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San Luis Obispo Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO

KEVIN KATSUDA, an Individual; Individually, and on Behalf of All Similarly Situated Individuals,

Plaintiffs,

v.

RITE AID CORPORATION, a Delaware corporation, THRIFTY PAYLESS, INC d/b/a RITE AID, a California corporation, and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV-0233

CLASS ACTION

1. **Failure to Pay Compensation for All Hours Worked and Minimum Wage Violations (Labor Code §§ 216, 1194, 1194.2, and 1197; IWC Wage Order No. 4);**
2. **Failure to Pay Overtime Wages (Labor Code §§ 510 and 1194; IWC Wage Order No. 4);**
3. **Failure to Authorize and Permit Meal and Rest Periods (Labor Code §§ 226.7; IWC Wage Order No. 4);**
4. **Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226);**
5. **Waiting Time Penalties (Labor Code §§ 201-203); and**
6. **Violation of the Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*)**

JURY TRIAL DEMANDED

Plaintiff KEVIN KATSUDA (“Plaintiff”), individually and on behalf of all similarly situated individuals, allege as follows:

GENERAL ALLEGATIONS

1. This is a proposed class action brought against Defendants RITE AID CORPORATION, a Delaware corporation, THRIFTY PAYLESS, INC., a California corporation, and Does 1 through 50 (hereinafter all defendants collectively, “Defendants,” “Company,” and “Rite Aid”), on behalf of Plaintiff and all other employees who worked in California as Store Managers (hereinafter collectively referred to as “Store Managers”) for Defendants at any time from November 5, 2018[1] and continuing while this action is pending (“Class Period”), who were denied the benefits and protections required under the California Labor Code and other statutes and regulations applicable to California employees.

2. During the Class Period, Defendants:

   a. unlawfully misclassified Store Managers as exempt employees;

   b. failed to pay wages for all hours worked by Store Managers;

   c. failed to pay Store Managers the applicable legal minimum wage;

   d. failed to pay overtime wages due to Store Managers;

   e. failed to provide meal and rest periods due to Store Managers;

   f. failed to provide the Store Managers with timely and accurate wage and hour statements;

   g. failed to pay the Store Managers compensation in a timely manner upon their termination or resignation;

   h. failed to maintain complete and accurate payroll records for the Store Managers;

   i. wrongfully withheld wages and compensation due to the Store Managers; and

   j. committed unfair business practices in an effort to increase profits and to gain an unfair business advantage at the expense of the Store Managers and the public.

[1] The statutory period here is four years and one hundred and seventy-eight days due to California Emergency Rule of Court 9(a), which tolled the applicable statute of limitations for 178 days from April 6, 2020 to October 1, 2020.

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3. The foregoing acts and other acts by Defendants - committed throughout California and Santa Barbara County - violated provisions of the California Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, 1198, and 2802 (collectively, "Employment Laws"), violated the applicable Wage Orders issued by California's Industrial Welfare Commission, including Wage Orders 7-2001 during the Class Period ("Regulations"), violated California's Unfair Business Practices Act, California Business & Professions Code sections 17200 *et seq*., and violated Plaintiff's rights.

JURISDICTION AND VENUE

4. Venue is proper in this Judicial District and the County of San Luis Obispo because work was performed by Plaintiff and other members of the Class for Defendants in the County of San Luis Obispo, California, and Defendants' obligations under the Employment Laws and Regulations to pay overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiff and other members of the Class arose and were breached in California, including the County of San Luis Obispo.

5. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, and Defendants are corporations qualified to do business in California and regularly conduct business in California. Further, no federal question is at issue as the claims are based solely on California law.

THE PARTIES

Plaintiff Kevin Katsuda

6. Plaintiff Kevin Katsuda is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Plaintiff has been employed by Rite Aid since in or around September 2019 as a salaried Store Manager. Plaintiff works at a Rite Aid store located at 1690 East Grand Ave. in Arroyo Grande, California. Plaintiff is informed and believes and thereon alleges that despite the fact that Plaintiff as a Store Manager was clearly a non-exempt employee, Defendants knowingly, deliberately and willfully classified Plaintiff and other similarly situated Store Managers as exempt in order to avoid paying him (and others) overtime wages and other related benefits due to non-

exempt employees, which he and others would have been entitled to if they were properly classified as non-exempt employees.

Defendants Rite Aid Corporation and Thrifty Payless, Inc.

7. Plaintiff is informed and believes and based thereon alleges that Defendant Rite Aid Corporation is now and/or all times mentioned in this Complaint was a Pennsylvania Corporation licensed to do business and actually doing business in the State of California.

8. Plaintiff is informed and believes and based thereon alleges that Defendant Thrifty Payless, Inc. is now and/or all times mentioned in this Complaint was a Pennsylvania Corporation licensed to do business and actually doing business in the State of California.

9. Plaintiff is informed and believes and based thereon alleges that Defendants Rite Aid Corporation and Thrifty Payless, Inc., are, and at all relevant times were, Pennsylvania corporations, owners and operators of a business and/or with numerous geographic locations within the State of California, including in Santa Barbara County as “Rite Aid.” Defendants Rite Aid Corporation and Thirfty Payless, Inc. operate retail drug store chains throughout the United States, including in California.

10. Plaintiff is informed and believes and based thereon alleges that the degree of control exercised by Thrifty Payless, Inc., over Rite Aid Corporation is enough to reasonably deem Rite Aid Corporation as an agent of Thrifty Payless, Inc. under traditional agency principles. Rite Aid Corporation can legitimately be described as only a means through which Thrifty Payless, Inc. acts and conducts its global business. Defendants have such a unity of interest and ownership that the separate personalities do not in reality exist and that the corporate structure is just a shield for the alter ego of each other. Plaintiff therefore is informed and believes and thereupon alleges that Rite Aid Corporation and Thrifty Payless, Inc., and each of them, were his employer under California law, that Defendants herein did acts consistent with the existence of an employer-employee relationship with Plaintiff and that Rite Aid Corporation was owned, controlled, directly or indirectly, by Thrifty Payless, Inc.

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Defendants Does 1 through 50, Inclusive

11. DOES 1 through 50 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 50, inclusive and for that reason, DOES 1 through 50 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 50 are believed to be business entities who were also co-employers of the Plaintiff and other aggrieved Planner IIs herein.

All Defendants

12. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

13. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

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14. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

15. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers of the Plaintiff and other similarly situated Store Managers herein.

16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

FACTS COMMON TO ALL CAUSES OF ACTION

17. Defendants are a nationwide retail company that operate drug stores throughout the United States, including in California, as "Rite Aid." Defendants sell health and wellness products and provide, among other things, prescription-filling, health information, and general groceries.

18. Pursuant to the California Industrial Welfare Commission Wage ("IWC") Order No. 7-2001, § 1, a person employed in an executive capacity – and therefore exempt from the protections of the California Labor Code ("Labor Code") and IWC Order – means an employee who:

(a) primarily engages in the management of the enterprise in which they are/were employed or of a customarily recognized department or subdivision thereof; and

(b) customarily and regularly directs the work of at least two other full-time employees or the equivalent; and

(c) is granted the authority to hire or fire other employees, or to command particularly serious attention to their recommendations on such actions; and

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(d) customarily and regularly exercises discretion and independent judgment in the performance of their duties; and

(e) primarily engages in managerial work; and

(f) earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (i.e., 40 hours per week).

19. Rite Aid classified and continues to classify Store Managers, including Plaintiff, as "exempt" employee, even though they did not or do not meet the above exemption criteria.

20. In fact, Store Managers, including Plaintiff, do not fit into any exemption. Rather than "manage" the store, Plaintiff spent more than 80% of his time performing non-managerial tasks – the same tasks performed by Defendants' hourly subordinates – including but not limited to: restocking shelves, assisting in the in-store pharmacy, operating the cash register, performing customer service work, and shelf price labeling.

21. Accordingly, Plaintiff and the putative class of Store Managers were/are non-exempt employees and were/are entitled to: (1) either the statutorily mandated meal periods or payment of missed meal period premiums; (2) either the statutorily mandated rest periods or payment of missed rest period premiums; (3) payment of all wages due, including overtime; (4) receipt of accurate itemized wage statements; and (5) payment of all wages due upon separation of employment (i.e., waiting time penalties).

22. Rite Aid has in place highly standardized practices, policies, and procedures that uniformly apply and govern Plaintiff and other similarly situated employees in their role as "Store Managers" of the Company. Their training programs, job descriptions, duties, personnel policies, hiring practices, compensation and promotion guidelines, progressive discipline policies, and Store Manager evaluation protocols are identical in nature and in practice, and ensures that common practices operate uniformly in every Rite Aid retail location.

23. Rite Aid's job description pertaining to the Store Manager position is worded with managerial tasks that sound or give the impression that the position entails a high degree of sophistication and requires independent judgment and discretion, but the reality is that these so-called managerial tasks are nothing more than layers upon layers of approval and authorization

from others above the Store Manager level. By way of example, Rite Aid's job description outlines a list of "essential duties and responsibilities" and one of them being "to discipline associates." However, Rite Aid also has in place a comprehensive and extensive standardized manual on how to document a subordinate employee, and then requiring the Store Manager to seek authorization and permission from the Human Resources Department and a Regional Manager for just about any type of discipline to be administered on the associate employee. Therefore, while duties sound or appear to be managerial, due to the multitude of personnel procedures and standardized practices surrounding their role as Store Managers for Rite Aid, Aggrieved Employees including Mr. Katsuda perform a uniform list of duties in a relatively predefined manner, leaving them with very little to no opportunity to regularly exercise discretion or independent judgment to "manage" their stores.

24. Along the same lines, Plaintiff and Store Managers are therefore also not subject to the Administrative Exemption. Their jobs are not commonly recognized as a learned or artistic profession, nor is the work of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, thus they are not subject to the Professional Exemption. They are not salespeople and thus do not qualify for a sales exemption such as the Outside Sales or Inside Commissioned Sales exemptions. Despite the obviously non-exempt nature of the job duties of Plaintiff and other similarly situated Store Managers, Rite Aid misclassified him and similarly-situated Store Manager employees as being exempt.

25. Putative Class Members, including Plaintiff, are also compelled to work off-the-clock and off-duty to meet productivity standards. The compensation structure for Rite Aid's Store Managers includes a monetary component that is tied to the productivity or profitability of their individual stores. Rite Aid also has in place "score cards" which penalize Store Managers for the slightest infraction of their store, for example, for appearance, lay-out, and for the overall progress of the store. Accordingly, Store Managers, including Plaintiff, work well beyond a standard 40-hour work week schedule and even appear to work on their scheduled "off-days" due to the pressure placed on them by Rite Aid's risk or reward culture.

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26. Accordingly, when factoring in the actual hours worked by Store Managers, their monthly salaries are less than two times the state minimum wage for full-time employment. Plaintiff, for example, is scheduled to work only five days a week and normally is scheduled to be "off" on Wednesdays and Sundays. However, he nevertheless shows up to work due to the pressures placed on him by Defendants. As a result, for the first two years of his employment with Rite Aid, he regularly worked 60-80 hours a week to meet Rite Aid's expectations. Plaintiff continues to work on his supposed "off" days to keep up with the fast-paced expectations and directives of Rite Aid.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure § 382 and Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on his own behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

> **All current and former Store Managers employed by Rite Aid in the State of California and classified as exempt, salaried employees from November 5, 2018 through the date of final judgment.**

28. All Store Managers, including Plaintiff, are putative Class Members.

29. During the Class Period, by virtue of unlawfully classifying Plaintiff and Class Members as salaried, exempt Store Managers, Defendants have routinely failed to compensate Store Managers all of the wages they are due ("off-the-clock" work).

30. During the Class Period, Plaintiff and Store Managers were subject to Defendants' unlawful company practice of classifying them as exempt employees and denying them wages and benefits that they would have been entitled to had they been properly classified as non-exempt employees. All who were subject to this unlawful classification and compensation scheme suffered damages. Defendants applied this illegal wage device uniformly to all Store Managers to the disadvantage of Class Members.

31. As a result, during the Class Period, Defendants have failed to provide Store Managers with accurate wage and hour statements since Defendant's misclassification scheme did not fully compensate Store Managers for all hours worked, including overtime, for missed meal and rest periods, and other related Labor Code violations. As a result, Defendants have failed to provide

Store Managers with accurate wage and hour statements due to the gross hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

32. During the Class Period, Plaintiff and Store Managers have been required to work more than eight hours per day and more than forty hours per workweek. Defendants have also violated Labor Code §§ 1194, 558, 510 when it forces Store Managers, including Plaintiff, to work consecutively on "days off" with no payment of overtime or double-overtime. Defendants have routinely failed to compensate Store Managers all of the overtime wages they are due.

33. During the Class Period, Defendants have failed to pay accrued wages and other compensation due immediately to Store Managers who were terminated, and Defendants have failed to pay accrued wages and other compensation due within seventy-two hours to Store Managers who ended their employment.

34. The proposed class is ascertainable in that its members can be identified using information contained in Defendants' payroll and personnel records.

35. <u>Numerosity</u>. The Store Managers are so numerous, conservatively estimated to include over 100 Store Managers, that joinder of each individual Class Member would be impracticable, and the disposition of their claims in a class action, rather than numerous individual actions, will benefit the parties, the Court and the interests of justice.

36. <u>Commonality</u>. There is a well-defined community of interest in the questions of law and fact involved in this action, because Defendants' failure to pay Store Managers their wages or afford them the protections required under the Employment Laws and Regulations affects all Class Members. Common questions of law and fact predominate over questions that affect only individual Store Managers, because all Store Managers were subject to the uniform, unlawful pay practices and policies. The predominate questions of law and fact include, but are not limited to:

a. Whether Defendants devised a scheme and/or plan to circumvent California wage and hour laws;

b. Whether Defendants' conduct was fraudulent and/or deceitful;

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c. Whether Defendants' conduct violated the Employment Laws and Regulations; and

(i) failed to compensate Plaintiff and the Class Members for all hours worked;

(ii) failed to compensate Plaintiff and the Class Members at the applicable and legally-mandated minimum hourly rate then in effect;

(iii) failed to provide Plaintiff and the Class Members with timely and accurate wage and hour statements; and

(iv) failed to maintain complete and accurate payroll records for Plaintiffs and the Class Members;

d. Whether Defendants' systematic acts and practices violate, *inter alia*, California Business & Professions Code section 17200, *et seq*.

37. Typicality. Plaintiff's claims are typical of those of the other Store Managers because all Store Managers share the same or similar employment duties and activities, all are automatically classified as exempt from overtime and meal and rest period provisions, and all have been denied the benefits and protections of the Employment Laws and Regulations in the same manner. Since Defendants have uniformly applied the same pay practices and policies to each Store Manager, Plaintiff's claims are typical of the claims of all Store Managers. Plaintiff's claims are also typical because Plaintiff has suffered the same damages as those suffered by all Class Members.

38. Adequacy of Representation. Plaintiff can fairly and adequately represent and protect the interests of all Store Managers in that Plaintiff does not have disabling conflicts of interest which are antagonistic to those of all other Store Managers. Plaintiff seeks no relief which is antagonistic or adverse to the other Class Members, and the infringement of their rights and the damages they have suffered are typical of all other Class Members. Plaintiff's counsel is competent and experienced in litigating class actions in California based on large employers' violations of the Employment Laws and Regulations.

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39. As mentioned above, to the extent that any Store Managers entered into any arbitration agreement with any Defendants and such agreements purport to require arbitration, such agreements are void and unenforceable. Even if such agreements are deemed enforceable, however, class-wide arbitration is appropriate and should be utilized to obtain class-wide relief.

40. Superiority of Class Action. The nature of this action and the nature of laws available to Plaintiffs and the other Store Managers in the putative Class make use of the class action a particularly efficient and effective procedure because:

a. For many of the Store Managers, individual actions or other individual remedies would be impracticable and litigating individual actions would be too costly;

b. The action involves a large corporate employer or employers (Rite Aid Corporation and Thrifty Payless, Inc.) and a large number of individual employees (Plaintiff and the other Class Members), many with relatively small claims and all with common issues of law and fact;

c. If the Store Managers are forced to bring individual lawsuits, the corporate defendants would necessarily gain an unfair advantage, the ability to exploit and overwhelm the limited resources of individual Class Members with vastly superior financial and legal resources;

d. The costs of individual suits would likely consume the amounts recovered;

e. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by current employees of Defendants, who would be disinclined to pursue an action against their present and/or former employer due to an appreciable and justified fear of retaliation and permanent damage to their immediate and/or future employment; and

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f. Common business practices Plaintiff experienced are representative of those experienced by all Store Managers and can establish the right of all Store Managers to recover on the alleged claims.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE

(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ.; IWC WAGE ORDER NO. 9; MINIMUM WAGE ORDER)

41. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief.

42. At all times relevant to this complaint, Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No. 9, and the Minimum Wage Order were in full force and effect and required that Defendant's California nonexempt employees receive the minimum wage for all hours worked irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate of twelve dollars ($12) per hour for work performed up through January 1, 2020, thirteen dollars ($13) per hour for work performed up through January 1, 2021, fourteen dollars ($14) per hour for work performed up through January 1, 2022, fifteen dollars ($15) per hour for work performed up through January 1, 2023, and fifteen dollars and fifty cents ($15.50) thereafter.

43. Defendants failed to pay Plaintiffs and putative class members for all hours worked at the statutory minimum wage rate, as required by law, including for work time spent on scheduled days' off, for work performed beyond a typical or standardized 8 hour work day or 40-hour work week schedule.

44. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff and putative class members have been deprived of minimum wages due in amounts to be determined at trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code §§ 1194 and 1194.2.

45. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No. 9, § 4, and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and reasonable attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

46. Plaintiffs request relief as described below.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(CAL. LABOR CODE §§ 510, 1194 ET SEQ.; IWC WAGE ORDER NO. 9.)

47. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

48. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage order No. 9, § 3, to pay Plaintiffs and putative class members overtime compensation at a rate of 1.5 times their regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in a week, and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a day.

49. Defendants failed to pay Plaintiffs and putative class members daily or weekly overtime compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

50. As a result of Defendants' unlawful acts, Plaintiff and putative class members have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor Code § 1194.

51. By violating Cal. Labor Code § 510, Defendants are liable for civil penalties and attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

52. Plaintiffs request relief as described below.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS

(CAL. LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NO. 7)

53. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

54. Plaintiff and putative class members have regularly worked in excess of five (5) hours in a workday without being provided at least a half-hour meal period in which they were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No.

9, § 11(A).

55. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 11(B).

56. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11, Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code §§ 218.5 and 1194.

57. Plaintiffs and putative class members have regularly worked in excess of four (4) hours in a workday without Defendants' authorizing and permitting them to take at least a ten minute rest period, as required by Cal. Labor Code § 226.7 and IWC wage order No. 9, § 12.

58. Because Defendants failed to authorize and permit proper rest periods, Defendants are liable to Plaintiffs and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not authorized and permitted, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 12(B).

59. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11, Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code §§ 218.5 and 1194.

60. Plaintiffs request relief as described below.

<u>FOURTH CAUSE OF ACTION</u>

FAILURE TO FURNISH ACCURATE WAGE STATEMENTS

(CAL. LABOR CODE §§ 226, 226.3; IWC WAGE ORDER NO. 7)

61. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

62. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-monthly or at the time of each payment of wages to furnish each California employee with a statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement

itemizing, among other things, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial violation and one hundred dollars ($100) for each subsequent violation, up to four thousand dollars ($4,000).

63. Defendants knowingly and intentionally failed to furnish Plaintiffs and putative class members with timely, itemized statements that accurately report the total hours worked, as required by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, Defendants are liable to Plaintiffs and putative class members for the amounts provided by Cal. Labor Code § 226(b), including an award of costs and reasonable attorneys' fees.

64. Plaintiffs request relief as described below.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(CAL. LABOR CODE §§ 201, 202, 203)

65. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

66. Cal. Labor Code § 201 requires an employer who discharges a California employee to pay all compensation due and owing to that employee immediately upon discharge.

67. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing to a California employee who quits within 72 hours of that employee's quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.

68. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.

69. Defendants willfully failed to timely pay compensation and wages, including unpaid minimum wage, unpaid overtime pay, unreimbursed expenses and unreimbursed reserve accounts, unpaid premium pay for missed meal periods, and unpaid premium pay for missed rest periods to Plaintiffs and similarly situated putative class members no longer in Defendants' employ, upon termination of their employment. As a result, Defendants are liable to Plaintiffs and similarly

situated putative class members for waiting time penalties, together with interest thereon and reasonable attorneys' fees and costs, under Cal. Labor Code §§ 203 and 256.

70. Plaintiffs request relief as described below.

SIXTH CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT

(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)

71. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

72. California Business & Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

73. California Business & Professions Code § 17204 allows "any person acting for the interests of itself, its members or the general public" to prosecute a civil action for violation of the Unfair Competition Law.

74. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing of this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code § 17200, by engaging in the following:

a. Failing to pay California minimum wage and overtime compensation to Plaintiff and putative class members;

b. Failing to provide adequate off-duty meal periods to Plaintiff and putative class members, and failing to pay them premium pay for missed meal periods;

c. Failing to authorize and permit adequate rest periods to Plaintiff and putative class members, and failing to pay them premium pay for missed rest periods;

d. Failing to pay all wages due upon termination of employment to Plaintiff and similarly situated putative class members no longer in Defendants' employ;

e. Failing to provide accurate itemized wage statements to Plaintiff and putative class members;

f. Failing to keep accurate payroll records noting the actual hours worked by Plaintiffs and putative class members, in violation of Cal. Labor Code § 1174 and IWC wage order No. 7, § 7(A);

g. Willfully misclassifying Plaintiff and putative class members as exempt in; and

h. Intentionally, recklessly and/or negligently misrepresenting to Plaintiffs and putative class members the true nature of their employment status.

75. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of Business & Professions Code § 17200.

76. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received and continue to hold ill-gotten gains belonging to Plaintiffs and putative class members. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs and putative class members have suffered economic injuries including, but not limited to loss of minimum wage and overtime wages, compensation for missed meal periods, compensation for missed rest periods, waiting time penalties, and attorneys' fees and costs incurred to enforce their rights, including their rights under Cal. Labor Code § 1194. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those unpaid minimum wage and overtime, unpaid compensation for missed meal periods and missed rest periods, and interest accrued.

77. Plaintiff and putative class members are entitled to restitution pursuant to Cal. Business & Professions Code §§ 17203 and 17208 for all minimum wage, overtime, meal period and rest period compensation, unpaid waiting time penalties, interest since four years prior to the filing of this action, and attorney's fees and costs Plaintiffs have incurred to enforce these rights, including their rights under Cal. Labor Code § 1194, 510.

78. Plaintiffs and putative class members are entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to Business & Professions Code § 17202.

79. By all of the foregoing alleged conduct, Defendants have committed, and are continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of Cal. Business & Professions Code §17200 *et seq*.

80. As a direct and proximate result of the unfair business practices described above, Plaintiff and putative class members have suffered significant losses and Defendants have been unjustly enriched.

81. Pursuant to Cal. Business & Prof. Code §17203, Plaintiff is entitled to: (a) restitution of money acquired by means of its unfair business practices, in amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief against Defendants' continuation of its unfair and unlawful business practices; and (c) a declaration that Defendants' business practices are unfair and unlawful within the meaning of the statute.

82. Plaintiff assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action which is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure § 1021.5.

83. Plaintiff requests relief as described below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all Store Managers, pray that the Court enter judgment in their favor and against Defendants as follows:

1. For an Order requiring and certifying this action as a class action;
2. For an Order appointing Plaintiff's counsel as Class Counsel;
3. For compensatory damages in an amount to be ascertained at trial;
4. For restitution in an amount to be ascertained at trial;
5. For punitive damages in an amount to be ascertained at trial;
6. For penalties as required by the applicable Wage Order or otherwise by law;
7. For prejudgment interest at the legal rate pursuant to California Labor Code section 218.6 and other applicable sections;
8. For reasonable attorney's fees pursuant to California Labor Code § 1194;
9. For cost of suit incurred herein;
10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay overtime premium compensation and for meal and rest period compensation; and

11. For such further relief as the Court may deem appropriate.

DATED: May 3, 2023 **BOYAMIAN LAW, INC.**

By: ______________________________
Michael H. Boyamian
Attorneys for Plaintiff KEVIN KATSUDA
and All Others Similarly Situated

<u>DEMAND FOR JURY TRIAL</u>

Plaintiff KEVIN KATSUDA, individually, and on behalf of all similarly situated individuals, demands jury trial of this matter.

DATED: May 3, 2023 **BOYAMIAN LAW, INC.**

By: ______________________________
Michael H. Boyamian
Armand R. Kizirian
Attorneys for Plaintiff KEVIN KATSUDA
and All Others Similarly Situated