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<u>FILED VIA LWDA'S PAGA CLAIM NOTICE ONLINE FORM</u>
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California Labor & Workforce Development Agency
Attention: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

CVS Health Corporation
c/o The Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

Attn.: General Counsel
Garfield Beach CVS, L.L.C.
One CVS Drive
Woonsocket, Rhode Island 02895

Garfield Beach CVS, L.L.C.
c/o C T Corporation System
330 N. Brand Boulevard Suite 700
Glendale, California 91203

Attn.: General Counsel
CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, Rhode Island 02895

CVS Pharmacy, Inc.
c/o C T Corporation System
330 N. Brand Boulevard Suite 700
Glendale, California 91203

Attn.: General Counsel
1085 Garfield Beach CVS, L.L.C.
One CVS Drive
Woonsocket, Rhode Island 02895

Re: Anahid Aroyan v. CVS Pharmacy, Inc.; CVS Health Corporation; Garfield Beach CVS, L.L.C.; and 1085 Garfield Beach CVS, L.L.C. – California Labor Code § 2699 Notice of Intent to File

Dear Sir or Madam:

Please be advised that this firm has been retained to represent Anahid Aroyan ("Plaintiff"), individually and on behalf of other similarly situated employees working in California, in connection with wage-and-hour claims against CVS Health Corporation, 1085 Garfield Beach CVS, L.L.C., Garfield Beach CVS, L.L.C., and CVS Pharmacy, Inc. (collectively, "Defendants").[1] Please direct all communications regarding this matter to this office.

Plaintiff seeks penalties for Defendants' violations of the California Labor Code, which are recoverable under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), and all other remedies available under the PAGA. Plaintiff seeks such remedies on behalf of the State of California and all current and former non-exempt employees who worked for Defendants and/or their predecessor or merged entities within the State of California ("Aggrieved Employees").[2] Nothing set forth herein is intended to waive any rights, claims, or causes of action on the part of Plaintiff and Aggrieved Employees. This letter is sent to provide notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants prior to filing suit in accordance with the PAGA.

Defendants have violated and continue to violate, among other provisions, Labor Code sections 201-204, 221, 223, 224, 226, 226.7, 227.3, 246, 248.6, 432.5, 510, 512, 558.1, 1174, 1182.12, 1197, 1198, 2800, and 2802, and California Industrial Welfare Commission ("IWC") Wage Order No. 4-2001, entitling Plaintiff and the Aggrieved Employees to damages and penalties under the PAGA, among other provisions, including Labor Code sections 210, 218.5, 218.6, 225.5, 226.3, 558, 1174.5, 1197.1, 1194 and 1194.2.[3]

Plaintiff was employed by Defendants as a non-exempt employee in the State of California.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and that any payment of less than the minimum wage is unlawful. Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage… to recover in a civil action the unpaid balance of the full amount of this minimum wage." Subdivision 4 of IWC Wage Order No. 4-2001 also obligates employers to pay each employee minimum wages for all hours worked. Thus, California law requires employers to pay non-exempt employees for all hours worked at the legal rate. Hours worked, as defined by the IWC, include all time an employee is subject to the employer's control and all time the employee is suffered or permitted to work, regardless of whether the employee is required to work or not. (IWC Wage Order No. 4-2001, subd 2.) Defendants

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[1] It is the law in California that, as owners and officers of the corporate employer, individual defendants are liable in their individual capacity for civil penalties, attorneys' fees, and litigation costs available to aggrieved employees pursuant to California Labor Code sections 558.1 and 1197.1. This rule was recently fortified in *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, where the California Court of Appeal held that the trial court did not err in holding the individual defendant liable, stating: "the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes." (emphasis in original).

[2] In *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, the California Court of Appeal held employees may bring suits for Labor Code violations not personally affecting the named employees, so long as other employees experienced the violations.

[3] Upon information and belief, Plaintiff alleges that IWC Wage Order No. 4-2001 is applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage Orders that may be deemed relevant after discovery.

did not compensate and in some situations undercompensated Plaintiff and Aggrieved Employees for all hours worked.

First, Defendants did not fully compensate Plaintiff and Aggrieved Employees at least the minimum wage for all hours worked because Plaintiff and Aggrieved Employees were required to perform pre- and post-shift activities that were off-the-clock, as well as during meal periods and rest breaks. Second, Defendants also did not fully compensate Plaintiff and Aggrieved Employees because they were compelled to work and remain on the premises during meal periods, but were not compensated for the time that they remained under Defendants control. Therefore, some of their unpaid meal period time constitutes off-the-clock work resulting in further unpaid minimum wages (along with further unpaid overtime wages) owed to Plaintiff and Aggrieved Employees.

Labor Code section 510 sets forth the California requirement that employees must be paid overtime as follows:

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

The IWC Wage Order(s) likewise mirror Labor Code section 510's overtime requirements and apply here. Moreover, Labor Code section 1198 provides that "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Further, in accordance with Labor Code section 1194, Plaintiff and Aggrieved Employees could not agree to work for an amount less than the minimum wage and overtime compensation required by state law.

As noted above, Plaintiff and Aggrieved Employees were compelled to perform work off-the-clock, resulting in uncompensated minimum and overtime wages. Because Plaintiff and Aggrieved Employees regularly worked full-time schedules, this off-the-clock work frequently resulted in unpaid overtime; however, Plaintiff and Aggrieved Employees did not even receive straight pay for these off-the-clock hours—they received no pay at all. Defendants willingly acquiesced to and ratified the practice of off-the-clock work to minimize the incidence of reported overtime, thereby reducing labor costs.

Additionally, the overtime that was paid was short as Defendants incorrectly calculated the regular rate for the purpose of calculating overtime. Defendants failed to include non-discretionary forms of pay in regular rate calculations, for which they face liability. As a result, Plaintiff and Aggrieved Employees were underpaid overtime wages in violation of Labor Code sections 510 and 1194.

Labor Code sections 221-224 and 2751 prohibit an employer from paying less than the agreed upon or designated wage, and from making unauthorized deductions from wages. Defendants made unlawful deductions from wages in violation of Labor Code sections 221, 223, and 224. Labor Code section 221 provides that employers may not collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Labor Code section 223 provides that where a contract requires an employer to maintain the designated wage scale, it is unlawful to pay a lower wage while purporting to pay the wage designated by contract. Labor Code section 224 prohibits employers from making deductions from an employee's wages not authorized by the employee in writing or permitted by law.

During the relevant time period, Defendants had a policy and practice of making unlawful deductions from the earned wages of Plaintiff and Aggrieved Employees. As a result of Defendants' actions, Plaintiff and Aggrieved Employees suffered and continue to suffer a loss of wages and compensation, and are entitled to damages and/or penalties in an amount to be shown according to proof at trial.

Labor Code sections 226.7 and 512, as well as subdivision 11 of IWC Wage Order No. 4-2001, mandate the following for meal periods: (1) no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, and (2) an employer may not employ an employee for a work period of more than ten (10) hours per day without providing a second meal period of not less than 30 minutes. Further, on February 25, 2021, the California Supreme Court reversed the Fourth Appellate District in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer's burden to show that compliant meal periods were provided to employees if the time records show otherwise.

With regards to meal periods, there are severe compliance issues—some are late, missed, short, or interrupted. Plaintiff and Aggrieved Employees did not receive compliant meal periods within the first five (5) hours of work, and did not receive second meal periods when working shifts of ten (10) hours or more. Plaintiff and Aggrieved Employees also did not receive second meal periods even when working shifts of twelve (12) hours or more. As a result, Plaintiff and Aggrieved Employees are entitled to receive premium payments in the form of one additional hour of pay at their regular rate of pay for non-compliant meal periods. (See *Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858; Lab. Code, § 226.7; IWC Wage Order No. 4-2001, subd. 11.)

The same violations occur with regard to Plaintiff's and Aggrieved Employees' rest breaks, which should be timely and duty-free, but which are also late, short, interrupted, and missed. Under California law, rest breaks must be paid, timely given, and duty free, and consist of ten (10) minutes net rest time per four (4) hours work or a major fraction thereof. Defendants retained control over Plaintiff and Aggrieved Employees during their rest breaks, requiring them to remain working and on premises. In *Augustus v. ABM Security Services Inc*. (2016) 2 Cal.5th 257, the California Supreme Court held that employees must be relieved of all duties during rest breaks pursuant to Labor Code section 226.7 and subdivision 12(A) of IWC Wage Order 5-2001. The court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards, and further explained that "employers [must] relinquish any control over how employees spend their break time, and relieve their employees of all duties." (*Id.* at p. 273.) Thus, Plaintiff and Aggrieved Employees did not receive timely and compliant rest breaks.

Labor Code section 226.7 further entitles Plaintiff and Aggrieved Employees to premium payments in the form of one additional hour of pay at their regular rate of pay for non-compliant rest breaks. (See *Ferra, supra*, 11 Cal.5th 858.) Defendants did not make premium payments for each non-compliant meal and rest break they failed to provide as required under Labor Code section 226.7. Further, any premium payment that was paid to Plaintiff and Aggrieved Employees was short because Defendants failed to include all non-discretionary forms of pay in regular rate calculations for purposes of calculating premium payments.

Defendants failed to provide accurate itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code section 226, subdivision (a). Due to, *inter alia*, Defendant's failure to pay Plaintiff and Aggrieved Employees for all hours worked (i.e., the failure to capture and pay for off-the-clock work), including minimum and overtime wages, failure to provide lawful meal and rest breaks, and failure to make premium payments for missed, late, or short meal breaks or rest periods, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code section 226, subdivisions (a)(1), (2), (5), and (9). Hence, the wage statements issued by Defendants are fatally noncompliant.

Defendants failed to provide the correct amount of paid sick leave that Plaintiff and Aggrieved Employees were entitled to under Labor Code section 246. Labor Code section 246 states that any employee who works thirty or more days within a year from the commencement of employment is entitled to paid sick days as provided in that section, and may begin using those accrued sick days on the 90th day of employment. Further, an employee shall accrue paid sick days at the rate of not less than one hour per every thirty hours worked, and shall accrue no less than forty hours of paid sick leave by the 200th calendar day of employment or each calendar year, or in each twelve-month period. Accrued paid sick days may be carried over to the following year of employment. Defendants withheld from Plaintiff and Aggrieved Employees their correct amount of accrued paid sick time, in violation of Labor Code section 246.

Labor Code section 248.6 provides that employers with 26 or more employees are required to provide up to eighty (80) hours of COVID-19 Supplemental Paid Sick Leave to covered employees to care for themselves, to care for family members, or for vaccine-related purposes. Defendants violated Labor Code section 248.6 by not providing Plaintiff and Aggrieved Employees with the required COVID-19 Supplemental Paid Sick Leave.

Pursuant to Labor Code section 1174, subdivision (d), an employer shall 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 wages 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 three years. Defendants have intentionally and willfully failed to keep accurate and complete records showing the hours worked daily by and wages paid to Plaintiff and Aggrieved Employees, in violation of Labor Code section 1174, subdivision (d).

Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, 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. Defendants did not provide all wages due to Plaintiff and Aggrieved Employees at the time of their separation because they did not pay them amounts due and owing at the time of termination or within seventy-two (72) hours of their resignation. Therefore, waiting-time penalties are triggered and Aggrieved Employees are entitled to continuing wages as provided by Labor Code section 203. Further, Defendants had and have a policy or practice of failing to pay Aggrieved Employees their paid time off and vacation time owed as wages upon separation of employment at their final rate of pay in violation of Labor Code section 227.3 and the applicable IWC Wage Orders.

Labor Code section 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code section 204, subdivision (d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." Due to the violations listed above, including failure to pay minimum and overtime wages, failure to pay meal and rest break premiums, and so forth, Defendants failed to timely pay Plaintiff and Aggrieved Employees all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis, in violation of Labor Code section 204.

Labor Code sections 2800 and 2802 require employers to reimburse their employees for necessary business-related expenses. During the relevant time period, Defendants failed to reimburse their employees for all necessary business-related expenses, including but not limited to the use of Plaintiff's and Aggrieved Employees' personal vehicles for work purposes, in violation of Labor Code sections 2800 and 2802. Defendants knew or should have known that Plaintiff and the other Aggrieved Employees were entitled to reimbursement for necessary business-related expenses.

Labor Code section 432.5 prohibits employers from requiring employees to agree to any term or condition of employment that is known by the employer to be prohibited by law. Defendants' post-employment restrictive covenants in its employment agreements with Plaintiff and Aggrieved Employees flout California law. Under Business and Professions Code section 16600, California courts have found various post-employment restrictive covenants to be void and unenforceable, including: (1) covenants not to compete (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 945), (2) covenants not to solicit a former employer's customers (*id.* at p. 948), (3) overly broad confidentiality provisions that operate as a "de facto" noncompete provision (*Brown v. TGS Mgmt. Co., LLC* (2020) 57 Cal.App.5th 303, 318-19), and (4) covenants not to solicit a former employer's employees (*AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.* (2018) 28 Cal.App.5th 923, 936). Thus Defendants' post-employment restrictive covenants in its employment agreements violate Labor Code section 432.5, and a violation of Labor Code section 432.5 serves as an additional basis for a representative action under the PAGA.

Plaintiff shall file an action to recover on Plaintiff's own behalf and on behalf of other Aggrieved Employees all unpaid wages, compensation, penalties, and other damages owed to them in order to remedy the sweeping practices which Defendants have integrated into their time tracking, payroll, and employment policies, and which have deprived Plaintiff and Aggrieved Employees of their lawfully earned wages.

Pursuant to Labor Code section 2699.3, subdivision (a), please advise within sixty (60) calendar days of this notice whether the LWDA intends to investigate and/or bring an action itself for the violations alleged above. We understand that if we do not receive a response within sixty-five (65) calendar days of this notice, Plaintiff, individually and on behalf of other similarly situated Aggrieved Employees and the State of California, may seek to recover penalties pursuant to Labor Code section 2699.

Sincerely,
CounselOne, PC

Anthony J. Orshansky

Filing Fee (Submitted Electronically)
Department of Industrial Relations, Accounting Unit