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similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MADERA**

BYRON CREAMER, as an individual, and on
behalf of all others similarly situated,

PLAINTIFF,

v.

RITE AID CORPORATION, a Delaware
corporation; and DOES 1 through 100, inclusive,

DEFENDANTS.

[Assigned for All Purposes to the Hon.]

Sosi Vogt, Department 45]

Case No: MCV085951

FIRST AMENDED CLASS ACTION

COMPLAINT

- 1. FAILURE TO PAY MINIMUM
WAGES (CAL. LABOR CODE
§§1182.12, 1194, 1194.2, 1197)**
- 2. WAITING TIME PENALTIES
(CAL. LAB. CODE § 203)**
- 3. FAILURE TO PAY ALL WAGES
BY THE APPROPRIATE PAY
PERIOD (CAL. LAB. CODE § 204)**
- 4. FAILURE TO PROVIDE
ACCURATE AND ITEMIZED
WAGE STATEMENTS (CAL.
LAB. CODE § 226, IWC Wage
Order)**
- 5. UNFAIR BUSINESS PRACTICES
(CALIFORNIA BUSINESS AND**

**PROFESSIONS CODE § 17200, ET
SEQ.); AND**

- 6. CIVIL PENALTIES FOR LABOR
CODE VIOLATIONS PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL.
LAB. CODE §2698 et seq.)**

DEMAND FOR JURY TRIAL

PLAINTIFF BYRON CREAMER (“PLAINTIFF” or “BYRON CREAMER”) individually, and on behalf of himself, all others similarly situated, and the general public, complains and alleges on information and belief the following against RITE AID CORPORATION (hereinafter “RITE AID”), a corporation, THRIFTY PAYLESS, INC. D/B/A RITE AID, a California corporation; and DOES 2 through 100, inclusive, (collectively, “DEFENDANTS”):

INTRODUCTION

1. This is a class action lawsuit being brought on behalf of all non-exempt employees who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF CLASS (defined below) work(ed) as retail employees at DEFENDANTS’ various locations in California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to numerous wage and hour violations which are the result of systemic policies and procedures implemented by DEFENDANTS.

2. DEFENDANTS’ actions give rise to violations of state wage and hour laws, including laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully earned but have been denied, as well as any penalties associated with DEFENDANTS’ rampant and willful violations of the law, interest on the unpaid wage amounts, and attorneys’ fees. Plaintiff substitutes and now names THRIFTY PAYLESS, INC. D/B/A RITE AID, a California corporation, as Doe 1 through the doe amendment procedure, as Plaintiff has now discovered this other entity defendant.

JURISDICTION AND VENUE

3. The Court has personal jurisdiction over DEFENDANTS because they are residents

1 and/or doing business in the state of California.

2 4. Venue is proper in this Court in accordance with Section 395(a) of the California Code
3 of Civil Procedure because DEFENDANTS, or some of them, reside and/or are doing business in
4 Madera County. Moreover, DEFENDANTS employed PLAINTIFF and others similarly situated
5 in Madera County and the harms occurred in Madera County.

6 **PARTIES**

7 5. PLAINTIFF BYRON CREAMER is a resident of Madera County, California.

8 6. PLAINTIFF is informed and believes and based thereon alleges that defendant RITE
9 AID CORPORATION is a corporation which, at all times relevant herein, employed California
10 persons in or near the City of Oakhurst, County of Madera, State of California.

11 7. Section 2 of the applicable Industrial Wage Commission Order defines an “employer”
12 as any “person as defined in Section 18 of the Labor Code, who directly or indirectly, or through
13 an agent or any other person, employs or exercises control over the wages, hours or working
14 conditions of any person.” PLAINTIFF, and others similarly situated including the PLAINTIFF
15 CLASS (defined below), are informed and believe and on this basis allege that DEFENDANTS
16 employ or exercise control over the wages, hours or working conditions of PLAINTIFF and the
17 rest of the PLAINTIFF CLASS as defined below.

18 8. PLAINTIFF is informed and believes and based thereon alleges that he was employed
19 by DEFENDANTS from on or about the middle of 2020 through, and including, December 2020.

20 9. Whenever in this Complaint reference is made to DEFENDANTS, such allegations
21 shall be deemed to mean the acts of all defendants acting individually, jointly, and/or severally.

22 10. PLAINTIFF is informed and believes, and on that basis alleges, that RITE AID
23 CORPORATION. and DOES 1 through 100 constitute an integrated enterprise based on their
24 interrelation of operations, common management, centralized control of labor relations, common
25 ownership, and financial control. Specifically, PLAINTIFF is informed and believes and thereon
26 alleges that: each of the DEFENDANTS operate according to uniform policies and procedures for
27 controlling the work of PLAINTIFF and the PLAINTIFF CLASS (described below);
28 DEFENDANTS operate as an interrelated operation; DEFENDANTS are operated by a group of

1 shared officers and directors; and each of the DEFENDANTS share and control the management
2 of the premises where PLAINTIFF and members of the PLAINTIFF CLASS work. Thus,
3 adherence to the fiction of the separate existence of each defendant here would permit abuse,
4 sanction, fraud and promote injustice.

5 11. The true names and capacities of defendants named herein as DOES 1-100, inclusive,
6 whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who therefore
7 sue these defendants by such fictitious names. PLAINTIFF will amend this Complaint to show
8 true names and capacities of these defendants when they are ascertained.

9 12. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,
10 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the
11 other, and at all times pertinent hereto were acting within the course and scope of their authority as
12 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.
13 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of
14 each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of
15 the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE
16 defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF
17 damages as well as damages of members of the PLAINTIFF CLASS (described below).

18 CLASS ACTION ALLEGATIONS

19 13. PLAINTIFF brings this action on behalf of himself and all others similarly situated as
20 a class action pursuant to California Code of Civil Procedure section 382. The class that
21 PLAINTIFF seeks to represent ("PLAINTIFF CLASS") is composed and defined as follows:

22 **All California persons who are or have been non-exempt employees of DEFENDANTS since**
23 **four (4) years prior to the filing of the initial Complaint until the entry of final judgment in**
24 **this action (the "CLASS PERIOD").**

25 14. There exists a well-defined community of interests among the PLAINTIFF CLASS
26 with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for
27 the following reasons:

28 a. Numerosity and Ascertainability: The members of the class are so numerous that

1 joinder of all members would be unfeasible and not practicable. While PLAINTIFF does not know
2 the exact number and identity of all Class members, PLAINTIFF alleges, on information and belief,
3 that the members of the PLAINTIFF CLASS exceed one hundred (100) persons. PLAINTIFF
4 alleges, on information and belief, that the identity of such membership is readily ascertainable via
5 inspection of the personnel records and other documents maintained by DEFENDANTS.

6 b. Typicality: The claims of PLAINTIFF pled as class action claims are typical of the
7 claims of all members of the class as they arise out of the same course of conduct and are predicated
8 on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS
9 sustained injuries and damages arising out of DEFENDANTS' common course of conduct in
10 violation of laws as complained of herein.

11 c. Commonality: Common issues of fact and law predominate in this action over any
12 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS members
13 arise from the same events or patterns or practices and are based on the same legal theories.
14 Specially, the following issues of fact and law, without limitation, predominate and make this
15 action superior to individual actions:

16 i. Whether DEFENDANTS denied PLAINTIFF and members of the
17 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to the California Labor
18 Code, California IWC Wage Orders, and all other applicable employment laws and regulations;

19 ii. Whether DEFENDANTS owe PLAINTIFF and members of the
20 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code section 203;

21 iii. Whether DEFENDANTS violated California Labor Code section 204 by
22 failing to pay all wages earned in a timely manner;

23 iv. Whether DEFENDANTS have failed to properly provide accurate itemized
24 wage statements as well as keep accurate records as required by California Labor Code section 226
25 and the applicable Industrial Welfare Commission's ("IWC") Wage Order;

26 v. Whether DEFENDANTS engaged in unfair business practices under section
27 17200, *et. seq* of the California Business and Professions Code;

28 vi. The effect upon and the extent of damages suffered by PLAINTIFF and

1 members of the PLAINTIFF CLASS and the appropriate amount of compensation.

2 d. Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for
3 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS' unlawful policy
4 and practice of failing to pay for all time worked, including but not limited to on-call time, and
5 failing to adequately compensate employees for all time worked. PLAINTIFF and members of the
6 PLAINTIFF CLASS do not have any conflicts of interest with other members such that it would
7 interfere with the prosecution of this case. Given the significance of the deprivation of their rights,
8 PLAINTIFF will prosecute this action vicariously on behalf of the PLAINTIFF CLASS. He has
9 retained competent and experienced legal counsel who specialize in employment, wage and hour,
10 and class action litigation to represent him and the proposed PLAINTIFF CLASS;

11 e. Superiority of Class Action: The disposition of PLAINTIFF and the proposed
12 PLAINTIFF CLASS members' claims in a class action will provide substantial benefits to both the
13 parties and the Court. The nature of this action and the nature of the laws available to the
14 PLAINTIFF CLASS make use of the class action format a particularly efficient and appropriate
15 procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a corporate
16 employer and a large number of individual employees possessing claims with common issues of
17 law and fact. If each employee were required to file an individual lawsuit, the corporate defendant
18 would necessarily gain an unconscionable advantage since each defendant would be able to exploit
19 and overwhelm the limited resources of each individual plaintiff with its vastly superior financial
20 and legal resources. Requiring each class member to pursue an individual remedy would also
21 discourage the assertion of lawful claims by employees who would be disinclined to pursue an
22 action against their present and/or former employer for an appreciable and justifiable fear of
23 retaliation and permanent damage to their careers at present and/or subsequent employment. Proof
24 of a common business practice or factual pattern, of which the named PLAINTIFF experienced, is
25 representative of the class mentioned herein and will establish the right of each of the members of
26 the class to recovery on the claims alleged herein.

27 The prosecution of separate actions by the individual class members, even if possible,
28 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect

1 to the individual class members against the defendants herein; and/or (b) legal determinations with
2 respect to individual class members which would, as a practical matter, be dispositive of the other
3 class members' claims who are not parties to the adjudications and/or would substantially impair
4 or impede the ability of class members to protect their interests. Further, the claims of the
5 individual members of the class are not sufficiently large to warrant vigorous individual
6 prosecution considering all of the concomitant costs and expenses attending thereto.

7 15. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the
8 management of this action that would preclude its maintenance as a class action.

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

10 16. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-
11 exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS
12 have been subjected to a variety of wage and hour violations during their employment with
13 DEFENDANTS.

14 17. Throughout their employment with DEFENDANTS, PLAINTIFF and members of the
15 PLAINTIFF CLASS are expected to work on call shifts for DEFENDANTS without receiving
16 payment for all times they waited to be called in, as required by law. As a result, PLAINTIFF and
17 members of the PLAINTIFF CLASS did not receive all wages owed to them by DEFENDANTS.

18 18. DEFENDANTS furthermore did not pay for all wages due, as the paychecks that
19 PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not account for all
20 wages earned.

21 19. DEFENDANTS also provided inaccurate and incomplete wage statements to
22 PLAINTIFF and members of the PLAINTIFF CLASS. The wage statements are inaccurate with
23 respect to the actual hours worked by employees, the gross wages earned, all applicable hourly
24 rates in effect and the number of hours worked at said hourly rates, the net wages earned, among
25 other deficiencies. The inaccurate wage statements create an actual injury, including making it
26 more difficult for PLAINTIFF and members of the PLAINTIFF CLASS to determine what
27 compensation they are owed but were not paid. Overall, DEFENDANTS' itemized statements to
28 PLAINTIFF and members of the PLAINTIFF CLASS make it appear as if they have been paid for

1 all hours worked when, in fact, they were not paid for all hours worked, as explained above.

2 20. The aforementioned acts constitute unfair and unlawful practices as defined by law
3 pursuant to California Business and Professions Code section 17200, et seq. By virtue of this
4 action, PLAINTIFFS seek to restore all wages to PLAINTIFF and members of the PLAINTIFF
5 CLASS that DEFENDANTS wrongfully took or withheld.

6 21. DEFENDANTS' violations of the law were willful and done according to
7 DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members
8 of the PLAINTIFF CLASS.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(CALIFORNIA LABOR CODE §§1182.12, 1194, 1194.2, 1197)**

12 (By PLAINTIFF in his individual capacity and in his capacity as representative of all similarly
13 situated members of the PLAINTIFF CLASS against DEFENDANTS)

14 22. PLAINTIFF realleges and incorporates by reference each and every allegation
15 contained in the foregoing paragraphs as though fully set forth here.

16 23. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law
17 is unlawful. An employer violates the minimum wage statute even if the average rate for paid and
18 unpaid hours exceeded the minimum wage.

19 24. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFF and
20 members of the PLAINTIFF CLASS the legal minimum wage in the State of California, as set
21 forth in Labor Code §1182.12. Under California law, PLAINTIFF and members of the PLAINTIFF
22 CLASS are entitled to at least the minimum wage for every hour worked.

23 25. DEFENDANTS' failure to pay the legal minimum wage to PLAINTIFF and members
24 of the PLAINTIFF CLASS as alleged herein is unlawful and creates an entitlement, pursuant to
25 Labor Code §1197, to recovery by PLAINTIFF and members of the PLAINTIFF CLASS in a civil
26 action for the unpaid balance of the full amount of the unpaid wages owed, including interest
27 thereon.

28 26. Pursuant to Labor Code §1194, PLAINTIFF and members of the PLAINTIFF CLASS

1 request that the court award reasonable attorneys' fees and costs incurred by PLAINTIFF and
2 members of the PLAINTIFF CLASS in this action.

3 27. In addition, pursuant to Labor Code §1194.2, PLAINTIFF and members of the
4 PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum
5 wages unlawfully unpaid in the amounts set forth above, and interest thereon.

6 **SECOND CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(CALIFORNIA LABOR CODE §§ 201, 202 and 203)**

9 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
10 situated members of the PLAINTIFF CLASS against DEFENDANTS)

11 28. PLAINTIFF realleges and incorporates by reference each and every allegation
12 contained in the foregoing paragraphs as though fully set forth here.

13 29. Pursuant to California Labor Code section 201, if an employer discharges an employee,
14 the wages earned and unpaid at the time of the discharge are due and payable immediately.
15 Pursuant to California Labor Code section 202, if an employee quits his or her employment, the
16 wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72)
17 hours of the resignation. Pursuant to California Labor Code section 203, if an employer willfully
18 fails to pay compensation upon discharge, then the employer is liable for waiting time penalties in
19 the form of compensation of up to thirty (30) workdays.

20 30. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have
21 received all the wages and other compensation they rightfully earned.

22 31. DEFENDANTS, and each of them, willfully refused and continue to refuse to timely
23 pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely manner, as
24 required by California Labor Code section 203. PLAINTIFF therefore requests restitution and
25 penalties as provided by California Labor Code section 203.

26 32. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been ready,
27 willing, and available to accept payment of these monies.

28 33. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation for

1 all forms of wages earned, including, but not limited to, sums for unlawful deductions from
2 compensation and additional wages, but to date have not received such compensation therefore
3 entitling PLAINTIFF and the class to penalties under California Labor Code section 203.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD**

6 **(CALIFORNIA LABOR CODE SECTION 204)**

7 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
8 situated members of the PLAINTIFF CLASS against DEFENDANTS)

9 34. PLAINTIFF realleges and incorporates by reference each and every allegation
10 contained in the foregoing paragraphs as though fully set forth here.

11 35. During the CLASS PERIOD, Labor Code section 204 applied to DEFENDANTS'
12 employment of PLAINTIFF and the PLAINTIFF CLASS. At all relevant times, Labor Code
13 section 204 provided that all wages earned by any employee, such as PLAINTIFF and members of
14 the PLAINTIFF CLASS, in any employment between the 1st and 15th days, inclusive, of any
15 calendar month, other than those wages due upon termination of an employee, are due and payable
16 between the 16th and 26th day of the month during which the work was performed. Furthermore,
17 at all times relevant hereto, Labor Code section 204 provided that all wages earned by any
18 employee, such as PLAINTIFF and members of the PLAINTIFF CLASS, in any employment
19 between the 16th and the last day, inclusive, of any calendar month, other than those wages due
20 upon termination of an employee, are due and payable between the 1st and 10th day of the
21 following month.

22 36. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members
23 of the PLAINTIFF CLASS wages for all hours worked.

24 37. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members
25 of the PLAINTIFF CLASS for all wages earned, and therefore violated Labor Code section 204.
26 Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover all
27 damages, penalties, and other remedies available for violation of Labor Code section 204.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS**

3 **(CALIFORNIA LABOR CODE § 226)**

4 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 38. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 39. California Labor Code section 226(a) and the applicable IWC Wage Order requires
9 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,
10 furnish each of his or her employees, itemize in wage statements, among other things, time records
11 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours
12 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an
13 explanation of the incentive plan formula shall be provided to the employees, an accurate
14 production record shall be maintained by the employer. Every employer shall also semimonthly
15 or at the time of each payment of wages furnish each employee, an itemized statement showing,
16 among other things all deductions.

17 40. DEFENDANTS knowingly and intentionally failed to comply with California
18 Labor Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate
19 payroll records and by failing, on each and every wage statement that was provided to PLAINTIFF
20 and members of the PLAINTIFF CLASS, to accurately reflect wage information, in addition to
21 properly and accurately providing all required items of information in their wage statements as
22 required by Labor Code Section 226(a).

23 41. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
24 knowingly and intentionally provided inaccurate payroll records to PLAINTIFF and members of
25 the PLAINTIFF CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered
26 actual damages as a result of DEFENDANTS' violation of Cal. Labor Code § 226(a). In addition,
27 PLAINTIFF and the PLAINTIFF CLASS have also suffered, and will continue to suffer, actual
28 damages in the form of additional litigation expenses incurred to calculate lost wages. These

1 additional litigation expenses include, but are not limited to, attorney's fees, expert witness fees,
2 and other costs attendant to the calculation of lost wages when such costs would not need to be
3 incurred if DEFENDANTS had provided proper and accurately, itemized wage statements to
4 PLAINTIFF and members of the PLAINTIFF CLASS that complied with California Labor Code
5 section 226(a).

6 42. California Labor Code section 226(e) and (g) provide that an employee suffering
7 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
8 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
9 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation
10 in subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
11 is entitled to an award of costs and reasonable attorney's fees.

12 43. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to
13 recover all amounts for all such wages and expenses and benefits on such wage statements,
14 penalties, interest, attorney's fees, and other court costs and expenses of suit, according to proof at
15 trial. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition
16 to or in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory
17 damages in amounts according to proof at trial.

18 **FIFTH CAUSE OF ACTION**

19 **UNFAIR BUSINESS PRACTICES**

20 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**

21 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
22 situated members of the PLAINTIFF CLASS against DEFENDANTS)

23 44. PLAINTIFF realleges and incorporates by reference each and every allegation
24 contained in the foregoing paragraphs as though fully set forth here.

25 45. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,
26 include DEFENDANTS' failure and refusal to pay all wages earned by PLAINTIFF and the
27 PLAINTIFF CLASS pursuant to DEFENDANTS' illegal pay practices described above. The
28 aforementioned violations constitute unfair business practices in violation of the Unfair

1 Competition Law, California Business and Professions Code Section 17200, et seq.

2 46. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have
3 reaped unfair benefits and illegal profits at the expense of PLAINTIFF, the PLAINTIFF CLASS,
4 and members of the public. DEFENDANTS should be compelled to restore such monies to
5 PLAINTIFF and the PLAINTIFF CLASS.

6 47. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF
7 CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders
8 that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the
9 compensation unlawfully withheld from them. PLAINTIFF and the PLAINTIFF CLASS are also
10 entitled to attorney's fees and costs, as permitted by Labor Code Sections 1194 and 1194.2.

11 **SIXTH CAUSE OF ACTION**

12 **CIVIL PENALTIES FOR LABOR CODE VIOLATIONS PURSUANT TO**
13 **THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (California Labor Code §§2698 et**
14 **seq.)** (By Plaintiff, on behalf of himself and all aggrieved employees, against Defendant RITE AID
15 CORPORATION and DOES 2 through 100)

16 48. Plaintiffs incorporate paragraphs 1 through 47 of this complaint as if fully alleged
17 herein. During the the statute of limitations' period preceding the filing of the initial complaint in
18 this action, Plaintiff alleges on behalf of himself and all others—on information and belief—that
19 Defendants violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.6, 256, 558,
20 558.1, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, as well as 1199, and all applicable Wage
21 Orders.

22 49. As described throughout this complaint, and as the violations are described and flow
23 from both the allegations in this complaint and/or the aforementioned statutes, Defendants thus
24 violated all of the aforementioned labor code violations. These violations subject Employer and
25 individuals to civil penalties as set forth in (1) the foregoing statutes to the extent that they are
26 specified and contained therein, which Plaintiff will be seeking on his own behalf and on the behalf
27 of all aggrieved employees; or to (2) other PAGA relief. To the extent that that the statutes do not
28 provide for PAGA civil penalties or PAGA available relief, then Plaintiff will seek the default

1 PAGA penalties for each of the preceding statutory violations in accordance with Labor Code
2 Section 2699(f) for himself and for all aggrieved employees, as well as the LWDA.

3 50. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
4 reasonable attorney's fees and costs in connection with his claims for civil penalties.

5 51. Plaintiff exhausted his administrative remedies by providing notice to the LWDA
6 and to Defendant RITE AID CORPORATION as required by the PAGA statute, complying with
7 all requirements to exhaust his administrative remedies on or about September 30, 2021. Plaintiff
8 or his counsel did not receive a response from Defendant or the LWDA.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray judgment as follows:

11 1. That the Court determine that Causes of Action 1 through 5 may be maintained as a
12 class action.

13 2. For injunctive relief to stop DEFENDANTS' illegal practices described above,
14 including, but not limited to, the payment of wages, inaccurately itemized and improper wage
15 statements, failure to timely pay wages at the legally required times, and other practices;

16 3. For general and compensatory damages, according to proof;

17 4. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS;

18 5. For statutory penalties as provided by law as well as under the PAGA statutes;

19 6. For penalties pursuant to California Labor Code and all other applicable Labor Code
20 and/or Employment Laws and Regulations;

21 7. For reasonable attorneys' fees as provided by law and under the statutes mentioned
22 throughout this complaint;

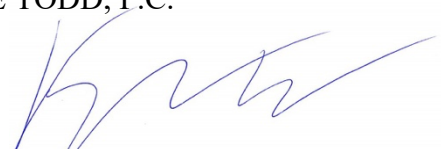
23 8. For interest accrued to date;

24 9. For costs of the suit incurred herein;

25 10. For such other and further relief that the Court may deem just and proper.
26
27
28

1 Dated: December 21, 2021

2 KYLE TODD, P.C.

3
4 By: 

5 KYLE TODD

6 ALFREDO NAVA

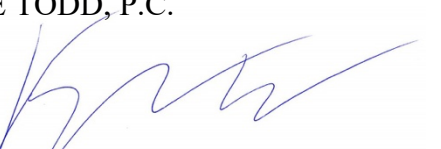
7 Attorneys for Plaintiff BYRON CREAMER
8 individually, and on behalf of all others similarly
9 situated

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFF and members of the PLAINTIFF CLASS, and all aggrieved employees,
12 demand a trial by jury on all issues so triable.

13 Dated: December 21, 2021

14 KYLE TODD, P.C.

15 By: 

16 KYLE TODD

17 ALFREDO NAVA

18 Attorneys for Plaintiff BYRON CREAMER
19 individually, and on behalf of all others similarly
20 situated
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SUMMONS (CITACION JUDICIAL)

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

Madera Superior Court
Civil Division

AUG 20 2021

RECEIVED
BY _____

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

RITE AID CORPORATION, a Delaware corporation; and DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

BYRON CREAMER, as an individual, and on behalf of all others similarly situated,

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

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

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

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Main Courthouse
200 South "G" Street, Madera, CA 93637

CASE NUMBER: (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kyle Todd; Kyle Todd, P.C.; 611 Wilshire Blvd., Ste. 315, Los Angeles CA 90017; (323) 208-9171.

DATE:
(Fecha)

Clerk, by
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date)

COPY

1 Kyle Todd (State Bar No. 286370)
kyle@kyletodd.com
2 Alfredo Nava (State Bar No. 282698)
anava@kyletodd.com
3 Peter Dafter (State Bar No. 334875)
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4 **KYLE TODD, P.C.**
611 Wilshire Blvd., Suite 315
5 Los Angeles, CA 90017
6 Telephone: (323) 208-9171
Facsimile: (323) 693-0822
7

Madera Superior Court
Civil Division

AUG 20 2021

BY RECEIVED

8 Attorneys for PLAINTIFF BYRON CREAMER, individually, and on behalf of all others
9 similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF MADERA**

12 BYRON CREAMER, as an individual, and on
13 behalf of all others similarly situated,

14
15 PLAINTIFF,

16 v.

17 RITE AID CORPORATION, a Delaware
corporation; and DOES 1 through 100, inclusive,

18 DEFENDANTS.
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27
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CLASS ACTION COMPLAINT

Case No.:

1. **FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197)**
2. **WAITING TIME PENALTIES (CAL. LAB. CODE § 203)**
3. **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD (CAL. LAB. CODE § 204)**
4. **FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS (CAL. LAB. CODE § 226, IWC Wage Order)**
5. **UNFAIR BUSINESS PRACTICES (CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.); AND**

DEMAND FOR JURY TRIAL

1 PLAINTIFF BYRON CREAMER (“PLAINTIFF” or “BYRON CREAMER”) individually, and
2 on behalf of himself, all others similarly situated, and the general public, complains and alleges on
3 information and belief the following against RITE AID CORPORATION (hereinafter “RITE
4 AID”), a corporation, and DOES 1 through 100, inclusive, (collectively, “DEFENDANTS”):

5 **INTRODUCTION**

6 1. This is a class action lawsuit being brought on behalf of all non-exempt employees
7 who work(ed) for DEFENDANTS in California. PLAINTIFF and members of the PLAINTIFF
8 CLASS (defined below) work(ed) as retail employees at DEFENDANTS’ various locations in
9 California. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to
10 numerous wage and hour violations which are the result of systemic policies and procedures
11 implemented by DEFENDANTS.

12 2. DEFENDANTS’ actions give rise to violations of state wage and hour laws, including
13 laws mandating the payment of wages. Through this lawsuit, PLAINTIFF, and others similarly
14 situated, seek to recover all wages which they and other employees of DEFENDANTS rightfully
15 earned but have been denied, as well as any penalties associated with DEFENDANTS’ rampant
16 and willful violations of the law, interest on the unpaid wage amounts, and attorneys’ fees.

17 **JURISDICTION AND VENUE**

18 3. The Court has personal jurisdiction over DEFENDANTS because they are residents
19 and/or doing business in the state of California.

20 4. Venue is proper in this Court in accordance with Section 395(a) of the California Code
21 of Civil Procedure because DEFENDANTS, or some of them, reside and/or are doing business in
22 Madera County. Moreover, DEFENDANTS employed PLAINTIFF and others similarly situated
23 in Madera County and the harms occurred in Madera County.

24 **PARTIES**

25 5. PLAINTIFF BYRON CREAMER is a resident of Madera County, California.

26 6. PLAINTIFF is informed and believes and based thereon alleges that defendant RITE
27 AID CORPORATION is a corporation which, at all times relevant herein, employed California
28 persons in or near the City of Oakhurst, County of Madera, State of California.

1 7. Section 2 of the applicable Industrial Wage Commission Order defines an “employer”
2 as any “person as defined in Section 18 of the Labor Code, who directly or indirectly, or through
3 an agent or any other person, employs or exercises control over the wages, hours or working
4 conditions of any person.” PLAINTIFF, and others similarly situated including the PLAINTIFF
5 CLASS (defined below), are informed and believe and on this basis allege that DEFENDANTS
6 employ or exercise control over the wages, hours or working conditions of PLAINTIFF and the
7 rest of the PLAINTIFF CLASS as defined below.

8 8. PLAINTIFF is informed and believes and based thereon alleges that he was employed
9 by DEFENDANTS from on or about the middle of 2020 through, and including, December 2020.

10 9. Whenever in this Complaint reference is made to DEFENDANTS, such allegations
11 shall be deemed to mean the acts of all defendants acting individually, jointly, and/or severally.

12 10. PLAINTIFF is informed and believes, and on that basis alleges, that RITE AID
13 CORPORATION. and DOES 1 through 100 constitute an integrated enterprise based on their
14 interrelation of operations, common management, centralized control of labor relations, common
15 ownership, and financial control. Specifically, PLAINTIFF is informed and believes and thereon
16 alleges that: each of the DEFENDANTS operate according to uniform policies and procedures for
17 controlling the work of PLAINTIFF and the PLAINTIFF CLASS (described below);
18 DEFENDANTS operate as an interrelated operation; DEFENDANTS are operated by a group of
19 shared officers and directors; and each of the DEFENDANTS share and control the management
20 of the premises where PLAINTIFF and members of the PLAINTIFF CLASS work. Thus,
21 adherence to the fiction of the separate existence of each defendant here would permit abuse,
22 sanction, fraud and promote injustice.

23 11. The true names and capacities of defendants named herein as DOES 1-100, inclusive,
24 whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who therefore
25 sue these defendants by such fictitious names. PLAINTIFF will amend this Complaint to show
26 true names and capacities of these defendants when they are ascertained.

27 12. At all times mentioned herein, DEFENDANTS, and each of them, were the agents,
28 representatives, employees, successors, assigns, parents, subsidiaries, and/or affiliates, each of the

1 other, and at all times pertinent hereto were acting within the course and scope of their authority as
2 such agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates.
3 PLAINTIFF also alleges that DEFENDANTS were, at all times relevant hereto, the alter egos of
4 each other. Wherever reference is made to DEFENDANTS herein, it is intended to include all of
5 the named DEFENDANTS as well as the DOE defendants. Each of the fictitiously named DOE
6 defendants is responsible for the occurrences herein alleged and proximately caused PLAINTIFF
7 damages as well as damages of members of the PLAINTIFF CLASS (described below).

8 CLASS ACTION ALLEGATIONS

9 13. PLAINTIFF brings this action on behalf of himself and all others similarly situated as
10 a class action pursuant to California Code of Civil Procedure section 382. The class that
11 PLAINTIFF seeks to represent (“PLAINTIFF CLASS”) is composed and defined as follows:
12 **All California persons who are or have been non-exempt employees of DEFENDANTS since**
13 **four (4) years prior to the filing of the initial Complaint until the entry of final judgment in**
14 **this action (the “ CLASS PERIOD”).**

15 14. There exists a well-defined community of interests among the PLAINTIFF CLASS
16 with respect to the claims asserted herein, and the PLAINTIFF CLASS is readily ascertainable for
17 the following reasons:

18 a. Numerosity and Ascertainability: The members of the class are so numerous that
19 joinder of all members would be unfeasible and not practicable. While PLAINTIFF does not know
20 the exact number and identity of all Class members, PLAINTIFF alleges, on information and belief,
21 that the members of the PLAINTIFF CLASS exceed one hundred (100) persons. PLAINTIFF
22 alleges, on information and belief, that the identity of such membership is readily ascertainable via
23 inspection of the personnel records and other documents maintained by DEFENDANTS.

24 b. Typicality: The claims of PLAINTIFF pled as class action claims are typical of the
25 claims of all members of the class as they arise out of the same course of conduct and are predicated
26 on the same violation(s) of the law. PLAINTIFF and all members of the PLAINTIFF CLASS
27 sustained injuries and damages arising out of DEFENDANTS’ common course of conduct in
28 violation of laws as complained of herein.

1 c. Commonality: Common issues of fact and law predominate in this action over any
2 allegedly individual issues. The claims of PLAINTIFF and the PLAINTIFF CLASS members
3 arise from the same events or patterns or practices and are based on the same legal theories.
4 Specially, the following issues of fact and law, without limitation, predominate and make this
5 action superior to individual actions:

6 i. Whether DEFENDANTS denied PLAINTIFF and members of the
7 PLAINTIFF CLASS all of the wages to which they are entitled pursuant to the California Labor
8 Code, California IWC Wage Orders, and all other applicable employment laws and regulations;

9 ii. Whether DEFENDANTS owe PLAINTIFF and members of the
10 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code section 203;

11 iii. Whether DEFENDANTS violated California Labor Code section 204 by
12 failing to pay all wages earned in a timely manner;

13 iv. Whether DEFENDANTS have failed to properly provide accurate itemized
14 wage statements as well as keep accurate records as required by California Labor Code section 226
15 and the applicable Industrial Welfare Commission's ("IWC") Wage Order;

16 v. Whether DEFENDANTS engaged in unfair business practices under section
17 17200, *et. seq* of the California Business and Professions Code;

18 vi. The effect upon and the extent of damages suffered by PLAINTIFF and
19 members of the PLAINTIFF CLASS and the appropriate amount of compensation.

20 d. Adequacy: PLAINTIFF and the PLAINTIFF CLASS all worked for
21 DEFENDANTS, share the same interests, and were subjected to DEFENDANTS' unlawful policy
22 and practice of failing to pay for all time worked, including but not limited to on-call time, and
23 failing to adequately compensate employees for all time worked. PLAINTIFF and members of the
24 PLAINTIFF CLASS do not have any conflicts of interest with other members such that it would
25 interfere with the prosecution of this case. Given the significance of the deprivation of their rights,
26 PLAINTIFF will prosecute this action vicariously on behalf of the PLAINTIFF CLASS. He has
27 retained competent and experienced legal counsel who specialize in employment, wage and hour,
28 and class action litigation to represent him and the proposed PLAINTIFF CLASS;

1 e. Superiority of Class Action: The disposition of PLAINTIFF and the proposed
2 PLAINTIFF CLASS members' claims in a class action will provide substantial benefits to both the
3 parties and the Court. The nature of this action and the nature of the laws available to the
4 PLAINTIFF CLASS make use of the class action format a particularly efficient and appropriate
5 procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a corporate
6 employer and a large number of individual employees possessing claims with common issues of
7 law and fact. If each employee were required to file an individual lawsuit, the corporate defendant
8 would necessarily gain an unconscionable advantage since each defendant would be able to exploit
9 and overwhelm the limited resources of each individual plaintiff with its vastly superior financial
10 and legal resources. Requiring each class member to pursue an individual remedy would also
11 discourage the assertion of lawful claims by employees who would be disinclined to pursue an
12 action against their present and/or former employer for an appreciable and justifiable fear of
13 retaliation and permanent damage to their careers at present and/or subsequent employment. Proof
14 of a common business practice or factual pattern, of which the named PLAINTIFF experienced, is
15 representative of the class mentioned herein and will establish the right of each of the members of
16 the class to recovery on the claims alleged herein.

17 The prosecution of separate actions by the individual class members, even if possible,
18 would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications with respect
19 to the individual class members against the defendants herein; and/or (b) legal determinations with
20 respect to individual class members which would, as a practical matter, be dispositive of the other
21 class members' claims who are not parties to the adjudications and/or would substantially impair
22 or impede the ability of class members to protect their interests. Further, the claims of the
23 individual members of the class are not sufficiently large to warrant vigorous individual
24 prosecution considering all of the concomitant costs and expenses attending thereto.

25 15. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the
26 management of this action that would preclude its maintenance as a class action.

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FACTS COMMON TO ALL CAUSES OF ACTION

16. PLAINTIFF and members of the PLAINTIFF CLASS are current or former non-exempt employees of DEFENDANTS. PLAINTIFF and members of the PLAINTIFF CLASS have been subjected to a variety of wage and hour violations during their employment with DEFENDANTS.

17. Throughout their employment with DEFENDANTS, PLAINTIFF and members of the PLAINTIFF CLASS are expected to work on call shifts for DEFENDANTS without receiving payment for all times they waited to be called in, as required by law. As a result, PLAINTIFF and members of the PLAINTIFF CLASS did not receive all wages owed to them by DEFENDANTS.

18. DEFENDANTS furthermore did not pay for all wages due, as the paychecks that PLAINTIFF and members of the PLAINTIFF CLASS were provided with did not account for all wages earned.

19. DEFENDANTS also provided inaccurate and incomplete wage statements to PLAINTIFF and members of the PLAINTIFF CLASS. The wage statements are inaccurate with respect to the actual hours worked by employees, the gross wages earned, all applicable hourly rates in effect and the number of hours worked at said hourly rates, the net wages earned, among other deficiencies. The inaccurate wage statements create an actual injury, including making it more difficult for PLAINTIFF and members of the PLAINTIFF CLASS to determine what compensation they are owed but were not paid. Overall, DEFENDANTS' itemized statements to PLAINTIFF and members of the PLAINTIFF CLASS make it appear as if they have been paid for all hours worked when, in fact, they were not paid for all hours worked, as explained above.

20. The aforementioned acts constitute unfair and unlawful practices as defined by law pursuant to California Business and Professions Code section 17200, et seq. By virtue of this action, PLAINTIFFS seek to restore all wages to PLAINTIFF and members of the PLAINTIFF CLASS that DEFENDANTS wrongfully took or withheld.

21. DEFENDANTS' violations of the law were willful and done according to DEFENDANTS' established policies and procedures applicable to PLAINTIFF and all members of the PLAINTIFF CLASS.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 **(CALIFORNIA LABOR CODE §§1182.12, 1194, 1194.2, 1197)**

4 (By PLAINTIFF in his individual capacity and in his capacity as representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 22. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 23. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law
9 is unlawful. An employer violates the minimum wage statute even if the average rate for paid and
10 unpaid hours exceeded the minimum wage.

11 24. At all relevant times, DEFENDANTS failed and refused to pay PLAINTIFF and
12 members of the PLAINTIFF CLASS the legal minimum wage in the State of California, as set
13 forth in Labor Code §1182.12. Under California law, PLAINTIFF and members of the PLAINTIFF
14 CLASS are entitled to at least the minimum wage for every hour worked.

15 25. DEFENDANTS' failure to pay the legal minimum wage to PLAINTIFF and members
16 of the PLAINTIFF CLASS as alleged herein is unlawful and creates an entitlement, pursuant to
17 Labor Code §1197, to recovery by PLAINTIFF and members of the PLAINTIFF CLASS in a civil
18 action for the unpaid balance of the full amount of the unpaid wages owed, including interest
19 thereon.

20 26. Pursuant to Labor Code §1194, PLAINTIFF and members of the PLAINTIFF CLASS
21 request that the court award reasonable attorneys' fees and costs incurred by PLAINTIFF and
22 members of the PLAINTIFF CLASS in this action.

23 27. In addition, pursuant to Labor Code §1194.2, PLAINTIFF and members of the
24 PLAINTIFF CLASS are entitled to recover liquidated damages in an amount equal to the minimum
25 wages unlawfully unpaid in the amounts set forth above, and interest thereon.

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1 **SECOND CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(CALIFORNIA LABOR CODE §§ 201, 202 and 203)**

4 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 28. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 29. Pursuant to California Labor Code section 201, if an employer discharges an employee,
9 the wages earned and unpaid at the time of the discharge are due and payable immediately.
10 Pursuant to California Labor Code section 202, if an employee quits his or her employment, the
11 wages earned and unpaid at the time of the discharge are due and payable within seventy-two (72)
12 hours of the resignation. Pursuant to California Labor Code section 203, if an employer willfully
13 fails to pay compensation upon discharge, then the employer is liable for waiting time penalties in
14 the form of compensation of up to thirty (30) workdays.

15 30. To this day, neither PLAINTIFF nor members of the PLAINTIFF CLASS have
16 received all the wages and other compensation they rightfully earned.

17 31. DEFENDANTS, and each of them, willfully refused and continue to refuse to timely
18 pay PLAINTIFF and members of the PLAINTIFF CLASS all wages earned in a timely manner, as
19 required by California Labor Code section 203. PLAINTIFF therefore requests restitution and
20 penalties as provided by California Labor Code section 203.

21 32. At all times, PLAINTIFF and members of the PLAINTIFF CLASS have been ready,
22 willing, and available to accept payment of these monies.

23 33. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to compensation for
24 all forms of wages earned, including, but not limited to, sums for unlawful deductions from
25 compensation and additional wages, but to date have not received such compensation therefore
26 entitling PLAINTIFF and the class to penalties under California Labor Code section 203.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD**

3 **(CALIFORNIA LABOR CODE SECTION 204)**

4 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 34. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 35. During the CLASS PERIOD, Labor Code section 204 applied to DEFENDANTS'
9 employment of PLAINTIFF and the PLAINTIFF CLASS. At all relevant times, Labor Code
10 section 204 provided that all wages earned by any employee, such as PLAINTIFF and members of
11 the PLAINTIFF CLASS, in any employment between the 1st and 15th days, inclusive, of any
12 calendar month, other than those wages due upon termination of an employee, are due and payable
13 between the 16th and 26th day of the month during which the work was performed. Furthermore,
14 at all times relevant hereto, Labor Code section 204 provided that all wages earned by any
15 employee, such as PLAINTIFF and members of the PLAINTIFF CLASS, in any employment
16 between the 16th and the last day, inclusive, of any calendar month, other than those wages due
17 upon termination of an employee, are due and payable between the 1st and 10th day of the
18 following month.

19 36. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members
20 of the PLAINTIFF CLASS wages for all hours worked.

21 37. During the CLASS PERIOD, DEFENDANTS failed to pay PLAINTIFF and members
22 of the PLAINTIFF CLASS for all wages earned, and therefore violated Labor Code section 204.
23 Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover all
24 damages, penalties, and other remedies available for violation of Labor Code section 204.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS**

3 **(CALIFORNIA LABOR CODE § 226)**

4 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS)

6 38. PLAINTIFF realleges and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth here.

8 39. California Labor Code section 226(a) and the applicable IWC Wage Order requires
9 that DEFENDANTS keep accurate records and semimonthly or at the time of payment of wages,
10 furnish each of his or her employees, itemize in wage statements, among other things, time records
11 showing when an employee ends and begins, meal periods, split shift intervals and total daily hours
12 worked shall also be recorded, when a piece rate or incentive plan is in operation, piece rates or an
13 explanation of the incentive plan formula shall be provided to the employees, an accurate
14 production record shall be maintained by the employer. Every employer shall also semimonthly
15 or at the time of each payment of wages furnish each employee, an itemized statement showing,
16 among other things all deductions.

17 40. DEFENDANTS knowingly and intentionally failed to comply with California
18 Labor Code section 226(a) and the applicable IWC Wage Order by failing to keep required accurate
19 payroll records and by failing, on each and every wage statement that was provided to PLAINTIFF
20 and members of the PLAINTIFF CLASS, to accurately reflect wage information, in addition to
21 properly and accurately providing all required items of information in their wage statements as
22 required by Labor Code Section 226(a).

23 41. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS
24 knowingly and intentionally provided inaccurate payroll records to PLAINTIFF and members of
25 the PLAINTIFF CLASS. PLAINTIFF and members of the PLAINTIFF CLASS have suffered
26 actual damages as a result of DEFENDANTS' violation of Cal. Labor Code § 226(a). In addition,
27 PLAINTIFF and the PLAINTIFF CLASS have also suffered, and will continue to suffer, actual
28 damages in the form of additional litigation expenses incurred to calculate lost wages. These

1 additional litigation expenses include, but are not limited to, attorney's fees, expert witness fees,
2 and other costs attendant to the calculation of lost wages when such costs would not need to be
3 incurred if DEFENDANTS had provided proper and accurately, itemized wage statements to
4 PLAINTIFF and members of the PLAINTIFF CLASS that complied with California Labor Code
5 section 226(a).

6 42. California Labor Code section 226(e) and (g) provide that an employee suffering
7 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
8 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
9 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation
10 in subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
11 is entitled to an award of costs and reasonable attorney's fees.

12 43. PLAINTIFF and members of the PLAINTIFF CLASS are therefore entitled to
13 recover all amounts for all such wages and expenses and benefits on such wage statements,
14 penalties, interest, attorney's fees, and other court costs and expenses of suit, according to proof at
15 trial. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to recover, in addition
16 to or in lieu of some or all wages and expenses and benefits, nominal, actual and compensatory
17 damages in amounts according to proof at trial.

18 **FIFTH CAUSE OF ACTION**

19 **UNFAIR BUSINESS PRACTICES**

20 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)**

21 (By PLAINTIFF in his individual capacity and in his capacity as a representative of all similarly
22 situated members of the PLAINTIFF CLASS against DEFENDANTS)

23 44. PLAINTIFF realleges and incorporates by reference each and every allegation
24 contained in the foregoing paragraphs as though fully set forth here.

25 45. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged,
26 include DEFENDANTS' failure and refusal to pay all wages earned by PLAINTIFF and the
27 PLAINTIFF CLASS pursuant to DEFENDANTS' illegal pay practices described above. The
28 aforementioned violations constitute unfair business practices in violation of the Unfair

1 Competition Law, California Business and Professions Code Section 17200, et seq.

2 46. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have
3 reaped unfair benefits and illegal profits at the expense of PLAINTIFF, the PLAINTIFF CLASS,
4 and members of the public. DEFENDANTS should be compelled to restore such monies to
5 PLAINTIFF and the PLAINTIFF CLASS.

6 47. DEFENDANTS' unfair business practices entitle PLAINTIFF and the PLAINTIFF
7 CLASS to seek preliminary and permanent injunctive relief, including but not limited to, orders
8 that DEFENDANTS account for and restore to PLAINTIFF and the PLAINTIFF CLASS the
9 compensation unlawfully withheld from them. PLAINTIFF and the PLAINTIFF CLASS are also
10 entitled to attorney's fees and costs, as permitted by Labor Code Sections 1194 and 1194.2.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF and the PLAINTIFF CLASS pray judgment as follows:

13 1. That the Court determine that Causes of Action 1 through 5 may be maintained as a
14 class action.

15 2. For injunctive relief to stop DEFENDANTS' illegal practices described above,
16 including, but not limited to, the payment of wages, inaccurately itemized and improper wage
17 statements, failure to timely pay wages at the legally required times, and other practices;

18 3. For general and compensatory damages, according to proof;

19 4. For restitution of all monies due to PLAINTIFF and the PLAINTIFF CLASS;

20 5. For statutory penalties as provided by law;

21 6. For penalties pursuant to California Labor Code and all other applicable Labor Code
22 and/or Employment Laws and Regulations;

23 7. For reasonable attorneys' fees as provided by law and under the statutes mentioned
24 throughout this complaint;

25 8. For interest accrued to date;

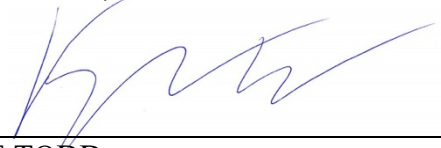
26 9. For costs of the suit incurred herein;

27 10. For such other and further relief that the Court may deem just and proper.

28 ///

1 Dated: August 20, 2021

KYLE TODD, P.C.

2
3 By: 

4 KYLE TODD

ALFREDO NAVA

PETER DAFTER

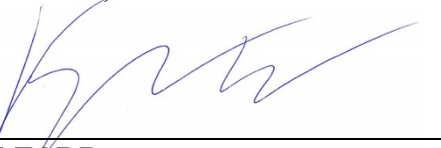
Attorneys for Plaintiff BYRON CREAMER
individually, and on behalf of all others similarly
situated

8
9 **DEMAND FOR JURY TRIAL**

10 PLAINTIFF and members of the PLAINTIFF CLASS demand a trial by jury on all issues
so triable.

11
12 Dated: August 20, 2021

KYLE TODD, P.C.

13
14 By: 

15 KYLE TODD

ALFREDO NAVA

PETER DAFTER

Attorneys for Plaintiff BYRON CREAMER
individually, and on behalf of all others similarly
situated

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)

Kyle Todd (State Bar No. 286370)

KYLE TODD, P.C.

611 Wilshire Blvd., Suite 315

Los Angeles, CA 90017

TELEPHONE NO.: (323) 208-9171

FAX NO. (Optional):

ATTORNEY FOR (Name): PLAINTIFF BYRON CREAMER

FOR COURT USE ONLY

Madera Superior Court
Civil Division

AUG 20 2021

BY RECEIVED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MADERA

STREET ADDRESS: 200 South "G" Street

MAILING ADDRESS: 200 South "G" Street

CITY AND ZIP CODE: Madera 93637

BRANCH NAME: Main Courthouse

CASE NAME:

Byron Creamer v. Rite Aid Corporation, et al

CIVIL CASE COVER SHEET



Unlimited

(Amount

demanded

exceeds \$25,000)



Limited

(Amount

demanded is

\$25,000)

Complex Case Designation



Counter



Joinder

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

JUDGE:

DEPT.:

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

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

Auto Tort



Auto (22)



Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort

Asbestos (04)



Product liability (24)



Medical malpractice (45)



Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort



Business tort/unfair business practice (07)



Civil rights (08)



Defamation (13)



Fraud (16)



Intellectual property (19)



Professional negligence (25)



Other non-PI/PD/WD tort (35)

Employment



Wrongful termination (36)



Other employment (15)

Contract



Breach of contract/warranty (06)



Rule 3 740 collections (09)



Other collections (09)



Insurance coverage (18)



Other contract (37)

Real Property



Eminent domain/Inverse



condemnation (14)



Wrongful eviction (33)



Other real property (26)

Unlawful Detainer



Commercial (31)



Residential (32)



Drugs (38)

Judicial Review



Asset forfeiture (05)



Petition re: arbitration award (11)



Writ of mandate (02)



Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)



Construction defect (10)



Mass tort (40)



Securities litigation (28)



Environmental/Toxic tort (30)

Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment



Enforcement of judgment (20)

Miscellaneous Civil Complaint



RICO (27)



Other complaint (not specified above) (42)

Miscellaneous Civil Petition



Partnership and corporate governance (21)



Other petition (not specified above) (43)

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:a. ☐ Large number of separately represented partiesd. ☒ Large number of witnessesb. ☒ Extensive motion practice raising difficult or novel
issues that will be time-consuming to resolvee. ☐ Coordination with related actions pending in one or more
courts in other counties, states, or countries, or in a federal
courtc. ☒ Substantial amount of documentary evidencef. ☐ Substantial postjudgment judicial supervision3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): (5): fail. to pay min., wait. time penal., unfair bus. practices, wage statements, Section 204

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

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 20, 2021

Kyle Todd

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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

Page 1 of 2

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

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

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

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition