All Defendants)**

16 61. Plaintiff incorporate all preceding paragraphs as though fully set forth  
17 herein.

18 62. California *Labor Code* § 510(a) states: "Any work in excess of eight hours in  
19 one workday and any work in excess of 40 hours in any one workweek and the first eight hours  
20 worked on the seventh day of work in any one workweek shall be compensated at the rate of no  
21 less than one and one-half times the regular rate of pay for an employee." California *Labor*  
22 *Code* § 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated  
23 at the rate of no less than twice the regular rate of pay for an employee." California *Labor Code*  
24 § 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek  
25 shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

26 63. Defendants have failed and refused to pay to Plaintiff and each member of the  
27 Plaintiff Class all overtime wages due to them in compliance with California *Labor Code*  
28 including, but not limited to, failing to pay all overtime accrued. Based upon information and

1 belief, Plaintiff and the other members of the Plaintiff Class were not paid overtime when they  
2 worked in excess of eight (8) hours in a given day. Plaintiff alleges that Defendants' policy was  
3 not to pay overtime wages until an employee had worked forty (40) hours in a workweek.

4 64. As a direct and proximate result of the acts and/or omissions of each Defendant,  
5 Plaintiff and each member of the Plaintiff Class has been deprived of overtime wages due in  
6 amounts to be determined at trial.

7 65. The applicable overtime requirements fixed by the commission for Plaintiff and  
8 the Plaintiff Class, are found in Wage Order 5-2001.

9 66. Pursuant to California *Labor Code* §§ 1194 and 1194.2 as a result of  
10 Defendants' failure to pay Plaintiff and the members of the Plaintiff Class all overtime wages  
11 due, Plaintiff and members of the plaintiff class are entitled to each recover the unpaid overtime  
12 wages in an amount equal to the overtime wages unlawfully unpaid, plus interest, fees and costs  
13 thereon.

14 **THIRD CAUSE OF ACTION**

15 **MEAL AND REST BREAK VIOLATIONS**

16 **(California *Labor Code* §§ 200, 226.7, 512, and 12 CCR § 11040)**

17 **(By Plaintiff and Members of the Plaintiff Class Against All Defendants)**

18 67. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

19 California *Labor Code* § 226.7(a) provides that "No employer shall require any  
20 employee to work during any meal or rest period mandated by an applicable order of the  
21 Industrial Welfare Commission."

22 68. California *Labor Code* § 512 provides that "An employer may not employ an  
23 employee for a work period of more than five hours per day without providing the employee  
24 with a meal period of not less than 30 minutes, except that if the total work period per day of the  
25 employee is no more than six hours, the meal period may be waived by mutual consent of both  
26 the employer and employee."

27 69. California *Labor Code* § 512 further provides that "An employer may not  
28 employ an employee for a work period of more than 10 hours per day without providing the

1 employee with a second meal period of not less than 30 minutes, except that if the total hours  
2 worked is no more than 12 hours, the second meal period may be waived by mutual consent of  
3 the employer and the employee only if the first meal period was not waived.”

4 70. The applicable wage order provides that “Unless the employee is relieved of all  
5 duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal  
6 period and counted as time worked. An “on duty” meal period shall be permitted only when the  
7 nature of the work prevents an employee from being relieved of all duty and when by written  
8 agreement between the parties an on-the-job paid meal period is agreed to. The written  
9 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

10 71. The applicable wage order provides that “If an employer fails to provide an  
11 employee a meal period in accordance with the applicable provisions of this order, the employer  
12 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for  
13 each workday that the meal period is not provided.”

14 72. California *Labor Code* § 226.7(a) provides that “No employer shall require any  
15 employee to work during any meal or rest period mandated by an applicable order of the  
16 Industrial Welfare Commission.”

17 73. The applicable wage order required employers to authorize, permit, and provide  
18 a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved  
19 of all duty.

20 74. At all times, relevant hereto, California *Labor Code* § 226.7(b) and the  
21 applicable wage order required employers to pay one hour of additional pay at the regular rate  
22 of compensation for each employee and each workday that a proper rest period is not provided.

23 75. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class  
24 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal  
25 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

26 76. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class did  
27 not waive their meal periods, by mutual consent with Defendants or otherwise.

28 77. Defendants failed to comply with the required meal periods established by

1 California *Labor Code* § 226.7, California *Labor Code* § 512, and the applicable Wage Order.

2 78. Defendants failed to compensate Plaintiff and members of the Plaintiff Class  
3 with premium wages when meal periods were missed.

4 79. Pursuant to the applicable wage order, and California *Labor Code* § 226.7(b)  
5 (which requires, in the event that “an employer fails to provide an employee a meal or rest  
6 period in accordance with an applicable order of the industrial Welfare Commission, the  
7 employer shall the employee one additional hour of pay at the employee’s regular rate of  
8 compensation for each work day that the meal or rest period is not provided”), the members of  
9 the Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal  
10 period, in a sum to be proven at trial.

11 80. At all times relevant to this Complaint, each Defendants failed, and has continued to  
12 fail, to timely provide Plaintiff and members of the Plaintiff Class with meal periods.

13 81. Thus, throughout the Class Period, Defendants regularly:

14 (a) Failed to provide paid rest periods of ten (10) minutes during which  
15 Plaintiff and the members of the Plaintiff Class were relieved of all duty  
16 for each four (4) hours of work; and

17 (b) Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour  
18 of pay at their regular rate of compensation for each workday that a rest  
19 period was not permitted.

20 82. As a direct and proximate result of the acts and/or omissions of each Defendant,  
21 Plaintiff and Class Members have been deprived of meal and rest period wages due in amounts to be  
22 determined at trial.

23 83. Pursuant to California *Labor Code* §§ 226.7, 512, and the applicable wage order, as a  
24 result of Defendants’ failure to pay Plaintiff and Class Members for all meal periods and rest periods,  
25 Plaintiff and all Class Members are entitled to recover the unpaid meal and rest period wages, plus  
26 interest, fees and costs thereon.

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

**FORFEITURE OF VACATION PAY (California Labor Code § 227.3)**

**(By Plaintiff and the Plaintiff Class Against All Defendants)**

1  
2  
3  
4 84. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
5 forth herein.

6 85. This cause of action is brought pursuant to California *Labor Code* § 227.3, which  
7 prohibits employers from forfeiting payment of the vested vacation wages of their employees.

8 86. Plaintiff's employment by Defendants has been terminated. Plaintiff had unused  
9 vested vacation wages (including, but not limited to, vacation pay, paid time off pay, personal  
10 day pay, personal holiday pay, incidental time off, and/or floating holiday pay) that were not  
11 paid out to him in a timely fashion at the end of his employment in violation of California *Labor*  
12 *Code* § 227.3.

13 87. As a matter of uniform corporate policy, procedure and practice Defendants  
14 violated California *Labor Code* § 227.3 by failing to pay Plaintiff and the members of the  
15 Plaintiff Class all vested vacation wages. The uniform policy of not paying Plaintiff and  
16 members of the plaintiff class all vested vacation wages at the end of their employment resulted  
17 in a forfeiture of vested vacation wages in violation of California *Labor Code* § 227.3.

18 88. The conduct of Defendants, their agents and employees as described herein was  
19 willful and was taken in conscious disregard of the rights of Plaintiff and the rights of the  
20 individual members of the plaintiff class. Such conduct, taken by Defendants' managerial  
21 employees, supports an award of up to thirty (30) days of pay, pursuant to California *Labor*  
22 *Code* § 203, as penalties for Plaintiff and each member of the Plaintiff Class who were not  
23 compensated for all vested vacation time at the conclusion of their employment with  
24 Defendants.

25 89. Such a pattern, practice and uniform administration of unlawful corporate policy  
26 regarding employee compensation as described herein creates an entitlement to recovery by  
27 Plaintiff and each member of the plaintiff class for damages and wages owed and for penalties,  
28 interest, costs and attorney's fees.

**FIFTH CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

**(By Plaintiff and the Plaintiff Class Against All Defendants)**

90. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

91. California *Labor Code* § 226(a) sets forth reporting requirements for employers when they pay wages, as follows:

"Every employer shall . . . at the time of each payment of wages, furnish his or her employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (4) all deductions, provided that all deductions made on written orders of the employer may be aggregated and shown as one item... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment." Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable attorney's fees."

92. Furthermore, California *Labor Code* § 1174 requires that the employer maintain accurate records showing the hours worked, and wages due to his or her employees.

93. Defendants failed to accurately report the gross wages earned and the net wages earned by Plaintiff and the members of the Plaintiff Class on their wage statements.

94. Defendants failed to accurately represent the total hours worked by Plaintiff and the members of the Plaintiff Class in that all hours worked are not accurately reflected on their wage statements.

95. Plaintiff and members of the Plaintiff Class were damaged by this failure to provide accurate wage statements because, among other things, they were and are unable to determine the proper amount of wages (including vacation wages) actually owed to them, and whether they have received full compensation therefore.

96. Plaintiff and members of the Plaintiff Class are entitled to, and hereby claim, penalties as provided by California *Labor Code* § 226(e), as well as interest, attorneys' fees and costs pursuant to California *Labor Code* § 226(e), and all other damages, attorneys' fees, costs,

1 expenses and interest permitted by statute.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES AT TIME OF**

4 **TERMINATION (CALIFORNIA LABOR CODE §§ 201-203)**

5 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

6 97. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
7 forth herein.

8 98. At all times relevant herein, Defendants was required to pay its employees all  
9 wages owed in a timely fashion during and at the end of their employment, pursuant to  
10 California *Labor Code* §§ 201-203.

11 99. As a pattern and practice, Defendants regularly failed to pay Plaintiff and  
12 members of the Plaintiff Class their final wages pursuant to California *Labor Code* §§ 201-203,  
13 and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

14 100. The conduct of Defendants and their agents and managerial employees as  
15 described herein was willful, and in violation of the rights of Plaintiff and the individual  
16 members of the Plaintiff Class.

17 101. Plaintiff is informed and believes, and based thereon alleges, that Defendants'  
18 willful failure to pay wages due and owing them upon separation from employment results in a  
19 continued payment of wages up to thirty (30) days from the time the wages were due.  
20 Therefore, Plaintiff and the members of the Plaintiff Class who have separated from  
21 employment are entitled to compensation pursuant to California *Labor Code* § 203.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION: CALIFORNIA BUSINESS AND**

24 **PROFESSIONS CODE § 17200, etc.**

25 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

26 102. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set  
27 forth herein.

28 103. Section 17200 of the California *Business and Professions Code* prohibits any

1 unlawful, unfair or fraudulent business act or practice.

2 104. Plaintiff brings this cause of action in a representative capacity on behalf of the  
3 general public and the persons affected by the unlawful and unfair conduct described herein.  
4 Plaintiff and members of the plaintiff class have suffered, and continue to suffer, injury in fact  
5 and monetary damages as a result of Defendants' actions.

6 105. The actions by Defendants as herein alleged amount to conduct which is  
7 unlawful and a violation of law. As such, said conduct amounts to unfair business practices in  
8 violation of California *Business and Professions Code* § 17200, *et seq.*

9 106. Defendants' conduct as herein alleged has damaged Plaintiff and the members of  
10 the Plaintiff Class by denying them wages due and payable, and by failing to provide proper  
11 wage statements. Defendants' actions are thus substantially injurious to Plaintiff and the  
12 members of the Plaintiff Class, causing them injury in fact and loss of money.

13 107. As a result of such conduct, Defendants have unlawfully and unfairly obtained  
14 monies due to the Plaintiff and the members of the Plaintiff Class.

15 108. All members of the Plaintiff Class can be identified by reference to payroll and  
16 related records in the possession of the Defendants. The amount of wages due Plaintiff and  
17 members of the plaintiff class can be readily determined from Defendants' records. The Class  
18 Members are entitled to restitution of monies due and obtained by Defendants during the Class  
19 Period as a result of Defendants' unlawful and unfair conduct.

20 109. During the Class Period, Defendants committed, and continues to commit, acts  
21 of unfair competition as defined by § 17200, *et seq.*, of the California *Business and Professions*  
22 *Code*, by and among other things, engaging in the acts and practices described above.

23 110. Defendants' course of conduct, acts, and practices in violation of the California  
24 law as mentioned in each paragraph above constitutes a separate and independent violation of §  
25 17200, etc., of the California *Business and Professions Code*.

26 111. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully  
27 denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies  
28 and practices and, therefore, Defendants' actions described herein constitute an unfair business



1 practice or act within the meaning of California *Business and Professions Code* § 17200.

2 112. Defendants' conduct described herein threatens an incipient violation of  
3 California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise  
4 significantly threatens or harms competition.

5 113. Defendants' course of conduct described herein further violates California  
6 *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

7 114. The unlawful, unfair, and fraudulent business practices and acts of Defendants as  
8 described herein-above have injured Plaintiff and the members of the Plaintiff Class in that they  
9 were wrongfully denied the timely and full payment of wages due to them.

10 **EIGHTH CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA LABOR CODE §§ 2698, et seq. (PAGA)**

12 **(Against Defendants on behalf of Plaintiff and the Members of the Plaintiff Class)**

13 115. Plaintiff incorporates all preceding paragraphs as though fully set for herein.

14 116. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor  
15 Code sections enumerated in California *Labor Code* §2699.5.

16 117. PAGA provides as follows: "[n]otwithstanding any other provision of law, a  
17 Plaintiff may as a matter of right amend an existing complaint to add a cause of action arising  
18 under this part at any time within 60 days of the time periods specified in this part."

19 118. Defendants' conduct, as alleged herein, violates numerous sections of the  
20 California *Labor Code* including, but not limited to, the following:

- 21 a. Defendants subjected Plaintiff and the members of the Plaintiff Class to  
22 security checks at meal breaks, rest breaks and at the end of the work shifts  
23 without proper compensation;
- 24 b. Defendants failed to provide Plaintiff and members of the Plaintiff Class with  
25 timely meal and rest breaks (California *Labor Code* §§ 200, 226.7, 512, and  
26 12 CCR § 11040);
- 27 c. Defendants failed to provide proper meal periods to Plaintiff and members  
28 of the Plaintiff Class as a result of subjecting Plaintiff and members of the

1 Plaintiff Class to security checks as the consequential wait time reduced the  
2 amount of the meal period and Defendants failed to compensate Plaintiff  
3 and members of the Plaintiff Class with one hour's wages in lieu of said full  
4 meal periods;

5 d. Defendants failed to provide rest breaks to Plaintiff and members of the  
6 Plaintiff Class as a result of subjecting Plaintiff and members of the Plaintiff  
7 Class to security checks as the consequential wait time reduced the amount  
8 of the rest break and Defendants and failed to compensate Plaintiff and  
9 members of the Plaintiff Class with one hour's wages in lieu of said full rest  
10 break;

11 e. Defendants failed to compensate Plaintiff and members of the Plaintiff Class  
12 with minimum wages and overtime compensation;

13 f. Defendants failed to provide accurate itemized wage statements to Plaintiff  
14 and members of the Plaintiff Class; and,

15 g. Whether Defendants failed to timely pay all wages due to Plaintiff and  
16 former employees upon termination or within 72 hours of resignation.

17 119. California *Labor Code* § 1198 makes it illegal to employ an employee under  
18 conditions of labor that are prohibited by the applicable wage order. California *Labor Code*  
19 section 1198 requires that "... the standard conditions of labor fixed by the commission shall be  
20 the ... standard conditions of labor for employees. The employment of any employee ... under  
21 conditions of labor prohibited by the order is unlawful."

22 120. California *Labor Code* §226(a) sets forth reporting requirements for employers  
23 when they pay wages, as follows:

24 "Every employer shall . . . at the time of each payment of wages, furnish his or  
25 her employees . . . an itemized statement in writing showing (1) gross wages  
26 earned; (2) total hours worked by the employee . . . (3) the number of piece-rate  
27 units earned and any applicable piece rate if the employee is paid on a piece-rate  
28 basis. . . (8) the name and address of the legal entity that is the employer and, if

1 the employer is a farm labor contractor, as defined in subdivision (b) of Section  
2 1682, the name and address of the legal entity that secured the services of the  
3 employer."

4 Section (e) provides:

5 "An employee suffering injury as a result of a knowing and intentional failure by  
6 an employer to comply with subdivision (a) shall be entitled to recover the  
7 greater of all actual damages or fifty dollars (\$50) for the initial pay period in  
8 which a violation occurs and one hundred dollars (\$100) per employee for each  
9 violation in a subsequent pay period, not exceeding an aggregate penalty of four  
10 thousand dollars (\$4000), and shall be entitled to an award of costs and  
reasonable attorneys' fees."

11 121. California *Labor Code* § 1174 provides that "[e]very person employing labor in  
12 this state shall ... [k]eep a record showing the names and addresses of all employees employed  
13 and the ages of all minors" and "[keep, at a central location in the state or at the plants or  
14 establishments at which employees are employed, payroll records showing the hours worked  
15 daily by and the wages paid to, and the number of piece-rate units earned by and any applicable  
16 piece rate paid to, employees employed at the respective plants or establishments..."

17 122. California *Labor Code* §204 requires that all wages earned by any person in any  
18 employment between the 1st and the 15th days, inclusive, of any calendar month, other than  
19 those wages due upon termination of an employee, are due and payable between the 16th and  
20 the 26th day of the month during which the labor was performed, and that all wages earned by  
21 any person in any employment between the 16th and the last day, inclusive, of any calendar  
22 month, other than those wages due upon termination of an employee, are due and payable  
23 between the 1st and the 10<sup>th</sup> day of the following month. California *Labor Code* § 204 also  
24 requires that all wages earned for labor in excess of the normal work period shall be paid no  
later than the payday for the next regular payroll period.

25 123. California *Labor Code* § 558(a) provides "[a]ny employer or other person acting  
26 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission  
28

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for  
2 each underpaid employee for each pay period for which the employee was underpaid in addition  
3 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one  
4 hundred dollars (\$100) for each underpaid employee for each pay period for which the  
5 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)

6 Wages recovered pursuant to this section shall be paid to the affected employee.” *Labor Code*  
7 § 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other  
8 civil or criminal penalty provided by law.”

9 124. Defendants, at all times relevant to this complaint, was employers or persons  
10 acting on behalf of an employer(s) who violated Plaintiff and other aggrieved employees’ rights  
11 by violating various sections of the California *Labor Code* as set forth above.

12 125. As set forth above, Defendants have violated numerous provisions of both the  
13 Labor Code sections regulating hours and days of work as well as the applicable order of the  
14 IWC. Accordingly, Plaintiff seeks the remedies set forth in California *Labor Code* § 558 for  
15 himself, the State of California, and all other aggrieved employees.

16 126. Pursuant to PAGA, and in particular California *Labor Code* §§ 2699(a), 2699.3,  
17 2699.5 and 558, Plaintiff, acting in the public interest as a private attorney general, seeks  
18 assessment and collection of unpaid wages and civil penalties for Plaintiff, all other aggrieved  
19 employees, and the State of California against Defendants, in addition to other remedies, for  
20 violations of California *Labor Code* §§ 200, 201, 202, 203, 226(a), 227.3, 510, 512, 1174, 1194,  
21 and, 1198.

22 127. California *Labor Code* § 1198 makes it illegal to employ an employee under  
23 conditions of labor that are prohibited by the applicable wage order. California *Labor Code* §  
24 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . .  
25 standard conditions of labor for employees. The employment of any employee . . . under  
26 conditions of labor prohibited by the order is unlawful.”

27 128. California *Labor Code* § 204 requires that all wages earned by any person in any  
28 employment between the 1st and the 15th days, inclusive, of any calendar month, other than  
those wages due upon termination of an employee, are due and payable between the 16th and

1 the 26th day of the month during which the labor was performed, and that all wages earned by  
2 any person in any employment between the 16th and the last day, inclusive, of any calendar  
3 month, other than those wages due upon termination of an employee, are due and payable  
4 between the 1st and the 10th day of the following month. California *Labor Code* § 204 also  
5 requires that all wages earned for labor in excess of the normal work period shall be paid no  
6 later than the payday for the next regular payroll period.

7 129. During the relevant time period, Defendants failed to pay Plaintiff and the  
8 aggrieved employees all wages due to them including, but not limited to, overtime wages, all  
9 wages due, and meal and rest period premium wages, within any time period specified by  
10 California *Labor Code* § 204. During the relevant time period, Defendants failed to pay  
11 Plaintiff and other aggrieved employees all wages due to them including, but not limited to,  
12 overtime wages, minimum wages, meal and rest period premium wages, within any time period  
specified by California *Labor Code* § 204.

13 130. Plaintiff has complied with the procedures for bringing suit specified in  
14 California *Labor Code* § 2699.3 and SB 836. By letter dated January 16, 2019, Plaintiff, on  
15 behalf of himself and the other aggrieved employees, pursuant to California *Labor Code* §  
16 2699.3 and SB 836, gave written notice by electronic submission to the Labor and Workforce  
17 Development Agency ("LWDA") and certified mail to Defendant of the specific provisions of  
18 the California Labor Code alleged to have been violated, including the facts and theories to  
19 support the alleged violations.

20 131. More than 60 days has passed since the January 16, 2019 Notice to the LWDA  
21 and no response has been received.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself, and on behalf of the members of the  
24 Plaintiff Class, prays for judgment against Defendants as follows:

- 25 1. For an order certifying the Plaintiff Class;
- 26 2. For nominal damages;
- 27 3. For equitable relief in the nature of declaratory relief, restitution of all monies  
28 due to Plaintiff and members of the Plaintiff Class, and disgorgement of profits from the

1 unlawful business practices of Defendants;

2 4. For penalties as permitted by the California *Labor Code*, and the regulations,  
3 standards and applicable wage orders promulgated thereunder, specifically including, but not  
4 limited to, California *Labor Code* §§ 200, 201, 202, 203, 226(a), 227.3, 510, 512, 1174, 1194,  
5 1198, and 2698-2699;

6 5. For interest as permitted by statute, including California *Labor Code* § 218.6;

7 6. For costs of suit and expenses incurred herein as permitted by statute, including  
8 California *Labor Code* §§ 226 and 1194;

9 7. For attorneys' fees as permitted by statute, including California *Labor Code* §§  
10 226 and 1194; and

11 8. For all such other and further relief that the Court may deem just and proper.

12 DATED: March 26, 2019

**BRADLEY/GROMBACHER, LLP  
LAW OFFICES OF SAHAG MAJARIAN II**

13  
14  
15 By: \_\_\_\_\_  
16 Marcus J. Bradley, Esq.  
17 Kiley Grombacher, Esq.  
18 Taylor L. Emerson, Esq.  
19 Sahag Majarian II, Esq.  
20 Attorneys for Plaintiff

**JURY DEMAND**

21 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

22 DATED: March 26, 2019

**BRADLEY/GROMBACHER, LLP  
LAW OFFICES OF SAHAG MAJARIAN II**

23  
24  
25 By: \_\_\_\_\_  
26 Marcus J. Bradley, Esq.  
27 Kiley Grombacher, Esq.  
28 Taylor L. Emerson, Esq.  
Attorneys for Plaintiff

**PROOF OF SERVICE**

**STATE OF CALIFORNIA)**

**COUNTY OF VENTURA)**

I am employed in the County of Ventura, State of California. I am over the age of eighteen and not a party to the within action; my business address is 2815 Townsgate Rd., Suite 130, Westlake Village, CA 91361.

On April 1, 2019, I served the foregoing documents described as **FIRST AMENDED COMPLAINT** on all interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(VIA OVERNIGHT DELIVERY)** I caused to have served such document(s) by Federal Express by placing a true copy thereof, enclosed in a sealed envelope or package designated by Federal Express addressed (see service list attached and delivered it to an authorized receiving station authorized by Federal Express to receive documents with delivery fees by our office.

**(VIA FACSIMILE TRANSMISSION)** From Fax No. \_\_\_\_\_ to the fax numbers listed on the attached service list. The facsimile machine I used complied with Rule 2033(3) and no error was reported by the machine.

**(VIA PERSONAL SERVICE)** I caused to have personally delivered such envelope(s) by hand to the offices of the addressee(s). Will file personal proof of service once served.

**(VIA E-MAIL)** I caused to have such documents sent by electronic service [Fed. Rule Civ. Proc. Rule 5(b)(2)(a)] by electronically mailing a true and correct copy through Bradley/Grombacher, LLP's electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 1, 2019, Westlake Village, California.

  
\_\_\_\_\_  
Tina Amoke

***Perez v. CVS***  
**Stanislaus Superior Court**  
**CASE NO: 19-CV-000292**  
**Service List**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<b>Agent for Service of Process for:</b> <b>CVS Health</b> <b>450 Veterans Memorial Parkway E.</b> <b>Providence, RI 02914</b>	<b>Agent for Service of Process for:</b> <b>CVS Pharmacy, Inc.</b> <b>CT Corp</b> <b>818 W. 7<sup>th</sup> Street Suite 930</b> <b>Los Angeles, CA 90017</b>
---	--



1 MORGAN, LEWIS & BOCKIUS LLP  
Jennifer B. Zargarof, Bar No. 204382  
2 jennifer.zargarof@morganlewis.com  
300 South Grand Avenue  
3 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
4 Tel: +1.213.612.2500  
5 Fax: +1.213.612.2501

6 Attorneys for Defendants  
CVS Health Corporation and CVS Pharmacy, Inc.

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 FELIX PEREZ, an individual, on his own  
12 behalf and on behalf of all others similarly  
13 situated,

14 Plaintiff,

15 vs.

16 CVS HEALTH CORPORATION, a Delaware  
17 corporation a/d/a CVS Caremark; CVS  
18 PHARMACY, INC., a Rhode Island  
19 corporation; and DOES 1-100, inclusive,

20 Defendant.  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 1:19-at-249

**DEFENDANTS' CORPORATE  
DISCLOSURE STATEMENT**

1 PLEASE TAKE NOTICE THAT:

2 Pursuant to Rule 71 of the Federal Rules of Civil Procedure, Defendants CVS Health  
3 Corporation and CVS Pharmacy, Inc. (collectively, "Defendants") make the following disclosure:  
4 CVS Pharmacy, Inc. is a wholly-owned subsidiary of CVS Health Corporation. CVS Health  
5 Corporation is a publicly traded corporation, and no entity owns more than 10% of its stock.

6 In addition, and for the purpose of enabling the Court to evaluate possible recusal or  
7 disqualification, Defendants further notify the Court that Longs Drug Stores, LLC may have  
8 employed individuals within the class definition as alleged in Plaintiff's Complaint, and therefore,  
9 Longs Drug Stores, LLC may have a pecuniary interest in the outcome of the case. Longs Drug  
10 Stores, LLC is the sole member of Longs Drug Stores California, LLC. Longs Drug Stores,  
11 LLC's sole member is CVS Pharmacy, Inc.

12  
13 Dated: April 5, 2019

MORGAN, LEWIS & BOCKIUS LLP

14  
15  
16 By /s/ Jennifer B. Zargarof  
17 Jennifer B. Zargarof  
18 Attorneys for Defendants  
19 CVS Health Corporation and CVS  
20 Pharmacy, Inc.  
21  
22  
23  
24  
25  
26  
27  
28

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: CVS Employees Deprived of Proper Wages Due to Off-the-Clock Security Checks](#)

---