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13 BARNETT, all others similarly situated, and the
general public

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

16 CONNIE MENESES, an Individual,
17 ROBERT BARNETT, an Individual,
Individually and on behalf of all others
18 similarly situated and the general public,

19 **PLAINTIFFS,**

20 v.

21 CVS PHARMACY, INC., a Rhode Island
corporation; CVS RX SERVICES, INC., a
22 New York corporation; GARFIELD BEACH
CVS, LLC, a California limited liability
23 company; and DOES 1 thru 50, inclusive,

24 **Defendants.**

CASE NO. BC489739

[CLASS ACTION]

Judge: Hon. John Shepard Wiley, Jr.
Dept.: 311

FIRST AMENDED COMPLAINT

1. **Failure to Pay Overtime Compensation (Cal. Labor Code § 1194);**
2. **Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code § 226);**
3. **Conversion (Cal. Civil Code §§ 3336, 3294);**
4. **Waiting Time Penalties (Cal. Labor Code §§ 201-203);**
5. **Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, et seq.); and**

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Superior Court of California
County of Los Angeles

APR 05 2013

John A. Clarke, Executive Officer/Clerk
By: L. Worku, Deputy

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6. Private Attorneys General Act of 2004
(Cal. Labor Code § 2698, *et seq.*)

1 **GENERAL ALLEGATIONS**

2 PLAINTIFF ROBERT BARNETT (“Plaintiff”), on behalf of himself and all others
3 similarly situated, and the general public, complains and alleges on information and belief the
4 following against DEFENDANTS CVS PHARMACY, INC.; CVS RX SERVICES, INC.;
5 GARFIELD BEACH CVS, LLC; and Does 1-50:

6 **INTRODUCTION**

7 1. This is a class action, under Code of Civil Procedure section 382, arising out of
8 DEFENDANTS CVS PHARMACY, INC., CVS RX SERVICES INC., GARFIELD BEACH
9 CVS, LLC, and Does 1 through 50 (collectively, “DEFENDANTS”)’ unlawful practice of
10 employing certain pharmacists in DEFENDANTS’ Region 72 of the State of California for more
11 than six consecutive days. In addition, these pharmacists were properly classified as non-exempt
12 employees, but were not paid proper overtime compensation for work on the seventh consecutive
13 day during the Class Period, which is defined as the time period beginning four years prior to the
14 filing of this Complaint through the trial date.

15 **JURISDICTION AND VENUE**

16 2. This Court has subject matter jurisdiction over all causes of action asserted herein
17 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
18 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
19 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
20 laws of the State of California or is subject to adjudication in the courts of the State of California.
21 No part of this complaint is preempted by federal law or challenges conduct within any federal
22 agency’s exclusive domain, and adjudication thereof has not been statutorily assigned to any
23 other court or jurisdiction.

24 3. This Court has personal jurisdiction over DEFENDANTS because
25 DEFENDANTS have caused injuries in the County of Los Angeles and State of California
26 through their acts, and by their violation of the California Labor Code, California state common
27 law, and California Business & Professions Code sections 17200, *et seq.*

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1 4. Venue as to DEFENDANTS is proper in this judicial district, pursuant to Code of
2 Civil Procedure section 395(a). DEFENDANTS either reside, maintain offices, transact business,
3 and/or have agents in Los Angeles County and DEFENDANTS are otherwise within this Court's
4 jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct
5 effect on PLAINTIFFS, those similarly situated, and the general public within the State of
6 California and within Los Angeles County.

7 5. This case should be classified as complex according to Rule 3.400 of the
8 California Rules of Court and Local Rule 7.3(k) of the Los Angeles County Superior Court, and
9 assigned to a complex litigation judge and department, as it will involve substantial documentary
10 evidence, a large number of witnesses, and is likely to involve extensive motion practice raising
11 difficult or novel issues that will be time-consuming to resolve and would require substantial
12 postjudgment judicial supervision.

13 6. On information and belief, the aggregate claims of the Class do not exceed
14 \$5,000,000 and the individual claims of BARNETT do not exceed \$75,000.

THE PARTIES

16 7. On August 7, 2012, Plaintiff CONNIE MENESES ("MENESES") filed this action
17 alleging she and members of the putative class employed by DEFENDANTS in California as
18 pharmacists worked more than six consecutive days and were not paid proper overtime
19 compensation for work on a seventh consecutive day. With the filing of this First Amended
20 Complaint, MENESES withdraws as a named plaintiff and is now an unnamed class member.

21 8. PLAINTIFF ROBERT BARNETT ("BARNETT") was formerly employed by
22 DEFENDANTS as a pharmacist at DEFENDANTS' store in Palm Desert, California (Store
23 #9646) during the relevant class period, and within the last 12 months. Upon information and
24 belief, Store #9646 is a store located within Region 72 of DEFENDANTS' California retail stores
25 and operations.

26 9. Defendant CVS RX SERVICES, INC. ("CVS RX") is a corporation organized
27 under the laws of the State of New York and is engaged in the business of providing pharmacy
28 services throughout the State of California.

1 10. Defendant CVS PHARMACY, INC. (“CVS PHARMACY”) is a corporation
2 organized under the laws of the State of Rhode Island and is engaged in the business of operating
3 retail stores that sell pharmaceuticals and general merchandise and provide pharmacy services
4 throughout the State of California.

5 11. Defendant GARFIELD BEACH CVS, LLC (“GARFIELD BEACH CVS” and
6 collectively with Defendants CVS RX and CVS PHARMACY, “CVS”) is a limited liability
7 company organized under the laws of the State of California and is engaged in business as a
8 pharmacy and medical supplier to CVS retail stores located throughout the State of California.

9 12. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to
11 PLAINTIFF, who therefore sues Defendants by such fictitious names under California Code of
12 Civil Procedure section 474. PLAINTIFF is informed and believes, and based thereon alleges,
13 that each of the Defendants designated herein as a Doe is legally responsible in some manner for
14 the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend this
15 Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
16 Does when such identities become known.

17 13. DEFENDANTS, collectively, have absorbed multiple major drug stores present in
18 California, including Sav-On in 2006 and Longs in 2009.

19 14. PLAINTIFF is informed and believes, and based thereon alleges, that each of the
20 DEFENDANTS acted in all respects pertinent to this action as the agent of the other
21 DEFENDANTS, carried out a joint scheme, business plan or policy in all respects pertinent
22 hereto, and the acts of each DEFENDANT are legally attributable to the other DEFENDANTS.

23 15. PLAINTIFF is informed and believes, and thereon alleges, that each and all of the
24 acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
25 each acting as agents and/or employees, and/or under the direction and control of each of the
26 other DEFENDANTS, and that said acts and failures to act were within the course and scope of
27 said agency, employment and/or direction and control. PLAINTIFF is informed and believes,

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1 and thereon alleges, that at all times material hereto DEFENDANTS were and are the agents of
2 each other.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 16. PLAINTIFF, individually and on behalf of the class, alleges that on or about
5 February 28, 2013, he provided written notice by certified mail to the Labor and Workforce
6 Development Agency (“LWDA”) and DEFENDANTS of the specific violations of the Labor
7 Code DEFENDANTS have violated and continue to violate. Attached is a true and correct copy
8 of that notice.

9 17. PLAINTIFF has permitted 33 calendar days to transpire from the postmark of
10 PLAINTIFF’s notice to the LWDA without having received a response from the LWDA advising
11 whether or not the agency intended to investigate PLAINTIFF’s claims. During this time,
12 DEFENDANTS have failed to provide notice that the alleged violations have been cured.
13 Therefore, PLAINTIFF is entitled to commence a civil action pursuant to Labor Code § 2699.

14 18. PLAINTIFF and all aggrieved persons have therefore exhausted all administrative
15 procedures required of them under Labor Code §§ 2698, 2699 and 2699.3, and as a result, are
16 justified as a matter of right in seeking penalties pursuant to the Private Attorneys General Act of
17 2004 (“PAGA”).

18 **CLASS ACTION ALLEGATIONS**

19 19. PLAINTIFF brings this action on behalf of himself individually and all others
20 similarly situated as a class action pursuant to California Code of Civil Procedure section 382, on
21 behalf of the class composed of and defined as follows (herein referred to as the “Class” and its
22 putative members as the “Class Members”):

23 All persons who are or were employed by DEFENDANTS as non-
24 exempt pharmacists in DEFENDANTS’ Region 72 in the State of
California, and who worked more than six consecutive days of
work at any time during the class period.

25 20. This action has been brought and may properly be maintained as a class action
26 under Code of Civil Procedure section 382 because there is a well-defined community of interest
27 in the litigation and the proposed classes are easily ascertainable:

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a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not yet been determined, PLAINTIFF is informed and believes that DEFENDANTS employ 1,000 or more pharmacists in the State of California and that DEFENDANTS routinely designate a significant number of such pharmacists as “floaters” expected to work at multiple stores.

b. Commonality: There are questions of law and fact common to PLAINTIFF and the Class as defined that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include without limitation:

- (i) Whether DEFENDANTS violated Wage Order Number 7-2001, section 5 and Labor Code section 1197 and 1194 by failing to provide at least a minimum wage to Class Members for all hours worked;
- (ii) Whether DEFENDANTS violated Wage Order Number 7-2001, section 3 and Labor Code sections 510 and 1194 by failing to pay overtime compensation, including failure to pay premium pay for all hours worked on the 7th day in a row of work, to Class Members who worked and should have been entitled to such compensation under California law;
- (iii) Whether DEFENDANTS violated Labor Code sections 201 through 203 by willfully failing to pay Class Members all compensation due promptly upon the termination of the employment relationship;
- (iv) Whether DEFENDANTS violated Labor Code section 226 by failing to provide accurate itemized wage statements for all Class Members;

1 (v) Whether DEFENDANTS unlawfully and intentionally took and
2 converted the property of Class Members by refusing to pay Class
3 Members all wages due and by refusing to reimburse Class
4 Members all necessary expenses incurred in the discharge of their
5 duties; and

6 (vi) Whether DEFENDANTS violated Business and Professions Code
7 sections 17200, *et seq.* by violating the labor laws and regulations
8 noted herein;

9 c. Typicality: PLAINTIFF's wage and hour claims are typical of the claims
10 of the Class. PLAINTIFF and all Class Members sustained injuries arising
11 out of actions or inactions of DEFENDANTS' common course of conduct
12 in violation of law as alleged herein.

13 d. Adequacy of Representation: PLAINTIFF is qualified to, and will fairly
14 and adequately protect the interests of each Class Member, with whom he
15 has a well-defined community of interest and typicality of claims, as
16 demonstrated herein. PLAINTIFF has no interest that is adverse to the
17 interests of the other Class Members. PLAINTIFF acknowledges that he
18 has an obligation to make known to the Court any relationship, conflicts or
19 differences with any Class Member. PLAINTIFF's attorneys and proposed
20 Class counsel are versed in the rules governing class action discovery,
21 certification, and settlement. PLAINTIFF has incurred, and during the
22 pendency of this action, will continue to incur, costs and attorney fees, that
23 have been, are and will be necessarily expended for the prosecution of this
24 action for the substantial benefit of each Class Member.

25 e. Superiority of Class Action: A class action is superior to other available
26 means for the fair and efficient adjudication of this controversy. Individual
27 joinder of all Class Members is not practicable, and common questions of
28 law and fact affecting the Classes predominate over any questions affecting

1 only individual members of the Class. Each Class Member has been
2 damaged and is entitled to recover by reason of DEFENDANTS' illegal
3 policies and/or practices. Class action treatment will allow those similarly
4 situated persons to litigate their claims in the manner that is most efficient
5 and economical for the parties and the judicial system. This is particularly
6 true given the challenges facing the California Superior Court and the
7 statewide reach of the DEFENDANTS.

8 f. Public Policy Consideration: California employers violate wage and hour
9 laws every day. Current employees are often afraid to assert their rights
10 out of fear of direct or indirect retaliation. Former employees are fearful of
11 bringing actions because they believe their former employers can damage
12 their future endeavors through negative references and other means.
13 California has a stated public policy in favor of class actions in this context
14 for the vindication of employee rights and enforcement of the Labor Code.
15 Class actions provide the Class Members who are not named in the
16 Complaint with a type of anonymity that allows for the vindication of their
17 rights.

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

19 21. PLAINTIFF BARNETT is a highly experienced pharmacist who has worked for
20 DEFENDANTS as a pharmacist in DEFENDANTS' store in Palm Desert, California (Store
21 #9646) during the class period. Upon information and belief, Store #9646 is located within the
22 geographic territory identified by DEFENDANTS as Region 72.

23 22. PLAINTIFF was hired for his education and experience, and was properly
24 classified as a non-exempt employee.

25 23. PLAINTIFF and other Class Members should be classified as "non-exempt"
26 employees. They are not engaged primarily in exempt duties nor do they perform work which
27 requires the exercise of discretion and independent judgment as contemplated by the Wage
28 Orders. PLAINTIFF and other Class Members should not be classified as "independent

1 contractors” exempt from the Wage Orders because they did not have the degree of independence
2 and control over their time and direction as required of independent contractors. PLAINTIFF and
3 other Class Members should not be classified as inside or outside salespersons exempt from any
4 part of the Wage Order because, typically, none of their wages come from commission.
5 DEFENDANTS concede this point by already paying and classifying all pharmacists as “non-
6 exempt” employees.

7 24. During his employment by DEFENDANTS as a pharmacist, PLAINTIFF was
8 asked to work 7 or more days in a row during 7-day periods. However, DEFENDANTS have
9 failed and refused to compensate PLAINTIFF properly as overtime compensation.

10 25. During his employment by DEFENDANTS as a pharmacist, PLAINTIFF has been
11 asked to work 7 days in a row without a day’s rest. When made to work 7 days in a row without
12 a day’s rest, PLAINTIFF was not paid premium pay.

13
14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME COMPENSATION**

16 **(Cal. Labor Code § 1194)**

17 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

18 26. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
19 by reference, as though fully set forth herein, all the allegations contained in paragraphs 1 to 23 of
20 this Complaint, excepting those allegations which are inconsistent with this cause of action.

21 27. DEFENDANTS routinely required PLAINTIFF and Class Members to work 7 or
22 more days in a row without being paid one and a half times their regular hourly pay rate for each
23 hour up to eight (8) hours per day on the seventh day in a row and beyond, and double time as to
24 all hours over eight (8).

25 28. DEFENDANTS failed to fully compensate PLAINTIFF and Class Members for all
26 overtime wages they earned, in particular, by failing to compensate pharmacists who worked 7 or
27 more days in a row the premium pay required under California law.

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1 35. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS
2 knowingly and intentionally provided inaccurate payroll records in order to conceal their
3 unlawful payment practices. As a result, PLAINTIFF and Class Members are entitled to recover
4 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
5 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
6 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee,
7 and are entitled to an award of costs and reasonable attorney fees.

8 36. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

9
10 **THIRD CAUSE OF ACTION**

11 **CONVERSION**

12 **(Cal. Civil Code §§ 3336, 3294)**

13 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

14 37. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
15 by reference, as though fully set forth herein, all the allegations contained in paragraphs 1 to 34 of
16 this Complaint, excepting those allegations which are inconsistent with this cause of action.

17 38. As alleged above, DEFENDANTS wrongfully withheld earned wages, property of
18 PLAINTIFF and Class Members, from PLAINTIFF and Class Members. In particular,
19 DEFENDANTS failed to pay PLAINTIFF and Class Members all wages they were owed.

20 39. At all relevant times, DEFENDANTS had and continue to have a legal obligation
21 imposed by statute to pay PLAINTIFF and the class all earned wages and other compensation due
22 to them. Such wages and compensation belonged to PLAINTIFF and the Class at the time the
23 labor and services were provided to DEFENDANTS, and accordingly, such wages and
24 compensation are the property of PLAINTIFF and the Class, not DEFENDANTS.

25 40. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFF and the
26 Class all overtime compensation for overtime hours worked, knowingly and intentionally failed to
27 compensate PLAINTIFF and the Class for mileage reimbursement, and knowingly and
28 intentionally failed to provide other compensation due to PLAINTIFF and the Class. Instead,

1 DEFENDANTS converted PLAINTIFF's and the Class' rightfully earned wages and expense
2 reimbursement to which they were entitled and converted them to DEFENDANTS' own use and
3 benefit.

4 41. PLAINTIFF and the Class have been injured by DEFENDANTS' intentional
5 conversion of such wages and compensation. PLAINTIFF and the Class are entitled to
6 immediate possession of all amounts converted by DEFENDANTS, with interest, as well as any
7 and all profits that DEFENDANTS acquired by their unlawful conversion.

8 42. DEFENDANTS' actions constituting conversion were oppressive, malicious, and
9 fraudulent, and were concealed by DEFENDANTS, and each of them, from PLAINTIFF and the
10 Class. PLAINTIFF and the Class have been injured by DEFENDANTS' oppressive, malicious,
11 intentional and fraudulent actions, entitling PLAINTIFF and the Class to punitive and exemplary
12 damages

13 43. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

14
15 **FOURTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(Labor Code §§ 201-203)**

18 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

19 44. As a separate and distinct cause of action, PLAINTIFF complains and realleges all
20 of the allegations contained in this complaint, and incorporates them by reference into this cause
21 of action as though fully set forth herein, excepting those allegations which are inconsistent with
22 this cause of action.

23 45. During the Class Period, DEFENDANTS failed to pay accrued wages and other
24 compensation due immediately to PLAINTIFF and each Class Member who was terminated, and
25 failed to pay accrued wages and other compensation due within seventy-two hours to each Class
26 Member, including PLAINTIFF, who ended his or her employment.

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1 46. Labor Code § 201 requires an employer who discharges an employee to pay
2 compensation due and owing to said employee immediately upon discharge. Labor Code § 203
3 provides that if an employer willfully fails to pay compensation promptly upon discharge, as
4 required by § 201, the employer is liable for waiting time penalties in the form of continued
5 compensation for up to 30 work days.

6 47. DEFENDANTS, and each of them, willfully failed and refused, and continue to
7 willfully fail and refuse, to timely pay compensation due to PLAINTIFF and Class Members
8 upon termination or resignation, as required by Labor Code § 201. As a result, DEFENDANTS,
9 and each of them, are liable to PLAINTIFF and all Class Members similarly situated for waiting
10 time penalties, together with interest thereon, pursuant to Labor Code § 203, as well as all other
11 available remedies, in an amount according to proof at the time of trial.

12 48. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

13
14 **FIFTH CAUSE OF ACTION**

15 **UNFAIR BUSINESS PRACTICES**

16 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

17 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

18 49. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
19 by reference, as though fully set forth herein, all the allegations contained in paragraphs 1 to 45 of
20 this Complaint, excepting those allegations which are inconsistent with this cause of action.

21 50. The Unfair Competition Law, Business & Professions Code sections 17200 *et seq.*,
22 defines unfair competition to include any “unfair,” “unlawful” or “deceptive” business practice,
23 and provides for restitutionary relief.

24 51. DEFENDANTS have committed numerous unfair, unlawful, or deceptive business
25 practices including but not limited to: (1) failing to provide PLAINTIFF and other non-exempt
26 pharmacists properly for wages earned where PLAINTIFF and other non-exempt pharmacists
27 worked 7 or more days in a row in any 7 day period; (2) permitting, encouraging, and/or requiring
28 PLAINTIFF and other non-exempt pharmacists to work 7 or more days in a row paying them

1 premium compensation as required by California's laws and regulations, particularly by failing to
2 pay compensation properly for hours worked on the seventh day in a row worked or beyond; (3)
3 willfully failing to pay PLAINTIFF and other non-exempt pharmacists all compensation due
4 promptly upon the termination of their employment relationships with DEFENDANTS; and (4)
5 knowingly and intentionally providing inaccurate payroll records to PLAINTIFF and other non-
6 exempt pharmacists.

7 52. The actions of DEFENDANTS detailed herein against PLAINTIFF and Class
8 Members constitute unfair, unlawful and deceptive business practices, and further, constitute
9 actions for which restitutionary relief is available.

10 53. As a proximate result of DEFENDANTS' actions, PLAINTIFF has suffered injury
11 in fact and lost money or property.

12 54. Under Business and Professions Code sections 17200, *et seq.*, PLAINTIFF and
13 other current and former aggrieved employees of DEFENDANTS are entitled to restitution of all
14 funds, which lawfully should have been paid as wages and/or overtime to any and all current or
15 former employees and wrongfully withheld by DEFENDANTS, for the last four years, together
16 with interest thereon.

17 55. Under Business and Professions Code sections 17200, *et seq.*, PLAINTIFF and
18 other current and former aggrieved employees of DEFENDANTS are entitled to restitution of all
19 funds which should have been paid as premium wages, civil penalties, or other penalties to any
20 and all current or former employees for the last four years, as well as costs and reasonable
21 attorneys fees pursuant to statute.

22 56. Under Business and Professions Code sections 17200, *et seq.*, DEFENDANTS
23 should be enjoined from any and all unfair, unlawful and deceptive business practices as these
24 practices are harmful to the general public.

25 57. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

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1 SIXTH CAUSE OF ACTION

2 PRIVATE ATTORNEY GENERAL ACT

3 (Labor Code §2698, *et seq.*)

4 By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS

5 58. As a separate and distinct cause of action, PLAINTIFF complains and realleges
6 all of the allegations contained in this complaint, and incorporates them by reference into the
7 cause of action as though fully set forth herein, excepting those allegations which are inconsistent
8 with this cause of action.

9 59. PLAINTIFF is an aggrieved employees as defined in Labor Code § 2699(a). He
10 brings this cause of action on behalf of himself and other current or former employees affected by
11 the labor law violations alleged in this complaint.

12 60. DEFENDANTS, at all times relevant to this complaint, were employers or
13 persons acting on behalf of an employer who violated Plaintiff's rights by violating California
14 labor laws regulating payment of wages and/or the hours and days of work, and are subject to
15 civil penalties as set forth above.

16 61. DEFENDANTS committed the following violations of the California Labor
17 Code against PLAINTIFF, and, on information and belief, against other current or former
18 employees while they were employed by DEFENDANTS:

19 a. DEFENDANTS violated Labor Code §§201-202 by failing to pay Proposed
20 Class Members, including PLAINTIFF, all wages due on the date of the employee's involuntary
21 termination or within 72 hours of the employee's voluntary termination.

22 b. DEFENDANTS violated Labor Code § 204 by failing to pay all wages due, to
23 Proposed Class Members, including PLAINTIFF, at least twice during each calendar month, in
24 compliance with those provisions.

25 c. DEFENDANTS violated Labor Code § 226 by failing to provide accurate
26 itemized wage statements to Proposed Class Members, including PLAINTIFF.

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1 d. DEFENDANTS violated Labor Code § 510 and provisions of IWC Wage
2 Order 7-2001 by failing to compensate Proposed Class Members, including PLAINTIFF, at one
3 and one-half times the regular rate of pay for any work in excess of 8 hours/day and 40
4 hours/week.

5 e. DEFENDANTS violated Labor Code §§ 510 and 552 by requiring or causing
6 Proposed Class Members, including PLAINTIFF, to work for longer hours than those fixed or
7 under conditions of labor prohibited by IWC Wage Order 7-2001, by paying Proposed Class
8 Members, including PLAINTIFF, a wage less than the minimum fixed by IWC Wage Order 7-
9 2001 or by violating or refusing or neglecting to comply with the provisions of Labor Code
10 Division 2, Part 4, Chapter 1 or IWC Wage Order 7-2001.

11 f. DEFENDANTS violated Labor Code §§ 851 and 852 by requiring or causing
12 Proposed Class Members, including PLAINTIFF, to work for longer hours than those fixed or
13 otherwise permitted by the Labor Code and without providing Proposed Class Members,
14 including PLAINTIFF, with one complete day of rest every week.

15 62. PLAINTIFF, individually and on behalf of all others similarly situated, provided
16 written notice on or about February 28, 2013 by certified mail to the LWDA and to
17 DEFENDANTS of the specific violations of the California Labor Code DEFENDANTS have
18 violated and continue to violate. Attached as Exhibit 1 is a true and correct copy of the letter sent
19 to the LWDA and DEFENDANTS.

20 63. PLAINTIFF has permitted 33 calendar days to transpire from the postmark of
21 Plaintiff's notice without having received notice from the LWDA advising whether or not the
22 agency intended to investigate PLAINTIFF's claims. During this time, DEFENDANTS have
23 failed to provide notice that the alleged violations have been cured. Therefore, PLAINTIFF is
24 entitled to commence his civil action pursuant to Labor Code § 2699.

25 64. PLAINTIFF and all aggrieved persons have therefore exhausted all
26 administrative procedures required of them under Labor Code §§ 2698, 2699 and 2699.3, and as a
27 result, are justified as a matter of right in bringing forward this cause of action.

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1 65. Pursuant to Labor Code § 2699(a) PLAINTIFF seeks to recover civil penalties,
2 as otherwise provided by statute, for which Defendants are liable as a result of their violations of
3 the California Labor Code and provisions of the applicable Industrial Wage Orders as follows:

4 a. For violations of Labor Code §§ 201-202 and 204, penalties under Labor Code
5 § 210: for an initial violation, one hundred dollars (\$100) for each failure to pay each employee;
6 for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
7 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.

8 b. For violations of Labor Code § 226, a civil penalty under Labor Code § 226.3
9 in the amount of \$250 per employee per violation in the initial citation and \$1,000 per employee
10 for each violation in a subsequent citation.

11 c. For violations of Labor Code §§ 510 and 552, and provisions of IWC
12 Wage Order 7-2001 relating to hours and days of work, penalties under Labor Code § 558 in the
13 amount of \$50 for each underpaid employee for each pay period, \$100 for each subsequent
14 violation, in addition to an amount sufficient to recover underpaid wages.

15 d. For violations of Labor Code §§ 851 and 852 relating to hours and days of
16 work, penalties under Labor Code § 853 in the amount of \$40 nor more than \$100 or by
17 imprisonment for not exceeding 60 days, or both.

18 e. For violations of Labor Code § 1174, civil penalties under Labor Code §
19 1174.5.

20 f. For violations of Labor Code § 1194 and provisions of IWC Wage Order 7-
21 2001 relating to payment of the legal minimum wage, penalties under Labor Code § 1197.1 in the
22 amount of \$100 for each underpaid employee for each pay period, \$250 for each subsequent
23 violation.

24 g. For violations of Labor Code § 1199, provisions of IWC Wage Order 7-2001
25 relating to conditions of labor and payment of the legal minimum wage, or the violation of refusal
26 or neglect to comply with the provisions of Labor Code Division 2, Part 4, Chapter 1 or IWC
27 Wage Order 7-2001, penalties under Labor Code § 1199 in an amount not less than \$100.

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Dated: April 3, 2013

Respectfully submitted,



By: _____
Michael D. Seplow
Attorneys for PLAINTIFF and Proposed Class

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DEMAND FOR JURY TRIAL

PLAINTIFF and Class Members hereby demand a trial by jury on all issues so triable.

Dated: April 3, 2013

Respectfully submitted,

By: 

Michael D. Seplow
Attorneys for PLAINTIFF and Proposed Class