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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 7th 2012

John A. Clarke, Executive Officer/Clerk
BY  Deputy
Mary Flores

22 SUPERIOR COURT OF THE STATE OF CALIFORNIA

23 FOR THE COUNTY OF LOS ANGELES, UNLIMITED JURISDICTION

24 IAN H. STARK, on behalf of himself, all
25 others similarly situated and the general
26 public,

27 Plaintiff,

28 v.

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

Defendants.

CASE NO. BC 476431

[CLASS ACTION]

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL**

1. Failure to Pay Minimum Wage (Cal. Labor Code § 1194);
2. Failure to Pay Overtime Compensation (Cal. Labor Code § 1194);
3. Failure to Reimburse All Necessary Expenditures (Cal. Labor Code § 2802)
4. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code § 226);

[Continued]

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5. Conversion (Cal. Civil Code §§ 3336, 3294);
 6. Unfair Business Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*); and
 7. Civil Penalties Pursuant to the Private Attorneys General Act (Cal. Labor Code §§ 204, 210, 216, 225.5, 226, 226.3, 510, 558, 1194, 1194.2, 1197, 2698 *et seq.* and 2802 *et seq.*)

GENERAL ALLEGATIONS

PLAINTIFF IAN H. STARK, as an individual, and on behalf of himself, all others similarly situated, and the general public, complains and alleges on information and belief the following against DEFENDANTS CVS PHARMACY, INC.; CVS RX SERVICES, INC.; GARFIELD BEACH CVS, LLC; and Does 1-50:

INTRODUCTION

1. This is a proposed class action, under Code of Civil Procedure section 382, arising out of DEFENDANTS' failure to pay a minimum wage and overtime compensation to certain "floater" pharmacists employed in the State of California by DEFENDANTS CVS PHARMACY, INC., CVS RX SERVICES INC., GARFIELD BEACH CVS, LLC, and Does 1 through 50 (collectively, "DEFENDANTS") in Region 65 of DEFENDANTS' California retail operations, and DEFENDANTS' failure to indemnify such "floater" pharmacists for all necessary expenses incurred in the discharge of their duties for DEFENDANTS. These "floater" pharmacists were properly classified as non-exempt employees and were required by DEFENDANTS to provide pharmacy services at more than one store location within the same pay period and often within the same day, but were not paid any compensation for travel time between such store locations or reimbursed for their reasonable and necessary non-commute mileage expenses incurred in the discharge of their duties during the Class Period, which is defined as the time period beginning four years prior to the filing of this Complaint through the trial date.

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1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction over all causes of action asserted herein
3 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
4 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
5 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
6 laws of the State of California or is subject to adjudication in the courts of the State of California.
7 No part of this complaint is preempted by federal law or challenges conduct within any federal
8 agency's exclusive domain, and adjudication thereof has not been statutorily assigned to any
9 other court or jurisdiction.

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

14 4. Venue as to DEFENDANTS is proper in this judicial district, pursuant to Code of
15 Civil Procedure section 395(a). DEFENDANTS either reside, maintain offices, transact business,
16 and/or have agents in Los Angeles County and DEFENDANTS are otherwise within this Court's
17 jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct
18 effect on PLAINTIFF, those similarly situated, and the general public within the State of
19 California and within Los Angeles County. PLAINTIFF was employed by DEFENDANTS at
20 multiple stores, including several located throughout Los Angeles County.

21 5. On information and belief, the aggregate total of the class action claims pled
22 herein do not exceed \$5,000,000, nor do PLAINTIFF IAN H. STARK's individual claims exceed
23 \$75,000.

24 **THE PARTIES**

25 6. PLAINTIFF IAN H. STARK ("PLAINTIFF") is now, and at all relevant times
26 was, employed by DEFENDANTS as a "floater" pharmacist at DEFENDANTS' stores in Region
27 65 of DEFENDANTS' California retail operations in Los Angeles and surrounding counties from
28 approximately March 2008 through the present.

1 7. Defendant CVS RX SERVICES, INC. ("CVS RX") is a corporation organized
2 under the laws of the State of New York and is engaged in the business of providing pharmacy
3 services throughout the State of California.

4 8. Defendant CVS PHARMACY, INC. ("CVS PHARMACY") is a corporation
5 organized under the laws of the State of Rhode Island and is engaged in the business of operating
6 retail stores that sell pharmaceuticals and general merchandise and provide pharmacy services
7 throughout the State of California.

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

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

20 11. DEFENDANTS, collectively, have absorbed multiple major drug stores present in
21 California, including Sav-On in 2006 and Longs in 2009.

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

26 13. PLAINTIFF is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
28 each acting as agents and/or employees, and/or under the direction and control of each of the

1 other DEFENDANTS, and that said acts and failures to act were within the course and scope of
2 said agency, employment and/or direction and control. PLAINTIFF is informed and believes,
3 and thereon alleges, that at all times material hereto DEFENDANTS were and are the agents of
4 each other.

5 CLASS ACTION ALLEGATIONS

6 14. PLAINTIFF brings this action on behalf of himself individually and all others
7 similarly situated as a class action pursuant to California Code of Civil Procedure section 382, on
8 behalf of the class composed of and defined as follows (herein referred to as the "Class" and its
9 putative members as the "Class Members"):

10 All persons who are employed or have been employed by
11 DEFENDANTS in Region 65 of DEFENDANTS' California retail
12 operations in the State of California as a non-exempt "floater"
13 pharmacists, providing pharmacy services at multiple store
14 locations, or any employee with the same job duties during the
15 Class Period (*i.e.*, as defined in Paragraph 1 of this Complaint, the
16 time period beginning four years prior to the filing of this
17 Complaint through the trial date).

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

- 21 a. Numerosity: The potential members of the Class as defined are so
22 numerous that joinder of all the members of the Class is impracticable.
23 While the precise number of Class Members has not yet been determined,
24 PLAINTIFF is informed and believes that DEFENDANTS employ 1,000
25 or more pharmacists in the State of California and that DEFENDANTS
26 routinely designate a significant number of such pharmacists as "floaters"
27 expected to work at multiple stores.
- 28 b. Commonality: There are questions of law and fact common to the
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:

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- (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 to Class Members who worked and should have been entitled to such compensation under California law;
 - (iii) Whether DEFENDANTS violated Labor Code section 2802 by failing to reimburse Class Members all necessary expenses incurred in the discharge of their duties;
 - (iv) Whether DEFENDANTS violated Labor Code section 226 by failing to provide accurate itemized wage statements for all Class Members;
 - (v) Whether DEFENDANTS unlawfully and intentionally took and converted the property of Class Members by refusing to pay Class Members all wages due and by refusing to reimburse Class Members all necessary expenses incurred in the discharge of their duties; and
 - (vi) Whether DEFENDANTS violated Business and Professions Code sections 17200, *et seq.* by violating the labor laws and regulations noted herein;
- c. Typicality: PLAINTIFF's wage and hour claims are typical of the claims of the Class. PLAINTIFF and all Class Members sustained injuries arising out of actions or inactions of DEFENDANTS' common course of conduct in violation of law as alleged herein.
- d. Adequacy of Representation: PLAINTIFF is qualified to, and will fairly and adequately protect the interests of each Class Member, with whom he

1 has a well-defined community of interest and typicality of claims, as
2 demonstrated herein. PLAINTIFF has no interest that is adverse to the
3 interests of the other Class Members. PLAINTIFF acknowledges that he
4 has an obligation to make known to the Court any relationship, conflicts or
5 differences with any Class Member. PLAINTIFF's attorneys and proposed
6 Class counsel are versed in the rules governing class action discovery,
7 certification, and settlement. PLAINTIFF has incurred, and during the
8 pendency of this action, will continue to incur, costs and attorney fees, that
9 have been, are and will be necessarily expended for the prosecution of this
10 action for the substantial benefit of each Class Member.

11 e. Superiority of Class Action: A class action is superior to other available
12 means for the fair and efficient adjudication of this controversy. Individual
13 joinder of all Class Members is not practicable, and common questions of
14 law and fact affecting the Classes predominate over any questions affecting
15 only individual members of the Class. Each Class Member has been
16 damaged and is entitled to recover by reason of DEFENDANTS' illegal
17 policies and/or practices. Class action treatment will allow those similarly
18 situated persons to litigate their claims in the manner that is most efficient
19 and economical for the parties and the judicial system. This is particularly
20 true given the challenges facing the California Superior Court and the
21 statewide reach of the DEFENDANTS.

22 f. Public Policy Consideration: California employers violate wage and hour
23 laws every day. Current employees are often afraid to assert their rights
24 out of fear of direct or indirect retaliation. Former employees are fearful of
25 bringing actions because they believe their former employers can damage
26 their future endeavors through negative references and other means.
27 California has a stated public policy in favor of class actions in this context
28 for the vindication of employee rights and enforcement of the Labor Code.

1 Class actions provide the Class Members who are not named in the
2 Complaint with a type of anonymity that allows for the vindication of their
3 rights.

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

5 16. PLAINTIFF STARK is a highly experienced pharmacist who has worked for
6 DEFENDANTS as a "floater" pharmacist in Region 65 of DEFENDANTS' California retail
7 operations since approximately March 2008.

8 17. Plaintiff was hired for his education and experience, and he was properly classified
9 as a non-exempt employee. PLAINTIFF and other Class Members are all classified as "non-
10 exempt" employees.

11 18. During his employment as by DEFENDANTS as a "floater" pharmacist,
12 PLAINTIFF has been asked to work at multiple stores, sometimes covering more than one store
13 in a single day. However, DEFENDANTS have failed and refused to compensate PLAINTIFF
14 for any time spent for "floating" between stores or reimbursed the non-commute mileage
15 expenditures necessarily incurred in the discharge of these duties. In addition, DEFENDANTS
16 have failed to accurately count the total of all hours worked across all stores by PLAINTIFF in a
17 single day, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked
18 and at the appropriate overtime rate of pay for time qualifying as overtime.

19
20 **FIRST CAUSE OF ACTION**
FAILURE TO PAY MINIMUM WAGE
(Cal. Labor Code § 1194)

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

22 19. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
23 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
24 those allegations which are inconsistent with this cause of action.

25 20. DEFENDANTS' conduct described in this Complaint violates, among other
26 things, I.W.C. Wage Order 7-2001 section 4 and Labor Code section 1197 in failing to provide at
27 least a minimum wage for all hours worked.

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1 21. DEFENDANTS failed to pay PLAINTIFF and Class Members wages for work
2 each performed in direct violation of I.W.C. Wage Order 7-2001, section 4 as well as Labor Code
3 section 1197. As of this date, PLAINTIFF and Class Members are still owed wages for which
4 they have not been paid. DEFENDANTS knew or should have known that PLAINTIFF deserved
5 to be paid at least a minimum wage for all work performed. DEFENDANTS, however, have
6 created a policy and/or practice of refusing to honor their obligations and pay PLAINTIFF and
7 Class Members for all time worked, particularly for time spent "floating" between stores.

8 22. Labor Code section 1194 provides for a private right of action to recover wages
9 when not paid at least a minimum wage. PLAINTIFF, on behalf of himself and the Class states
10 this Cause of Action pursuant to this provision. Therefore, PLAINTIFF and Class Members are
11 entitled to recover the unpaid balance of all wages DEFENDANTS owe PLAINTIFF and Class
12 Members, plus interest on that amount, and reasonable attorney fees and costs of this suit
13 pursuant to Labor Code section 1194. PLAINTIFF and Class Members are also entitled to
14 penalties and/or liquidated damages pursuant to statute.

15 23. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

16
17 **SECOND CAUSE OF ACTION**
18 **FAILURE TO PAY OVERTIME COMPENSATION**
19 **(Cal. Labor Code § 1194)**

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

21 24. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
22 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
23 those allegations which are inconsistent with this cause of action.

24 25. DEFENDANTS routinely required PLAINTIFF and Class Members to work more
25 than eight (8) hours per day and/or forty (40) hours per week.

26 26. DEFENDANTS failed to fully compensate PLAINTIFF and Class Members for all
27 overtime wages they earned, in particular, by failing to compensate "floater" pharmacists for time
28 spent "floating" between stores and by failing to accurately total all hours worked across multiple
stores by "floater" pharmacists in single day.

1 27. PLAINTIFF is informed and believes, and thereon alleges that the failure of
2 DEFENDANTS to fully compensate PLAINTIFF and Class Members for overtime work was
3 willful, purposeful, and unlawful and done in accordance with the policies and practices of
4 DEFENDANTS' operations.

5 28. As a proximate cause of the aforementioned violations, PLAINTIFF and Class
6 Members have been damaged in an amount according to proof at time of trial. PLAINTIFF and
7 Class Members are entitled to recover the unpaid balance of wages owed, penalties, including
8 penalties available pursuant to California Labor Code section 558, plus interest, reasonable
9 attorney fees and costs of suit according to the mandate of California Labor Code §§ 1194, *et*
10 *seq.*, and punitive damages for DEFENDANTS' oppressive, malicious, intentional, and
11 fraudulent actions.

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

13
14 **THIRD CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE ALL NECESSARY EXPENDITURES**
16 **(Cal. Labor Code § 2802)**

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

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

21 31. DEFENDANTS routinely required PLAINTIFF and Class Members to work at
22 multiple store locations within the same pay period and within the same day. In discharging their
23 duties as "floater" pharmacists for DEFENDANTS, PLAINTIFF and Class Members routinely
24 incurred necessary expenses for non-commute mileage for reporting to any stores other than their
25 "home" store and for non-commute mileage between the first store to which they reported and
26 any additional stores to which they were required to report in a given workday.

27 32. DEFENDANTS failed to fully reimburse PLAINTIFF and Class Members for all
28 necessary expenditures incurred in the discharge of their duties for DEFENDANTS.

 33. PLAINTIFF is informed and believes, and thereon alleges that the failure of
DEFENDANTS to fully reimburse PLAINTIFF and Class Members for all necessary

1 expenditures incurred in the discharge of their duties was willful, purposeful, and unlawful and
2 done in accordance with the unlawful policies and practices of DEFENDANTS' operations.

3 34. As a proximate cause of the aforementioned violations, PLAINTIFF and Class
4 Members have been damaged in an amount according to proof at time of trial. PLAINTIFF and
5 Class Members are entitled to recover the unpaid balance of unreimbursed expenditures incurred
6 in the discharge of their duties, penalties, including penalties available pursuant to California
7 Labor Code Section 558, plus interest, reasonable attorney fees and costs of suit according to the
8 mandate of California Labor Code §§ 1194, *et. seq.*, and punitive damages for DEFENDANTS'
9 oppressive, malicious, intentional, and fraudulent actions

10 35. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
14 **(Cal. Labor Code § 226)**
15 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

16 36. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
17 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
18 those allegations which are inconsistent with this cause of action.

19 37. California Labor Code section 226 requires all employers to provide accurate
20 itemized wage statements to each employee for wages earned during that pay period.

21 38. DEFENDANTS failed to provide PLAINTIFF and Class Members with accurate
22 itemized wage statements as required by California Labor Code section 226. In particular, by
23 virtue of the foregoing policies and practices, DEFENDANTS knowingly and intentionally did
24 not state on PLAINTIFF's and Class Members' payroll records the time that they had actually
25 worked, the overtime that they had earned, and the mileage expense reimbursements to which
26 they were entitled.

27 39. PLAINTIFF is informed and believes, and thereon alleges that DEFENDANTS
28 knowingly and intentionally provided inaccurate payroll records in order to conceal their
unlawful payment practices. As a result, PLAINTIFF and Class Members are entitled to recover
the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a

1 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
2 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee,
3 and are entitled to an award of costs and reasonable attorney fees.

4 40. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

5
6 **FIFTH CAUSE OF ACTION**
CONVERSION

7 **(Cal. Civil Code §§ 3336, 3294)**

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

9 41. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
10 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
11 those allegations which are inconsistent with this cause of action.

12 42. As alleged above, DEFENDANTS wrongfully withheld earned wages and expense
13 reimbursements from PLAINTIFF and Class Members. In particular, DEFENDANTS failed to
14 pay PLAINTIFF and Class Members for all hours worked, all overtime wages they earned, and
15 all necessary expenditures incurred in the discharge of their duties for which they were entitled to
16 reimbursement pursuant to the applicable employment laws and regulations.

17 43. At all relevant times, DEFENDANTS had and continue to have a legal obligation
18 imposed by statute to pay PLAINTIFFS and members of the PLAINTIFF CLASS all earned
19 wages and other compensation due to them. Such wages and compensation belonged to
20 PLAINTIFFS and members of the PLAINTIFF CLASS at the time the labor and services were
21 provided to DEFENDANTS, and accordingly, such wages and compensation are the property of
22 PLAINTIFFS and members of the PLAINTIFF CLASS, not DEFENDANTS.

23 44. DEFENDANTS knowingly and intentionally failed to pay PLAINTIFFS and
24 members of the PLAINTIFF CLASS all overtime compensation for overtime hours worked,
25 knowingly and intentionally failed to compensate PLAINTIFFS and members of the PLAINTIFF
26 CLASS for mileage reimbursement, and knowingly and intentionally failed to provide other
27 compensation due to PLAINTIFFS and members of the PLAINTIFF CLASS. Instead,
28 DEFENDANTS converted PLAINTIFFS' and members of the PLAINTIFF CLASS' rightfully

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1 earned wages and expense reimbursement to which they were entitled and converted them to
2 DEFENDANTS' own use and benefit.

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

8 46. DEFENDANTS' actions constituting conversion were oppressive, malicious, and
9 fraudulent, and were concealed by DEFENDANTS, and each of them, from PLAINTIFFS and
10 PLAINTIFF CLASS as hereinbefore alleged. PLAINTIFF and members of the PLAINTIFF
11 CLASS have been injured by DEFENDANTS' oppressive, malicious, intentional and fraudulent
12 actions, entitling PLAINTIFFS and the PLAINTIFF CLASS to punitive and exemplary damages

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

14
15 **SIXTH CAUSE OF ACTION**
16 **UNFAIR BUSINESS PRACTICES**
17 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**
18 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

19 48. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
20 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
21 those allegations which are inconsistent with this cause of action.

22 49. The Unfair Competition Law, Business & Professions Code sections 17200 *et seq.*,
23 defines unfair competition to include any "unfair," "unlawful" or "deceptive" business practice,
24 and provides for injunctive and restitutionary relief for violations.

25 50. DEFENDANTS have committed numerous unfair, unlawful, or deceptive business
26 practices including but not limited to: (1) failing to provide PLAINTIFF and other non-exempt
27 "floater" pharmacists compensation for all hours worked, particularly for time spent "floating"
28 between stores; (2) permitting, encouraging, and/or requiring PLAINTIFF and other non-exempt
"floater" pharmacists to work in excess of eight hours per day and in excess of forty hours per
week without paying them overtime compensation as required by California's laws and

1 regulations, particularly by failing to compensate them for time spent "floating" between stores
2 and by failing to accurately total all hours worked across multiple stores in a single day; and (3)
3 willfully failing to reimburse PLAINTIFF and other "floater" pharmacists for all necessary
4 expenditures incurred in the discharge of their duties, including expenses for non-commute
5 mileage for reporting to any stores other than their "home" store and for non-commute mileage
6 between the first store to which they reported and any additional stores to which they were
7 required to report in a given workday.

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

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

13 53. PLAINTIFF is informed and believes that DEFENDANTS continue to engage in
14 the practices described herein and are continuing and will continue to benefit financially from
15 these unlawful and unfair practices unless enjoined by this court from doing so.

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

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

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

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

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3 **SEVENTH CAUSE OF ACTION**
4 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
5 **(Cal. Labor Code §§ 204, 210, 216, 225.5, 226, 226.3,**
6 **510, 558, 1194, 1194.2, 1197, 2698 *et seq.* and 2802 *et seq.*)**
7 **By PLAINTIFF individually and on behalf of the Class against all DEFENDANTS**

8 58. As a separate and distinct cause of action, PLAINTIFF realleges and incorporates
9 by reference, as though fully set forth herein, all the allegations of this Complaint, excepting
10 those allegations which are inconsistent with this cause of action.

11 59. PLAINTIFF, individually and on behalf of all others similarly situated and the
12 general public, provided written notice on or about November 29, 2011 (and postmarked
13 December 5, 2011) to the Labor and Workforce Development Agency (“LWDA”) and to
14 DEFENDANT CVS RX SERVICES, INC. of the specific violations of the California Labor Code
15 that DEFENDANTS have violated and continue to violate.

16 60. On or about January 5, 2012, the LWDA provided written notice to Plaintiff that it
17 did not intend to investigate the allegations. PLAINTIFF has exhausted all administrative
18 procedures required under Labor Code section 2699.3, by permitting 33 days to transpire prior to
19 bringing this claim for relief after providing notice to the LWDA and to DEFENDANT CVS RX
20 SERVICES, INC., and by receiving written notice from the LWDA that it does not intend to
21 investigate the allegations. During this time, DEFENDANTS have failed to provide notice that
22 the alleged violations have been cured. As a result, PLAINTIFF is justified as a matter of right in
23 bringing forward this cause of action.

24 61. Pursuant to Labor Code Section 2699(a), PLAINTIFF seeks to recover civil
25 penalties, as otherwise provided by statute, for which DEFENDANTS are liable as a result of
26 their violations of the California Labor Code and provisions of the applicable Industrial Wage
27 Orders. Pursuant to Private Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.*
28 (“PAGA”), PLAINTIFF should be awarded twenty-five percent (25%) of all penalties due under
California law, including attorneys’ fees and costs.

 62. WHEREFORE, PLAINTIFF requests relief as hereafter provided.

1 **PRAYER FOR RELIEF**

2 On information and belief, the aggregate total of the class action and representative action
3 claims pled herein do not exceed \$5,000,000, nor do PLAINTIFF IAN H. STARK's individual
4 claims exceed \$75,000.

5 WHEREFORE, PLAINTIFF prays for relief and judgment against all DEFENDANTS,
6 jointly and severally, as follows:

7 1. That the Court determine that Causes of Action 1-6 be maintained as a class action
8 and for Cause of Action 7 to be maintained as a representative action;

9 2. For general, compensatory and exemplary damages, according to proof;

10 3. For restitution of all monies due to PLAINTIFF and the proposed class from the
11 unlawful business practices;

12 4. For all penalties pursuant to law;

13 5. For an order awarding the costs and fees of this action, including prejudgment
14 interest, costs, and attorneys' fees pursuant to Labor Code section 1194;

15 6. For an order permanently enjoining DEFENDANTS from providing inaccurate
16 itemized wage statements;

17 7. For permanent injunctive relief requiring DEFENDANTS to cease and desist from
18 all unlawful and/or unfair activities pursuant to Business and Professions Code sections 17200, *et*
19 *seq.*;

20 8. For such other and further relief as this Court may deem appropriate.

21 Dated: February 6, 2012

22 Respectfully submitted,

23 LAW OFFICES OF THOMAS W. FALVEY
24 SCHONBRUN, DESIMONE, SEPLOW,
25 HARRIS, HOFFMAN & HARRISON LLP
26 DADGOSTAR LAW LLP

27 By: 
J.D. Henderson

28 Attorneys for Plaintiff Ian Stark

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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a trial by jury on all issues so triable.

Dated: February 6, 2012

Respectfully submitted,

LAW OFFICES OF THOMAS W. FALVEY
SCHONBRUN, DESIMONE, SELOW,
HARRIS, HOFFMAN & HARRISON LLP
DADGOSTAR LAW LLP

By: 

J.D. Henderson

Attorneys for Plaintiff Ian Stark