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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

SALENA GOSSACK, an individual, on behalf
of herself and other aggrieved employees,

Plaintiff,

vs.

CVS HEALTH CORPORATION, a Delaware
corporation; STEPHANIE B. KUEHNER, an
individual; and DOES 1-20, inclusive.

Defendants.

CASE NO.: 37-2021-00040493-CU-W/T-CTL

COMPLAINT FOR:

- 1) ASSOCIATIONAL-RACE
DISCRIMINATION AND
HARASSMENT;**
- 2) HOSTILE WORK ENVIRONMENT;**
- 3) VIOLATION OF CALIFORNIA
WHISTLEBLOWER LAW;**
- 4) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 5) FAILURE TO PAY OVERTIME
WAGES;**
- 6) FAILURE TO PROVIDE MEAL/REST
BREAKS;**
- 7) FAILURE TO PAY WAGES OWED AT
DISCHARGE;**
- 8) FAILURE TO PROVIDE WAGE
STATEMENTS;**
- 9) FAILURE TO PROVIDE COMPLETE
PERSONNEL FILE;**
- 10) FAILURE TO PROVIDE PAYROLL
RECORDS;**
- 11) REPRESENTATIVE ACTION FOR
CIVIL PENALTIES.**

1 Plaintiff SALENA GOSSACK (“Plaintiff” or “Gossack”) complains as follows:

2 **NATURE OF THE ACTION**

3 1. This is an employment discrimination case, brought pursuant to the provisions of
4 the California Fair Employment and Housing Act, Government Code §§12940, et seq. (“FEHA”);
5 as well as a wage-and-hour action brought pursuant to the provisions of the California Labor Code.

6 **THE PARTIES**

7 2. Plaintiff is a resident of the State of California and was employed by Defendants as
8 a Store-Manager-in-Training and Store Team Leader.

9 3. Defendant CVS Health Corporation, a Delaware corporation, (“CVS”) was a
10 corporation, association, partnership, joint venture, or other business entity, organized and existing
11 under the laws of the State of Delaware and at all times herein mentioned conducted business in
12 the State of California, and throughout the County of San Diego, including in Escondido, CA.

13 4. Plaintiff is informed and believe, and based thereon, allege that Defendant
14 Stephanie B. Kuehner (“Kuehner”) is and at all times mentioned herein, a resident of the State of
15 California. During the relevant time period, Kuehner was a District Leader for Defendant CVS;
16 and took all actions alleged herein in the course and scope of her employment with CVS or,
17 alternatively, in her individual capacity

18 5. Plaintiff is unaware of the true names and capacities of the Defendants fictitiously
19 designated as “DOES” 1 through 20, and therefore sues those Defendants by these fictitious
20 names. Plaintiff will amend this Complaint when the true names and capacities of these
21 Defendants have been ascertained. Plaintiff is informed and believes, and thereon alleges, that
22 “DOES” 1 through 20, are legally responsible in some manner for the events and happenings
23 referenced that caused the injuries to Plaintiff for which Plaintiff now seek damages.

24 6. Plaintiff is informed and believe, and thereon allege, that Defendants were the
25 agents, servants, employees of the other Defendants, and were acting within the scope, course and
26 authority of their agency and or employment. Plaintiff is further informed, believe, and thereon
27 allege that each of the Defendants consented to, ratified, participated in, or authorized the acts of
28 the remaining Defendants.

1 **JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

2 7. Jurisdiction is proper in the Superior Court for the County of San Diego because it
3 has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist.

4 8. This Court has jurisdiction over Defendant CVS because it is an association,
5 corporation, or business entity based in, authorized, registered to conduct, or in fact conducts
6 substantial business in the State of California, County of San Diego.

7 9. This Court has jurisdiction over Defendant Kuehner as she is a citizen of the State
8 of California.

9 10. Venue is proper in the County of San Diego as a substantial part of the events and
10 omissions giving rise to the claims occurred in this County.

11 11. Plaintiff has filed charges of discrimination with, and received right to sue letters
12 from, the California Department of Fair Housing and Employment. Plaintiff also gave written
13 notice by certified mail to the California Labor and Workforce Development Agency (“LWDA”)
14 and Defendant CVS Health Corporation on July 22, 2021, of the specific provisions of the Labor
15 Code she alleged to have been violated, including the facts and theories to support the alleged
16 violations; and the LWDA gave no notice that it intended to investigate the alleged violations.
17 Plaintiff has thus exhausted her administrative remedies.

18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 12. Salena Gossack began working for Defendant CVS as a “Store Manager in
20 Training” in its Garfield Beach location on May 15, 2019. She excelled in her role and, as a result,
21 was promoted to Store Team Leader and transferred to Defendant CVS’s Escondido location on
22 April 19, 2020. Unfortunately for Gossack, that is when she began working with Stephanie
23 Kuehner—a bigoted, racist woman who was all-too-willing to throw Gossack under the bus if it
24 meant saving her own job.

25 13. Gossack (as well as several other managers) regularly met with Kuehner to discuss
26 operations at the Escondido store. And Gossack *repeatedly* told Kuehner about issues she

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1 had with Deborah;¹ a subordinate employee who kept working off-the-clock, and who would often
2 use Gossack's login information (as well as the login information of other managers) in order to
3 adjust her time.

4 14. Kuehner brushed off Gossack's concerns, telling her "Oh yeah, [Deb] does that shit
5 all the time." When Gossack noted the law and company policy forbids employees from working
6 off-the-clock, Kuehner told her "It's just what we do." Indeed, Kuehner regularly expected
7 employees—including Gossack—to work off-the-clock. She even accused Gossack of abusing
8 overtime by logging all of her, and her co-worker's, hours; telling her "everyone works off-the-
9 clock" in order to get the job done. Little did Gossack know, complaining about these unlawful
10 conditions painted a target on her back.

11 15. The situation only got worse in early June 2020, when Kuehner asked Gossack to
12 identify a young boy in one of Gossack's pictures. Gossack told Kuehner that the child was her
13 nephew. Because Gossack's nephew was African-American, and Gossack is not, Kuehner further
14 probed Gossack about the picture; resulting in an extremely awkward and embarrassing
15 conversation wherein Gossack had to explain that her half-sister was also African-American, and
16 the picture was of her half-sister's son.

17 16. This conversation marked a turning point for Gossack's career at CVS. Kuehner
18 now wanted Gossack gone. And, when Deborah formally complained about working off-the-clock
19 in or around the end of June 2020—the same issue about which Gossack had already told
20 Kuehner—Kuehner saw her path to getting Gossack out of the store.

21 17. Deborah's complaint sparked a month-long, formal investigation into the working
22 conditions at Gossack's store. And Kuehner did everything in her power to make sure all the
23 blame landed squarely on Gossack. For example, in July she asked Gossack to fill out a list of all
24 the time Deborah had worked off-the-clock. Gossack not only asked if that included time sending
25 and receiving e-mails and text messages; but also inquired if she should inform Human Resources
26 that she too was working off-the-clock by responding to text messages she received all day and
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28 ¹ Deborah's last name is presently unknown.

1 making conference calls on her days off. Kuehner erroneously told her she did not need to include
2 any of that information.

3 18. At the end of the investigation, and much to Gossack's surprise, CVS abruptly
4 terminated her employment. Though Deborah had worked with many other managers—all of
5 whom were aware that Deborah, and other employees, were working off-the-clock—Gossack was
6 the only person CVS fired.

7 19. CVS's abuse and mistreatment of Gossack did not end at her termination. Though
8 CVS fired Gossack on August 21, 2020, it refused to hand over her final paycheck until August
9 26. And when Gossack requested her entire personnel file—including her wage statements—on
10 July 23, 2021, CVS refused to comply; and, as of the date of this Complaint, has *still* not provided
11 Gossack copies of all of her wage statements. Clearly, CVS is attempting to hide evidence of their
12 unlawful wage-and-hour practices.

13 **FIRST CAUSE OF ACTION**

14 **ASSOCIATIONAL-RACE DISCRIMINATION & HARASSMENT**

15 **IN VIOLATION OF FEHA**

16 **(All Against Entity Defendants)**

17 **(Harassment Only Against Individual Defendants)**

18 20. Plaintiff restates and incorporates by reference each and every allegation in all
19 preceding paragraphs as though fully set forth herein.

20 21. Defendants are employers as defined by applicable law; or, alternatively,
21 individually liable for harassment under FEHA.

22 22. FEHA makes it unlawful for an employer to discriminate against or harass an
23 employee on the basis of her association with a protected group of people.²

24 23. Plaintiff's sister and nephew are members of a protected group based on their race
25 (African-American).

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² *Thompson v. City of Monrovia*, 186 Cal. App. 4th 860, 877 (2010)

1 in a place free of discrimination as Defendants' harassing conduct sufficiently offended,
2 humiliated, distressed, or intruded upon Plaintiff so as to disrupt the Plaintiff's emotional
3 tranquility in the workplace, affect the Plaintiff's ability to perform the job as usual, and/or
4 otherwise interfered with and undermined the Plaintiff's personal sense of well-being.³

5 35. As a direct and proximate result of the acts of Defendants, and each of them, as
6 alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other
7 economic damages; suffered emotional distress; and has generally been damaged in an amount to
8 be ascertained at trial.

9 36. Defendants' conduct was done intentionally, in a malicious, fraudulent, and
10 oppressive manner, entitling Plaintiff to punitive damages.

11 37. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees,
12 which he is entitled to recover in an amount according to proof under applicable law.

13 **THIRD CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA'S WHISTLEBLOWER LAW**

15 **(Against Entity Defendants)**

16 38. Plaintiff restates and incorporates by reference each and every allegation in all
17 preceding paragraphs as though fully set forth herein.

18 39. California Labor Code § 1102.5 makes it unlawful for Defendant—as an employer
19 and/or agent acting on behalf of an employer—to prevent an employee from, or retaliate against an
20 employee for, providing information to a person with authority over the employee that the
21 employee has reasonable cause to believe discloses a violation of a statute or federal statute; or
22 constituted a violation or noncompliance with a local, state, or federal rule or regulation.

23 40. Plaintiff informed Defendant and/or its agents that she, as well as several other
24 employees, were working off-the-clock and, as a result, not being paid for all time worked.
25 Plaintiff had reasonable cause to believe such a practice violated a statute or federal statute; or
26 constituted a violation or noncompliance with a local, state, or federal rule or regulation.

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³ Cal. Gov't Code § 12923.

41. Plaintiff's act of providing this information to Kuehner, who had supervisory authority over her, was a contributing factor in Defendant's decision to discharge Plaintiff.

42. As a direct and proximate result of the acts of Defendants, and each of them, as alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

43. Defendants' acts were done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Plaintiff to punitive damages.

44. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, which she is entitled to recover in an amount according to proof under applicable law.

45. While a one-year statute of limitations normally limits whistleblower claims, Plaintiff's claims are nevertheless still timely as the California Judicial Council's Emergency Rule 9 tolled the statute of limitations until October 1, 2020; meaning the statute of limitations does not expire until one year and 41 days after Defendant terminated Gossack.

FOURTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against Entity Defendants)

46. Plaintiff restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

47. The above-described conduct of Defendants, and each of them, was against the public policy of the State of California as evinced by its enactment of FEHA and the Labor Code.

48. By terminating Plaintiff because of her association to a protected group, as well as complaints she lodged regarding the working conditions at the Escondido store, the Defendants, and each of them, terminated Plaintiff in violation of public policy.

49. Additionally, California Labor Code § 232.5 makes it unlawful for CVS to “[d]ischarge, formally discipline, or otherwise discriminate against an employee who discloses information about the employer’s working conditions.” Yet that is precisely what Defendants did

1 by disciplining, and ultimately discharging Plaintiff for, complaining to management about the fact
2 she and several co-workers were working off-the-clock and without pay.

3 50. As a direct and proximate result of the acts of Defendants, and each of them, as
4 alleged above, Plaintiff has incurred compensatory damages, including lost earnings and other
5 economic damages; suffered emotional distress; and has generally been damaged in an amount to
6 be ascertained at trial.

7 51. Defendants' discrimination was done intentionally, in a malicious, fraudulent, and
8 oppressive manner, entitling Plaintiff to punitive damages.

9 52. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees,
10 which she is entitled to recover in an amount according to proof under applicable law.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 **(Against Entity Defendants)**

14 53. Plaintiff restates and incorporates by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 54. Defendants willfully misclassified Plaintiff as exempt from overtime in order to
17 avoid their obligations under California Labor Code §§ 510, 1194, and the applicable wage order.
18 Plaintiff did not "customarily and regularly exercised discretion an independent judgment in the
19 performance of [her] duties" as required to qualify as exempt from those laws. Indeed, Gossack
20 spent the majority of her time on routine tasks such as bookkeeping, cashiering, and stocking
21 shelves. Though she also supervised hourly employees and helped manage the store, her primary
22 purpose was the non-exempt work she performed, rather than her managerial assignment.

23 55. Alternatively, if Defendants did not classify Plaintiff as exempt, Defendants
24 violated California Labor Code §§ 510, 1194, and the applicable wage order by permitting or
25 suffering Plaintiff to work off-the clock and through meal/rest breaks, and illegally and
26 inaccurately recording time in which Plaintiff worked.

27 56. Thus, Defendants violated the Labor Code by failing to compensate Plaintiff for all
28 overtime, calculated at one and one-half times the regular rate of pay for all hours worked in

1 excess of 8 hours per day and/or 40 hours per week, and for the first 8 hours on the seventh
2 consecutive workday, with double time for all hours worked in excess of 12 hours in any workday
3 and for all hours worked in excess of 8 hours on the seventh consecutive day of work in any
4 workweek.

5 57. Defendants' violation of California law was knowing and willful. As a proximate
6 result, Plaintiff has suffered, and continue to suffer, substantial losses related to the use and
7 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
8 to compel Defendants to fully perform its obligations under state law, all to their respective
9 damages in amounts according to proof at time of trial, and within the jurisdiction of this Court.
10 Plaintiff is also entitled to recover the unpaid balance of wages owed to her by Defendants, plus
11 interest, penalties, attorneys' fees, expenses, and costs of suit.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL/REST BREAKS**

14 **(Against Entity Defendants)**

15 58. Plaintiff restates and incorporates by reference each and every allegation in all
16 preceding paragraphs as though fully set forth herein.

17 59. Defendants willfully misclassified Plaintiff as exempt from California's meal and
18 rest break laws in order to avoid their obligations under California Labor Code §§ 226.7, 516, and
19 the applicable wage order. Plaintiff did not "customarily and regularly exercised discretion an
20 independent judgment in the performance of [her] duties" as required to qualify as exempt from
21 those laws.

22 60. Alternatively, if Defendants did not classify Plaintiff as exempt, Defendants
23 suffered or permitted Plaintiff to work through her meal-and-rest breaks.

24 61. Plaintiff worked over four hours per shift and/or over five hours per shift, and was
25 entitled to a duty-free paid rest period of not less than ten minutes for every four hours worked, or
26 major fraction thereof; as well as to a duty-free meal period of not less than thirty minutes for
27 every five hours worked, or major fraction thereof.
28

1 62. Defendants failed to provide legally compliant rest and meal periods during the
2 relevant time period and, as such, violated California law.

3 63. Defendants further violated California Labor Code §§ 226.7, 516, and the
4 applicable wage order by failing to pay Plaintiff one additional hour of compensation at her
5 regular rate of pay—rather than her base hourly rate—for each workday that a meal period was not
6 provided; and for each workday that a rest period was not provided.

7 64. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of legally
8 compliant rest breaks and meal periods, and is thus entitled to recover damages in the amount of
9 one additional hour of compensation at her regular rate of pay for each day a paid rest break was
10 not provided; and one additional hour of compensation at her regular rate of pay for each day a
11 meal period was not provided.

12 65. Plaintiff seeks recovery of pre-judgment interest on all amounts recovered herein,
13 in addition to any damages and penalties otherwise owed.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES OWED AT DISCHARGE**

16 **(Against Entity Defendants)**

17 66. Plaintiff restates and incorporates by reference each and every allegation in all
18 preceding paragraphs as though fully set forth herein.

19 67. Pursuant to Labor Code §§ 201–204, Defendants are required to pay all earned and
20 unpaid wages to an employee who is discharged. Labor Code § 201 mandates that if an employer
21 discharges an employee, the employee’s wages earned and unpaid at the time of discharge are due
22 and payable immediately.

23 68. Furthermore, pursuant to Labor Code § 202, Defendants are required to pay all
24 accrued wages due to an employee no later than 72 hours after the employee quits his or her
25 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
26 in which case the employee is entitled to his or her wages at the time of quitting.

27 69. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
28 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the

1 employer is liable for waiting time penalties in the form of continued compensation to the
2 employee at the same rate for up to 30 workdays.

3 70. Though Defendants terminated Plaintiff on August 21, 2020, Defendants failed to
4 provide Plaintiff with her “final paycheck” until August 26. While a one-year statute of
5 limitations normally limits claims for waiting time penalties where there is no claim for underlying
6 wages, Plaintiff’s claims are nevertheless still timely as (1) the California Judicial Council’s
7 Emergency Rule 9 tolled the statute of limitations until October 1, 2020, meaning the statute of
8 limitations does not expire until one year and 41 days after Defendant terminated Gossack; or,
9 alternatively, (2) the statute of limitations was tolled an additional 65 days from July 22, 2021,
10 while Gossack exhausted her administrative remedies with the LWDA.

11 71. Alternatively, Defendants’ misclassification of Plaintiff as exempt and failure to
12 pay overtime, has meant they willfully failed to pay accrued wages and other compensation to
13 Plaintiff in accordance with Labor Code §§ 201 and 202.

14 72. As a result, Plaintiff is entitled to all available statutory penalties, including the
15 waiting time penalties provided in Labor Code §§ 203 and 204, together with interest thereon, as
16 well as other available remedies.

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE WAGE STATEMENTS**

19 **(Against Entity Defendants)**

20 73. Plaintiff restates and incorporates by reference each and every allegation in all
21 preceding paragraphs as though fully set forth herein.

22 74. California Labor Code § 226(a) requires Defendants “semimonthly or at the time of
23 each payment of wages . . . to his or her employee, either as a detachable part of the check, draft,
24 or voucher paying the employee’s wages, or separately if wages are paid by personal check or
25 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units
27 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
28 deductions, provided that all deductions made on written orders of the employee may be

1 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
2 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
3 social security number or an employee identification number other than a social security number,
4 (8) the name and address of the legal entity that is the employer and, if the employer is a farm
5 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal
6 entity that secured the services of the employer, and (9) all applicable hourly rates in effect during
7 the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee.”

9 75. Labor Code § 226(e) provides that an employee is entitled to recover the greater of
10 all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100
11 for each subsequent pay period, not to exceed an aggregate penalty of \$4,000, as well as an award
12 of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and
13 intentionally failed to provide timely and accurate itemized wage statements to the employees.

14 76. At all material times, Defendants knowingly and intentionally failed to provide
15 Plaintiff with *any* wage statements; or, alternatively, knowingly and intentionally failed to provide
16 Plaintiff with wage statements that included some or all of the nine pieces of information
17 mandated by § 226.

18 77. Such a pattern, practice, and uniform administration of corporate policy as
19 described herein is unlawful and creates an entitlement to recovery by Plaintiff, in a civil action,
20 for all damages or penalties pursuant to Labor Code §226(a), including interest thereon, injunctive
21 relief pursuant to Labor Code § 226(h), attorneys’ fees, and costs of suit according to the mandate
22 of California Labor Code §226.

23 78. While a one-year statute of limitations normally limits claims brought under § 226,
24 Plaintiff’s claims are nevertheless still timely as (1) the California Judicial Council’s Emergency
25 Rule 9 tolled the statute of limitations until October 1, 2020, meaning the statute of limitations
26 does not expire until one year and 41 days after Gossack received her final wage statement; or,
27 alternatively, (2) the statute of limitations was tolled an additional 65 days from July 22, 2021,
28 while Gossack exhausted her administrative remedies with the LWDA.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE COMPLETE PERSONNEL FILE**

3 **(Against Entity Defendants)**

4 79. Plaintiff restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 80. Labor Code § 1198.5 requires that every employer in California keep and provide
7 to employees for inspection and copying certain “personnel records” within 30 days of an
8 employee’s request, including but not limited to the employee’s personnel file. In addition, Labor
9 Code § 1198.5 requires every employer in California to “maintain a copy of each employee's
10 personnel records for a period of not less than 3 years after termination of employment.”

11 81. Plaintiff made a formal, written request to Defendants for Plaintiff’s complete
12 personnel file pursuant to Labor Code § 1198.5 on July 23, 2021. Pursuant to Labor Code §
13 1198.5, Defendants’ production of Plaintiff’s complete personnel file was due on or before August
14 22, 2021.

15 82. On August 17, 2021, Defendants produced a partial personnel file. On September
16 15, 2021, Defendants produced additional personnel records, promising “a supplemental response .
17 . . [i]f additional information is located.” To date, it is unclear whether Defendants have produced
18 Plaintiff’s full personnel file.

19 83. Labor Code § 1198.5(k) awards Plaintiff a penalty in the amount of \$750 for
20 Defendants’ failure to produce her complete personnel file within 30 days, as required by
21 California law. In addition, Labor Code § 1198.5(1) awards Plaintiff reasonable attorneys’ fees
22 and costs of suit in connection with an action to compel Defendants to produce her entire
23 personnel file.

24 84. Accordingly, Plaintiff is entitled to recover from Defendants her attorneys’ fees and
25 costs of suit in addition to a \$ 750 penalty and interest, in an amount according to proof at trial

26 85. Plaintiff also requests injunctive relief from this Court to compel Defendants to
27 produce the entire contents of Plaintiff’s personnel file, as required by Labor Code § 1198.5.

28 Plaintiff is presently and continuously injured by Defendants’ violation of Labor Code § 1198.5,

1 and Plaintiff will be irreparably harmed if the Court does not grant Plaintiff's request for such
2 injunctive relief. No plain, adequate, or speedy remedy is available to Plaintiff to redress
3 Defendants' failure to comply with Labor Code § 1198.5 because a penalty alone will not provide
4 Plaintiff with the documents and information to which Plaintiff is statutorily entitled under Labor
5 Code § 1198.5.

6 **TENTH CAUSE OF ACTION**

7 **FAILURE TO PROVIDE PAYROLL RECORDS**

8 **(Against Entity Defendants)**

9 86. Plaintiff restates and incorporates by reference each and every allegation in all
10 preceding paragraphs as though fully set forth herein.

11 87. Labor Code section 226(b) states employers must "afford current and former
12 employees the right to inspect or receive a copy of records pertaining to their employment, upon
13 reasonable request to the employer."

14 88. Labor Code section 226(c) states that "[a]n employer who receives a written or oral
15 request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or
16 former employee shall comply with the request as soon as practicable, but no later than 21
17 calendar days from the date of the request."

18 89. Labor Code section 226(f) states, "[a] failure by an employer to permit a current or
19 former employee to inspect or copy records within the time set forth in subdivision (c) entitles the
20 current or former employee or the Labor Commissioner to recover a seven hundred-fifty-dollar
21 (\$750) penalty from the employer."

22 90. Labor Code section 226(h) states that an "employee may also bring an action for
23 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
24 reasonable attorney's fees."

25 91. Plaintiff requested copies of her itemized wage statements on July 23, 2021.
26 Pursuant to Labor Code § 226(c), Defendants' production of Plaintiff's wage statements was due
27 on or before August 13, 2021. To date, Defendant CVS has still failed to produce such
28 documents, violating Labor Code § 226.

1 92. Labor Code § 226(f) awards Plaintiff a penalty in the amount of \$750 for
2 Defendant's failure to produce her wage statements within 21 days, as required by California law.
3 In addition, Labor Code § 226(h) awards Plaintiff reasonable attorneys' fees and costs of suit in
4 connection with an action to compel Defendants to produce all of her wage statements.

5 93. Accordingly, Plaintiff is entitled to recover from Defendants her attorneys' fees and
6 costs of suit in addition to a \$ 750 penalty and interest, in an amount according to proof at trial.

7 94. Plaintiff also requests injunctive relief from this Court (pursuant to Labor Code §
8 226(h)) to compel Defendants to produce all of Plaintiff's wage statements, as required by Labor
9 Code § 226(c). Plaintiff is presently and continuously injured by Defendants' violation of Labor
10 Code § 226(c), and Plaintiff will be irreparably harmed if the Court does not grant Plaintiff's
11 request for such injunctive relief. No plain, adequate, or speedy remedy is available to Plaintiff to
12 redress Defendants' failure to comply with Labor Code § 226(c) because a penalty alone will not
13 provide Plaintiff with the documents and information to which Plaintiff is statutorily entitled under
14 Labor Code § 226(c).

15 **ELEVENTH CAUSE OF ACTION**

16 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES**

17 **(Against Entity Defendants)**

18 95. Plaintiff restates and incorporates by reference each and every allegation in all
19 preceding paragraphs as though fully set forth herein.

20 96. California Labor Code §§2698-2699, the Labor Code Private Attorney General Act
21 of 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
23 agencies or employees for a violation of the Labor Code, may be recovered through a civil action
24 by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other
25 current or former employees.

26 97. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
27 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
28

1 authorized to exercise the same discretion, subject to the same limitations and conditions to assess
2 a civil penalty.

3 98. Plaintiff is an “aggrieved employee” as defined by Labor Code § 2699 as she was
4 employed by Defendant; misclassified as exempt from California’s overtime and meal/rest period
5 laws; was permitted to work off-the-clock without pay; was not paid the equivalent of one-hour of
6 her regular rate of pay whenever a meal-or-rest break was not provided; was not paid all wages
7 owed at discharge; was issued inaccurate wage statements; and was denied her right to inspect a
8 copy of her personnel file and wage statements. She is thus a proper representative to bring a civil
9 action on behalf of herself and all other current and former employees of Defendants in California
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 99. Plaintiff seeks to recover civil penalties, including but not limited to penalties under
12 Labor Code § 2699 from Defendant in a representative action for the violation of the California
13 Labor Code set forth above. She is also entitled to an award of reasonable attorneys’ fees and
14 costs pursuant to Labor Code § 2699(g)(l).

15 100. Plaintiff has complied with all of the requirements set forth in Labor Code § 2699.3
16 to commence a representative action under PAGA.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
19 follows:

- 20 1. For nominal, actual, and compensatory damages;
- 21 2. For special and/or non-economic damages in an amount according to proof;
- 22 3. For punitive and/or exemplary damages in an amount according to proof;
- 23 4. For liquidated damages in an additional amount equal to the entire award of other
24 damages;
- 25 5. For statutory and civil penalties according to proof, including but not limited to all
26 penalties authorized by the Labor Code §§ 226(f) and 2699;
- 27 6. For attorneys’ fees pursuant to applicable laws;
- 28 7. For costs of suit incurred herein;

- 1 8. For pre-judgment interest to the extent allowed by law;
2 9. For post-judgment interest to the extent allowed by law;
3 10. For declaratory relief declaring that Defendants committed the unlawful practices
4 alleged herein;
5 11. For injunctive relief restraining Defendants from committing any similar future
6 unlawful employment practices and implementing practices to deter or discourage similar future
7 unlawful practices;
8 12. For injunctive relief compelling Defendant CVS to produce a full and complete
9 copy of Plaintiff's personnel file, as well as all of her wage statements; and
10 13. For such other and further relief as the Court deems just and proper.

11
12 DATED: September 22, 2021

MOUTON LAW
STACEY Y. MOUTON

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14 By: /s/ Stacey Y. Mouton
15 STACEY MOUTON
16 2150 Comstock #710754
17 San Diego, California 92111
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20 Attorney for Plaintiff
21 SALENA GOSSACK
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COMPLAINT