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ELECTRONICALLY FILED
Superior Court of California,
County of Placer

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by: Marina Olivarez Fuentes, Deputy Clerk

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and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

DANIEL MARDEN, on behalf of himself
and all other aggrieved employees,

Plaintiff,

v.

CVS PHARMACY, INC., a Rhode Island
Corporation; LONGS DRUG STORES
CALIFORNIA, L.L.C.; a California Limited
Liability Company; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. S-CV-0045902

REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT
("PAGA")

1. PAGA Penalties for Failure to Pay Overtime Wages
2. PAGA Penalties for Failure to Pay Sick Leave
3. PAGA Penalties for Meal Period Violations
4. PAGA Penalties for Rest Period Violations
5. PAGA Penalties for Wage Statement Violations
6. PAGA Penalties for Failure to Timely Pay Final Wages

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1 Plaintiff DANIEL MARDEN, on behalf of himself and all other aggrieved employees,
2 alleges:

3 **INTRODUCTION**

4 1. DANIEL MARDEN (“Plaintiff”) brings this representative action against CVS
5 PHARMACY, INC., a Rhode Island Corporation; LONGS DRUG STORES CALIFORNIA,
6 L.L.C.; a California Limited Liability Company; and DOES 1 through 10, Inclusive
7 (“Defendants”) to recover civil penalties arising out of Defendants’ multiple labor code
8 violations as described, including Defendants’ failure to pay all wages owed, included overtime
9 and sick leave, failure to pay meal and rest period premiums for meal and rest periods not
10 provided, failure to provide accurate wage statement, and failure to timely pay wages.

11 2. Plaintiff gave notice of these claims to the California Labor and Workforce
12 Development Agency (“LWDA”) and Defendants. There was no LWDA intervention within 65
13 days of that notice, and no notice of cure by Defendants. Plaintiff asserts claims for civil
14 penalties as a representative of the State of California, as authorized by the Private Attorneys
15 General Act (“PAGA”), Labor Code sections 2698, *et seq.*, and to the extent permitted by law,
16 on behalf of the aggrieved employees who held the positions identified and suffered one or
17 more of the violations alleged. Labor Code § 2699.3(a)(2)(C). A true and correct copy of the
18 September 17, 2020 Notice showing compliance with section 2699.3 is attached as **Exhibit 1**
19 and demonstrates Plaintiff is an aggrieved employee and has standing to bring a representative
20 action on behalf of the State and as a private attorney general.

21 3. Plaintiff seeks to represent all current and former non-exempt employees of
22 Defendants who suffered one or more of the alleged violations (“aggrieved employees”) from
23 one year and 65 days before commencement of this action until trial (“the PAGA Period”).

24 **THE PARTIES**

25 4. Plaintiff is a resident of the County of Placer, California.
26 5. Plaintiff is informed, believes, and alleges Defendant CVS PHARMACY, INC.
27 is a Rhode Island Corporation and has conducted business, and employed Plaintiff and other
28 aggrieved employees during the PAGA Period, in the County of Placer.

7. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and alleges, each DOE Defendant is legally responsible in some manner for unlawful acts alleged. Plaintiff will amend to add names and capacities of DOEs when they become known.

8. Plaintiff is informed, believes, and alleges each Defendant acted in all respects relevant to this action as the agent of the other Defendants, carried out a joint scheme, plan, or policy, and the acts of each Defendant are legally attributable to the other Defendants.

9. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure § 395. Defendants conduct business in Placer County, and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and those similarly situated within California and Placer County. The California Superior Court also has jurisdiction in this matter because individual Class Members' claims are under the \$75,000.00 jurisdictional threshold for federal jurisdiction and the aggregate claim is under the five million-dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005 ("CAFA"). 28 U.S.C. § 1332.

10. There is no federal question at issue, as the issues are based solely on California statutes and law, including the Labor Code, Industrial Welfare Commission (“IWC”) Wage Orders, Code of Civil Procedure, Civil Code, and Business and Professions Code.

11. As a PAGA representative action, this matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

12. Plaintiff re-alleges all preceding paragraphs.

13. Plaintiff and other aggrieved employees received compensation, including bonuses, in addition to hourly wages while employed by Defendants. The additional

compensation should have been included when calculating the regular rate of pay and used when paying overtime wages, premium wages, and sick leave wages, but were not.

14. For example, Plaintiff received a bonus of \$300 for the period March 29, 2020 – May 2, 2020. Plaintiff was paid overtime on his April 10, 2020 paystub, overtime and a meal period premium on April 24, 2020, and sick leave on May 8, 2020 (covering April 19, 2020 – May 2, 2020). In each example, Defendants paid the wages at Plaintiff's base rate of \$13 per hour, not the correct regular rate of pay

15. During the PAGA Period, Defendants conducted business and employed Plaintiff and other aggrieved employees in Placer County and throughout California.

16. At all times during the PAGA Period, Plaintiff and other aggrieved employees were covered by the protections of the California Labor Code.

17. During the PAGA Period, Plaintiff and other aggrieved employees received compensation, including bonuses, in addition to hourly wage.

18. During the PAGA Period, Defendants failed to include all wages, including bonuses, when calculating regular rates of pay used when paying overtime wages, premiums wages, and sick leave wages

19. During the PAGA Period, Plaintiff and other aggrieved employees were not paid all overtime wages for hours worked over eight per day or forty per week.

20. During the PAGA Period, Plaintiff and other aggrieved employees were not properly compensated with sick leave wages.

21. During the PAGA Period, Plaintiff and other aggrieved employees were not provided all duty-free thirty-minute meal periods for shifts of five hours or more, starting before the end of the fifth hour of work, or paid one hour of pay at their regular rate in lieu of a meal period not provided.

22. During the PAGA Period, Plaintiff and other aggrieved employees were not authorized or permitted all paid ten-minute rest periods for work periods of four (4) hours or major fractions, or paid one hour of pay at their regular rate of pay in lieu of unauthorized rest periods.

24. During the PAGA Period, Defendants had a policy and practice of failing to timely pay Plaintiff and other aggrieved employees for all wages owed during employment, and, as a result, failed to pay all wages due upon separation of employment. Defendants had an independent practice not to timely pay all final wages due.

25. Plaintiff re-alleges all preceding paragraphs.

27. “[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

- 4 -

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29. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

30. Defendants failed to correctly calculate the regular rate of pay when paying overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

SECOND CAUSE OF ACTION
PAGA Penalties for Failure to Pay All Sick Leave Wages
(By Plaintiff and Aggrieved Employees Against Each Defendant)

31. Plaintiff re-alleges all preceding paragraphs.

32. Employers must calculate paid sick leave for non-exempt employees in one of two ways (Labor Code § 246 (l)):

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
 - (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
33. Defendants failed to correctly calculate the regular rate of pay when paying sick leave wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

THIRD CAUSE OF ACTION
PAGA Penalties for Failure to Provide Meal Periods
(By Plaintiff and Aggrieved Employees Against Each Defendant)

34. Plaintiff re-alleges all preceding paragraphs.

35. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and a second 30 minute meal period for shifts of ten hours or more, which began before the end of the tenth hour of work, Defendants willfully violated Labor Code §§226.7, 512, and Wage Order 7-2001.

36. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 7-2001.

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37. During the PAGA Period, Defendants failed to provide compliant meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FOURTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Rest Periods
(By Plaintiff and Aggrieved Employees Against Each Defendant)

38. Plaintiff re-alleges all preceding paragraphs.

39. By failing to authorize and permit rest periods of at least 10 minutes for every four (4) hours or major fraction thereof worked per day, Defendants willfully violated provisions of Labor Code section 226.7 and Wage Order 7-2001.

40. By failing to provide one hour of pay at their regular rate of compensation when rest periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and Wage Order 7-2001.

41. During the applicable statutory period, Defendants failed to provide rest periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FIFTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees Against Each Defendant)

42. Plaintiff re-alleges all preceding paragraphs.

43. Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing, among other things, gross and net wages earned, total hours worked, and the number of hours worked at each hourly rate by the employee during the pay period. Labor Code § 226(a).

44. Defendants intentionally and willfully violated Section 226 by failing to provide wage statements which included information called for in Section 226(a)(1) (2), (5) and (9).

45. Aggrieved employees are entitled to pursue PAGA civil penalties for violations of Labor Code section 226. Labor Code § 2699.5.

46. Labor Code § 226.3 provides for civil penalties for Section 226 violations. Plaintiff seeks civil penalties of \$250 for initial violations and \$1,000 for subsequent violations.

SIXTH CAUSE OF ACTION

**PAGA Penalties for Failure to Pay Timely Wages Due at Termination
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

47. Plaintiff re-alleges all preceding paragraphs.

48. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' employees and former employees, within the time required by law.

49. Defendants failed to timely pay Plaintiff and other aggrieved employees all wages when due, including final wages at termination, as required by Labor Code §§ 201-202.

50. An employer willfully failing to timely pay all wages during employment must, as a statutory penalty, pay the wages for 30 days, or until paid in full. Labor Code § 203.

51. Defendants failed to pay Plaintiff and other aggrieved employees all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not paid all final wages.

PRAYER FOR RELIEF

Plaintiff Daniel Marden, on behalf of himself and all other aggrieved employees, prays for judgment, according to proof, as follows:

A. This action be maintained as a PAGA Representative Action, and Plaintiff and his counsel provided with enforcement capability as if the action were brought by the DLSE;

B. For recovery of civil penalties under Labor Code section 2699 for failure to authorize and permit rest periods pursuant to Labor Code section 226.7(a);

C. For recovery of civil penalties under Labor Code section 2699 for failure to pay all rest period premiums due pursuant to Labor Code section 226.7(b);

D. For recovery of civil penalties under Labor Code section 2699 for failure to provide meal periods compliant with Labor Code sections 226.7 and 512;

E. For recovery of civil penalties under Labor Code section 2699 for failure to pay all meal period premiums due pursuant to Labor Code section 226.7;

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- 1 F. For recovery of civil penalties under Labor Code section 2699 for failure to pay
- 2 all overtime wages owed pursuant to Section 1194;
- 3 G. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for
- 4 failing to pay overtime wages for all hours worked;
- 5 H. For recovery of civil penalties under Labor Code section 2699 for failure to pay
- 6 all sick leave wages owed pursuant to Labor Code § 246 (l);
- 7 I. For recovery of civil penalties under Labor Code section 2699 for failing to
- 8 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3;
- 9 J. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
- 10 timely pay all final wages upon termination pursuant to Labor Code sections 201-203;
- 11 K. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
- 12 pay statutory waiting time penalties due pursuant to Labor Code section 203;
- 13 L. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to
- 14 the aggrieved employees, subject to approval by the Court. Labor Code section 2699(i);
- 15 M. For reasonable attorneys' fees and costs; and
- 16 N. For such other relief the Court deems just and proper.

17 COHELAN KHOURY & SINGER
18 DAVTYAN LAW FIRM, INC.
19 November 25, 2020 By: 
20 Jeff Geraci, Esq.
21 Attorneys for Plaintiff DANIEL MARDEN, on behalf of
22 himself and all others similarly situated
23
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25
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27
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
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(† Also admitted in Illinois)

September 17, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail With Return Receipt

CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, Rhode Island 02895

Longs Drug Stores California, LLC
One CVS Drive, Box 1075
Woonsocket, Rhode Island 02895

CVS Pharmacy, Inc.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Longs Drug Stores California, LLC
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Re: Mr. Daniel Marden on behalf of himself and all similarly-situated Longs Drug Stores California, LLC and CVS Pharmacy, Inc. employees in California, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Mr. Daniel Marden submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Longs Drug Store, LLC, and CVS Pharmacy, Inc. ("CVS" or "Defendant"). Mr. Marden seeks to represent himself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action against CVS. Labor Code §§ 2698, *et seq.* For purposes of this notice, "aggrieved employees" includes all Defendant's non-exempt employees in California.

Factual Statement

Mr. Marden was hired in September 2017. He worked as a Cashier in Auburn, California until his termination on May 28, 2020. His duties included stocking, operating a cash register, and customer service.

Mr. Marden received compensation, including bonuses, in addition to his hourly wages while employed by CVS. Those additional amounts should have been included when calculating his regular rate of pay and used when paying overtime wages, premium wages, and sick leave wages, but were not. For example, he received a bonus of \$300 for the period March 29, 2020 – May 2, 2020. He was paid overtime on the April 10, 2020 paystub, overtime and a meal period premium on April 24, 2020, and sick leave on May 8, 2020 (covering April 19, 2020 – May 2, 2020). In each example, Mr. Marden was paid at his base rate of \$13 per hour, rather than at his regular rate of pay.

As a result of the policies described above, CVS violates Industrial Welfare Commission Wage Orders, including 7-2001, and the Labor Code provisions described below.

Labor Code § 246 (Sick Leave)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (1)

Mr. Marden was paid sick leave at his base rate of pay, which is less than required under either of the two alternative methods of calculation.

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

CVS must authorize and permit employees "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours." *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 29 (2012).

CVS must provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." *Id.* at 1049.

If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7; Industrial Welfare Commission ("IWC") Wage Order 7-2001

At times, Mr. Marden and other aggrieved employees did not receive compliant rest and meal periods, including second meals in longer shifts. When premium wages were paid, they were not paid at the correct regular rate.

Labor Code §§ 510 and 1194 (Overtime)

Employers must pay overtime wages for hours worked over eight per day or forty per week at 1.5 times an employee's regular rate of pay. Labor Code §§ 510, 1194. When Mr. Marden worked overtime, he was paid 1.5 times his base rate of pay, rather than his regular rate of pay.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, "total hours worked by the employee," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Labor Code § 226(a)(2)(9). CVS failed to do this because its wage statements did not accurately show the rate at which sick leave, overtime, or premium wages, should have been paid.

CVS Pharmacy, Inc.
Longs Drug Stores, LLC
Re: Mr. Daniel Marden
September 17, 2020
Page 3

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Cal. Labor Code § 201. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. As a result of its failure to pay all wages earned, CVS failed to pay all final wages to Mr. Marden and other aggrieved employees, and violated Sections 201-203.

Conclusion

Defendant's employment practices, as described in detail above, violate IWC Wage Orders, including 7-2001 and the California Labor Code, including sections 201-203, 226, 226.3, 226.7, 246, 510, 512, 1194, and 2699.

Our client requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Mr. Marden will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Orders 7-2001, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Geraci, Esq.