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13 Attorneys For: Plaintiffs and the Class

14
 15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **COUNTY OF LOS ANGELES**

17 ROBERT CHASE and SHELDON)
 SCHERWIN, on behalf of themselves)
 18 and all others similarly situated,)

19 Plaintiffs,

20 vs.

21 RITE AID CORPORATION, a Delaware)
 corporation, THRIFTY PAYLESS, INC.,)
 22 a California Corporation, THRIFTY)
 CORPORATION, a California)
 23 Corporation, and DOES 1-100, inclusive)

24 Defendants.

CASE NO. BC381055

25 **SECOND AMENDED CLASS**
ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR:

- 1) Failure to Provide or Allow Meal Periods;
- 2) Failure to Provide or Allow Rest Periods;
- 3) Failure to Pay Overtime Compensation;
- 4) Failure to Furnish Timely and Accurate Wage Statements;
- 5) Failure to Pay Final Wages;
- 6) Waiting Time Penalties;
- 7) Unlawful and Unfair Business Acts and Practices in Violation of

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California Business &
Professions Code §
17200, *et seq.*

[DEMAND FOR JURY TRIAL]

Plaintiffs, Robert Chase and Sheldon Scherwin (“Plaintiffs”), on behalf of themselves and all others similarly situated (the “Class” or “Class Members”), complain and allege against Defendants as follows:

I. INTRODUCTION

1. This is a class action under California Code of Civil Procedure § 382, seeking compensation for meal and rest periods not provided or allowed, unpaid overtime compensation, compensation for failure to furnish accurate wage statements, waiting time penalties, injunctive and other equitable relief, interest, and reasonable attorneys’ fees and costs, under California Labor Laws and Industrial Welfare Commission (“IWC”) Wage Orders. Plaintiffs, on behalf of themselves and the Class, also seek injunctive relief and restitution of all benefits Defendants have enjoyed from their violations of these laws.

2. Since at least November 20, 2003, Defendants had a companywide practice of not providing pharmacists with rest breaks and meal periods. Indeed, pharmacists often worked alone for the first five hours of their shift, and in many instances their entire shift, which prevented them from taking required meal breaks and rest periods.

3. On information and belief, Defendants also have a companywide policy of scheduling pharmacists to work with only Intern Pharmacists, who are not authorized or allowed to fill prescriptions or counsel patients when not supervised by a licensed pharmacist. It is Defendant’s companywide policy that whenever a pharmacist is working alone, or working only with a technician or Intern, that the pharmacist may not leave the premises for meal periods.

4. On information and belief, even when they were not alone,

1 pharmacists were not allowed or authorized to take meal periods unless they were
2 scheduled to take a meal period. Defendants have a companywide practice of
3 requiring pharmacists to take meal periods according to a predetermined pharmacy
4 schedule. Defendants failed to schedule pharmacists' meal periods, as shown from
5 their own scheduling records. Given the medical nature of their work, and the
6 constant need to tend to patient's pharmaceutical and counseling needs,
7 pharmacists were not allowed to unilaterally decide when to take a meal period.

8 5. On information and belief, Defendants were aware and admitted that
9 pharmacists would not be provided with the opportunity to take meal periods given
10 the nature of their work, and Defendants admitted that they would have to
11 compensate pharmacists with an extra hour of pay on those days when a meal
12 period was not provided. Defendants tracked the shifts when a pharmacist was not
13 provided with a meal period in Defendants' electronic time and pay records,
14 however, Defendants did not pay the extra hour of pay that they admittedly owed
15 on these occasions. In sum, Defendants had a companywide policy of requiring
16 pharmacists to work without meal periods because Defendants determined that
17 they would profit from additional prescription fills during this time, and because it
18 would be less expensive to pay the extra hour of pay than to staff additional
19 pharmacists to provide meal periods. But Defendants failed to pay the additional
20 wages they understood and acknowledged were owed.

21 6. On information and belief, Defendants also had a companywide
22 policy of requiring pharmacists to log out of the time keeping system during "on
23 duty" meal periods, but still make themselves available to customers. Instances
24 where this occurred can easily be determined from Defendants' records, which will
25 show that pharmacists filled prescriptions while they were logged off the electronic
26 time keeping system.

27 7. On information and belief, Defendants also failed to provide
28 pharmacists with the opportunity to take a second meal period during shifts

1 exceeding ten hours. Defendants have a companywide policy of using written
2 meal period waivers that violates California law on their face. Specifically, the
3 policy provides that pharmacists may waive their second meal period even during
4 shifts that exceed twelve hours. This conflicts with California law, which only
5 allows a second meal period to be waived if the total shift does not exceed twelve
6 hours.

7 8. On information and belief, pharmacists were also required to work
8 though breaks in order to achieve the “prescription counts” that Defendants
9 required. Pharmacists were regularly reprimanded for failing to achieve the
10 companies’ lofty goals. Defendants refused to schedule meal periods and/or
11 provide additional relief so that pharmacists could take meal periods when a
12 pharmacy’s prescription fill counts were not being met. Defendants’ scheduling
13 software also specifically tracks which pharmacies are understaffed such that
14 pharmacists are unable to take rest breaks and meal periods, however, Defendants
15 failed to take corrective measures.

16 9. On information and belief, Defendants conducted surveys of their
17 pharmacists and were aware of the fact that pharmacists were not getting rest
18 breaks and meal periods, and, as a result, that errors and misfills were resulting,
19 which placed patients and the public at risk. Defendants, however, ignored this
20 information to protect its own profits. Defendants did not afford their pharmacists
21 proper meal and rest periods, as required by Labor Code §§ 226.7 and 512 and
22 applicable IWC Wage Orders. These employees are owed an additional hour of
23 pay at their regular rate for each missed meal and rest period.

24 10. On information and belief, Defendants also did not compensate
25 pharmacists for overtime in instances where the pharmacists worked through their
26 rest breaks, resulting in ten or more minutes of additional labor that they would not
27 have otherwise worked during their shifts. Defendants also have a companywide
28 policy of not including store and company meeting time when calculating overtime

1 or premium wages owed to pharmacists.

2 11. Since at least November 20, 2003, Defendants also did not furnish
3 each of their employees with timely itemized wage statements accurately
4 identifying the number of hours of pay for which they were entitled to
5 compensation, including additional pay for missed breaks and meal periods, as
6 required by Labor Code § 226. Each employee is entitled to the greater of actual
7 damages or fifty dollars (\$50) for the initial period in which Defendants failed to
8 provide a statement accurately reflecting total hours and one hundred dollars
9 (\$100) for each subsequent pay period, up to a total of four thousand dollars
10 (\$4,000).

11 12. Defendants have willfully failed and refused, and continue to fail and
12 refuse, to timely pay wages due for missed rest/meal periods and overtime to
13 employees at the conclusion of their employment with Defendants, entitling these
14 former employees to statutory penalties under Labor Code § 201-203.

15 **II. JURISDICTION**

16 13. The California Superior Court for the County of Los Angeles has
17 jurisdiction over Plaintiffs' and Class Members' claims for rest and meal period
18 violations under Labor Code § 206.7, 218, 221, and 512.

19 14. The California Superior Court for the County of Los Angeles has
20 jurisdiction over Plaintiffs' and Class Members' claims for unpaid overtime wages
21 under Labor Code §§ 510, 558, and 1194, and failure to keep adequate time
22 records under Labor Code § 226.

23 15. The California Superior Court for the County of Los Angeles has
24 jurisdiction over Plaintiffs' and Class Members' claims for waiting time penalties
25 for failure to pay final wages of discharged employees under Labor Code § 203.

26 16. The California Superior Court for the County of Los Angeles has
27 jurisdiction over Plaintiffs' and Class Members' claims for injunctive relief and
28 restitution of ill-gotten benefits arising from Defendants' unlawful business

1 practices under Business & Professions Code § 17203 and 17204.

2 **III. VENUE**

3 17. Venue as to each Defendant is proper in the California Superior Court
4 for the County of Los Angeles, pursuant to Code of Civil Procedure § 395(a).
5 Defendant Rite Aid Corporation is a Delaware corporation with its principal place
6 of business in California, and it maintains headquarters of other offices, transacts
7 business, and/or has an agent in Los Angeles County. Defendants Thrifty
8 Corporation, and Thrifty PayLess, Inc. are California corporations that maintain
9 offices, transact business, and/or have agents in Los Angeles County. The
10 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
11 situated within the State of California and within Los Angeles County. Defendants
12 operate in Los Angeles County as well as in other counties within the State of
13 California and employ numerous Class Members in Los Angeles County.
14 Moreover, Plaintiff Scherwin resides in Los Angeles County, Plaintiff Chase
15 resides in Ventura County, and Plaintiffs are or were employed by Defendants in
16 Los Angeles County.

17 **IV. PARTY ALLEGATIONS**

18 **A. Plaintiff Sheldon Scherwin**

19 18. Plaintiff Scherwin is an adult resident of California. Plaintiff
20 Scherwin was originally hired by Thrifty Corporation in 1988. During the Class
21 Period stated herein, Plaintiff Scherwin was employed by Defendants Thrifty
22 Corporation and/or Thrifty PayLess, Inc., and Rite Aid Corporation as a
23 pharmacist in one of Defendants' locations in Los Angeles County, California,
24 which on information and belief is owned and operated by Thrifty Corporation
25 and/or Thrifty PayLess, Inc. His duties primarily consisted of filling prescriptions
26 for customers of the pharmacy, and counseling patients regarding their
27 prescriptions.

28 19. Plaintiff Scherwin, like other similarly situated Class Members, was

1 paid an hourly wage throughout his employment with Defendants.

2 20. During the Class Period, Plaintiff Scherwin was not provided or
3 allowed rest and meal breaks in accordance with Labor Code §§ 226.7(a) and 512.
4 Plaintiff Scherwin worked in excess of five (5) hours per day and was not provided
5 a half hour meal period in which he was relieved of all duties. He also regularly
6 worked in excess of four hours, or major fraction thereof, without being provided a
7 ten minute rest break. In some instances he worked in excess of ten (10) hours a
8 day and was not provided any meal periods in which he was relieved of all duties,
9 or the appropriate number of ten minute rest breaks.

10 21. Plaintiff Scherwin worked in excess of four, six, eight, and even ten
11 hours by himself without an opportunity to take required meal or rest breaks. Meal
12 periods were not scheduled for Plaintiff Scherwin's shifts, and were not otherwise
13 provided by Defendants.

14 22. On days when Plaintiff Scherwin worked through paid rest periods, he
15 worked ten or more minutes longer than required for an eight-hour shift, but was
16 not properly paid overtime compensation for all hours worked in excess of eight
17 (8) hours in accordance with applicable Wage Order Nos. 4-98 and 4-2001.

18 23. Defendants did not timely pay missed break and overtime
19 compensation due to Plaintiff Scherwin at the conclusion of his employment in
20 violation of California Labor Code §§ 201-203.

21 **B. Plaintiff Robert Chase**

22 24. Plaintiff Chase is an adult resident of Ventura County, California. On
23 information and belief, Plaintiff Chase was originally employed by Thrifty
24 PayLess, Inc. Although he applied to Rite Aid Corporation, he was subsequently
25 required to sign a "New Hire" form for Thrifty PayLess. During the Class Period
26 stated herein, Plaintiff Chase was employed by Defendants PayLess Corporation
27 and/or Thrifty PayLess, Inc., and Rite Aid Corporation as a pharmacist in multiple
28 of Defendants' locations in Los Angeles County, California. On information and

1 belief, at least one of these locations was owned and operated by Thrifty PayLess,
2 Inc. and/or PayLess Corporation during the Class Period. Plaintiff Chase's duties
3 primarily consisted of filling prescriptions for customers of the pharmacy, and
4 counseling patients regarding their prescriptions.

5 25. Plaintiff, Robert Chase, like other similarly situated Class Members,
6 was paid an hourly wage throughout his employment with Defendants.

7 26. During the Class Period, Plaintiff Chase was not provided or allowed
8 rest or meal breaks in accordance with Labor Code §§ 226.7(a) and 512. Plaintiff
9 Chase regularly worked in excess of five (5) hours per day and was not provided a
10 half hour meal period in which he was relieved of all duties. He also regularly
11 worked in excess of four hours, or major fraction thereof, without being provided a
12 ten minute rest break. In some instances he worked in excess of ten (10) hours a
13 day and was not provided any meal period in which he was relieved of all duties,
14 or the appropriate number of ten minute rest periods.

15 27. Plaintiff Chase worked in excess of four, six, eight, and even ten
16 hours by himself without an opportunity to take required meal or rest breaks. Meal
17 periods were not scheduled for Plaintiff Chase's shifts, and were not otherwise
18 regularly provided by Defendants. Plaintiff Chase worked alone throughout the
19 night without any opportunity to take a meal period in which he was relieved of all
20 duties as the pharmacy did not close and there was nobody there to relieve him.

21 28. On days when Plaintiff Chase worked through paid rest periods, he
22 worked ten or more minutes longer than required for an eight-hour shift, but was
23 not properly paid overtime compensation for all hours worked in excess of eight
24 (8) hours in accordance with applicable Wage Order Nos. 4-98 and 4-2001.

25 29. Defendants did not timely pay overtime compensation and other
26 unpaid wages due to Plaintiff Chase at the conclusion of his employment in
27 violation of California Labor Code § 201-203.

28 **C. Defendants**

1 30. Plaintiffs allege on information and belief that Rite Aid Corporation is
2 a corporation organized under the laws of the State of Delaware with its principal
3 place of business located in California. Defendant Thrifty Corporation is a
4 California Corporation with its principal place of business in California.
5 Defendant Thrifty PayLess, Inc. is a California Corporation with its principal place
6 of business in California. Defendant Rite Aid operates numerous California Rite
7 Aid drugstores through its wholly-owned subsidiaries, including Thrifty PayLess,
8 Inc, and Thrifty Corporation, which actually own and/or lease the retail drug
9 stores.

10 **D. DOES 1-100**

11 31. The true names and capacities, whether individual, corporate,
12 associate, or otherwise, of defendants sued herein as DOES 1 through 100,
13 inclusive, are currently unknown to Plaintiffs, who therefore sue defendants by
14 such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed
15 and believe, and based thereon allege, that each of the Defendants designated
16 herein as a DOE is legally responsible in some manner for the unlawful acts
17 referred to herein. Plaintiffs will seek leave of court to amend this complaint to
18 reflect the true names and capacities of the Defendants designated hereinafter as
19 DOES when their identities become known. Defendants and DOES 1-100
20 inclusive are collectively referred to as "Defendants" herein.

21 32. Plaintiffs are informed and believe and thereon allege that at all times
22 herein mentioned, the above named Defendants and each of them, and the DOE
23 defendants, and each of them, were acting as express agents, implied agents,
24 ostensible agents, servants, partners, and/or employees of each other. Plaintiffs are
25 informed and believe that in doing the acts herein alleged the named Defendants
26 and each of them, and the DOE defendants, and each of them, was at all times
27 acting within the scope of and pursuant to such agency and employment, and with
28 the full knowledge, consent, permission, approval and ratification, either express or

1 implied, of each of the other Defendants and benefited from the actions of every
2 other Defendant, thereby adopting such conduct and actions as their own.

3 Plaintiffs are informed and believe and thereon allege that the Defendants, and
4 each of them, were the alter egos of each other Defendant named herein. Plaintiffs
5 are informed and believe and thereon allege that the Defendants, and each of them,
6 aided and abetted and offered substantial assistance to the other Defendants in the
7 commission of the wrongful acts alleged herein.

8 **V. FACTUAL ALLEGATIONS**

9 33. Defendants operate, and at all times during the Class Period, have
10 done business in Los Angeles County and elsewhere within California.

11 Defendants own and operate drug stores and pharmacies throughout California.

12 Defendants employ and have employed numerous Class Members, including

13 Plaintiffs, to work as pharmacists. Each Class Member worked for and was
14 employed by Defendants.

15 **A. Duties of Employees.**

16 34. Defendants' pharmacists are paid hourly and are not guaranteed any
17 particular salary.

18 35. The primary duty and essential function of the pharmacist employees
19 is to fill prescriptions and provide information for customers regarding their
20 prescriptions.

21 36. The Class Members, including Plaintiffs, do not fall within any of the
22 exemptions to the pay requirements of the California Labor Code regarding
23 overtime, breaks, or waiting time penalties.

24 **B. Denial of Rest Breaks.**

25 37. During the Class Period, Defendants had, and continue to have a
26 policy and practice of requiring pharmacist employees to work without ten minute
27 rest periods. Pharmacists are also required to work alone or as the only pharmacist
28 on duty for four, six, eight, and even ten hours, making it impossible for them to

1 take a rest break at all, much less at or near the midway point of each four hour
2 period. This policy and practice does not comply with Labor Code § 226.7, and
3 512, and applicable IWC Wage Orders, and also constitute a separate and
4 independent violation of California Business and Professions Code § 17200 *et seq.*,
5 since it constitutes an unlawful and unfair business practice.

6 **C. Denial of Meal Periods.**

7 38. During the Class Period, Defendants had, and continue to have, a
8 policy and practice of requiring the Class Members, including Plaintiffs, to work in
9 excess of five (5) hours per day without providing them the opportunity to take a
10 meal period of at least a half hour during which they are relieved of all duties.
11 Pharmacist employees were also often required to work alone, or as the only
12 pharmacist on duty for five, six, eight, and even ten hours, which precluded them
13 from taking a 30-minute uninterrupted, off-duty meal period. It was also
14 Defendants policy not to provide Pharmacists with meal periods when working
15 alone on Sundays and during graveyard shifts.

16 39. On information and belief, even when they were not alone,
17 Pharmacists were not allowed or authorized to take meal periods unless they were
18 scheduled to take a meal period. Defendants failed to schedule meal periods, as
19 shown from their own scheduling records. Given the medical nature of their work,
20 and the constant need to tend to patient's pharmaceutical needs, Pharmacists were
21 not allowed to unilaterally decide when to take a meal period.

22 40. Defendants also failed to provide Pharmacists with the opportunity to
23 take a second meal period during shifts exceeding ten hours. Defendants'
24 companywide written meal period waiver policy unlawfully provides that
25 Pharmacists may waive their second meal period even during shifts that exceed
26 twelve hours.

27 41. On information and belief, Pharmacists were also required to work
28 though breaks in order to achieve the "prescription counts" that Defendants

1 required. Defendants refused to schedule meal periods and/or provide additional
2 relief so that Pharmacists could take meal periods when a pharmacy's prescription
3 fill counts were not being met. Defendants' scheduling software also specifically
4 tracks which pharmacies are understaffed such that Pharmacists are unable to take
5 rest breaks and meal periods, however, Defendants failed to take corrective
6 measures. Defendants also tracked shifts when a Pharmacist was not provided
7 with a meal period through Defendants' electronic time and payroll records, but
8 did not pay Pharmacists the extra hour of pay they were owed on these occasions.

9 42. Defendants' companywide policies and practices do not comply with
10 Labor Code §§ 226.7 and 512, and applicable IWC Wage Orders, and also
11 constitutes a separate and independent violation of California Business &
12 Professions Code § 17200 *et seq.* since it constitutes an unlawful and unfair
13 business practice.

14 **D. Failure to Pay Overtime Wages Due**

15 43. On days where pharmacist employees were denied paid rest breaks,
16 they were required to work ten or more minutes longer than they would otherwise
17 have been required to work under a lawful eight-hour shift. On these occasions,
18 Defendants did not pay pharmacist employees for the additional time they were
19 forced to work at the applicable overtime rate.

20 **E. Failure to Furnish Timely and Accurate Wage Statements.**

21 44. During the Class Period, Defendants have failed to furnish each of
22 their employees with timely itemized wage statements accurately reflecting hours
23 due to each employee, including additional hours of regular pay due to compensate
24 them for missed rest and meal periods.

25 **F. Failure to Timely Pay Wages Due.**

26 45. During the Class Period, Defendants had, and continue to have, a
27 policy and practice of not timely paying wages due and owing to the Class
28 Members, including Plaintiffs, within 72 hours of the conclusion of their

1 employment with Defendants. This policy and practice does not comply with
2 Labor Code § 201-203, and also constitutes a separate and independent violation of
3 Business & Professions Code § 17200 *et seq.* since it constitutes an unlawful and
4 unfair business practice.

5 **G. Unfair Business Practices.**

6 46. A violation of California's wage and hour laws constitutes a separate
7 and independent violation of Business & Professions Code § 17200 *et seq.* since it
8 constitutes an unlawful and unfair business practice.

9 **VI. CLASS ALLEGATIONS**

10 47. This action may properly be maintained as a class action pursuant to
11 section 382 of the Code of Civil Procedure. The Class is sufficiently numerous,
12 since it is estimated to include thousands of pharmacist employees throughout
13 California, the joinder of whom in one action is impracticable, and the disposition
14 of whose claims in a class action will provide substantial benefits to the parties and
15 the Court.

16 48. **Class Definition:** Without prejudice to later revisions, the class
17 which Plaintiffs seek to represent are composed of all persons who were employed
18 by Defendants as non-exempt Pharmacists at any location in the State of California
19 (the "Class") during the period commencing from November 20, 2003 up until the
20 date of trial (the "Class Period") in the following sub-classes:

- 21 a. All Plaintiff Class Members who were employed for work periods
22 of more than five hours without meal periods;
- 23 b. All Plaintiff Class Members who were scheduled to work as the
24 only pharmacist on duty for the first five hours of a shift, in any
25 shift that exceeded six hours, and who were not paid the hour of
26 pay owed for meal periods that were not provided;
- 27 c. All Plaintiff Class Members who were scheduled to work as the
28 only employee on duty for the first five hours of a shift, in any

- 1 shift that exceeded six hours, and who were not paid the hour of
2 pay owed for meal periods that were not provided;
- 3 d. All Plaintiff Class Members that were scheduled to work with an
4 Intern Pharmacist, and no other pharmacists, for the first five hours
5 of a shift, in any shift that exceeded six hours, and who were not
6 paid the hour of pay owed for meal periods that were not provided;
- 7 e. All Plaintiff Class Members who were not scheduled to take a
8 meal period within the first five hours of a shift, in any shift that
9 exceeded six hours, and who were not paid the hour of pay owed
10 for meal periods that were not provided;
- 11 f. All Plaintiff Class Members who signed a meal period waiver
12 agreement, and worked a shift exceeding twelve hours without
13 receiving a second meal period, and who were not paid the hour of
14 pay owed for meal periods not provided;
- 15 g. All Plaintiff Class Members that filled a prescription while they
16 were logged off of the electronic time keeping system, and who
17 were not paid the hour owed for meal periods not provided;
- 18 h. All Plaintiff Class Members who were required to work during
19 meal periods mandated by IWC Wage Order 7;
- 20 i. All Plaintiff Class Members who were not provided with statutory
21 rest periods and were not paid the hour of pay owed for rest
22 periods that were not provided;
- 23 j. All Plaintiff Class Members who were scheduled to work as the
24 only pharmacist on duty at their locations for the first four hours,
25 or last four hours of a shifts, and who were not paid the hour of pay
26 owed for rest periods that were not provided;
- 27 k. All Plaintiff Class Members who were scheduled to work as the
28 only pharmacy employee on duty for the first four hours, or last

1 four hours of a shift, and who were not paid the hour of pay owed
2 for rest periods that were not provided;

3 l. All Plaintiff Class Members who were provided with incomplete
4 and inaccurate pay records that did not reflect all actual hours
5 worked and/or rates of premium pay for Defendants' failure to
6 provide meal and rest periods (or compensation in lieu thereof);

7 m. All Plaintiff Class Members who were not paid overtime pay due;
8 and

9 n. All Plaintiff Class Members whom Defendants did not timely pay
10 all wages due upon discharge or termination of employment in
11 violation of Labor Code Section 203;

12 49. Throughout discovery in this litigation, Plaintiff may find it
13 appropriate and/or necessary to amend the definition of the Class and/or Subclass.
14 Plaintiffs will formally define and designate a class definition when they seek to
15 certify the Class and Subclass alleged herein.

16 50. **Ascertainable Class:** The Class is ascertainable in that each Member
17 can be identified using information contained in Defendants' payroll and personnel
18 records.

19 51. **Common Questions of Law or Fact Predominate:** There is a well-
20 defined community of interest in the questions of law and fact affecting the Class.
21 The questions of law and fact common to the Class predominate over questions
22 which may affect individual Class Members. These questions of law and fact
23 include, but are not limited to, the following:

24 (a) Whether Defendants' policy of scheduling pharmacists to work as the
25 only pharmacist on duty for extended periods of time specifically or
26 effectively precluded pharmacists from taking rest breaks and meal
27 periods that Defendants were required to provide them with during the
28 time they worked as the only Pharmacist on duty;

- 1 (b) Whether Defendants' policy of scheduling pharmacists to work alone
- 2 as the only employee on duty for extended periods of time specifically
- 3 or effectively precluded Pharmacists from taking rest breaks and meal
- 4 periods that Defendants were required to provide them with during the
- 5 time they worked alone;
- 6 (c) Whether Defendants' policy of requiring scheduled meal periods,
- 7 coupled with Defendants' failure to schedule meal periods, precluded
- 8 Pharmacists from taking meal periods that Defendants were required
- 9 to provide them;
- 10 (d) Whether pharmacists are entitled to additional compensation for
- 11 instances when they filled prescriptions while logged of the time
- 12 keeping system;
- 13 (e) Whether Defendants were required to pay Members of the Class for
- 14 rest periods owed but not provided or allowed;
- 15 (f) Whether Defendants were required to pay Members of the Class for
- 16 meal periods owed but not provided or allowed;
- 17 (g) Whether Defendants were required by law to pay overtime
- 18 compensation to Members of the Class who worked through rest
- 19 periods owed but not provided or allowed;
- 20 (h) Whether Defendants' meal period waiver forms are lawful;
- 21 (i) Whether Defendants failed to keep accurate records of the pharmacy
- 22 schedules, hours worked, and hours of pay due Members of the Class;
- 23 (j) Whether Defendants failed to timely furnish the Members of the Class
- 24 with a statement accurately showing the total hours the employee was
- 25 entitled to receive for each pay period, including additional hours of
- 26 regular pay to compensate them for missed rest and meal periods, and
- 27 additional overtime compensation due;
- 28 (k) Whether Defendants failed to pay missed break and overtime wages

1 owed at the time Class Members' employment ended; and

- 2 (l) Whether Defendants' systematic acts and practices violated, *inter alia*,
3 California Labor Code §§ 201, 202, 203, 221, 226, 226.7, 510, 512,
4 558, 1174, 1194 and 1197, and California Business & Professions
5 Code § 17200 *et seq.*

6 52. **Numerosity:** The Class is so numerous that the individual joinder of
7 all Members is impractical under the circumstances of this case. While the exact
8 number of Members of the Class is unknown to Plaintiffs at this time, Plaintiffs are
9 informed and believe the Class consists of over thousands of persons. Individual
10 joinder of Members of the Class is also impracticable because the individual
11 Members are disbursed throughout California.

12 53. **Typicality:** Plaintiffs' and the Class Members' claims for restitution
13 and damages arise from and were caused by Defendants' wrongful conduct.
14 Because Plaintiffs were routinely not provided with required meal and rest periods,
15 and because they were not compensated for the meal and rest periods they were
16 denied, and resultant overtime, Plaintiffs are asserting claims that are typical of the
17 claims of each Member of the Class. Plaintiffs are like all other Class Members
18 because Plaintiffs have suffered the same injuries as those suffered by the Class.
19 Since Plaintiffs' claims and the claims of Class Members all derive from a
20 common nucleus of operative facts, Plaintiffs are asserting claims that are typical
21 of the claims of the entire Class.

22 54. **Adequacy:** Plaintiffs will fairly and adequately represent and protect
23 the interests of the Class in that they have no disabling conflicts of interest that
24 would be antagonistic to those of the other Members of the Class. Plaintiffs seek
25 no relief that is antagonistic or adverse to the Members of the Class and the
26 infringement of the rights and the damages they have suffered are typical of all
27 other Members of the Class. Plaintiffs have retained competent counsel,
28 experienced in class action litigation and employment law and intend to prosecute

1 this action vigorously.

2 55. **Superiority:** The nature of this action and the nature of laws
3 available to Plaintiffs and the Class make the use of the class action format a
4 particularly efficient and appropriate procedure to afford relief to Plaintiffs and the
5 Class for the wrongs alleged because:

- 6 (a) The individual amounts of damages involved, while not insubstantial,
7 are such that individual actions or other individual remedies are
8 impracticable and litigating individual actions would be too costly;
- 9 (b) This case involves large corporate employers and a large number of
10 individual employees with many relatively small claims with common
11 issues of law and fact;
- 12 (c) If each Class Member were required to file an individual lawsuit, the
13 Defendants would necessarily gain an unconscionable advantage since
14 they would be able to exploit and overwhelm the limited resources of
15 each individual Member of the Class with their vastly superior
16 financial and legal resources;
- 17 (d) The costs of individual suits could unreasonably consume the amounts
18 that would be recovered;
- 19 (e) Requiring each Member of the Class to pursue an individual remedy
20 would also discourage the assertion of lawful claims by employees
21 who would be disinclined to pursue an action against their present
22 and/or former employer for an appreciable and justifiable fear of
23 retaliation and permanent damage to their immediate and/or future
24 employment;
- 25 (f) Proof of a common business practice or factual pattern which
26 Plaintiffs experienced is representative of that experienced by the
27 Class and will establish the right of each of the Members to recover on
28 the causes of action alleged; and

1 (g) Individual actions would create a risk of inconsistent results and
2 would be unnecessary and duplicative of this litigation.

3 56. Notice to the Members of the Class may be made by first-class mail
4 addressed to all persons who have been individually identified by Defendants
5 through access to Defendants' payroll and personnel records. Alternatively, if
6 Defendants cannot produce a list of Members' names and addresses, the Members
7 of the Class may be notified by publication in the appropriate media outlets, and by
8 posting notices in Defendants' places of business in the State of California.

9 57. Plaintiffs and the Members of the Class have all similarly suffered
10 irreparable harm and damages as a result of Defendants' unlawful and wrongful
11 conduct. This action will provide substantial benefits to Plaintiffs, the Class and
12 the public since, absent this action, Plaintiffs and the Members of the Class will
13 continue to suffer losses, thereby allowing Defendants' violations of law to
14 proceed without remedy, and allowing Defendants to retain proceeds of their ill-
15 gotten gains.

16 **FIRST CAUSE OF ACTION**
17 **Failure to Provide or Allow Meal Periods**
18 **(Violation of California Labor Code § 226.7 and applicable IWC Orders)**

19 58. Plaintiffs and the Class hereby incorporate by this reference each and
20 every preceding paragraph of this complaint as if fully set forth herein.

21 59. Pursuant to section 1194 of the Labor Code, Plaintiffs and the Class
22 may bring a civil action for wages directly against the employer in Plaintiffs' name
23 without first filing a claim with the Division of Labor Standards Enforcement.
24 Such private class actions have the support and approval of the Division of Labor
25 Standards Enforcement.

26 60. At all times herein mentioned, Plaintiffs and the Class were non-
27 exempt pharmacists subject to the "meal period" provisions of the IWC. No valid
28 legal or applicable exception to the meal period requirement existed to allow
Defendants to avoid providing Plaintiffs and the Class with regular meal periods as

1 required by the Labor Code.

2 61. From at least November 20, 2003 to the present, Defendants failed to
3 provide Plaintiffs and the Class with uninterrupted, off-duty thirty (30) minute
4 meal periods for every five (5) hours worked. On information and belief,
5 Defendants had a policy that Pharmacists could only take meal periods at
6 predetermined scheduled times, however, Defendants failed to schedule
7 Pharmacists' meal periods. Plaintiffs and the Class were also required to work
8 five, six, eight, and even ten hours alone, or as the only Pharmacist on duty, which
9 prevented them from taking any required rest or meal breaks. Defendants further
10 had a policy not to provide Pharmacists with meal periods when working alone
11 since the pharmacies did not close and there was nobody there to relieve them.

12 62. On information and belief, Defendants also had a companywide
13 policy of requiring pharmacists to log out of the time keeping system during "on
14 duty" meal periods, but still make themselves available to customers. Defendants'
15 records will reveal instances where a pharmacist filled prescriptions or counseled
16 customers while logged off the time keeping system.

17 63. Defendants also failed to provide Plaintiffs and the Class with a
18 second uninterrupted, off-duty thirty (30) minute meal period during shifts of ten
19 (10) hours or more. Defendants utilized an unlawful meal period waiver form that
20 purports to waive second meal periods during shifts exceeding twelve (12) hours.
21 Defendants denied Plaintiffs and the Class lawful breaks even though they were
22 well aware of the obligation to provide meal periods in which Plaintiffs and the
23 Class were relieved of all duties as required by Labor Code § 226.7, 512, and all
24 applicable IWC Wage Orders, including No. 4-2001.

25 64. Wages are due to employees for "all hours worked" under applicable
26 IWC Orders, including No. 4-2001, and applicable laws, rules, orders,
27 requirements, and regulations. Plaintiffs and the Class request relief pursuant to
28 Labor Code § 226.7(b), which provides for one hour of additional pay at the

1 employees' regular rate of pay for each meal period not provided. Plaintiffs and
2 the Class demand all applicable reimbursement and penalties for their lost meal
3 periods. Further, Plaintiffs and the Class demand reasonable attorney's fees and
4 costs of suit, pursuant to Labor Code § 215.8.

5 65. Under California law, meal periods must be recorded unless all
6 operations cease during the scheduled meal periods. Defendants did not schedule
7 meal periods, and Plaintiffs and the Class did not cease all operations during
8 scheduled meal periods.

9 **SECOND CAUSE OF ACTION**
10 **Failure to Provide or Allow Rest Periods**
11 **(Violation of California Labor Code § 226.7 and Applicable IWC Orders)**

12 66. Plaintiffs and the Class hereby incorporate by this reference each and
13 every preceding paragraph of this complaint as if fully set forth herein.

14 67. At all times herein mentioned Plaintiffs and the Class were non-
15 exempt employees and subject to the "rest period" provisions of the IWC. No
16 valid legal or applicable exception to the rest period requirement existed to allow
17 Defendants to avoid providing Plaintiffs and the Class Members with regular rest
18 period(s) as required by the Welfare Commission, Labor Code, wage orders and/or
19 regulations.

20 68. From at least November 20, 2003, to the present, Defendants failed to
21 provide Members of the Class with rest periods during every four hour period
22 worked. The law requires that employees, such as those in the Plaintiffs' position,
23 be allowed a ten minute break during every four hour work period, or major
24 fraction thereof. The prescribed break should be allowed, as close to the middle of
25 the four hour period as possible, according to the applicable IWC Wage Orders,
26 including No. 4-2001. Plaintiffs and the Class should have been provided a ten
27 minute break at the two hour point of each four hour work period, or major fraction
28 thereof. Defendants failed to provide and denied them such breaks. Plaintiffs and
the Class work and have worked four hour shifts or longer without receiving the

1 required ten minute breaks pursuant to Labor Code § 226.7(a) and applicable IWC
2 Wage Orders.

3 69. Defendants further have a companywide policy of scheduling
4 pharmacists to work alone for the first four hours or last four hours of their shifts
5 (or, indeed, their entire shifts), which prevents pharmacists from taking required
6 rest breaks.

7 70. Wages are due to employees for “all hours worked” under IWC Order
8 4-2001. “[R]est periods shall be counted as hours worked...” pursuant to IWC
9 Order 4-2001 § 12(A). Wages are due to the Plaintiffs to compensate for the “rest
10 periods” that were denied under applicable laws, rules requirements, and
11 regulations. Ten minutes worth of prorated wages are due to the Plaintiffs and the
12 Class for each rest period owed by not provided during the Class Period. In
13 addition, the Plaintiffs and the Class are entitled to recover interest on the unpaid
14 rest period wages due to them. Further, the Plaintiffs and the Class demand
15 reasonable attorney’s fees and costs of suit, pursuant to Labor Code § 218.5, plus
16 all appropriate penalties for the wage and hour violations.

17 71. Plaintiffs and the Class request relief pursuant to Labor Code §
18 226.7(b) and all applicable IWC Wage Orders, including 4-2001(B), which
19 provides for one hour of additional pay at the employees’ regular rate of pay for
20 each rest period that is not provided, in a sum to be proven at trial.

21 **THIRD CAUSE OF ACTION**
22 **Failure to Pay Overtime Compensation**
23 **(Violation of California Labor Code §510, 558, 1194 and 1197**
And all Applicable IWC Wage Orders)

24 72. Plaintiffs and the Class hereby incorporate by this reference each and
25 every preceding paragraph of this complaint as if fully set forth herein.

26 73. Pursuant to sections 510, 558, 1194 and 1197 of the Labor Code,
27 among other applicable sections, it is unlawful to employ persons for longer than
28 the hours set by the IWC.

1 74. During and throughout the course of the Class Period, Plaintiffs and
2 the Class were compelled to work without rest periods as required by California
3 law. “[R]est periods shall be counted as hours worked...” pursuant to IWC Order
4 4-2001 § 12(A). Wages are due to the Plaintiffs to compensate for the “rest
5 periods” that were denied under applicable laws, rules requirements, and
6 regulations. Ten minutes worth of prorated wages are due to the Plaintiffs, for
7 each four hour work period, or major fraction thereof, contained in each day of
8 work each Class Member performed, from November 20, 2003 to the present.

9 75. As a result of Defendants’ failure to provide paid rest breaks in
10 accordance with California law, Plaintiffs and Class Members ended up working
11 ten (10), twenty (20), thirty (30), and sometimes even forty (40) minutes longer
12 than they would be required to work during a lawful eight hour work day. In these
13 instances, Defendants did not compensate Plaintiffs or the Class for overtime pay
14 due them.

15 76. On information and belief, Defendants did not include store and
16 company meeting time when calculating overtime and premium wages owed to
17 pharmacists. Pharmacists are entitled to additional overtime and premium wages
18 for all store and company meetings that they attended.

19 77. Under the provisions of California’s Labor Code and the applicable
20 IWC Wage Orders, including, *inter alia*, Nos. 4-98 and 4-2001, Plaintiffs and the
21 Class should have received overtime wages in a sum according to proof for the
22 hours they worked through mandated rest periods to the extent this time added to
23 the actual time worked, exceeded eight hours on a given day.

24 78. Defendants cannot provide records because they have failed and
25 refused and continue to fail and refuse to pay Plaintiffs and the Class the amounts
26 owed and to keep accurate records in violation of section 1174 of the California
27 Labor Code.

28 79. Plaintiffs and the Class request recovery of overtime compensation

1 according to proof plus penalty wages, interest, attorney's fees and costs pursuant
2 to sections 203, 218.5, 510, 558, 1194 and 1197 of the Labor Code, the relevant
3 California IWC Wage Orders, or any other statutory, regulatory, or common law
4 authority, as well as the assessment of any other statutory penalties against
5 Defendants, in a sum as provided by the California Labor Code and other
6 applicable California statutes and regulations.

7 80. The pattern, practice and uniform administration of corporate policy
8 regarding illegal employee compensation as described herein is unlawful, and
9 Plaintiffs and the Class are entitled to recover in a civil action for the unpaid
10 balance of the full amount of the overtime premiums owing, including interest
11 thereon, penalties, reasonable attorney's fees and costs of suit according to the
12 mandate of the Labor Code.

13 **FOURTH CAUSE OF ACTION**
14 **Failure to Furnish Timely and Accurate Wage Statements**
15 **(Violation of California Labor Code § 226)**

16 81. Plaintiffs and the Class hereby incorporate by this reference each and
17 every preceding paragraph of this complaint as if fully set forth herein.

18 82. Labor Code § 226(a) requires employers semi-monthly, or at the time
19 of each payment of wages, to furnish each employee with a statement itemizing,
20 inter alia, the total hours of pay owed to the employee at the employees' regular
21 rate of compensation, and hours owed at any applicable overtime rate or other.
22 Labor Code § 226(e) provides that if an employer knowingly and intentionally fails
23 to provide a statement itemizing, inter alia, the total hours owed to the employee,
24 then the employee is entitled to recover the greater of all actual damages, or fifty
25 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each
26 subsequent violation up to four thousand dollars (\$4000).

27 83. Defendants knowingly and intentionally failed to furnish and continue
28 to knowingly and intentionally fail to furnish each Plaintiff and Class Member with
accurate itemized statements showing the total hours owed to each of them, as

1 required by Labor Code § 226(a). As a result, Defendants are liable to Plaintiffs
2 and Class Members for the amounts provided by Labor Code § 226.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Pay Final Wages**
5 **(Violation of California Labor Code § 201 and 202)**

6 84. Plaintiffs and the Class hereby incorporate by this reference each and
7 every preceding paragraph of this complaint as if fully set forth herein.

8 85. Labor Code § 201 requires employers to furnish immediately the final
9 wages of an employee who is terminated from employment.

10 86. Labor Code § 202 requires employers to furnish final wages of an
11 employee who quits within 72 hours of the resignation, unless the employee has
12 provided 72 hours notice of his or her intention to quit, in which case the wages are
13 due at the time of quitting.

14 87. As to those Members of the Class (including Plaintiffs) whose
15 employment ended by either termination or resignation during the Class Period,
16 Defendants, and each of them, have failed and refused, and continue to fail and
17 refuse, to provide those Class Members with their final wages, including but not
18 limited to overtime compensation and missed break compensation earned while
19 employed by Defendants during the Class Period.

20 88. Defendants, and each of them, have willfully failed to pay Plaintiffs
21 and the Class all wages due in accordance with Labor Code § 201 and 202.

22 89. As a result of such illegal conduct, Plaintiffs and the Class have
23 suffered damages in an amount to be proven at trial.

24 90. Pursuant to Labor Code § 218.5, Plaintiffs and the Class request that
25 the court award reasonable attorney's fees and costs incurred in this action, in
26 addition to such other relief as may be warranted.

27 **SIXTH CAUSE OF ACTION**

28 **Waiting Time Penalties**
(Violation of California Labor Code § 203)

91. Plaintiffs and the Class hereby incorporate by this reference each and

1 every preceding paragraph of this complaint as if fully set forth herein.

2 92. Defendants' failure to pay wages, as alleged above, was willful in that
3 Plaintiffs and the Class earned all wages that are currently owed and the failure to
4 pay these wages was without justification or excuse.

5 93. In denying Plaintiffs and the Class payment of the wages, Defendants
6 acted willfully, wantonly and intentionally. Defendants were aware of their
7 obligation to provide rest and meal periods, and to compensate pharmacists with
8 additional premium wages in those instances where breaks were not provided.
9 Defendant's tracked these instances in their electronic time and payroll systems.
10 Defendants also scheduled pharmacists to work alone for long periods of time,
11 knowing that this would prevent pharmacists from taking breaks. As such,
12 Defendants' actions in not paying Plaintiffs and the Class wages owed is entirely in
13 bad faith and warrants waiting time penalties.

14 94. Pursuant to the provisions of Labor Code § 203 and any other
15 applicable statute or doctrine, Plaintiffs and those Members of the Class no longer
16 employed by Defendants are entitled to a waiting time penalty equal to not less
17 than 30 days' wages in an amount to be proven at trial.

18 **SEVENTH CAUSE OF ACTION**

19 **Unlawful and Unfair Business Acts and Practices
(Violation of California Business & Professions Code § 17200, *et seq.*)**

20 95. Plaintiffs and the Class hereby incorporate by this reference each and
21 every preceding paragraph of this complaint as if fully set forth herein.

22 96. The acts, omissions, and practices of Defendants as alleged herein
23 constituted unlawful and unfair business acts and practices within the meaning of
24 Section 17200, *et seq.* of the California Business & Professions Code. Plaintiffs
25 have standing to bring this action under California Business & Professions Code
26 Section 17200 because they have suffered injury in fact and have lost money
27 because of the Defendants' conduct.

28 97. Defendants have engaged in "unlawful" business acts and practices by

1 their nonpayment of overtime and missed break wages in violation of the statutes
2 and regulations, referenced herein above, including California Labor Code § 201-
3 203, 221, 226, 226.7, 510, 558, 1174, 1194, 1197, and 2802; Business &
4 Professions Code § 17200 *et seq.*; and all applicable IWC Wage Orders, including
5 Nos. 4-98 and 4-2001.

6 98. Plaintiffs reserve the right to allege other violations of law which
7 constitute unlawful acts or practices.

8 99. Defendants have also engaged in “unfair” business acts or practices in
9 that the harm caused by Defendants’ nonpayment of missed break and overtime
10 wages outweighs the utility of such conduct and such conduct offends public
11 policy, is immoral, unscrupulous, unethical, deceitful and offensive, causes
12 substantial injury to Plaintiffs and the Class, and provides Defendants with an
13 unfair competitive advantage over those employers that abide by the law, properly
14 classify their employees, and pay compensation in accordance with the law.

15 100. Defendants, and each of them, aided, abetted, encouraged and
16 rendered substantial assistance to the other defendants in carrying out the
17 aforementioned unlawful and unfair business acts and practices conducted by
18 Defendants.

19 101. As a result of the conduct described above, Defendants have been and
20 will be unjustly enriched at the expense of Plaintiffs and the Class. Specifically,
21 Defendants have been unjustly enriched by the retention of hundreds of thousands,
22 or millions of dollars in wages earned and wrongfully withheld from Plaintiffs and
23 the Class.

24 102. The aforementioned unlawful or unfair business acts or practices
25 conducted by Defendants have been committed in the past and continues to this
26 day. Defendants have failed to acknowledge the wrongful nature of their actions.
27 Defendants have not corrected or publicly issued individual and comprehensive
28 corrective notices to Plaintiffs and the Class or provided full restitution and

1 disgorgement of all ill-gotten monies either acquired or retained by Defendants as
2 a result thereof, thereby depriving Plaintiffs and the Class the minimum working
3 conditions and standards due them under California Labor Laws, and IWC Wage
4 Orders.

5 103. Pursuant to the Business & Professions Code Section 17203, Plaintiffs
6 and the Class seek an order of this Court requiring Defendants to disgorge all ill-
7 gotten gains and awarding Plaintiffs and the Class full restitution of all monies
8 wrongfully acquired by Defendants by means of such “unlawful” and “unfair”
9 conduct, plus interest and attorney’s fees pursuant to, *inter alia*, Code of Civil
10 Procedure Section 1021.5, so as to restore any and all monies to Plaintiffs and the
11 Class and the general public which were acquired and obtained by means of such
12 “unlawful” and “unfair” conduct, and which ill-gotten gains are still retained by
13 Defendants. Plaintiffs and the Class additionally request that such funds be
14 impounded by the Court or that an asset freeze or constructive trust be imposed
15 upon such monies by Defendants. Plaintiffs and the Class may be irreparably
16 harmed and/or denied an effective and complete remedy if such an order is not
17 granted.

18 104. Pursuant to Business & Professions Code Section 17203, Plaintiffs
19 and the Class seek an order of this Court for equitable and/or injunctive relief in
20 the form of requiring Defendants to keep accurate records of time worked, and to
21 insure the payment of earned overtime and missed break wages, and to ensure
22 future employees are provided the meal and rest breaks mandated by law.

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves, and all present and
25 former similarly situated Class Members, and on behalf of the general public,
26 request the following relief:

27 A. That the Court determine that this action may be maintained as a class
28 action under Code of Civil Procedure § 382;

1 B. That the Court find that Defendants have violated the overtime
2 provisions of Labor Code § 1194, and all applicable IWC Wage Orders, including,
3 4-98 and 4-2001 as to the Plaintiffs and the Class;

4 C. That the Court find that Defendants have violated the record-keeping
5 provisions of Labor Code § 1174(d), and all applicable IWC Wage Orders,
6 including 4-2001 as to Plaintiff and the Class;

7 D. That the Court find that Defendants have violated Labor Code §§
8 226.7, 512 and all applicable IWC Wage Orders, including No. 4-2001, by failing
9 to provide Plaintiffs and the Class adequate meal and rest periods;

10 E. That the Court find that Defendants have violated Labor Code § 226
11 by failing to record, keep and timely furnish Plaintiffs and Class itemized
12 statements accurately showing the total hours worked by each of them;

13 F. That the Court find that Defendants have violated Labor Code § 201,
14 202, and 203 for willful failure to pay all compensation owed at the time of
15 termination of employment to Plaintiffs and the Class;

16 G. That the Court find that Defendants have violated Labor Code §
17 2802(a) by requiring Plaintiffs and the Class to pay additional sums for the labor
18 and costs necessary to complete their work and enforce their rights;

19 H. That the Court award to Plaintiffs and the Class expenditures and
20 losses which were incurred in the discharge of their duties, or of their obedience to
21 the direction of the employer, plus interest at the statutory post judgment rate of
22 10% simple interest per annum and attorney's fees, pursuant to Labor Code §
23 2802(b) and (c);

24 I. That the Court find that Defendants have violated Business and
25 Professions Code § 17200 *et seq.* by failing to pay its employees missed break and
26 overtime compensation, waiting period penalties, by failing to afford employees
27 adequate meal periods, and by failing to timely furnish employees with statements
28 accurately showing total hours worked;

1 J. That the Court find that Defendants' violations as described above are
2 found to have been willful;

3 K. That the Court award Plaintiffs and the Class damages for the amount
4 of unpaid overtime and missed meal and rest period compensation, including
5 interest thereon, damages for failure to timely furnish statements accurately
6 showing total hours worked, and penalties subject to proof at trial;

7 L. That Defendants be ordered to pay restitution to Plaintiffs and the
8 Class due to Defendants' unlawful activities, pursuant to Business and Professions
9 Code § 17200-05;

10 M. That Defendants further be enjoined to cease and desist from unlawful
11 activities in violation of Business and Professions Code § 17200 *et seq.*

12 N. That Plaintiffs and the Class be awarded reasonable attorney's fees
13 and costs pursuant to Labor Code § 218.5, 226, and 1194, Code of Civil Procedure
14 § 1021.5, and/or other applicable law; and

15 O. That the Court award such other and further relief as this Court may
16 deem appropriate.

17 Dated: June __, 2009

HARRISON PATTERSON O'CONNOR &
KINKEAD LLP

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By: _____
James R. Patterson
Harry W. Harrison
Attorneys for the Plaintiffs and the
Class

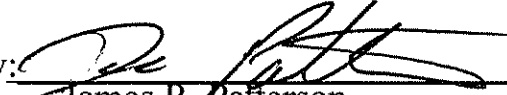
DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

Dated: June 15, 2009

HARRISON PATTERSON O'CONNOR &
KINKEAD LLP

By:


James R. Patterson
Harry W. Harrison
Attorneys for the Plaintiffs and the
Class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO	COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): James R. Patterson, Esq. (SBN: 211102) Cary A. Kinkead, Esq. (SBN: 216545) HARRISON PATTERSON O'CONNOR & KINKEAD LLP 402 West Broadway, 29 th Floor San Diego, CA 92101	Telephone No. Tel: (619) 756-6990 Fax: (619) 756-6991
SHORT CASE TITLE Chase, et al. v. Rite Aid Corp., et al.	JUDGE: KUHL DEPT: 323
ATTORNEYS FOR PLAINTIFFS	Case No. BC381055

PROOF OF SERVICE

I, the undersigned, say: I am over 18 years of age, employed in the County of San Diego, California, in which the within-mentioned service occurred; and that I am not a party to the subject cause. My business address is 402 West Broadway, 29th Floor, San Diego, California 92101.

On June 15, 2009, I caused the following document(s) to be served:

- **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

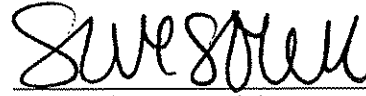
by placing a copy thereof in a separate envelope for each addressee named hereafter and addressed as follows:

Glenn L. Briggs S. Sean Shahabi HODEL BRIGGS WINTER LLP 8105 Irvine Center Drive, Ste. 1400 Irvine, CA 92618	<i>Attorneys for Defendants</i>
James M. Lindsay, Esq. Gene J. Stonebarger, Esq. Lindsay & Stonebarger 620 Coolidge Drive, Ste. 225 Folsom, CA 92630	<i>Co-Counsel for Plaintiffs and the Class</i>
Michael D. Singer COHELAN KHOURY & SINGER 605 C Street, Suite 200 San Diego, CA 92101 Tel: (619) 595-3001; Fax: (619) 595-3000	<i>Co-Counsel for Plaintiffs and the Class</i>

- BY MAIL.** I am familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.
- BY FAX.** In addition to service by mail as set forth above, a copy of said document(s) were also delivered by facsimile transmission to the addressee pursuant to Code of Civil Procedure §1013(e).
- BY PERSONAL SERVICE.** Cal Express Messenger Service hand-delivered said document(s) to the addressees (listed on the attached Service List) pursuant to Code of Civil Procedure §1011.

- () BY ELECTRONIC MAIL TRANSMISSION: A PDF format copy of such document(s) was sent by electronic mail transmission to each such person at the e-mail address listed above. The transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on June 15, 2009.



Stephanie L. Wesolek