

EXHIBIT 1

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STEVEN KELLER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

STEVEN KELLER, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

CVS PHARMACY, INC.; GARFIELD
BEACH CVS, L.L.C.; CVS HEALTH
CORPORATION; and DOES 1 through
25, inclusive,

Defendants.

Case No.: 2:23-cv-00515-SVW (MAAx)
Assigned to the Hon. Stephen V. Wilson

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
ENFORCEMENT ACTION UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA
LABOR CODE SECTION 2698 ET
SEQ.**

- (1) Violation of Cal. Labor Code §§
1194, 1197 and 1197.1 (Unpaid
Minimum Wages)**
- (2) Violation of Cal. Labor Code §§
510 and 1198 (Unpaid
Overtime)**
- (3) Violation of Cal. Labor Code §§
226.7 and 512(a) (Unpaid Meal
Period Premiums)**
- (4) Violation of Cal. Labor Code §**

- (5) Violation of Cal. Labor Code §§ 204 and 210 (Wages Not Timely Paid During Employment)**
- (6) Violation of Cal. Labor Codes §§ 551, 552 and 852 (Failure to Provide One Day's Rest In Seven)**
- (7) Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements)**
- (8) Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid)**
- (9) Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses)**
- (10) Violation of Cal. Business & Professions Code § 17200, *et seq.***
- (11) Violation of Cal. Labor Code §§ 2698, *et seq.* (Private Attorneys General Act)**

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND PAGA

COMES NOW, Plaintiff STEVEN KELLER (“Plaintiff”), individually and on behalf of all members of the general public similarly situated, and on behalf of aggrieved employees, and alleges as follows against Defendants CVS PHARMACY, INC.; GARFIELD BEACH CVS, L.L.C.; CVS HEALTH CORPORATION; LONGS DRUG STORES CALIFORNIA, L.L.C.; and DOES 1 through 25, inclusive (“Defendants”):

JURISDICTION AND VENUE

1. This is a class and PAGA representative action brought pursuant to California Code of Civil Procedure § 382.

2. The monetary damages, restitution, statutory penalties, and other applicable legal and equitable relief sought by Plaintiff exceed the minimal jurisdiction limits of this Court and will be established according to proof at trial.

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10. The statutes under which this action is brought do not specify any other basis for jurisdiction.

4. This Court has jurisdiction over all Defendants because, upon information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Further, no federal question is at issue because the claims asserted herein are based solely on California law.

5. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, employ individuals, and/or transact business in the State of California, County of Los Angeles. The majority of the acts, events, and violations alleged herein relating to Plaintiff occurred in the State of California, County of Los Angeles.

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1 PHARMACY, INC.; GARFIELD BEACH CVS, L.L.C.; CVS HEALTH
2 CORPORATION; LONGS DRUG STORES CALIFORNIA, L.L.C.; and/or DOES 1
3 through 25, each acting as the agent, employee, alter ego, and/or joint venturer of, or
4 working in concert with, each of the other co-Defendants and within the course and
5 scope of such agency, employment, joint venture, or concerted activity with legal
6 authority to act on the others' behalf. The acts of any and all Defendants represent and
7 were in accordance with Defendants' official policy.

8 14. At all relevant times, Defendants were the employers of Plaintiff within
9 the meaning of all applicable state laws and statutes. Defendants directly or indirectly
10 controlled or affected the working conditions, wages, working hours, and conditions of
11 employment of Plaintiff so as to make each of said Defendants employers and
12 employers liable under the statutory provisions set forth herein.

13 15. Defendants had the authority to hire and terminate Plaintiff and other
14 Class Members and aggrieved employees, to set work rules and conditions governing
15 Plaintiff and other Class Members and aggrieved employees' employment, and to
16 supervise their daily employment activities.

17 16. Defendants exercised sufficient authority over the terms and conditions
18 of Plaintiff and other Class Members and aggrieved employees' employment for them
19 to be joint employers of Plaintiff and other Class Members and aggrieved employees.

20 17. Defendants directly hired and paid wages and benefits to Plaintiff and
21 other Class Members and aggrieved employees.

22 18. Defendants continue to employ hourly paid and/or non-exempt employees
23 within the State of California.

24 19. At all relevant times, Defendants, and each of them, ratified each and every
25 act or omission complained of herein. At all relevant times, Defendants, and each of
26 them, aided and abetted the acts and omissions of each and all the other Defendants in
27 proximately causing the damages herein alleged.

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1 20. Plaintiff is informed and believes, and thereon alleges, that each of said
2 Defendants is in some manner intentionally, negligently, or otherwise responsible for
3 the acts, omissions, occurrences, and transactions alleged herein.

4 **GENERAL ALLEGATIONS**

5 21. Defendants, jointly and severally, employed Plaintiff at various locations
6 since Plaintiff's hire in or around 1991 until Plaintiff's termination on or about
7 December 7, 2022. For many years, Plaintiff has held a "manager" title at Defendants'
8 Westlake Village, California location, and performed duties in numerous counties,
9 including Los Angeles County, Ventura County, and Orange County, where at least
10 some of Defendants' corporate offices were located in La Habra, California.

11 22. For many of these years, Plaintiff was misclassified as exempt because
12 Plaintiff was employed under the "manager" title. However, Plaintiff's day-to-day
13 duties were less than 50% managerial in nature, and more than 50% non-managerial in
14 nature for years. Thus, Plaintiff should have been employed as a non-exempt, hourly-
15 paid employee throughout his employment.

16 23. Defendants are aware of this misclassification and began to pay Plaintiff
17 at least some of the Class Members and aggrieved employees on an hourly, non-exempt
18 basis starting on or about September 18, 2022. Defendants continued to violate
19 California law as it applied to the wages of Plaintiff and other Class Members and
20 aggrieved employees, inclusive of managers who were misclassified and paid salary
21 through the end of their employment with Defendants, managers who were
22 misclassified and paid salary until a certain point, and then paid as non-exempt, hourly
23 employees (as was Plaintiff), and managers who were always paid as hourly, non-
24 exempt employees.

25 24. Plaintiff is informed and believes, and thereon alleges that Defendants
26 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
27 employees. As set forth in more detail below, this pattern and practice of wage abuse
28 involved, *inter alia*:

1 (1) misclassifying Plaintiff and the Class Members and aggrieved employees
2 such that they were not properly paid for all hours worked, all overtime they
3 should have accrued, all meal or rest periods accrued, etc.;

4 (2) requiring Plaintiff and the Class Members and aggrieved employees to work
5 off the clock without compensation while Plaintiff and the Class Members and
6 aggrieved employees were misclassified as exempt, and continuing to do so after
7 Plaintiff and the Class Members and aggrieved employees were reclassified as
8 hourly, non-exempt employees;

9 (3) failing to properly pay Plaintiff and the Class Members and aggrieved
10 employees overtime wages and minimum wages for all hours worked while
11 Plaintiff and the Class Members and aggrieved employees were misclassified as
12 exempt, and after they were reclassified as hourly, non-exempt employees;

13 (4) failing to provide Plaintiff and the Class Members and aggrieved employees
14 all meal and rest breaks to which they were entitled while Plaintiff and the Class
15 Members and aggrieved employees were misclassified as exempt, and after they
16 were reclassified as hourly, non-exempt employees;

17 (5) failing to timely pay wages during employment while Plaintiff and the Class
18 Members and aggrieved employees were misclassified as exempt, and after they
19 were reclassified as hourly, non-exempt employees;

20 (6) failing to provide Plaintiff and the Class Members and aggrieved employees
21 with one day's rest in seven, or alternatively pay at the premium rates for such
22 failure, while Plaintiff and the Class Members and aggrieved employees were
23 misclassified as exempt, and after they were reclassified as hourly, non-exempt
24 employees;

25 (7) failing to timely pay wages to Plaintiff and the Class Members and aggrieved
26 employees upon termination of employment while Plaintiff and the Class
27 Members and aggrieved employees were misclassified as exempt, and after they
28 were reclassified as hourly, non-exempt employees;

1 (8) failing to provide accurate wage statements while Plaintiff and the Class
2 Members and aggrieved employees were misclassified as exempt, and after they
3 were reclassified as hourly, non-exempt employees;

4 (9) failing to reimburse necessary business-related expenses while Plaintiff and
5 the Class Members and aggrieved employees were misclassified as exempt, and
6 after they were reclassified as hourly, non-exempt employees; and

7 (10) failing to adhere to other related protections afforded by the California Labor
8 Code and applicable Industrial Welfare Commission Wage Order.

9 25. Plaintiff is informed and believes, and based thereon alleges, that
10 Defendants knew or should have known that pursuant to California Labor Code §§
11 1194, 1197, 1197.1, and the applicable IWC Wage Order, that Plaintiff and other Class
12 Members and aggrieved employees were entitled to receive at least minimum wages for
13 all hours worked and that they were not receiving minimum wages for all hours worked,
14 and that further, Plaintiff and other Class Members and aggrieved employees should
15 have been classified as hourly, non-exempt employees during the liability periods
16 covered in this lawsuit.

17 26. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants implemented time rounding practices that were not neutral and that said
19 practices were designed to consistently round time in Defendants' favor, ensuring the
20 underpayment of wages, including minimum and overtime wages, to Plaintiff and other
21 Class Members and aggrieved employees. Defendants also implemented policies that
22 prohibited Plaintiff and other Class Members and aggrieved employees from accurately
23 recording the actual time worked, resulting in a failure to pay Plaintiff and other Class
24 Members and aggrieved employees all wages owed.

25 27. Further, Defendants misclassified Plaintiff and other Class Members and
26 aggrieved employees in "manager" titles, or else titles including "supervisor", "lead",
27 and "assistant" as it applied to titles suggesting managerial or supervisory authority,
28 knowing that Plaintiff and other Class Members and aggrieved employees worked less

1 than 51% in a managerial role. Having been misclassified, Defendants did not pay
2 Plaintiff and other Class Members and aggrieved employees for off-the-clock, hours
3 worked during their shifts, overtime pay, proper meal and rest periods, all wages that
4 needed to be timely paid per Cal. Lab. Code § 204, all in violation of California law.

5 28. Plaintiff and other Class Members and aggrieved employees worked over
6 eight (8) hours in a day, and/or forty (40) hours in a week during their employment
7 with Defendants.

8 29. Plaintiff is informed and believes, and based thereon alleges, that
9 Defendants knew or should have known that pursuant to California Labor Code §§ 510
10 and 1198, and the applicable IWC Wage Order, Plaintiff and other Class Members and
11 aggrieved employees were entitled to receive certain wages for overtime compensation
12 and that they were not receiving certain wages for overtime compensation.

13 30. Plaintiff is informed and believes, and based thereon alleges, that
14 Defendants knew or should have known that pursuant to California Labor Code §§
15 226.7 and 512, and the applicable IWC Wage Order, Plaintiff and other Class Members
16 and aggrieved employees were entitled to receive a meal period or payment of one (1)
17 additional hour of pay at their regular rate of compensation when they were not provided
18 with an uninterrupted meal period of no less than thirty (30) minutes for a work period
19 of more than five hours per day and that Plaintiff and other Class Members and
20 aggrieved employees were entitled to receive a second meal period or payment of one
21 (1) additional hour of pay at their regular rate of compensation when they were not
22 provided with an uninterrupted second meal period of no less than thirty (30) minutes
23 for a work period of more than ten (10) hours per day. However, Plaintiff and other
24 Class Members and aggrieved employees did not receive all meal periods or payment
25 of one (1) additional hour of pay at their regular rate of compensation when a meal
26 period was missed, shortened, taken late, and/or interrupted.

27 31. Plaintiff is informed and believes, and based thereon alleges, that
28 Defendants knew or should have known that pursuant to California Labor Code § 226.7

1 and the applicable IWC Wage Order, Plaintiff and other Class Members and aggrieved
2 employees were entitled to receive all rest periods or payment of one (1) additional hour
3 of pay at their regular rate of compensation when they were not provided with an
4 uninterrupted rest period of no less than ten (10) minutes for every four hours, or major
5 fraction thereof, worked. However, Plaintiff and other Class Members and aggrieved
6 employees did not receive all rest periods or payment of one (1) additional hour of pay
7 at their regular rate of compensation when a rest period was missed, shortened, taken
8 late, and/or interrupted.

9 32. Plaintiff is informed and believes, and based thereon alleges, that
10 Defendants knew or should have known that they were required to timely pay all wages
11 owed to Plaintiff and other Class Members and aggrieved employees at the correct rate
12 of pay. Because Plaintiff and other Class Members and aggrieved employees were
13 misclassified, they were not properly paid minimum wage, overtime, premiums for
14 missed meal or rest periods, bonuses or proper remuneration for said bonuses properly,
15 etc.

16 33. Throughout the time period involved in this case, Defendants regularly
17 failed to pay Plaintiff and other Class Members and aggrieved employees all wages
18 within any time permissible under California law, including, *inter alia*, California Labor
19 Code § 204. Defendants knew or should have known that Plaintiff and other Class
20 Members and aggrieved employees were entitled to receive all wages owed to them
21 during their employment. Plaintiff and other Class Members and aggrieved employees
22 did not receive payment of all wages, including overtime compensation, minimum
23 wages, and meal and rest period premiums.

24 34. Throughout the time period involved in this case, Defendants regularly
25 failed to provide Plaintiff and other Class Members and aggrieved employees with one
26 day's rest in seven in violation of California Labor Codes §§ 551, 552, and 852. Further,
27 when Plaintiff and other Class Members and aggrieved employees worked on the
28 seventh day of work, they were not properly paid one-and-a-half times or twice their

1 regular rate of pay, as appropriate. When Plaintiff and the Class Members and aggrieved
2 employees were misclassified, they were never paid appropriately for the seventh day
3 of work, as proscribed by Cal. Lab. Codes §§ 551, 552, and 852. Further, even when
4 classified or reclassified as hourly non-exempt employees, Plaintiff and the Class
5 Members and aggrieved employees were still required to work these hours in violation
6 of the aforementioned Labor Code sections, and were not paid one-and-a-half times
7 their regular hourly rate of pay or double time, as appropriate based on the hours they
8 worked.

9 35. Plaintiff is informed and believes, and based thereon alleges, that
10 Defendants knew or should have known that they were required to provide Plaintiff
11 and other Class Members and aggrieved employees with complete and accurate
12 itemized wage statements pursuant to California Labor Code § 226(a) but failed to do
13 so.

14 36. Throughout the time period involved in this case, Defendants regularly
15 failed to keep complete or accurate payroll records for Plaintiff and other Class
16 Members and aggrieved employees. Defendants knew or should have known that
17 Defendants were required to keep complete and accurate payroll records for Plaintiff
18 and other Class Members and aggrieved employees in accordance with California law,
19 but, in fact, did not keep complete and accurate payroll records.

20 37. Throughout the time period involved in this case, Defendants regularly
21 failed to maintain accurate records relating to Plaintiff's and other Class Members and
22 aggrieved employees' work periods, meal periods, total daily hours, hours per pay
23 period, and applicable pay rates.

24 38. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants knew or should have known that Plaintiff and other Class Members and
26 aggrieved employees were entitled to receive all wages upon termination of
27 employment, including, without limitation, overtime wages, minimum wages, meal
28 period premium wages, and rest period premium wages, and that they did not receive

1 payment of all wages upon termination of employment in violation of California Labor
2 Code §§ 201 and 202.

3 39. Plaintiff is informed and believes, and based thereon alleges, that
4 Defendants knew or should have known pursuant to California Labor Code §§ 2800 and
5 2802 that Plaintiff and other Class Members and aggrieved employees were entitled to
6 reimbursement for necessary business-related expenses, but, in fact, did not reimburse
7 them for necessary business-related expenses.

8 40. Throughout the time period involved in this case, Defendants knew or
9 should have known that they had a duty to compensate Plaintiff and the class and
10 aggrieved employees pursuant to California law. Defendants had the financial ability to
11 pay such compensation, but willfully, knowingly, and intentionally failed to do so, in
12 order to increase Defendants' profits.

13 41. Throughout the time period involved in this case, Defendants knew or
14 should have known that they had a duty to comply with the laws of the State of
15 California and have been in violation of California Labor Codes §§ 2898 *et seq.* for
16 their failures to (1) properly record all aggrieved employees' time; (2) pay all aggrieved
17 employees their wages at the proper rate of pay; (3) provide all aggrieved employees
18 their meal/rest periods in compliance with California law or provide aggrieved
19 employees with premiums for said failures for meal/rest periods missed or otherwise
20 out of compliance with California law; (4) timely pay all aggrieved employees wages
21 owed during their employment; (5) properly provide all aggrieved employees with one
22 day's rest in seven as required by Cal. Lab. Codes §§551, 552, and 852; (6) provide
23 accurate wage statements to aggrieved employees; (7) maintain accurate records to
24 aggrieved employees pursuant to the California Labor Code; (8) properly reimburse
25 aggrieved employees for all expenditures made on behalf of aggrieved employees for
26 Defendants' business purposes; and (9) pay aggrieved employees all wages due on
27 separation of employment.

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CLASS ACTION ALLEGATIONS

42. Plaintiff brings this lawsuit as a class action on behalf of himself and all others similarly situated, as members of a proposed class pursuant to California Code of Civil Procedure § 382. The class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements under California Code of Civil Procedure § 382.

43. The proposed class is defined as follows:

All current and former hourly-paid and/or non-exempt, as well as those misclassified as salary and/or exempt, employees with job titles that included the words “manager,” “lead,” “supervisor,” and/or “assistant” who worked for Defendants in the State of California at any time during the period from four years prior to the date of the filing of this Complaint until final judgment.

44. Plaintiff reserves the right to establish subclasses as appropriate.

45. There is a well-defined community of interest in the litigation and the Class is easily ascertainable.

46. The Class is so numerous that the individual joinder of all its members is impracticable. While the exact number and identities of Class Members and aggrieved employees are unknown to Plaintiff at this time, the exact numbers of Class Members and aggrieved employees and their identities can be ascertained through appropriate discovery from records maintained by Defendants and their agents.

47. Common questions of fact and law exist as to all Class Members and aggrieved employees, which predominate over any questions affecting only individual members of the Class. The common legal and factual questions which do not vary from Class Member to Class Member and related aggrieved employees, and which may be determined without reference to the individual circumstances of any Class Member or related aggrieved employee include, but are not limited to, the following:

- i. Whether Defendants misclassified Plaintiff and other Class Members and aggrieved employees;
- ii. Whether Defendants had a policy and practice of failing to pay minimum wages to Plaintiff and other Class Members and aggrieved employees for all hours worked;
- iii. Whether Defendants had a policy and practice of failing to pay overtime wages to Plaintiff and other Class Members and aggrieved employees for all overtime hours worked;
- iv. Whether Defendants had a policy and practice of failing to provide meal periods to Plaintiff and other Class Members and aggrieved employees;
- v. Whether Defendants had a policy and practice of failing to provide rest periods to Plaintiff and other Class Members and aggrieved employees;
- vi. Whether Defendants failed to timely pay their hourly-paid and/or non-exempt employees in the State of California for all hours worked, and for all missed, short, late, and/or interrupted meal periods and rest periods;
- vii. Whether Defendants failed to timely pay all wages due to Plaintiff and other Class Members and aggrieved employees during their employment;
- viii. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- ix. Whether Defendants failed to provide Plaintiff and other Class Members and aggrieved employees with one day's rest in seven;
- x. Whether Defendants paid Plaintiff and other Class Members and aggrieved employees at the appropriate overtime or double time rate when Defendants required Plaintiff or other Class Members and aggrieved employees to work in seven-day blocks without one day's rest, as proscribed by Cal. Lab. Codes §§ 551, 552, and 852;
- xi. Whether Defendants' failure to provide Plaintiff and other Class Members and aggrieved employees with one day's rest in seven was willful;

- xii. Whether Defendants failed to pay all wages due to Plaintiff and other Class Members and aggrieved employees within the required time upon their discharge or resignation;
- xiii. Whether Defendants failed to comply with wage reporting as required by the California Labor Code; including, *inter alia*, § 226;
- xiv. Whether Defendants failed to reimburse Plaintiff and other Class Members and aggrieved employees for necessary business-related expenses and costs;
- xv. Whether Defendants' conduct was willful or reckless;
- xvi. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*;
- xvii. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- xviii. Whether Plaintiff and other Class Members and aggrieved employees are entitled to compensatory damages pursuant to the California Labor Code.

48. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are coincident with and not antagonistic to those of the other Class Members and aggrieved employees Plaintiff seeks to represent. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff intends to prosecute this action vigorously.

49. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual litigation of the claims of all Class Members and aggrieved employees is impracticable. Even if every Class Member and aggrieved employee could afford individual litigation, the court system could not. It would be unduly burdensome on the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments and would magnify the

1 delay and expense to all parties and to the court system resulting from multiple trials of
2 the same complex factual issues. By contrast, the conduct of this action as a class action,
3 with respect to some or all of the issues presented in this Complaint, presents fewer
4 management difficulties, conserves the resources of the parties and of the court system,
5 and protects the rights of each Class Member and aggrieved employee.

6 50. Certification of this lawsuit as a class action will advance public policy
7 objectives. Employers of this great state violate employment and labor laws every
8 day. Current employees are often afraid to assert their rights out of fear of direct or
9 indirect retaliation. However, class actions provide the Class Members and aggrieved
10 employees who are not named in the complaint anonymity that allows for the
11 vindication of their rights.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE §§ 1194, 1197, AND 1197.1**

14 **Failure to Pay Minimum Wage**

15 **(Against All Defendants and DOES 1 – 25)**

16 51. Plaintiff incorporates herein by specific reference, as though fully set forth,
17 the allegations in all preceding paragraphs.

18 52. At all relevant times, California Labor Code §§ 1194, 1197 and 1197.1
19 provide that the minimum wage for employees fixed by the Industrial Welfare
20 Commission is the minimum wage to be paid to employees, and the payment of a wage
21 less than the minimum so fixed is unlawful. Plaintiff and other Class Members and
22 aggrieved employees were not paid the appropriate minimum wage for all of the hours
23 they worked. Plaintiff and other Class Members and aggrieved employees were not paid
24 the minimum wage for work performed beyond their scheduled shifts, and the wages
25 paid to them were not sufficient to compensate them for all hours they worked at a
26 minimum wage rate on a cumulative basis.

27 53. Throughout the relevant time period, Defendants regularly required
28 Plaintiff and other Class Members and aggrieved employees to perform work off-the-

1 clock as Plaintiff and other Class Members and aggrieved employees worked day and
2 night, and often through each day of the week, week in and week out. The off-the-clock
3 work took many forms. When Plaintiff and other Class Members and aggrieved
4 employees were misclassified as exempt, they simply were not paid for many hours
5 worked in a day, despite the fact that Plaintiff and other Class Members and aggrieved
6 employees often worked seven-day work weeks for various routine tasks such as
7 inventorying, stocking, taking calls, or other electronic communications all day and
8 night for routine matters, working through periods that should have been provided for
9 meals or rest, etc.

10 54. Even after Plaintiff and other Class Members and aggrieved employees
11 were reclassified as hourly, non-exempt employees on or about September 18, 2022,
12 Plaintiff and other Class Members and aggrieved employees were routinely required to
13 perform off-the-clock work on a regular basis and at all hours, as described, *supra*.

14 55. In addition, even when applying an hourly, non-exempt system of payment
15 to Plaintiff and other Class Members and aggrieved employees, Defendants utilized
16 time rounding practices that resulted in the systematic underpayment of wages
17 (including minimum wages, straight time wages, and overtime wages) as it related to
18 Plaintiff and other Class Members and aggrieved employees.

19 56. Defendants also failed to accurately record the actual time worked by
20 Plaintiff and other Class Members and aggrieved employees. Finally, Defendants failed
21 to pay Plaintiff and other Class Members and aggrieved employees for all hours worked
22 based on regular rates of pay correctly calculated to include all applicable remuneration,
23 including non-discretionary commissions, non-discretionary bonuses, and non-
24 discretionary performance pay.

25 57. This is particularly the case for Plaintiff and other Class Members and
26 aggrieved employees who were improperly misclassified and paid as salaried
27 employees, and were not paid as hourly non-exempt employees ever, or until September
28 18, 2022, or later. Even after Defendants changed the classification of Plaintiff and other

1 Class Members and aggrieved employees to that of hourly non-exempt employees, they
2 were still required to do off-the-clock work. Defendants failed to pay Plaintiff other
3 Class Members and aggrieved employees for all work performed at the regular rate for
4 all manner of tasks performed on a regular basis, as described, *supra*.

5 58. Defendants' failure to pay Plaintiff and other Class Members and
6 aggrieved employees the minimum wage as required violates California Labor Code §§
7 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff and other Class Members
8 and aggrieved employees are entitled to recover the unpaid balance of their minimum
9 wage compensation, as well as interest, costs, and attorneys' fees.

10 59. Pursuant to California Labor Code § 1194.2, Plaintiff and other Class
11 Members and aggrieved employees are entitled to recover liquidated damages in an
12 amount equal to the wages unlawfully unpaid and interest thereon.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 510 AND 1198**

15 **Unpaid Overtime**

16 **(Against All Defendants and DOES 1 – 25)**

17 60. Plaintiff incorporates herein by specific reference, as though fully set forth,
18 the allegations in all preceding paragraphs.

19 61. California Labor Code § 1198 and the applicable Industrial Welfare
20 Commission ("IWC") Wage Order provide that it is unlawful to employ persons without
21 compensating them at a rate of pay either time-and-one-half or two-times that person's
22 regular rate of pay, depending on the number of hours worked by the person on a daily
23 or weekly basis.

24 62. Specifically, the applicable IWC Wage Order provides that Defendants
25 were required to pay Plaintiff and other Class Members and aggrieved employees at the
26 rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or
27 more than forty (40) hours in a workweek.

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1 63. The applicable IWC Wage Order further provides that Defendants were
2 required to pay Plaintiff and other Class Members and aggrieved employees overtime
3 compensation at a rate of two (2) times their regular rate of pay for all hours worked in
4 excess of twelve (12) hours in a day.

5 64. California Labor Code § 510 codifies the right to overtime compensation
6 at one-and-one half times the regular hourly rate for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on
8 the seventh day of work, and to overtime compensation at twice the regular hourly rate
9 for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh day of work.

11 65. During the relevant time period, Plaintiff and other Class Members and
12 aggrieved employees regularly worked in excess of eight (8) hours in a day, in excess
13 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. However,
14 Defendants did not record Plaintiff and other Class Members and aggrieved employees'
15 actual hours worked and intentionally and willfully failed to pay all overtime wages
16 owed to Plaintiff and other Class Members and aggrieved employees.

17 66. Throughout the relevant time period, Defendants regularly required
18 Plaintiff and other Class Members and aggrieved employees to perform work off-the-
19 clock as Plaintiff and the Class Members and aggrieved employees worked day and
20 night, and often through each day of the week, week in and week out. The off-the-clock
21 work took many forms. When Plaintiff and other Class Members and aggrieved
22 employees were misclassified, they simply were not paid for many hours worked in a
23 day, despite that Plaintiff and other Class Members and aggrieved employees often
24 worked seven-day work weeks for various routine tasks such as inventorying, stocking,
25 taking calls or other electronic communications all day and night for routine matters,
26 working through periods that should have been provided for meals or rest, etc.

27 67. Even after Plaintiff and other Class Members and aggrieved employees
28 were reclassified as hourly, non-exempt employees on or about September 18, 2022,

1 Plaintiff and other Class Members and aggrieved employees were routinely required to
2 perform off-the-clock work on a regular basis and at all hours, as described, *supra*.

3 68. In addition, even when applying an hourly, non-exempt system of payment
4 to Plaintiff and other Class Members and aggrieved employees, Defendants utilized
5 time rounding practices that resulted in the systematic underpayment of wages
6 (including minimum wages, straight time wages and overtime wages) as it related to
7 Plaintiff and other Class Members and aggrieved employees.

8 69. Defendants also failed to accurately record the actual time worked by
9 Plaintiff and other Class Members and aggrieved employees. Moreover, the
10 uncompensated work described herein was often performed when Plaintiff and other
11 Class Members and aggrieved employees had already worked eight (8) hours in a day
12 and/or forty (40) hours in week resulting in a failure to pay overtime compensation.

13 70. Finally, Defendants failed to pay overtime to Plaintiff and other Class
14 Members and aggrieved employees for all overtime hours worked based on regular rates
15 of pay correctly calculated to include all applicable remuneration, including non-
16 discretionary commissions, non-discretionary bonuses, and non-discretionary
17 performance pay. This is particularly the case for Plaintiff and other Class Members
18 and aggrieved employees who were improperly misclassified and paid as salaried
19 employees, and were not paid overtime ever, or until September 18, 2022, or later.

20 71. Even after Defendants reclassified Plaintiff and other Class Members and
21 aggrieved employees as hourly non-exempt employees, they were still required to do
22 off-the-clock work. Defendants failed to pay Plaintiff and other Class Members and
23 aggrieved employees for all work performed at the overtime rate for all manner of tasks
24 performed on a regular basis, as described, *supra*.

25 72. Defendants' failure to pay Plaintiff and other Class Members and
26 aggrieved employees as outlined above violates California Labor Code §§ 510 and 1198
27 and is therefore unlawful.

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73. Pursuant to California Labor Code § 1194, Plaintiff and other Class Members and aggrieved employees are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

Failure to Provide Meal Periods

(Against All Defendants and DOES 1 – 25)

74. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

75. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code §§ 226.7 and 512(a) were applicable to Plaintiff and the other Class Members' and aggrieved employees' employment by Defendants.

76. At all relevant times herein set forth, California Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable IWC Order.

77. At all relevant times herein set forth, California Labor Code § 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

78. At all relevant times, California Labor Code § 512(a) further provides that an employer may not require, cause, or permit an employee to work a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

1 79. As misclassified employees with purportedly managerial-styled titles,
2 Plaintiff and other Class Members and aggrieved employees were required to be
3 unofficial “utility players”, fill ins for clerks, cashiers, and other floor people, who
4 routinely were not available in sufficient force because of Defendants’ policies to
5 understaff their workplace locations, and also in specific routine situations where other
6 store employees working with Plaintiff and other Class Members and aggrieved
7 employees were not available for routine duties or tasks.

8 80. Said requirement was a policy and practice that resulted in Plaintiff and
9 other Class Members and aggrieved employees either missing meal periods, or at best,
10 getting brief opportunities to eat or use the restroom, in a manner non-compliant with
11 California law in that said meal periods, when available at all, were late, short,
12 interrupted, and often did not allow Plaintiff or other Class Members and aggrieved
13 employees a meaningful opportunity to leave the premises or otherwise truly be duty
14 free for the meal period.

15 81. During the relevant time period when Plaintiff and other Class Members
16 and aggrieved employees were misclassified and denied proper meal periods, and even
17 during other time periods when Plaintiff or other Class Members and aggrieved
18 employees were changed to an hourly, non-exempt classification, Plaintiff and other
19 Class Members and aggrieved employees who were scheduled to work for a period of
20 time no longer than six (6) hours, and who did not waive their legally-mandated meal
21 periods by mutual consent, were required to work for periods longer than five (5) hours
22 without an uninterrupted meal period of not less than thirty (30) minutes.

23 82. During the relevant time period, Plaintiff and other Class Members and
24 aggrieved employees who were scheduled to work for a period of time in excess of ten
25 (10) hours but no longer than twelve (12) hours, and who did not waive their legally
26 mandated meal periods by mutual consent, were required to work for periods longer
27 than ten (10) hours without an uninterrupted meal period of not less than thirty (30)
28 minutes.

1 83. During the relevant time period, Defendants intentionally and willfully
2 required Plaintiff and other Class Members and aggrieved employees to work during
3 meal periods and failed to compensate Plaintiff and other Class Members and aggrieved
4 employees for work performed during meal periods because Defendants intentionally
5 and willfully misclassified them.

6 84. Even in instances after Plaintiff and other Class Members and aggrieved
7 employees were reclassified as hourly non-exempt, Defendants still intentionally and
8 willfully required Plaintiff and other Class Members and aggrieved employees to work
9 during meal periods and failed to compensate Plaintiff and other Class Members and
10 aggrieved employees for work performed during meal periods.

11 85. As a result, Plaintiff and other Class Members and aggrieved employees
12 worked through meal periods, took late meal periods, took interrupted meal periods, or
13 took short meal periods, if at all. Defendants failed to provide proper meal periods, and
14 any meal periods provided were late, short, interrupted, took place in settings wherein
15 Defendants did not allow Plaintiff or Class Members or aggrieved employees to leave
16 Defendants' premises, or the meal periods were otherwise non-compliant with
17 California law.

18 86. During the relevant time period, Defendants failed to pay Plaintiff and
19 other Class Members and aggrieved employees all meal period premiums due pursuant
20 to California Labor Code § 226.7 and 512. Defendants' conduct violates applicable
21 IWC Wage Order(s), and California Labor Code §§ 226.7 and 512(a).

22 87. Pursuant to the applicable IWC Wage Order and California Labor Code §
23 226.7(b), Plaintiff and the other Class Members and aggrieved employees are entitled
24 to recover from Defendants one additional hour of pay at their regular rate of
25 compensation for each workday that a meal period was not provided.

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FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

Failure to Provide Rest Periods

(Against All Defendants and DOES 1 – 25)

88. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

89. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7 were applicable to Plaintiff and other Class Members and aggrieved employees' employment by Defendants.

90. At all relevant times, California Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

91. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

92. Pursuant to the applicable IWC Wage Order and California Labor Code § 226.7(b), Plaintiff and other Class Members and aggrieved employees were entitled to recover from Defendants one (1) additional hour of pay at their regular hourly rate of compensation for each workday that the rest period was not provided.

93. As employees with "manager" styled titles, Plaintiff and other Class Members and aggrieved employees were required to be unofficial "utility players", fill ins for clerks, cashiers, and other floor people, who routinely were not available in sufficient force because of Defendants' policies to understaff their workplace locations, and also in specific routine situations where other store employees working alongside Plaintiff and other Class Members and aggrieved employees were not available to

1 complete routine tasks. Said requirement was a policy and practice that resulted in
2 Plaintiff and other Class Members and aggrieved employees either missing rest periods,
3 or at best, getting brief opportunities to eat or use the restroom, which was non-
4 compliant with California law in that said rest periods, when available at all, were late,
5 short, interrupted, and routinely did not allow Plaintiff or other Class Members or
6 aggrieved employees a meaningful opportunity to leave the premises or otherwise truly
7 be duty free for the rest period.

8 94. During the relevant time period when Plaintiff and other Class Members
9 and aggrieved employees were misclassified and denied proper rest periods, and even
10 during other time periods when Plaintiff or other Class Members and aggrieved
11 employees were changed to an hourly, non-exempt classification, Defendants required
12 Plaintiff and other Class Members and aggrieved employees to work three and one-half
13 (3 ½) or more hours without authorizing or permitting a ten (10) minute rest period per
14 each four (4) hour period, or major fraction thereof, worked. Defendants failed to
15 authorize and permit Plaintiff and other Class Members and aggrieved employees' third
16 legally-complaint 10-minute rest period on days where Plaintiff and other Class
17 Members and aggrieved employees worked more than ten (10) hours in a day.

18 95. During the relevant time period, Defendants intentionally and willfully
19 required Plaintiff and other Class Members and aggrieved employees to work during
20 rest periods and failed to compensate Plaintiff and other Class Members and aggrieved
21 employees for work performed during rest periods because Defendants intentionally
22 and willfully misclassified them.

23 96. Even in instances after Plaintiff and other Class Members and aggrieved
24 employees were reclassified as hourly non-exempt, Defendants still intentionally and
25 willfully required Plaintiff and other Class Members and aggrieved employees to work
26 during rest periods and failed to compensate Plaintiff and other Class Members and
27 aggrieved employees for work performed during rest periods.

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97. As a result, Plaintiff and other Class Members and aggrieved employees worked through rest periods, took late rest periods, took interrupted rest periods, or took short rest periods, if at all. Defendants failed to provide proper rest periods, and any rest periods provided were late, short, interrupted, took place in settings wherein Defendants did not allow Plaintiff or Class Members or aggrieved employees to leave Defendants' premises, or the rest periods were otherwise non-compliant with California law.

98. Defendants also had no policy and/or practice to pay a premium when rest periods were missed, short, late, and/or interrupted, or otherwise failed to comply with California law, and thus failed to pay Plaintiff and other Class Members and aggrieved employees the full rest period premium due in violation of California Labor Code § 226.7.

99. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code § 226.7.

100. Pursuant to the applicable IWC Wage Orders and California Labor Code § 226.7(c), Plaintiff and other Class Members and aggrieved employees are entitled to recover from Defendants one additional hour of pay at their regular rate of compensation for each workday that a rest period was not provided.

FIFTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210

Failure to Timely Pay Wages During Employment

(Against All Defendants and DOES 1 – 25)

101. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

102. At all times herein set forth, California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and 26th day of the month during which the labor was performed.

103. At all times herein set forth, California Labor Code § 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

104. At all times herein set forth, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

105. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other Class Members and aggrieved employees all wages due to them, within any time period permissible under California Labor Code § 204.

106. During the relevant time period, Plaintiff and other Class Members and aggrieved employees misclassified and thus paid improperly for all minimum wages, all hours worked, all off-the-clock time, all overtime, including for overtime and double time due for working seven days in a row, meal and rest period premiums, all bonuses and commissions, and all other forms of remuneration due to Plaintiff and other Class Members and aggrieved employees due to them at specific times as prescribed by California law. Defendants thus violated California Labor Code § 204(a).

107. Plaintiff and other Class Members and aggrieved employees are entitled to recover all available remedies for Defendant's violations of California Labor Code § 204, including statutory penalties pursuant to Labor Code § 210(b).

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 551, 552, AND 852

Failure to Provide One Day's Rest in Seven

(Against All Defendants and DOES 1 – 25)

108. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

109. California Labor Code § 551 states that “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Cal. Lab. Code §

552 prohibits and employer from “caus[ing] his employees to work more than six days in seven.”

110. At all times relevant hereto, Labor Code § 852 has provided that “[t]he employer shall apportion the periods of rest to be taken by an employee so that the employee will have one complete day of rest during each week.” Cal. Code § 852.

111. In *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074, the Court addressed unsettled questions relating to employees’ guaranteed day of rest under the California Labor Code, noting the following:

1. Employees are entitled to one day of rest for each workweek (as defined by the employer), rather than one rest day in every consecutive seven-day period. [*Mendoza v. Nordstrom, Inc., supra*, 2 Cal.5th at p.1078.] The California Labor Code refers to a week or workweek as a “fixed and regularly recurring period.” This can be Sunday to Saturday, or Monday to Sunday, not a rolling period of any seven consecutive days. [*Id.* at p. 1084.] This means that an employee could essentially work more than six consecutive days without a day of rest if the days of work stretch across more than one workweek. This “week-by-week” interpretation can be best understood by dividing the calendar month into seven-day blocks (such as Monday to Sunday). If an employee takes a day of rest early in the workweek (Tuesday) and then another rest day late in the next workweek (Sunday), that employee will essentially work eleven consecutive days without a rest day. This is not per se prohibited under the law. [*Id.* at p. 1080.] The court explained that for every calendar month, an employee is guaranteed no less than one day of rest for every seven days worked. Therefore, rest days need not fall on every seventh day, but can be spaced out differently in a calendar month, “so long as the number of rest days received by the employee amounts to the number of calendar days divided by seven.” [*Id.* at p. 1086.]

2. Employees who work six-hour shifts or less on every day of the given workweek are not entitled to a rest day. [*Mendoza v. Nordstrom, Inc., supra*, 2 Cal.5th at p. 1078.] However, this applies only if the employee never works a shift of more than six hours in any day of the given week. Also, the day of rest guarantee does not apply “when the total hours of employment do not exceed 30 hours in any week.” [*Id.* at p. 1084.]

3. Finally, an employer “causes” an employee to go without a day of rest “when it induces the employee to forgo rest to which he or she is

entitled.” [*Mendoza v. Nordstrom, Inc., supra*, 2 Cal.5th at p. 1078.] An employee can, however, independently choose not to take a day of rest and an employer is not prohibited from allowing or permitting the employee to do so. [*Id.*] “An employer may not encourage its employees to forgo rest or conceal the entitlement to rest, but is not liable simply because an employee chooses to work a seventh day.” [*Id.* at p. 1091.]

112. Further, the California Code of Regulations, Title 8 (“Cal. Code Regs.”) provide for the amounts at which employees should be paid when working on the seventh day in the manner proscribed by Cal. Lab. Codes 551 and 552, and further clarified by *Mendoza*. For example, Cal. Code Reg. § 11170 for miscellaneous employees § 4 provides:

4. Daily Overtime - General Provisions

The following overtime provisions are applicable to employees eighteen (18) years of age or over and to employees 16 or 17 years of age who are not required by law to attend school, and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(A) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(B) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(C) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

1 113. Plaintiff and other Class Members and aggrieved employees were
2 subjected to numerous situations where they were not afforded one day's rest in seven,
3 and, per the further guidance provided in from the *Mendoza* case, Plaintiff and other
4 Class Members and aggrieved employees were sometimes required to work two or three
5 weeks straight without a single day off.

6 114. For example, during major inventory review periods, which happened
7 approximately twice a year, Plaintiff and other Class Members and aggrieved
8 employees could expect to work for approximately twenty-one (21) days in a row with
9 no day off. As another example, during seasonal adjustment periods (*e.g.*, when
10 Valentine's Day displays were replaced with Easter displays, or when Halloween
11 displays were replaced with Thanksgiving/Christmas displays), Plaintiff and other Class
12 Members and aggrieved employees could be expected to work for at least fourteen (14)
13 to twenty-one (21) days in a row without a day off.

14 115. As a result, Plaintiff and other Class Members and aggrieved employees
15 went without one day's rest in seven, not only in violation of the black letter law
16 described in Cal. Lab. Codes 551, 552, and 852, but in violation of the law as further
17 clarified by the *Mendoza* case.

18 116. During the relevant time period, Defendants intentionally and willfully
19 required Plaintiff and other Class Members and aggrieved employees to work for
20 periods of seven days straight without one day of rest without properly compensating
21 Plaintiff or the other Class Members or aggrieved employees, as prescribed by
22 California law, at either the time-and-a-half rate or the double time rate, depending on
23 hours worked during the seventh day. Sometimes, this failure to abide by California law
24 was a result of Defendants intentionally and willfully misclassifying Plaintiff and other
25 Class Members and aggrieved employees.

26 117. Even in instances after Plaintiff and other Class Members and aggrieved
27 employees were reclassified as hourly non-exempt, Defendants still intentionally and
28 willfully required Plaintiff and other Class Members and aggrieved employees to work

1 seven days in a row without one day's rest, and failed to compensate Plaintiff and other
2 Class Members and aggrieved employees for work at the proper time-and-a-half rate or
3 double time rate.

4 118. Defendants also had no policy and/or practice to either allow Plaintiff or
5 other Class Members or aggrieved employees to take a complete day off on the seventh
6 day of the week, as required by Cal. Lab. Codes 551, 552, or 852, or else a policy and/or
7 practice to properly capture time—including off-the-clock work performed on the
8 seventh day of work for Plaintiff and other Class Members and aggrieved employees—
9 such that Plaintiff and other Class Members and aggrieved employees could be properly
10 compensated for time worked on the seventh day as required by California law (*e.g.*,
11 the Cal. Code Regs/IWC Wage Orders).

12 119. Defendants' conduct violates California law such as the applicable IWC
13 Wage Orders and California Labor Codes §§ 551, 552, and 852.

14 120. Pursuant to the applicable IWC Wage Orders and California Labor Code
15 §§ 551, 552, and 852, Plaintiff and other Class Members and aggrieved employees
16 are entitled to recover from Defendants time-and-a-half for all hours worked up through
17 the end of the eighth hour, or double time for all hours worked in excess of eight hours
18 on the seventh day during the relevant time period.

19 121. Plaintiff and other Class Members and aggrieved employees have been
20 damaged in an amount according to proof at the time of trial, and are entitled to recovery
21 of such amounts, plus penalties, interest, attorneys' fees, expenses and costs.

22 **SEVENTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226(a)**

24 **Failure to Provide Accurate Wage Statements**

25 **(Against All Defendants and DOES 1 – 25)**

26 122. Plaintiff incorporates herein by specific reference, as though fully set forth,
27 the allegations in all preceding paragraphs.

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1 123. At all material times set forth herein, California Labor Code § 226(a)
2 provides that every employer shall furnish each of its employees an accurate itemized
3 wage statement in writing, including, but not limited to, the name and address of the
4 legal entity that is the employer, total hours worked, and all applicable hourly rates.

5 124. Defendants have intentionally and willfully failed to provide Plaintiff and
6 other Class Members and aggrieved employees with complete and accurate wage
7 statements. The deficiencies include, among other things, the failure to state all hours
8 worked, the failure to state the actual gross wages earned, and the correct rates of pay.
9 Accordingly, Defendants violated California Labor Code 226(a).

10 125. As a result of Defendants' violation of California Labor Code § 226(a),
11 Plaintiff and other Class Members and aggrieved employees have suffered injury and
12 damage to their statutorily protected rights.

13 126. Specifically, Plaintiff and other Class Members and aggrieved employees
14 have been injured by Defendants' intentional violation of California Labor Code §
15 226(a) because they were denied both their legal right to receive, and their protected
16 interest in receiving, accurate, itemized wage statements under California Labor Code
17 § 226(a). In addition, because Defendants failed to provide the accurate number of total
18 hours worked on wage statements, Plaintiff and other Class Members and aggrieved
19 employees been prevented by Defendants from determining if all hours worked were
20 paid and the extent of the underpayment. Plaintiff had to file this lawsuit, and will
21 further have to conduct discovery, reconstruct time records, and perform computations
22 in order to analyze whether in fact Plaintiff and other Class Members and aggrieved
23 employees were paid correctly and the extent of the underpayment, thereby causing
24 Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these
25 efforts and incur these costs had Defendants provided the accurate number of total hours
26 worked. This has also delayed Plaintiff's ability to demand and recover the
27 underpayment of wages from Defendants.

28 ///

127. Plaintiff and other Class Members and aggrieved employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201, 202, AND 203

Final Wages Not Timely Paid

(Against All Defendants and DOES 1 – 25)

128. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

129. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. California Labor Code § 202 mandates that if an employee quits, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

130. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than thirty (30) days.

131. At the time that Plaintiff and other Class Members and aggrieved employees' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and other Class Members and aggrieved employees all wages owed to them pursuant to California Labor Code §§ 201 and 202, including, without

1 limitation, overtime wages, minimum wages, meal period premium wages, and rest
2 period premium wages, and all wages due to Plaintiff and other Class Members and
3 aggrieved employees as they became due, as required per California Labor Code § 204.

4 132. As a result, Plaintiff and other Class Members and aggrieved employees
5 are entitled to all available statutory penalties, including the waiting time penalties
6 provided in California Labor Code § 203, together with interest thereon, as well as other
7 available remedies.

8 **NINTH CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 2800 AND 2802**

10 **Failure to Reimburse Necessary Business Expenses**

11 **(Against All Defendants and DOES 1 – 25)**

12 133. Plaintiff incorporates herein by specific reference, as though fully set forth,
13 the allegations in all preceding paragraphs.

14 134. Pursuant to California Labor Code §§ 2800 and 2802, an employer must
15 reimburse its employees for all necessary expenditures incurred by the employee in
16 direct consequence of the discharge of his or her job duties or in direct consequence of
17 his or her job duties or in direct consequence of his or her obedience to the directions
18 of the employer.

19 135. Plaintiff and other Class Members and aggrieved employees incurred
20 necessary business-related expenses and costs that were not fully reimbursed by
21 Defendants. Defendants allowed Plaintiff and other Class Members and aggrieved
22 employees to make expenditures, such as (1) usage of personal cell phones, personal
23 computers, and personal internet, for work-related purposes; (2) significant
24 unreimbursed mileage accrued by Plaintiff and other Class Members and aggrieved
25 employees as they completed various tasks for Defendants requiring them to use their
26 personal vehicles and make trips; and (3) purchase of small petty items for other
27 employees for Defendants' workplace (*e.g.*, necessary items for the break rooms in
28 Defendants' workplaces).

136. Defendants intentionally and willfully failed to reimburse Plaintiff and other Class Members and aggrieved employees for all necessary business-related expenses and costs. Plaintiff and other Class Members and aggrieved employees are entitled to recover from Defendants their business-related expenses and costs incurred during the course and scope of her employment, plus interest accrued from the date on which Plaintiff and other Class Members and aggrieved employees incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

137. Plaintiff and other Class Members and aggrieved employees have been damaged in an amount according to proof at the time of trial, and are entitled to recovery of such amounts, plus penalties, interest, attorneys' fees, expenses and costs.

TENTH CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET. SEQ.*

Unfair and Unlawful Business Practices

(Against All Defendants and DOES 1 – 25)

138. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

139. Each and every one of Defendants' acts and omissions in violation of the California Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay minimum wages, Defendants' failure and refusal to provide required meal periods, Defendants' failure and refusal to provide required rest periods, Defendants' failure to timely pay wages at the correct rate during employment, Defendants' failure and refusal to furnish accurate itemized wage statements, Defendants' refusal to provide one day's rest in seven, Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to timely pay wages upon termination constitutes an unfair and unlawful business practice under California Business and Professions Code § 17200 *et seq.*

1 140. Defendants' violations of California wage and hour laws constitute an
2 unfair and unlawful business practice because Defendants' aforementioned acts and
3 omissions were done repeatedly over a significant period of time, and in a systematic
4 manner, to the detriment of Plaintiff and other Class Members and aggrieved
5 employees.

6 141. Defendants have avoided payment of overtime wages (including overtime
7 wages required for requiring Plaintiff and other Class Members and aggrieved
8 employees to work on the seventh day in a row), minimum wages, meal period
9 premiums, rest period premiums, timely wages at the correct rate of pay, and other
10 benefits as required by the California Labor Code, the California Code of Regulations,
11 and the applicable IWC Wage Order. Further, Defendants have failed to record, report,
12 and pay the correct sums of assessment to the state authorities under the California
13 Labor Code and other applicable regulations.

14 142. As a result of Defendants' unfair and unlawful business practices,
15 Defendants have reaped unfair and illegal profits during Plaintiff and other Class
16 Members and aggrieved employees' tenure at the expense of Plaintiff, other Class
17 Members, aggrieved employees, and members of the public. Defendants should be
18 made to disgorge its ill-gotten gains and to restore them to Plaintiff and other Class
19 Members and aggrieved employees.

20 143. Defendants' unfair and unlawful business practices entitle Plaintiff and
21 other Class Members and aggrieved employees to seek preliminary and permanent
22 injunctive relief, including but not limited to orders that Defendants account for,
23 disgorge, and restore to Plaintiff and other Class Members and aggrieved employees
24 the wages and other compensation unlawfully withheld from them. Plaintiff and other
25 Class Members and aggrieved employees are entitled to restitution of all monies to be
26 disgorged from Defendants in an amount according to proof at the time of trial.

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ELEVENTH CAUSE OF ACTION

**VIOLATION OF CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.
(Against Defendants CVS PHARMACY, INC.; GARFIELD BEACH CVS,
L.L.C.; CVS HEALTH CORPORATION and DOES 1 – 25)**

144. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

145. PAGA expressly establishes that any provision of the California labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

146. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

147. Plaintiff and the other hourly-paid, non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them. Plaintiff and other similarly situated employees are also referred to as “aggrieved employees” throughout this complaint.

148. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- a. Violation of California Labor Code sections 510 and 1198 for failure to pay overtime wages, as set forth more fully below;
- b. Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to pay minimum wages, as set forth more fully below;

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- c. Violation of California Labor Code sections 226.7 and 512(a) for failure to provide legally required meal periods, as set forth more fully below;
- d. Violation of California Labor Code section 226.7 for failure to provide legally required rest periods, as set forth more fully below;
- e. Violation of California Labor Code section 204 for failure to timely pay wages to Plaintiff and aggrieved employees during employment, as set forth more fully before;
- f. Violation of California Labor Code sections 551, 552, and 852 for failure to provide aggrieved employees with one day's rest in seven;
- g. Violation of California Labor Code sections 201, 202, and 203 for failure to pay all wages at time of discharge from employment, as set forth more fully below;
- h. Violation of California Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and aggrieved employees, as set forth more fully below;
- i. Violation of California Labor Code section 1174(d) for failure to keep complete and accurate payroll records relating to Plaintiff and aggrieved employees, as set forth more fully below; and
- j. Violation of California Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and aggrieved employees for necessary business-related expenses, as set forth more fully below.

149. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff, all aggrieved employees, and the State of California against Defendants, in addition to other remedies, for violations of Labor Code sections set forth herein. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as

1 follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws
2 and education of employers and employees about their rights and responsibilities and
3 twenty-five (25%) to the aggrieved employees. Further, and as authorized by the
4 California Labor Code sections 210, 218.5, and 2699, Plaintiff seeks recovery of his
5 attorneys' fees and costs.

6 **Failure to Pay Overtime Wages**

7 150. California Labor Code section 1198 and the applicable IWC Wage Order
8 have provided that it is unlawful to employ persons without compensating them at a rate
9 of pay either time-and-one-half or two-times that person's regular rate of pay,
10 depending on the number of hours worked by the person on a daily or weekly basis.

11 151. Specifically, the applicable IWC Wage Order provides that Defendants are
12 and were required to pay Plaintiff and aggrieved employees employed by Defendants,
13 and working more than eight (8) hours in a day or more than forty (40) hours in a
14 workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8)
15 hours in a day or more than forty (40) hours in a workweek.

16 152. The applicable IWC Wage Order further provides that Defendants are and
17 were required to pay Plaintiff and aggrieved employees employed by Defendants, and
18 working more than twelve (12) hours in a day, overtime compensation at a rate of two
19 (2) times their regular rate of pay.

20 153. California Labor Code section 510 codifies the right to overtime
21 compensation at one-and-one half times the regular hourly rate for hours worked in
22 excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8)
23 hours worked on the seventh day of work, and to overtime compensation at twice the
24 regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess
25 of eight (8) hours in a day on the seventh day of work.

26 154. During the relevant time period, Plaintiff and aggrieved employees
27 regularly worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in
28 a day, and/or in excess of forty (40) hours in a week performing work duties "off-the-

1 clock” as described in greater detail in the General Allegations section and Class
2 Allegations section, *supra*.

3 155. Defendants’ failure to pay Plaintiff and aggrieved employees the unpaid
4 balance of overtime compensation, as required by California law, violates the
5 provisions of California Labor Code sections 510 and 1198, and is therefore unlawful.

6 **Failure to Pay Minimum Wages**

7 156. At all relevant times, California Labor Code sections 1194, 1197 and
8 1197.1 have provided that the minimum wage for employees fixed by the IWC is the
9 minimum wage to be paid to employees, and the payment of a wage less than the
10 minimum so fixed is unlawful. Defendants’ failure to pay minimum wages included,
11 *inter alia*, Defendants’ failure to pay Plaintiff and the aggrieved employees any wages
12 for time spent working “off-the-clock” performing duties, as described in greater detail
13 in the Class Allegations section and General Allegations section, *supra*. Accordingly,
14 Defendants regularly failed to pay at least minimum wages to Plaintiff and aggrieved
15 employees for all of the hours they worked in violation of California Labor Code
16 sections 1194, 1197 and 1197.1.

17 157. Defendants’ failure to pay Plaintiff and aggrieved employees the minimum
18 wage as required violates California Labor Code sections 1194, 1197 and 1197.1.

19 **Failure to Provide Meal Periods**

20 158. At all relevant times herein set forth, California Labor Code section 226.7
21 has provided that no employer shall require an employee to work during any meal
22 period mandated by an applicable IWC Order.

23 159. At all relevant times herein set forth, California Labor Code section 512(a)
24 has provided that an employer may not require, cause, or permit an employee to work
25 for a period of more than five (5) hours per day without providing the employee with a
26 meal period of not less than thirty (30) minutes, except that if the total work period per
27 day of the employee is not more than six (6) hours, the meal period may be waived by
28 mutual consent of both the employer and the employee.

1 160. During the relevant time period, Plaintiff and aggrieved employees who
2 were scheduled to work for a period of time no longer than six (6) hours, and who did
3 not waive their legally mandated meal periods by mutual consent, were required to work
4 for periods longer than five (5) hours without a meal period of not less than thirty (30)
5 minutes.

6 161. During the relevant time period, Plaintiff and the aggrieved employees,
7 who were scheduled to work for a period of time in excess of six (6)
8 hours, were required to work for periods longer than five (5) hours without an
9 uninterrupted meal period of not less than thirty (30) minutes.

10 162. During the relevant time period, Plaintiff and the aggrieved employees,
11 who were scheduled to work for a period of time in excess of ten (10) hours but no
12 longer than twelve (12) hours, and who did not waive their legally-mandated meal
13 periods by mutual consent, were required to work in excess of ten (10) hours without
14 receiving a second uninterrupted meal period of not less than thirty (30) minutes.

15 163. During the relevant time period, Plaintiff and the aggrieved employees,
16 who were scheduled to work for a period of time in excess of twelve (12) hours, were
17 required to work for periods longer than ten (10) hours without a second uninterrupted
18 meal period of not less than thirty (30) minutes.

19 164. During the relevant time period, Defendants willfully required Plaintiff
20 and the aggrieved employees to work during meal periods and failed to compensate
21 Plaintiff and aggrieved employees for work performed during meal periods. For
22 example, Defendants failed to relieve Plaintiff of all duties such that Plaintiff could take
23 compliant meal periods, and as a result, Plaintiff worked through mandated meal
24 periods.

25 165. Defendants failed to pay Plaintiff and the aggrieved employees the full
26 meal period premium due in violation of California Labor Code sections 226.7 and 512
27 on each occasion when a timely, uninterrupted meal period of at least thirty (30) minutes
28 was not provided. Defendants failed to incorporate all nondiscretionary payments for

1 work performed by Plaintiff and the aggrieved employees in the regular rate of
2 compensation.

3 166. Defendants' conduct violates applicable IWC Wage Order(s), and
4 California Labor Code sections 226.7 and 512(a).

5 **Failure to Provide Rest Periods**

6 167. At all relevant times, California Labor Code section 226.7 has provided
7 that no employer shall require an employee to work during any rest period mandated by
8 an applicable order of the California IWC.

9 168. At all relevant times, the applicable IWC Wage Order provides that
10 "[e]very employer shall authorize and permit all employees to take rest periods, which
11 insofar as practicable shall be in the middle of each work period" and that the "rest
12 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
13 net rest time per four (4) hours or major fraction thereof" unless the total daily work
14 time is less than three and one-half (3½) hours.

15 169. Pursuant to the applicable IWC Wage Order and California Labor Code
16 section 226.7(b), Plaintiff and the aggrieved employees are entitled to recover from
17 Defendants one (1) additional hour of pay at the employee's regular hourly rate of
18 compensation for each workday that the rest period was not provided.

19 170. During the relevant time period, Defendants required Plaintiff and the
20 aggrieved employees to work four (4) or more hours without authorizing or permitting
21 a ten (10) minute rest period per each four (4) hour period, or major fraction thereof
22 worked. During the relevant time period, Defendants willfully required Plaintiff and
23 the aggrieved employees to work during rest periods. For example, Defendants failed
24 to relieve Plaintiff of all duties such that Plaintiff could take compliant rest periods, and
25 as a result, Plaintiff worked through mandated rest periods.

26 171. Defendants failed to pay Plaintiff and aggrieved employees the full rest
27 period premium due in violation of California Labor Code sections 226.7 and 512 on
28 each occasion when a timely, uninterrupted rest period of at least ten (10) minutes was

1 not provided. Defendants failed to incorporate all nondiscretionary payments for work
2 performed by Plaintiff and the aggrieved employees in the regular rate of compensation.

3 172. Defendants' conduct violates the applicable IWC Wage Orders and
4 California Labor Code section 226.7.

5 **Failure to Timely Pay Wages During Employment**

6 173. At all relevant times herein set forth, California Labor Code section 204
7 has provided that all wages earned by any person in any employment between the 1st
8 and 15th days, inclusive, of any calendar month, other than those wages due upon
9 termination of an employee, are due and payable between the 16th and the 26th day of
10 the month during which the labor was performed.

11 174. At all times herein set forth, California Labor Code section 204 has
12 provided that all wages earned by any person in any employment between the 16th and
13 the last day, inclusive, of any calendar month, other than those wages due upon
14 termination of an employee, are due and payable between the 1st and the 10th day of
15 the following month.

16 175. At all times herein set forth, California Labor Code section 204 has
17 provided that all wages earned for labor in excess of the normal work period shall be
18 paid no later than the payday for the next regular payroll period.

19 176. During the relevant time period, Defendants intentionally and willfully
20 failed to pay Plaintiff and the aggrieved employees all wages due to them, within any
21 time period permissible under California Labor Code section 204, including wages for
22 overtime compensation, minimum wage compensation, meal period premiums, rest
23 period premiums, or any other bonuses, commissions, or other wages due during the
24 proper pay period after they became due.

25 **Failure to Provide One Day's Rest In Seven**

26 177. California Labor Code § 551 states that "[e]very person employed in any
27 occupation of labor is entitled to one day's rest therefrom in seven." Cal. Lab. Code §
28 ///

1 552 prohibits and employer from “caus[ing] his employees to work more than six days
2 in seven.”

3 178. At all times relevant hereto, Labor Code § 852 has provided that “[t]he
4 employer shall apportion the periods of rest to be taken by an employee so that the
5 employee will have one complete day of rest during each week.” Cal. Code § 852. Cal.
6 Lab. Code. § 852, as part of Cal. Lab. Codes 850 – 856, apply to retail stores that sell
7 pharmaceuticals, inclusive of Defendants.

8 179. In *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal. 5th 1074, the Court addressed
9 unsettled questions relating to employees’ guaranteed day of rest under the California
10 Labor Code, noting the following:

11 Employees are entitled to one day of rest for each workweek (as defined by
12 the employer), rather than one rest day in every consecutive seven-day
13 period. [*Mendoza v. Nordstrom, Inc., supra*, 2 Cal.5th at p.1078.] The
14 California Labor Code refers to a week or workweek as a “fixed and
15 regularly recurring period.” This can be Sunday to Saturday, or Monday to
16 Sunday, not a rolling period of any seven consecutive days. [*Id.* at p. 1084.]
17 This means that an employee could essentially work more than six
18 consecutive days without a day of rest if the days of work stretch across
19 more than one workweek. This “week-by-week” interpretation can be best
20 understood by dividing the calendar month into seven-day blocks (such as
21 Monday to Sunday). If an employee takes a day of rest early in the
22 workweek (Tuesday) and then another rest day late in the next workweek
23 (Sunday), that employee will essentially work eleven consecutive days
24 without a rest day. This is not per se prohibited under the law. [*Id.* at p.
25 1080.] The court explained that for every calendar month, an employee is
26 guaranteed no less than one day of rest for every seven days
27 worked. Therefore, rest days need not fall on every seventh day, but can
28 be spaced out differently in a calendar month, “so long as the number of
rest days received by the employee amounts to the number of calendar days
divided by seven.” [*Id.* at p. 1086.]

Employees who work six-hour shifts or less on every day of the given
workweek are not entitled to a rest day. [*Mendoza v. Nordstrom,
Inc., supra*, 2 Cal.5th at p. 1078.] However, this applies only if the
employee never works a shift of more than six hours in any day of the given
week. Also, the day of rest guarantee does not apply “when the total hours
of employment do not exceed 30 hours in any week.” [*Id.* at p. 1084.]

1
2 Finally, an employer “causes” an employee to go without a day of rest
3 “when it induces the employee to forgo rest to which he or she is
4 entitled.” [*Mendoza v. Nordstrom, Inc., supra*, 2 Cal.5th at p. 1078.] An
5 employee can, however, independently choose not to take a day of rest and
6 an employer is not prohibited from allowing or permitting the employee to
7 do so. [*Id.*] “An employer may not encourage its employees to forgo rest
8 or conceal the entitlement to rest, but is not liable simply because an
9 employee chooses to work a seventh day.” [*Id.* at p. 1091.]

10 180. Further, the California Code of Regulations, Title 8 (“Cal. Code Regs.”)
11 provide for the amounts at which employees should be paid when working on the
12 seventh day in the manner proscribed by Cal. Lab. Codes 551 and 552, and further
13 clarified by *Mendoza*. For example, Cal. Code Reg. § 11170 for miscellaneous
14 employees § 4 provides:

15 4. Daily Overtime - General Provisions

16 The following overtime provisions are applicable to employees eighteen
17 (18) years of age or over and to employees 16 or 17 years of age who are
18 not required by law to attend school, and are not otherwise prohibited by
19 law from engaging in the subject work. Such employees shall not be
20 employed more than eight (8) hours in any workday or more than 40 hours
21 in any workweek unless the employee receives one and one-half (1 1/2)
22 times such employee's regular rate of pay for all hours worked over 40
23 hours in the workweek. Eight (8) hours of labor constitutes a day's work.
24 Employment beyond eight (8) hours in any workday or more than six (6)
25 days in any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (A) One and one-half (1 1/2) times the employee's regular rate of pay
28 for all hours worked in excess of eight (8) hours up to and including
29 12 hours in any workday, and for the first eight (8) hours worked on
30 the seventh (7th) consecutive day of work in a workweek; and

(B) Double the employee's regular rate of pay for all hours worked in
excess of 12 hours in any workday and for all hours worked in excess
of eight (8) hours on the seventh (7th) consecutive day of work in a
workweek.

(C) The overtime rate of compensation required to be paid to a
nonexempt full-time salaried employee shall be computed by using

1 the employee's regular hourly salary as one-fortieth (1/40) of the
2 employee's weekly salary.

3 181. Plaintiff and aggrieved employees were subjected to numerous situations
4 where they were not afforded one day's rest in seven, and, per the further guidance
5 provided in from the *Mendoza* case, Plaintiff and aggrieved employees were sometimes
6 required to work two or three weeks straight without a single day off.

7 182. For example, during major inventory review periods, which happened
8 approximately twice a year, Plaintiff and aggrieved employees could expect to work for
9 approximately twenty-one (21) days in a row with no day off. As another example,
10 during seasonal adjustment periods (*e.g.*, when Valentine's Day displays were replaced
11 with Easter displays, or when Halloween displays were replaced with
12 Thanksgiving/Christmas displays), Plaintiff and aggrieved employees could be
13 expected to work for at least fourteen (14) to twenty-one (21) days in a row without a
14 day off.

15 183. As a result, Plaintiff and aggrieved employees went without one day's rest
16 in seven, not only in violation of the black letter law described in Cal. Lab. Codes 551,
17 552, and 852, but in violation of the law as further clarified by the *Mendoza* case.

18 184. During the relevant time period, Defendants intentionally and willfully
19 required Plaintiff and aggrieved employees to work for periods of seven days straight
20 without one day of rest without properly compensating Plaintiff or aggrieved
21 employees, as prescribed by California law, at either the time-and-a-half rate or the
22 double time rate, depending on hours worked during the seventh day. Sometimes, this
23 failure to abide by California law was a result of Defendants intentionally and willfully
24 misclassifying Plaintiff and aggrieved employees.

25 185. Even in instances after Plaintiff and aggrieved employees were reclassified
26 as hourly non-exempt, Defendants still intentionally and willfully required Plaintiff and
27 aggrieved employees to work seven days in a row without one day's rest, and failed to
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1 compensate Plaintiff and aggrieved employees for work at the proper time-and-a-half
2 rate or double time rate.

3 186. Defendants also had no policy and/or practice to either allow Plaintiff or
4 aggrieved employees to take a complete day off on the seventh day of the week, as
5 required by Cal. Lab. Codes 551, 552, or 852, or else a policy and/or practice to properly
6 capture time—including off-the-clock work performed on the seventh day of work for
7 Plaintiff and aggrieved employees—such that Plaintiff and aggrieved employees could
8 be properly compensated for time worked on the seventh day as required by California
9 law (*e.g.*, the Cal. Code Regs/IWC Wage Orders).

10 187. Defendants' conduct violates California law such as the applicable IWC
11 Wage Orders and California Labor Codes §§ 551, 552, and 852.

12 **Failure to Timely Pay Wages Upon Termination**

13 188. Pursuant to California Labor Code sections 201, 202, and 203, Defendants
14 are required to pay all earned and unpaid wages to an employee who is discharged.
15 California Labor Code section 201 mandates that if an employer discharges an
16 employee, the employee's wages accrued and unpaid at the time of discharge are due
17 and payable immediately. California Labor Code section 202 mandates that if an
18 employee quits, his or her wages shall become due and payable not later than seventy-
19 two (72) hours thereafter, unless the employee has given seventy-two (72) hours'
20 notice of his or her intention to quit, in which case the employee is entitled to his or
21 her wages at the time of quitting.

22 189. California Labor Code section 203 provides that if an employer willfully
23 fails to pay, in accordance with California Labor Code sections 201 and 202, any wages
24 of an employee who is discharged or who quits, the wages of the employee shall
25 continue as a penalty from the due date thereof at the same rate until paid or until an
26 action therefore is commenced; but the wages shall not continue for more than thirty
27 (30) days.

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1 190. At the time that Plaintiff and the aggrieved employees' employment with
2 Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the
3 aggrieved employees all wages owed to them pursuant to California Labor Code
4 sections 201 and 202, including, without limitation, overtime wages, minimum wages,
5 meal period premium wages, rest period premium wages, and any other appropriate
6 wages such as bonuses or commissions or other gratuities.

7 **Failure to Provide Compliant Wage Statements**

8 191. At all relevant times set forth herein, California Labor Code section 226(a)
9 provides that every employer shall furnish each of its employees an accurate itemized
10 statement in writing showing (1) gross wages earned, (2) total hours worked by the
11 employee, (3) the number of piece-rate units earned and any applicable piece rate if the
12 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
13 made on written orders of the employee may be aggregated and shown as one item, (5)
14 net wages earned, (6) the inclusive dates of the period for which the employee is paid,
15 (7) the name of the employee and his or her social security number, (8) the name and
16 address of the legal entity that is the employer, and (9) all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours worked at each
18 hourly rate by the employee. The deductions made from payments of wages shall be
19 recorded in ink or other indelible form, properly dated, showing the month, day, and
20 year, and a copy of the statement or a record of the deductions shall be kept on file by
21 the employer for at least three years at the place of employment or at a central location
22 within the State of California.

23 192. Defendants have intentionally and willfully failed to provide employees
24 with complete and accurate wage statements. The deficiencies include, among other
25 things, the failure to state all correct rates of pay, all hours worked, all meal period
26 premium wages earned, all rest period premium wages earned, and all other wages
27 earned, such as bonuses, commissions, or other gratuities.

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Failure to Keep Requisite Payroll Records

193. At all relevant times set forth herein, California Labor Code section 1174(d) has required an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

194. Defendants have intentionally and willfully failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Plaintiff and the aggrieved employees.

195. As a result of Defendants' violation of California Labor Code section 1174(d), Plaintiff and the aggrieved employees have suffered injury and damage to their statutorily-protected rights.

196. More specifically, Plaintiff and the aggrieved employees have been injured by Defendants' intentional and willful violation of California Labor Code section 1174(d) because they were denied both their legal right and protected interest, in having available, accurate and complete payroll records pursuant to California Labor Code section 1174(d).

Failure to Reimburse Necessary Business Expenses

197. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

198. Plaintiff and the aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not

1 limited to (1) usage of personal cell phones, personal computers, and personal internet,
2 for work-related purposes; (2) significant unreimbursed mileage accrued by Plaintiff
3 and aggrieved employees as they completed various tasks for Defendants requiring
4 them to use their personal vehicles and make trips; and (3) purchase of small petty items
5 for other employees for Defendants' workplace (e.g., necessary items for the break
6 rooms in Defendants' workplaces).

7 199. Defendants intentionally and willfully failed to reimburse Plaintiff and the
8 aggrieved employees for all necessary business-related expenses and costs.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial with respect to all issues triable of right by
11 jury.

12 **PRAYER FOR RELIEF**

13 Plaintiff, on behalf of himself all others similarly situated, prays for relief and
14 judgment against Defendants, jointly and severally, as follows:

15 **Class Certification**

16 1. That this action be certified as a class action;
17 2. That Plaintiff be appointed as the representative of the Class;
18 3. That counsel for Plaintiff be appointed as Class Counsel; and
19 4. That Defendants provide to Class Counsel immediately the names and
20 most current/last known contact information (address, e-mail and telephone numbers)
21 of all Class Members and aggrieved employees.

22 **As to the First Cause of Action**

23 5. That the Court declare, adjudge and decree that Defendants violated
24 California Labor Code §§ 1194, 1197, and 1197.1 by willfully failing to pay minimum
25 wages to Plaintiff and the other Class Members and aggrieved employees;

26 6. For general unpaid wages and such general and special damages as may be
27 appropriate;

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1 7. For statutory wage penalties pursuant to California Labor Code § 1197.1
2 for Plaintiff and the other 11s in the amount as may be established according to proof
3 at trial;

4 8. For pre-judgment interest on any unpaid compensation from the date such
5 amounts were due;

6 9. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Labor Code § 1194(a);

8 10. For liquidated damages pursuant to California Labor Code § 1194.2;

9 11. For such other and further relief as the Court may deem just and proper.

10 **As to the Second Cause of Action**

11 12. That the Court declare, adjudge and decree that Defendants violated
12 California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully
13 failing to pay all overtime wages due to Plaintiff and the other Class Members and
14 aggrieved employees;

15 13. For general unpaid wages at overtime wage rates and such general and
16 special damages as may be appropriate;

17 14. For pre-judgment interest on any unpaid overtime compensation
18 commencing from the date such amounts were due;

19 15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Labor Code § 1194;

21 16. For such other and further relief as the Court may deem just and proper.

22 **As to the Third Cause of Action**

23 17. That the Court declare, adjudge and decree that Defendants violated
24 California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully
25 failing to provide all meal periods, (including second meal periods) to Plaintiff and the
26 other Class Members and aggrieved employees;

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18. That the Court make an award to Plaintiff and the other Class Members and aggrieved employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code § 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

22. For reasonable attorneys' fees and costs of suit incurred herein;

23. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause Action

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other Class Members and aggrieved employees;

25. That the Court make an award to Plaintiff and the other Class Members and aggrieved employees of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

26. For all actual, consequential, and incidental losses and damages, according to proof;

27. For premium wages pursuant to California Labor Code § 226.7(c);

28. For pre-judgment interest on any unpaid wages from the date such amounts were due;

29. For such other and further relief as the Court may deem just and proper.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code § 204 by willfully failing to pay all compensation owed at the

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1 time required by California Labor Code § 204 to Plaintiff and the Class Members and
2 aggrieved employees;

3 31. For statutory penalties pursuant to California Labor Code § 210;

4 32. For such other and further relief as the Court deems just and proper.

5 **As to the Sixth Cause of Action**

6 33. That the Court declare, adjudge and decree that Defendants violated
7 California Labor Code §§ 551, 552, and 852 by willfully failing to provide Plaintiff or
8 the Class Members and aggrieved employees one day's rest in seven;

9 34. That the Court declare, adjudge and decree that Defendants willfully failed
10 to pay Plaintiff or the Class Members or aggrieved employees appropriately for working
11 on the seventh day in the manner required per the appropriate IWC Wage Order;

12 35. For general unpaid wages at overtime wage rates and such general and
13 special damages as may be appropriate;

14 36. For pre-judgment interest on any unpaid overtime compensation
15 commencing from the date such amounts were due;

16 37. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Labor Code § 1194;

18 38. For such other and further relief as the Court may deem just and proper.

19 **As to the Seventh Cause of Action**

20 39. That the Court declare, adjudge and decree that Defendants violated the
21 record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage
22 Orders as to Plaintiff and the other Class Members and aggrieved employees, and
23 willfully failed to provide accurate itemized wage statements thereto;

24 40. For actual, consequential and incidental losses and damages, according to
25 proof;

26 41. For statutory penalties pursuant to California Labor Code § 226(e);

27 42. For injunctive relief to ensure compliance with this section, pursuant to
28 California Labor Code § 226(g);

43. For such other and further relief as the Court may deem just and proper.

As to the Eighth Cause of Action

44. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other Class Members and aggrieved employees previously employed by Defendants;

45. For all actual, consequential, and incidental losses and damages, according to proof;

46. For statutory wage penalties pursuant to California Labor Code § 203 for Plaintiff and the other Class Members and aggrieved employees who have left Defendants' employ;

47. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

48. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

49. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 2800 and 2802 by willfully failing to reimburse Plaintiff and the other Class Members and aggrieved employees for all necessary business-related expenses as required by California Labor Code §§ 2800 and 2802;

50. For actual, consequential and incidental losses and damages, according to proof;

51. For the imposition of civil penalties and/or statutory penalties;

52. For punitive damages and/or exemplary damages according to proof at trial;

53. For reasonable attorneys' fees and costs of suit incurred herein; and

54. For such other and further relief as the Court may deem just and proper.

As to the Tenth Cause of Action

55. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and the other Class Members

1 and aggrieved employees: 510 and 1198 (by failing to pay overtime wages); 1194, 1197,
2 and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a) (by failing to provide
3 meal and rest periods or compensation in lieu thereof); 204 (by failing to timely pay
4 wages during employment); 551, 552, and 852 (by failing to provide one day's rest in
5 seven); 226(a) (by failing to provide accurate wage statements); and 201, 202, and 203
6 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to
7 reimburse business-related expenses);

8 56. For restitution of unpaid wages to Plaintiff and all the other Class Members
9 and aggrieved employees and all pre-judgment interest from the day such amounts were
10 due and payable;

11 57. For the appointment of a receiver to receive, manage and distribute any
12 and all funds disgorged from Defendants and determined to have been wrongfully
13 acquired by Defendants as a result of violation of California Business and Professions
14 Code §§ 17200, *et seq.*;

15 58. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
16 California Code of Civil Procedure § 1021.5; and

17 59. For injunctive relief to ensure compliance with this section, pursuant to
18 California Business and Professions Code §§ 17200, *et seq.*

19 **As to the Eleventh Cause of Action**

20 51. For civil penalties pursuant to California Labor Code sections 2699(a), (f),
21 and (g), plus costs and attorneys' fees for violation of California Labor Code sections
22 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 852, 1174(d), 1194, 1197,
23 1197.1, 1198, 2800 and 2802; and

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1 52. For such other and further relief as the Court may deem proper.

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3 DATED: April 3, 2023

BLACKSTONE LAW, APC

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5 By:



6
7 Jonathan M. Genish, Esq.
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10 Attorneys for Plaintiff
11 STEVEN KELLER
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