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 and REGINE DUHON, on behalf of themselves
 8 and all others similarly situated

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 RYAN HYAMS and REGINE DUHON,
 12 individuals, on behalf of themselves and all
 13 others similarly situated,

14 Plaintiffs,

15 vs.

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

19 Defendants.
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Case No. 4:18-cv-06278-HSG

**CLASS AND REPRESENTATIVE ACTION
 SECOND AMENDED COMPLAINT**

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

DEMAND FOR JURY TRIAL.

1 Plaintiffs RYAN HYAMS (“PLAINTIFF HYAMS”), an individual, and REGINE DUHON
2 (“PLAINTIFF DUHON”), an individual (PLAINTIFF HYAMS and PLAINTIFF DUHON are
3 referred to collectively as “PLAINTIFFS”), on behalf of themselves and all other persons similarly
4 situated, hereby allege against Defendants CVS HEALTH CORPORATION, CVS PHARMACY,
5 INC., GARFIELD BEACH CVS, LLC, AND CVS RX SERVICES, INC. (“DEFENDANTS”) as
6 follows:

7 **INTRODUCTION**

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

20 **JURISDICTION AND VENUE**

21 2. This class action is brought pursuant to Federal Rule of Civil Procedure 23.

22 3. The United States District Court for the Northern District of California has
23 jurisdiction of this matter pursuant to Defendants’ Notice of Removal filed on October 12, 2018,
24 alleging jurisdiction pursuant to 28 U.S.C. § 1332), 1441, and 1446 (*See* Docket #1).

25 4. Venue is proper in this judicial district because PLAINTIFFS, and other persons
26 similarly situated, performed work for DEFENDANTS in the Northern District of California,
27 DEFENDANTS maintain offices and facilities and transact business in the Northern District of
28 California, and DEFENDANTS’ illegal practices, which are the subject of this action, were applied,

1 at least in part, to PLAINTIFFS, and other persons similarly situated, in the Northern District of
2 California. Thus, a substantial part of the events or omissions giving rise to PLAINTIFFS' claims
3 occurred in the Northern District of California. *See* 28 U.S.C. § 1391(b).

4 **PLAINTIFF HYAMS**

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

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

19 7. During his employment, PLAINTIFF HYAMS would regularly work more than 9
20 hours per day on average, and more than 108 hours in two consecutive week periods.
21 DEFENDANTS utilized a centralized scheduling procedure where he and other pharmacists were
22 routinely scheduled for 12-hour shifts. On occasion, PLAINTIFF HYAMS would work more than
23 12 hours per day, for which DEFENDANTS would then pay him double-time. There also were
24 occasions where he worked more than 12 days in a consecutive two week period. DEFENDANTS
25 often failed to provide PLAINTIFF HYAMS with a rest day as required under the Labor Code.

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

1 15. PLAINTIFF DUHON is a former non-exempt employee who worked as a pharmacy
2 cashier and pharmacy technician for DEFENDANTS for more than two-and-a-half years. At the end
3 of her employment with DEFENDANTS, PLAINTIFF DUHON was earning \$19/hour. PLAINTIFF
4 DUHON is a resident of Solano County, California.

5 16. As a pharmacist technician, PLAINTIFF DUHON'S primary duties were to assist the
6 pharmacist on duty with taking in and dispensing prescriptions to DEFENDANTS' customers. This
7 included receiving customers' prescriptions and inputting them into DEFENDANTS' computer
8 system, making calls to customers to inform them their prescriptions were ready, filling prescriptions
9 (ensuring the quantity of medications matched customers' prescriptions), and working the "out"
10 window (giving customers their prescriptions and ringing up Sudafed products).

11 17. Approximately one time per month throughout her employment, PLAINTIFF
12 DUHON would work seven days in a row, without a rest day as required under the Labor Code.

13 18. PLAINTIFF DUHON frequently worked the closing shift during her employment.
14 On those shifts, PLAINTIFF DUHON was required to perform work after clocking out at the end of
15 the day. Specifically, she was required to clock out for her shift, and then carry cash collected in
16 DEFENDANTS' pharmacy throughout the day to the cash office in the Target store where the
17 pharmacy was located. DEFENDANTS did not compensate PLAINTIFF DUHON for such time
18 worked, in violation of the Labor Code.

19 19. For a portion of her employment, in violation of Labor Code Section 246(i),
20 DEFENDANTS failed to provide PLAINTIFF DUHON, or other aggrieved employees, with written
21 notice setting forth the amount of paid sick leave available, or paid time off the Company provides
22 in lieu of sick leave.

23 20. Throughout her employment with DEFENDANTS, PLAINTIFF DUHON routinely
24 was unable to take her uninterrupted rest breaks due to DEFENDANTS' under-staffing, fill-time
25 metrics, and an emphasis on servicing customers as quickly as possible to avoid negative survey
26 responses. PLAINTIFF DUHON routinely was interrupted with pharmacy questions. PLAINTIFF
27 DUHON was not paid any penalties for these interrupted rest breaks.

28 21. PLAINTIFF DUHON resigned from her position with DEFENDANTS in February

1 2018. Although she gave DEFENDANTS more than 72 hours' notice of her resignation,
2 DEFENDANTS did not pay PLAINTIFF DUHON all of her outstanding wages within the timeframe
3 required by the Labor Code.

4 **THE CLASS**

5 22. PLAINTIFFS bring this action on behalf of themselves and all similarly situated class
6 of individuals ("CLASS MEMBERS" or "THE CLASS") pursuant to Federal Rule of Civil
7 Procedure 23. THE CLASS is defined as follows: All current and former employees of
8 DEFENDANTS in the State of California at any time within the period beginning four (4) years prior
9 to the filing of this action and ending at the time this action settles or proceeds to final judgment (the
10 "CLASS PERIOD").

11 23. PLAINTIFFS also seek to represent the following subclasses (collectively,
12 "SUBCLASSES"), defined as follows:

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

1 CLASS PERIOD who were not provided all vacation time, or wages in lieu
2 thereof, in compliance with California law.

3 24. PLAINTIFFS reserve the right to redefine the definitions of THE CLASS or
4 SUBCLASSES as appropriate based on further investigation, discovery, and specific theories of
5 liability.

6 **DEFENDANTS**

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

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

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

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

27 c. DEFENDANT GARFIELD BEACH CVS, LLC. (collectively with
28 DEFENDANTS CVS RX SERVICES, INC., and CVS PHARMACY, INC.) is a

1 limited liability company organized under the laws of the State of California that
2 is engaged in business as a pharmacy and medical supplier to CVS retail stores
3 located throughout the State of California.

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

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

15 28. PLAINTIFFS are informed and believe, and based thereon allege, that each
16 DEFENDANT acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
17 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
18 each DEFENDANT are legally attributable to the other DEFENDANTS.

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

26 30. To the extent one or more of DEFENDANTS did not directly hire, fire, or supervise
27 PLAINTIFFS, PLAINTIFFS further allege that, upon information and belief, one or more
28 DEFENDANTS control the business enterprises of one or more of the other DEFENDANTS, thereby

1 creating an employment relationship with PLAINTIFFS. *See Castaneda v. Ensign Group, Inc.*
2 (2014) 229 Cal.App.4th 1015, 1017-1018; *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912,
3 950.

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

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

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

26 **CLASS ACTION ALLEGATIONS**

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

1 35. Based on information and belief, PLAINTIFFS believe that other members of THE
2 CLASS and SUBCLASSES were subject to the same policies, practices and conduct that resulted in
3 the following:

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

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

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

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

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

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

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

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

26 42. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
27 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to receive and
28 did not receive overtime compensation for work that DEFENDANTS knew or should have known

1 was performed.

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

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

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

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

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

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

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

14 50. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
15 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to written
16 notice of paid sick leave or paid time off available. In violation of the Labor Code, DEFENDANTS
17 did not provide to PLAINTIFFS and CLASS MEMBERS written notice of paid sick leave or paid
18 time off available.

19 51. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS
20 knew or should have known that PLAINTIFFS and CLASS MEMBERS were entitled to one day's
21 rest in seven, and that they did not receive one day's rest in seven in violation of the Labor Code.

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

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

3 **SATISFACTION OF CLASS ACTION CRITERIA**

4 53. PLAINTIFFS bring this action on their own behalves, as well as on behalf of each
5 and all other persons similarly situated and seeks class certification of THE CLASS and
6 SUBCLASSES under Rule 23 of the Federal Rules of Civil Procedure.

7 54. All claims alleged herein arise under California law for which PLAINTIFFS seek
8 relief authorized by California law.

9 55. There is a well-defined community of interest in litigation and the CLASS
10 MEMBERS are readily ascertainable:

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

16 B. Commonality: There are questions of law and fact common to THE CLASS,
17 as demonstrated herein.

18 C. Typicality: PLAINTIFFS' claims (or defenses, if any) are typical of all
19 CLASS MEMBERS, as demonstrated herein.

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

1 E. Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. The prosecution of separate actions by individual CLASS
3 MEMBERS would create a risk of inconsistent or varying adjudications, and/or adjudications with
4 respect to individual CLASS MEMBERS, as a practical matter, would be dispositive of the interests
5 of the other members not parties to the individual adjudications, or would substantially impair or
6 impede their ability to protect their interests. Additionally, class action treatment will permit those
7 similarly situated individuals to litigate their claims in the manner that is most efficient and
8 economical for the parties and the judicial system. Moreover, PLAINTIFFS are unaware of any
9 difficulties that are likely to be encountered in the management of this action that would preclude its
10 maintenance as a class action.

11 FIRST CAUSE OF ACTION

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

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

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

15 56. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
16 every allegation set forth above.

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

20 58. At all relevant times herein, Labor Code section 512 has provided that “[a]n employer
21 may not employ an employee for a work period of more than five hours per day without providing
22 the employee with a meal period of not less than 30 minutes,” except that if the total work period per
23 day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent
24 of both the employer and employee. Cal. Lab. Code § 512(a). During this meal period of not less
25 than thirty (30) minutes, the employee is to be completely free of the employer’s control and must
26 not perform any work for the employer. If the employee does perform work for the employer during
27 this thirty (30) minute meal period, the employee has not been provided with a duty-free meal period,
28 in accordance with California law, and is to be compensated for any work performed during this (30)

1 minute meal period in addition to one (1) additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided. *See also* IWC Wage Order 7-
3 2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

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

11 60. As alleged above, at all relevant times herein, DEFENDANTS failed to provide
12 PLAINTIFFS and CLASS MEMBERS with a full, thirty (30) minute uninterrupted meal period free
13 from job duties, as required by Labor Code sections 226.7, 512(a), and IWC Order No. 7-2001(11),
14 *codified* at Cal. Code Regs. tit. 8 § 11050. Additionally, DEFENDANTS did not provide
15 PLAINTIFFS and CLASS MEMBERS with a second uninterrupted thirty (30) minute meal period
16 on days they worked over ten (10) hours, as required by the Labor Code. Cal. Lab. Code §§ 226.7,
17 512(a); IWC Order No. 7-2001(11), *codified* at Cal. Code Regs. tit. 8 § 11050.

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

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

1 to take an uninterrupted rest break. DEFENDANTS failed to relinquish any control over how
2 employees spend their break time. *See Augustus v. ABM Security Systems, Inc.*, 2 Cal. 5th 257, 260
3 (2016). As a result, PLAINTIFFS and CLASS MEMBERS would work shifts in excess of 3.5 hours,
4 in excess of six (6) hours, and in excess of ten (10) hours, without receiving the uninterrupted ten
5 (10) minute rest periods to which they were entitled.

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

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

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

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

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

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

THIRD CAUSE OF ACTION

Failure To Pay Overtime

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

(Against ALL DEFENDANTS and DOES 1 to 25)

1
2
3
4
5 77. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
6 every allegation set forth above.

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

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

15 80. At all relevant times herein, DEFENDANTS were required to compensate
16 PLAINTIFFS and CLASS MEMBERS for all overtime, calculated at one and one-half (1 ½) times
17 the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40)
18 hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double-
19 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in
20 excess of eight (8) hours on the seventh consecutive day of work in any workweek. Cal. Lab. Code
21 §§ 510, 1194, IWC Wage Order 7-2001(3), *codified* at Cal. Code Regs. tit. 8 § 11050.

22 81. As alleged above, at all relevant times herein, DEFENDANTS willfully failed to pay
23 all overtime wages owed to PLAINTIFFS and CLASS MEMBERS. During the CLASS PERIOD,
24 PLAINTIFFS and CLASS MEMBERS were not paid overtime premiums for all of the hours they
25 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of
26 eight (8) hours on the seventh (7th) consecutive day of work in a workweek, and/or in excess of forty
27 (40) hours in a week. Moreover, at all times herein, DEFENDANTS failed to properly calculate the
28 regular rate of pay for purposes of paying overtime to PLAINTIFFS and CLASS MEMBERS by

1 including all compensation, such as shift differential pay and other compensation, as required by the
2 Labor Code. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542 (2018).

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

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

8 **FOURTH CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

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

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

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

13 84. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
14 every allegation set forth above.

15 85. At all relevant times herein, employers operating under California law must pay at
16 least minimum wage to their employees for all hours worked. IWC Order No. 7-2001(4), *codified*
17 at Cal. Code Regs. tit. 8 § 11050. An employee not paid at least minimum wage is entitled to recover
18 the unpaid balance of such wages. Cal. Lab. Code §§ 1182.12 and 1194. In addition, an employee
19 is entitled to recover liquidated damages equaling the wages unlawfully unpaid, as well as interest.
20 Cal. Lab. Code §1194.2. An employer failing to pay minimum wages must pay a civil penalty of
21 \$100 for the initial pay period and \$250 for each subsequent pay period during which such violations
22 occurred. Cal. Lab. Code § 1197.1.

23 86. As alleged above, at all relevant times herein, DEFENDANTS failed to pay
24 PLAINTIFFS and CLASS MEMBERS minimum wages for all hours worked.

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

27 88. PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according
28 to proof at trial, and seek all wages earned and due, interest, penalties, expenses, attorneys' fees and

1 costs of suit.

2 **FIFTH CAUSE OF ACTION**

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

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

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

6 89. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
7 every allegation set forth above.

8 90. At all relevant times herein, pursuant to Labor Code sections 201 and 202, employers
9 must pay all wages due upon termination and, if an employer terminates an employee, the employee's
10 wages are "due and payable immediately." Cal. Lab. Code § 201. Pursuant to Labor Code section
11 202, employers are required to pay all wages due to an employee no later than 72 hours after the
12 employee quits employment, unless the employee provided 72 hours of notice of the intention to
13 quit, in which case the employee is entitled to those wages at the time of quitting. Cal. Lab. Code §
14 202.

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

20 92. As alleged above, at all relevant times herein, PLAINTIFFS and the FORMER
21 EMPLOYEE SUBCLASS were entitled to, but did not receive, meal and rest period premium wages,
22 overtime wages, minimum wages, vacation wages, and all compensation owed to them.

23 93. When PLAINTIFFS and the FORMER EMPLOYEE SUBCLASS separated from
24 employment with DEFENDANTS, DEFENDANTS willfully failed to pay all wages owed, and also
25 willfully failed to make timely final payment of wages.

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

27 95. As a consequence of DEFENDANTS' willful conduct in not timely paying wages
28 owed at the time of separation from employment, PLAINTIFFS and the FORMER EMPLOYEE

1 SUBCLASS are entitled to 30 days' worth of their average daily wages as a penalty under Labor
2 Code section 203. *See Drumm v. Morningstar*, 695 F.Supp.2d 1014 (N.D. Cal. 2010).

3 96. PLAINTIFFS and the FORMER EMPLOYEE SUBCLASS have been damaged in
4 an amount according to proof at trial, and seek all wages earned and due, penalties, interest, expenses,
5 attorneys' fees and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Timely Pay All Wages**

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

9 **and Cal. Code Regs. tit. 8 § 11050)**

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

11 97. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
12 every allegation set forth above.

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

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

27 100. At all relevant times herein, Labor Code sections 1182.12, 1194, 1197, 1197.1 and
28 1198 have provided that the minimum wage for employees fixed by the applicable IWC Wage Order

1 is the minimum wage to be paid to employees, and the payment of a wage less than the minimum
2 wage set by the IWC is unlawful. “Hours worked,” and therefore compensable time, is defined in
3 IWC Wage Order 7-2001 as “the time during which an employee is subject to the control of an
4 employer, and includes all time the employee is suffered or permitted to work, whether or not
5 required to do so...” IWC Wage Order 7-2001(K), *codified* at Cal Code. Regs. tit. 8 §11050(2)(K).

6 101. As alleged above, at all relevant times herein, DEFENDANTS willfully failed to pay
7 PLAINTIFFS and CLASS MEMBERS all wages due including, but not limited to overtime wages,
8 minimum wages, and meal and rest period premium wages, within the periods mandated by Labor
9 Code section 204.

10 102. DEFENDANTS’ conduct violates Labor Code sections 204, 1182.12, 1194, 1194.2,
11 1197, 1198, and IWC Order No. 7-2001, *codified* at Cal. Code Regs. tit. 8 § 11050.

12 103. PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according
13 to proof at trial, and seek all wages earned and due, penalties, interest, expenses, attorneys’ fees and
14 costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Reimburse For Employment Related Expenses**

17 **(Cal. Lab. Code section 2802)**

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

19 104. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
20 every allegation set forth above.

21 105. At all relevant times herein, Labor Code section 2802 has required an employer to
22 indemnify an employee “for all necessary expenditures or losses incurred by the employee in direct
23 consequence of the discharge of his or her duties....” Cal. Lab. Code § 2802(a). This includes costs
24 associated with the use of personal cell phones for work-related purposes. “If an employee is
25 required to make work-related calls on a personal cell phone, then he or she is incurring an expense
26 for purposes of section 2802.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137,
27 1144 (2014).

28 106. At all relevant times herein, PLAINTIFFS and the BUSINESS EXPENSE

1 SUBCLASS incurred necessary business-related expenses and costs that were not reimbursed by
2 DEFENDANTS, including, but not limited to, the cost for cell phone usage. PLAINTIFFS and the
3 BUSINESS EXPENSE SUBCLASS were required to use their personal cell phones to exchange text
4 messages with DEFENDANTS' management. DEFENDANTS did not provide PLAINTIFFS or the
5 BUSINESS EXPENSE SUBCLASS with a work-issued cell phone, nor has it reimbursed
6 PLAINTIFFS and the BUSINESS EXPENSE SUBCLASS for the necessary expenses they incurred
7 in using their personal cell phones for DEFENDANTS' business, in violation of Labor Code section
8 2802.

9 107. PLAINTIFFS and the BUSINESS EXPENSE SUBCLASS have been damaged in an
10 amount according to proof at trial, and seek all wages earned and due, penalties, interest, attorneys'
11 fees, expenses, and costs of suit.

12 **EIGHTH CAUSE OF ACTION**

13 **Failure To Maintain Required Records**

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

15 **§ 11050.)**

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

17 108. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
18 every allegation set forth above.

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

25 110. Pursuant to IWC Wage Order 7-2001, employers are required to keep accurate time
26 records including, but not limited to, when the employee begins and ends each work period and meal
27 period. IWC Order No. 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050. During the CLASS
28 PERIOD, DEFENDANTS failed to keep accurate records of meal period start and stop times for

1 PLAINTIFFS and CLASS MEMBERS in violation of the Labor Code. Cal. Lab. Code §1198.5; IWC
2 Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

3 111. At all relevant times herein, Labor Code section 226 provides that an employer is to
4 maintain accurate records, including, but not limited to: total daily hours worked by each employee;
5 applicable rates of pay; all deductions; meal periods; time records showing when each employee
6 begins and ends each work period; and accurate itemized statements. By DEFENDANTS' company-
7 wide policies and practices of inaccurately recording time in which PLAINTIFFS and CLASS
8 MEMBERS worked, including failing to record time during which PLAINTIFFS and CLASS
9 MEMBERS worked, DEFENDANTS knowingly and intentionally failed to maintain records as
10 required by the Labor Code. Cal. Lab. Code §§ 226(a), 1174(d); *see also* IWC Wage Order 7-
11 2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

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

15 **NINTH CAUSE OF ACTION**

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

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

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

19 113. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
20 every allegation set forth above.

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

26 115. At all relevant times herein, DEFENDANTS systematically provided PLAINTIFFS
27 and CLASS MEMBERS with incomplete and inaccurate wage statements. The violations include,
28 without limitation, the failure to accurately list the total hours worked by each employee, total regular

1 and overtime wages earned, the accurate regular rate of pay, or meal and/or rest break premiums
2 entitled to PLAINTIFFS and CLASS MEMBERS.

3 116. At all relevant times herein, DEFENDANTS' failure to provide accurate itemized
4 wage statements was a knowing and intentional act based on their company-wide policy and practice
5 of failing to pay all wages owed as set forth herein in violation of Labor Code. Cal. Lab. Code §§
6 226(a), 226(e), 226.3.

7 117. By DEFENDANTS' company-wide policies and practices of inaccurately recording
8 time in which PLAINTIFFS and CLASS MEMBERS worked, DEFENDANTS knowingly and
9 intentionally failed to maintain records as required by the Labor Code. Cal. Lab. Code §§ 226(a),
10 226(e), 226.3; IWC Wage Order 7-2001(7), *codified* at Cal. Code Regs. tit. 8 § 11050.

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

14 **TENTH CAUSE OF ACTION**

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

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

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

18 119. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
19 every allegation set forth above.

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

25 121. At all times herein, DEFENDANTS failed to provide PLAINTIFFS and CLASS
26 MEMBERS with the required written notice on wage statements and/or other separate written
27 statements that listed the requisite information set forth in Labor Code section 246. Specifically,
28 DEFENDANTS' wage statements fail to state PLAINTIFFS' and CLASS MEMBERS' paid sick

1 leave balance, as required by the Labor Code. Cal. Lab. Code § 246(i).

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

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

6 **ELEVENTH CAUSE OF ACTION**

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

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

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

10 124. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
11 every allegation set forth above.

12 125. At all times herein, Labor Code section 551 has provided that "[e]very person
13 employed in any occupation of labor is entitled to one day's rest therefrom in seven." Cal. Lab. Code
14 § 551.

15 126. At all times herein, Labor Code section 552 has provided that "[n]o employer of labor
16 shall cause his employees to work more than six days in seven." Cal. Lab. Code § 552.

17 127. At all times herein, Labor Code section 852 has provided that "[t]he employer shall
18 apportion the periods of rest to be taken by an employee so that the employee will have one complete
19 day of rest during each week." Cal. Lab. Code § 852.

20 128. At all times herein, DEFENDANTS failed to provide to PLAINTIFFS and CLASS
21 MEMBERS the legally-mandated rest days as required by California law. Further, "an employer's
22 obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain
23 absolute neutrality as to the exercise of that right." *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074,
24 1091 (2017). DEFENDANTS failed to provide this notice to PLAINTIFFS and CLASS
25 MEMBERS.

26 129. DEFENDANTS' conduct violates Labor Code sections 551, 552, and 852.

27 130. PLAINTIFFS and CLASS MEMBERS have been damaged in an amount according
28 to proof at trial, and seek all wages earned and due, penalties, interest, attorneys' fees, expenses, and

1 costs of suit, as well as relief pursuant to Labor Code section 853.

2 **TWELFTH CAUSE OF ACTION**

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

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

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

6 131. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
7 every allegation set forth above.

8 132. At all times herein, Labor Code section 850 has provided, in pertinent part, that “[n]o
9 person employed to sell at retail drugs and medicines or to compound physicians' prescriptions shall
10 perform any work in any store, dispensary, pharmacy, laboratory, or office for more than an average
11 of nine hours per day, or for more than 108 hours in any two consecutive weeks or for more than 12
12 days in any two consecutive weeks...” Cal. Lab. Code § 850.

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

16 134. At all times herein, and in violation of Labor Code Section 851, DEFENDANTS
17 required PLAINTIFFS and the PHARMACY EMPLOYEE SUBCLASS to work in excess of the
18 hours prescribed by Labor Code Section 850.

19 135. DEFENDANTS' conduct violates Labor Code sections 850 and 851.

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

23 **THIRTEENTH CAUSE OF ACTION**

24 **Unfair And Unlawful Business Practices**

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

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

27 137. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
28 every allegation set forth above.

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

4 139. At all times herein, DEFENDANTS’ conduct, as alleged herein, has been, and
5 continues to be, unfair, unlawful and harmful to PLAINTIFFS, CLASS MEMBERS, the general
6 public, and DEFENDANTS’ competitors. PLAINTIFFS and CLASS MEMBERS have suffered
7 injury in fact and have lost money as a result of DEFENDANTS’ unlawful business practices.

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

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

22 142. DEFENDANTS’ violations of California wage and hour laws constitute a business
23 practice because DEFENDANTS’ aforementioned acts and omissions were done repeatedly over a
24 significant period of time, and in a systematic manner, to the detriment of PLAINTIFFS and CLASS
25 MEMBERS.

26 143. As a result of the violations of California law herein described, DEFENDANTS
27 unlawfully gained an unfair advantage over other businesses. PLAINTIFFS and CLASS
28 MEMBERS have suffered pecuniary loss by DEFENDANTS’ unlawful business acts and practices

1 alleged herein.

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

8 **FOURTEENTH CAUSE OF ACTION**

9 **Representative Action for Civil Penalties**

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

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

12 145. PLAINTIFFS incorporate by reference and reallege as if fully stated herein each and
13 every allegation set forth above.

14 146. PLAINTIFFS are both "aggrieved employees" within the meaning of Labor Code
15 section 2699(c), and are proper representatives to bring a civil action on behalf of themselves and
16 other current and former employees of DEFENDANTS pursuant to the procedures specified in Labor
17 Code section 2699.3, because PLAINTIFFS were employed by DEFENDANTS and the alleged
18 violations of the Labor Code were committed against PLAINTIFFS.

19 147. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
20 sections 2698-2699.5, PLAINTIFFS seek to recover civil penalties, including but not limited to
21 penalties under Labor Code sections 2699, 210, 225.5, 226.3, 558, 850, 851, 852, 853, 1174.5,
22 1197.1, and 1199, from DEFENDANTS in representative action for the violations set forth above,
23 including but not limited to violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,
24 850, 851, 852, 853, 1174, 1194, 1197, 1198, and 2802. PLAINTIFFS are also entitled to an award of
25 reasonable attorneys' fees and costs pursuant to Labor Code section 2699 (g)(1).

26 148. Pursuant to Labor Code Section 2699.3, PLAINTIFF HYAMS gave written notice by
27 certified mail to the California Labor and Workforce Development Agency ("LWDA") and
28 DEFENDANTS of the specific provisions of the Labor Code and IWC Wage Orders alleged to have

1 been violated, including the facts and theories to support the alleged violations. PLAINTIFF
2 HYAMS' notice to the LWDA is attached as Exhibit A. Within sixty-five (65) calendar days of the
3 postmark date of PLAINTIFF HYAMS' notice letter, the LWDA did not provide notice to
4 PLAINTIFFS that it intends to investigate the alleged violations.

5 149. Therefore, PLAINTIFFS have complied with all of the requirements set forth in Labor
6 Code Section 2699.3 to commence a representative action under PAGA.

7 **PRAYER FOR RELIEF**

8 Wherefore PLAINTIFFS, individually and on behalf of all other persons similarly situated,
9 respectfully pray for relief against DEFENDANTS and Does 1 through 25, inclusive, and each of
10 them, as follows:

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

