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Page: 6 of 19

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ALAMEDA COUNTY

June 24, 2020

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG20065869

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Ori Edelstein (SBN 268145)
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

10 DAVID RAMIREZ, on behalf of the State of
11 California and Aggrieved Employees,

12 Plaintiffs,

13 vs.

14 RITE AID CORPORATION and THRIFTY
15 PAYLESS, INC.,

16 Defendants.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

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**COMPLAINT FOR PENALTIES PURSUANT TO SECTION 2699(a) and (f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL**

David Ramirez, et al. v. Rite Aid Corp., et al.

1 Plaintiff David Ramirez ("Plaintiff"), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff David Ramirez, individually and on behalf the State of California and the
5 Aggrieved Employees, brings this enforcement action against Defendant Rite Aid Corporation ("Rite
6 Aid") and Defendant Thrifty Payless, Inc. ("Thrifty Payless") (collectively "Defendants") on behalf
7 of individuals who have worked for Defendants as non-exempt hourly employees and have been
8 subject to Defendants' security-check policies and practices (the "Aggrieved Employees").
9 Throughout the relevant time period, Plaintiff and the Aggrieved Employees have been denied
10 payment for all hours worked, including overtime, and have been forced to wait in security-check
11 lines while off-the-clock. This case implicates Defendants' longstanding policies and practices, which
12 fails to properly compensate non-exempt employees for work performed while "off-the-clock."

13 2. Defendants' conduct violates California law by knowingly and willfully requiring
14 Plaintiff and Aggrieved Employees to perform work and/or remain on duty for the benefit of
15 Defendants while off-the-clock. Plaintiff and Aggrieved Employees bring these claims to challenge
16 Defendants' policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all
17 minimum wages owed; (2) failing to pay Plaintiff and Aggrieved Employees overtime wages; (3)
18 failing to compensate Plaintiff and Aggrieved Employees for all hours worked; and (4) failing to
19 provide Plaintiff and Aggrieved Employees accurate, itemized wage statements.

20 3. Plaintiff files this action to recover all penalties, and other damages on behalf of himself
21 and the Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendants have
22 integrated into its time tracking, payroll, and security policies across their stores throughout
23 California that have deprived Plaintiff and Aggrieved Employees of their lawfully-earned wages.

24 PARTIES

25 4. Plaintiff David Ramirez is an individual over the age of eighteen, and at all times
26 relevant to this Complaint was a resident of the State of California, County of Los Angeles. Plaintiff
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1 was employed as a non-exempt supervisor by Defendants at a Rite Aid drugstore in Los Angeles,
2 California from December 2011 to the Present.

3 5. Plaintiff is informed, believes, and thereon alleges that Defendant Rite Aid Corp. is a
4 Delaware corporation with its principal place of business located in Camp Hill, Pennsylvania, and is
5 registered to do business in California. Defendant Rite Aid may be served with process by serving
6 its registered agent, C T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles,
7 California 90017.

8 6. Plaintiff is informed, believes, and thereon alleges that Defendant Thrifty Payless, Inc.
9 is a California corporation with its principal place of business located in Camp Hill, Pennsylvania,
10 and is registered to do business in California. Defendant Thrifty Payless may be served with process
11 by serving its registered agent, C T Corporation System, 818 West Seventh Street, Suite 930, Los
12 Angeles, California 90017.

13 7. Plaintiff is informed, believes, and thereon alleges that Defendants own, operate, and/or
14 manage a chain of drugstores throughout the United States, including Rite Aid drugstores throughout
15 California. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved
16 Employees, among other hourly employees, throughout California.

17 8. Plaintiff is informed and believes that each and every one of the acts and omissions
18 alleged herein were performed by, and/or attributable to, Defendants, acting through their agents
19 and/or employees, and/or under the direction and control of each of the other, and that said acts and
20 failures to act were within the course and scope of said agency, employment and/or direction and
21 control.

22 9. Plaintiff is informed, believes, and thereon alleges that Defendants directly control the
23 operations of its agents, managers, and employees throughout all of its stores in California.

24 10. At all material times, Defendants have done business under the laws of California, have
25 had places of business in California, including in this County, and have employed Aggrieved
26 Employees in this County and elsewhere in California. Defendants are "person[s]" as defined in
27

1 Labor Code § 18, and “employer[s]” as that term is used in the Labor Code and the IWC Wage
2 Orders regulating wages, hours, and working conditions. Upon information and belief, Defendants
3 employ Aggrieved Employees, because Defendants, directly or indirectly, control the employment
4 terms, pay practices, timekeeping practices, and daily work of Plaintiff and similarly situated
5 employees.

6 **JURISDICTION AND VENUE**

7 11. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
8 The Court also has jurisdiction over Defendants because Defendants do business in the State of
9 California, are authorized to do business in California, and are registered with the California
10 Secretary of State.

11 12. Defendants operate multiple drugstores, and employ Aggrieved Employees in
12 California.

13 13. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
14 and/or 395.5. Defendants conduct business, employ Aggrieved Employees, have jobsites, and
15 therefore liability arose in this County.

16 **FACTUAL ALLEGATIONS**

17 14. Defendants operate a chain of drugstores throughout the United States and California,
18 including but not limited to the drugstore on 7900 Sunset Blvd., which is located in Los Angeles,
19 California. Defendants employ thousands of hourly non-exempt workers similarly situated to
20 Plaintiff across these facilities throughout the State of California.

21 15. Plaintiff worked as a non-exempt supervisor from December 2011 through the present.
22 Plaintiff is paid at an hourly rate of \$17.75 and regularly works in excess of eight hours a day and,
23 on average, 37 hours per week. On average, Plaintiff worked more than 8 hours per shift at least two
24 times per week, every week worked.

25 16. As a matter of course, Defendants routinely make their employees wait in security-
26 check lines for an average of five-to-ten minutes or longer while its employees are clocked out and
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1 off-the-clock. The time spent waiting in these security check lines is compensable, but nevertheless
2 goes unpaid.

3 17. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees
4 compensation which they are lawfully owed, as well as the overtime premiums resulting from the
5 additional off-the-clock, post-shift work.

6 18. Plaintiff is informed, believes, and thereon alleges that this same security-check system
7 is used across all Defendants' facilities throughout California.

8 19. Defendants' common course of wage-and-hour abuse includes routinely failing to
9 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
10 Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked off the clock.

11 20. Defendants' failure to record all hours worked results in a failure to provide Aggrieved
12 Employees, including Plaintiff, accurate itemized wage statements as required by California law.
13 The wage statements Defendant provides are not accurate because they do not reflect the actual hours
14 worked by Plaintiff and Aggrieved Employees. The wage statements do not contain off-the-clock
15 work. Further, the wage statements are inaccurate because they do not include premium pay for
16 overtime work that was performed while the off-the-clock.

17 21. Aggrieved Employees report to a facility owned, operated, or managed by Defendants
18 to perform their jobs.

19 22. Aggrieved Employees perform their jobs under Defendants' supervision and using
20 materials and technology approved and supplied by Defendant.

21 23. Aggrieved Employees are required to follow and abide by common work, time, pay,
22 and overtime policies and procedures in the performance of their jobs.

23 24. At the end of each pay period, Aggrieved Employees receive wages from Defendants
24 that are determined by common systems and methods that Defendants selects and controls.

25 25. Defendants pay Aggrieved Employees on an hourly rate basis.

26 26. Upon information and belief, Aggrieved Employees worked more than 8 hours a day,
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1 and more than forty hours in at least one workweek during the year before this Complaint was filed.

2
3 **FIRST CAUSE OF ACTION**
4 **Penalties Pursuant to Labor Code § 2699(a) for Violations of California Labor Code § 226**
5 **(Accurate, Itemized Wage Statements)**
6 **(Against All Defendants)**

7
8 27. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
9 herein.

10 28. Defendants do not provide Plaintiff and the Aggrieved Employees with accurate
11 itemized wage statements as required by California law, as a result of off-the-clock work, and
12 overtime violations set forth above.

13 29. Labor Code § 226(a) provides:

14 Every employer shall, semimonthly or at the time of each payment of
15 wages, furnish each of his or her employees, either as a detachable part of
16 the check, draft, or voucher paying the employee's wages, or separately
17 when wages are paid by personal check or cash, an accurate itemized
18 statement in writing showing (1) gross wages earned, (2) total hours worked
19 by the employee, except for any employee whose compensation is solely
20 based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial
22 Welfare Commission, (3) the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
24 deductions, provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item, (5) net wages earned,
26 (6) the inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and his or her social security number, (8) the name
28 and address of the legal entity that is the employer, and (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.

30. The IWC Wage Orders also establishes this requirement. (See IWC Wage Order 4-
2001(7)).

31. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by
an employer to comply with subdivision (a) is 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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

32. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

33. Defendants fail to provide timely, accurate, itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code § 226(a) and the IWC Wage Orders. In particular, the wage statements Defendants provides employees, including to Plaintiff and Aggrieved Employees, do not accurately reflect the actual hours worked, actual gross wages earned, or actual net wages earned. This is because, in part, Defendants do not count as "hours worked" the off-the-clock time its hourly, non-exempt employees spend performing work activities outside of their scheduled paid shifts and other work-related activities.

34. Defendants' failure to comply with Labor Code § 226(a) was and continues to be knowing and intentional. Although, as alleged herein, Defendants are aware that Plaintiff and Aggrieved Employees perform off-the-clock work, systematically fail to include this time worked in Plaintiff and the Aggrieved Employees' wage statements.

35. On information and belief, Defendants' conduct has been substantially the same at all relevant times throughout the state of California.

36. Labor Code § 2699(a) permits an aggrieved employee to recover any civil penalty to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or

1 herself and other current or former employees pursuant to the procedures set forth in Labor Code §
2 2699.3.

3 37. Plaintiff seeks to recover civil penalties from Defendants' for their violations of Labor
4 Code § 226 throughout California on behalf of himself, the State of California, and other Aggrieved
5 Employees pursuant to Labor Code § 2699(a).

6 38. On April 15, 2020, Plaintiff gave written notice to the LWDA and to Defendant Rite
7 Aid of his intent to pursue civil penalties for Defendants' failure to provide timely and compliant
8 wage statements in violation of Labor Code §§ 226 and 226.3 pursuant to the PAGA. On June 11,
9 2020, Plaintiff supplemented his written notice by adding Defendant Thrifty Payless to the
10 enforcement action based on Thrifty Payless' representation that it was Plaintiff and the Aggrieved
11 Employees' employer. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet,
12 Plaintiff has not received a response from the LWDA. Accordingly, pursuant to Labor Code §
13 2699.3(2)(a), Plaintiff has satisfied the administrative pre-requisites to commence a PAGA action.

14 39. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
15 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
16 and costs as set forth below.

17 40. Wherefore, Plaintiff requests relief as hereinafter provided.

18 **SECOND CAUSE OF ACTION**
19 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §**
20 **204 (Failure to Pay for all Hours Worked)**
21 **(Against All Defendants)**

22 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
23 herein.

24 42. Plaintiff alleges that Defendants willfully engaged and continue to engage in a policy
25 and practice of not compensating Aggrieved Employees for all hours worked or spent in Defendants'
26 control. Defendants regularly require Aggrieved Employees to perform uncompensated off-the-clock
27 work.

43. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

44. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

45. IWC Wage Order 4-2001(2)(K) defines hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

46. In violation of California law, Defendants knowingly and willfully refuse to provide Aggrieved Employees with compensation for all time worked. Defendants require Plaintiff and Aggrieved Employees to work off-the-clock without compensation for their work performed.

47. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

48. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay for all hours worked in violation of Labor Code § 204 throughout California on behalf of himself, the State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

49. On April 15, 2020, Plaintiff gave written notice to the LWDA and to Defendant Rite Aid of his intent to pursue civil penalties for Defendants' failure to compensate for all hours worked in violation of Labor Code § 204 pursuant to the PAGA. On June 11, 2020, Plaintiff supplemented his written notice by adding Defendant Thrifty Payless to the enforcement action. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a

1 response from the LWDA. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff has
2 satisfied the administrative pre-requisites to commence a PAGA action.

3 50. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees
4 for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys'
5 fees and costs as set forth below.

6 51. Wherefore, Plaintiff requests relief as hereinafter provided.

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8 **THIRD CAUSE OF ACTION**
9 **Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code §§ 510**
10 **(Failure to Pay Overtime Wages)**
11 **(Against All Defendants)**

12 52. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 53. Defendants do not properly compensate Aggrieved Employees with appropriate
15 overtime premiums, including time and a half premiums based on their regular rate of pay, as
16 required by California law.

17 54. Labor Code § 510(a) provides as follows:

18 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
19 in one workday and any work in excess of 40 hours in any one workweek and
20 the first eight hours worked on the seventh day of work in any one workweek
shall be compensated at the rate of no less than one and one-half times the
regular rate of pay for an employee. Any work in excess of 12 hours in one day
shall be compensated at the rate of no less than twice the regular rate of pay for
an employee.

21 55. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

22 ...shall not be employed more than eight (8) hours in any workday or more than
23 40 hours in any workweek unless the employee receives one and one-half (1 ½)
24 times such employee's regular rate of pay for all hours worked over 40 hours
25 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
26 beyond eight (8) hours in any workday or more than six (6) days in any
27 workweek is permissible provided the employee is compensated for such
overtime at not less than ... [o]ne and one-half (1½) times the employee's
regular rate of pay for all hours worked in excess of eight (8) hours up to and
including 12 hours in any workday, and for the first eight (8) hours worked on
the seventh (7th) consecutive day of work in a workweek....

56. Labor Code § 200 defines wages as “all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.” All such wages are subject to California’s overtime requirements, including those set forth above.

57. Defendants' policies and practices of requiring Aggrieved Employees to perform work off-the-clock are unlawful and results in overtime violations. As a result of these unlawful policies and practices, Aggrieved Employees have worked overtime hours for Defendants without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders, and other applicable law.

58. Defendants' policy and practice of requiring Plaintiff and Aggrieved Employees to perform work off-the-clock is unlawful. Many of Defendants' hourly, non-exempt employees, including Plaintiff and Aggrieved Employees, work over eight hours in a day and/or over forty hours in a week. Accordingly, as a result of Defendants' unlawful policy alleged herein of requiring Plaintiff and Aggrieved Employees to perform off-the-clock work, Plaintiff and Aggrieved Employees work overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, applicable IWC Wage Orders, and other applicable law.

59. As alleged above, Defendants require non-exempt, hourly employees to perform off-the-clock work, including unpaid overtime work, knowing full well that such work is being performed outside of their paid shifts. Defendants have, therefore, knowingly and willfully refused to perform their obligations to compensate Aggrieved Employees for all premium wages for overtime work.

60. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does not

1 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

2 61. Plaintiff seeks to recover civil penalties from Defendants for their failure to pay
3 overtime wages in violation of Labor Code § 510 throughout California on behalf of himself, the
4 State of California, and other Aggrieved Employees pursuant to Labor Code § 2699(f).

5 62. On April 15, 2020, Plaintiff gave written notice to the LWDA and to Defendant Rite
6 Aid of his intent to pursue civil penalties for Defendants' failure to pay overtime wages in violation
7 of Labor Code § 510 pursuant to the PAGA. On June 11, 2020, Plaintiff supplemented his written
8 notice by adding Defendant Thrifty Payless to the enforcement action. Over 65 days have passed
9 since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the
10 LWDA. Accordingly, pursuant to Labor Code § 2699.3(2)(a), Plaintiff has satisfied the
11 administrative pre-requisites to commence a PAGA action.

12 63. Defendants are liable to Plaintiff, the State of California, and Aggrieved Employees for
13 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
14 and costs as set forth below.

15 64. Wherefore, Plaintiff requests relief as hereinafter provided.

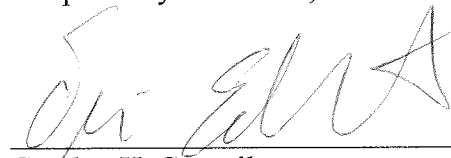
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
18 requests the following relief:

- 19 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
 - 20 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
21 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
22 and/or any other applicable law;
 - 23 3. For all costs of suit; and
 - 24 4. For such other and further relief as this Court deems just and proper.
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3 Date: June 23, 2020
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Respectfully submitted,



Carolyn H. Cottrell

Ori Edelstein

Ryan M. Hecht

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

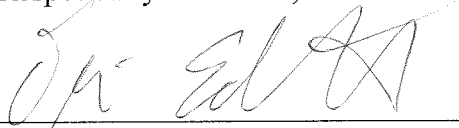
7 *Attorneys for Plaintiff, on behalf of the State of*
8 *California and Aggrieved Employees*
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1 DEMAND FOR JURY TRIAL

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

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5 Date: June 23, 2020

Respectfully submitted,

6 

7 Carolyn H. Cottrell

8 Ori Edelstein

9 Ryan Hecht

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*