

COPY

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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Scott Edward Cole, Esq. (S.B. # 160744)
Molly A. DeSario, Esq. (S.B. #230763)
Christopher B. Johnson, Esq. (S.B. #284814)
SCOTT COLE & ASSOCIATES, APC
1970 Broadway, Ninth Floor
Oakland, California 94612
Telephone: (510) 891-9800
Facsimile: (510) 891-7030
Email: scole@scalaw.com
Email: mdesario@scalaw.com
Email: cjohnson@sclaw.com
Web: www.scalaw.com

Attorneys for Representative Plaintiffs
Michael Chavez, Farhan Hussain,
Lisa Mitchell, and the Plaintiff Class

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

MICHAEL CHAVEZ, FARHAN
HUSSAIN, and LISA MITCHELL,
individually and on behalf of all others
similarly situated, and each and every
plaintiff identified in Attachment "A"
hereto,

Plaintiffs,

vs.

RITE AID CORPORATION, and
DOES 1 through 100, inclusive,

Defendants.

Case No.

115 CV 2773 13

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

ENDORSED

2015 FEB 25 P 3: 20

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By: S. ACKARD Deputy Clerk

1 Representative Plaintiffs allege as follows:
2

3 **PRELIMINARY STATEMENT**

4 1. This is a class action seeking unpaid regular and overtime wages, including
5 unpaid compensation for interrupted and/or missed meal and/or rest periods, interest thereon,
6 reimbursement of business expenses, liquidated damages and other penalties, injunctive and
7 other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, California Labor
8 Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1197 and/or 1198, California
9 Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure
10 § 1021.5. Plaintiffs Michael Chavez, Farhan Hussain, and Lisa Mitchell ("Plaintiffs") bring this
11 action on behalf of themselves and all other persons similarly situated ("Class Members" and/or
12 the "Plaintiff Class") who are or have been employed by defendants Rite Aid Corporation and/or
13 Does 1 through 100, inclusive (collectively "Defendant" and/or "Rite Aid") and misclassified as
14 overtime-exempt retail managers in any store in the State of California within the applicable
15 class period. Additionally, the Plaintiffs identified in Attachment "A" hereto bring this action
16 against Rite Aid on their own behalf.

17 2. In light of the tolling effect and "relation-back" of the instant claims, pursuant to
18 the prosecution of *Fenley v. Rite Aid Corporation*, Santa Clara County Superior Court Case No.
19 1-12-CV-229127, the class period is designated as the time from November 4, 2009 through
20 trial, based upon Plaintiffs' and the Class Members' allegation that Defendant's violations of
21 California's wage and hour laws, as described more fully below, have been ongoing throughout
22 that time.

23 3. During the class period, Rite Aid has had a consistent policy of (1) permitting,
24 encouraging and/or requiring its allegedly overtime-exempt Store Managers, including the
25 Representative Plaintiffs and Class Members, to work in excess of eight hours per day and in
26 excess of forty hours per week without paying them overtime compensation as required by
27 California's wage and hour laws, (2) unlawfully denying Representative Plaintiffs and Class
28 Members statutorily-mandated meal and rest periods, and (3) willfully failing to provide

1 Representative Plaintiffs and Class Members with accurate semimonthly itemized wage
2 statements reflecting the total number of hours each worked, the applicable deductions, and the
3 applicable hourly rates in effect during the pay period, and (4) failing to reimburse Class
4 Members for business expenses related to the operations of Defendant. In addition,
5 Representative Plaintiffs are informed and believe and, on that basis, allege that Rite Aid has had
6 a consistent policy of willfully failing to pay compensation (including unpaid overtime) in a
7 prompt and timely manner to the Representative Plaintiffs and those Class Members whose
8 employment with Rite Aid has terminated.

9
10 **INTRODUCTION**

11 4. Rite Aid operates numerous stores throughout California, including those in
12 which Representative Plaintiffs have worked as Store Managers. The Representative Plaintiffs
13 are informed and believe and, on that basis, allege that, within the Class Period, Rite Aid
14 employed hundreds of individuals in California in recent years who occupied salaried Store
15 Manager positions at its Rite Aid retail locations, employment positions which did not, and
16 currently do not, meet any known test for exemption from the payment of overtime wages and/or
17 the entitlement to meal or rest periods.

18 5. Despite actual knowledge of these facts and legal mandates, Rite Aid has and
19 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
20 by electing not to pay all wages due (including overtime and missed meal and rest period
21 compensation) and/or all penalties dues (including “waiting time” penalties) to its salaried Store
22 Managers at its Rite Aid retail locations.

23 6. Representative Plaintiffs are informed and believe and, based thereon, allege that
24 officers of Rite Aid knew of these facts and legal mandates yet, nonetheless, repeatedly
25 authorized and/or ratified the violation of the laws cited herein.

26 7. Despite Rite Aid’s knowledge of Class Members’ entitlement to overtime pay and
27 meal and/or rest periods for all applicable work periods, Rite Aid failed to provide the same to
28 the Class Members thereof, in violation of California state statutes, the applicable California

1 Industrial Welfare Commission Wage Order, and Title 8 of the California Code of Regulations.
2 This action is brought to redress and end this prolonged pattern of unlawful conduct once and for
3 all.

4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over the Representative Plaintiffs' and Class
6 Members' claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable
7 Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations,
8 Labor Code §§ 201-204, 226.7, 510, 512, 1194, 1198, and/or the California Code of Civil
9 Procedure § 1021.5.

10 9. This Court also has jurisdiction over the Representative Plaintiffs' and Class
11 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Rite Aid's
12 unfair and/or fraudulent business practices under California Business & Professions Code
13 § 17200, *et seq.*

14 10. Venue as to Defendant is proper in this judicial district pursuant to California
15 Code of Civil Procedure § 395(a). Rite Aid maintains stores within the County of Santa Clara,
16 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
17 service of process. The unlawful acts alleged herein have and have had a direct effect on the
18 Representative Plaintiffs and those similarly situated within the State of California and within the
19 County of Santa Clara. Rite Aid operates said facilities and has employed numerous Class
20 Members in the County of Santa Clara and throughout counties within the State of California.

21
22 **PLAINTIFFS**

23 11. Representative Plaintiffs Michael Chavez, Farhan Hussain, and Lisa Mitchell are
24 natural persons who were employed by Rite Aid as salaried Store Managers in California during
25 the Class Period.

26 12. As used throughout this Complaint, the term "Class Members" refers to the
27 Representative Plaintiffs herein as well as each and every person eligible for membership in the
28 class of persons as further described and defined herein.

1 | alleged and that the Representative Plaintiffs’ and Class Members’ damages, as herein alleged,
2 | were proximately caused thereby.

3 | 19. Representative Plaintiffs are informed and believe and, on that basis, allege that,
4 | at all relevant times herein mentioned, each of the defendants was the agent and/or employee of
5 | each of the remaining defendants and, in doing the acts herein alleged, was acting within the
6 | course and scope of such agency and/or employment.

7 |
8 | **CLASS ACTION ALLEGATIONS**

9 | 20. The Representative Plaintiffs bring this action on behalf of themselves and as a
10 | class action on behalf of all persons similarly situated and proximately damaged by Rite Aid’s
11 | conduct including, but not necessarily limited to, the following Plaintiff Class:

12 | “All persons who were employed as salaried Store Managers by
13 | Defendant in one or more of its Rite Aid retail locations in
14 | California at any time on or after November 4, 2009.”

14 | 21. Rite Aid, its officers and directors are excluded from the Plaintiff Class.

15 | 22. This action has been brought and may properly be maintained as a class action
16 | under California Code of Civil Procedure § 382 because there is a well-defined community of
17 | interest in the litigation and the proposed Class is easily ascertainable.

18 | a. Numerosity: A class action is the only available method for the fair
19 | and efficient adjudication of this controversy. The members of the
20 | Plaintiff Class are so numerous that joinder of all members is
21 | impractical, if not impossible, insofar as Representative Plaintiffs
22 | are informed and believe and, on that basis, allege that there are
23 | sufficient Class Members to meet the numerosity requirement.
24 | Membership in the Class will be determined upon analysis of
25 | employee and payroll, among other, records maintained by Rite
26 | Aid.

23 | b. Commonality: The Representative Plaintiffs and the Class
24 | Members share a community of interests in that there are numerous
25 | common questions and issues of fact and law which predominate
26 | over any questions and issues solely affecting individual members,
27 | including, but not necessarily limited to:

26 | 1) Whether defendants violated the applicable IWC Wage Order
27 | and/or California Labor Code § 510 by failing to pay overtime
28 | compensation to its salaried Store Managers who worked in
excess of forty hours per week and/or eight hours per day;

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- 2) Whether defendants violated California Business and Professions Code § 17200, *et seq.* by failing to pay overtime compensation to its salaried Store Managers who worked in excess of forty hours per week and/or eight hours per day;
- 3) Whether Defendant violated California Labor Code §§ 400-410 and/or § 2802 by requiring Class Members to pay all or a portion of the normal business expenses of Defendant;
- 4) Whether defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 5) Whether defendants violated California Labor Code §§ 201-204 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated;
- 6) Whether defendants violated California Labor Code § 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
- 7) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class Members sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the Plaintiff Class in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interest in the litigation of this case as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsels who are experienced in conducting litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not

parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

23. As described herein, for years, Rite Aid has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as overtime wages and/or compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other retailers.

24. Rite Aid has declined to pay these wages, even upon a Class Member’s termination or resignation from employment, in blatant violation of California Labor Code § 201 and/or § 202.

25. California Labor Code §§ 201 and 202 require Defendant to pay severed employees all wages due and owed to the employee immediately upon discharge or within 72 hours of resignation of their positions, in most circumstances. California Labor Code § 203 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the subject employees’ wages until the back wages are paid in full or an action is commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

26. Moreover, according to Defendant’s policies, Class Members were required to incur business expenses related to the operations of Defendant.

27. Furthermore, despite its knowledge of the Representative Plaintiffs’ and the Class Members’ entitlement to compensation for all hours worked, Defendant violated California Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records by members of the class. Rite Aid also failed to provide the Representative Plaintiffs and Class Members with accurate semimonthly itemized statements of the total number of hours worked by each, and all applicable hourly rates in effect, during the pay period, in violation of California Labor Code § 226. In failing to provide the required documents, Defendant has not only failed to pay its workers the full amount of compensation due but the company has also, until now, effectively shielded itself from its employees’ scrutiny by

1 concealing the magnitude and financial impact of its wrongdoing that such documents might
2 otherwise have led workers to discover.

3 28. Representative Plaintiffs and all persons similarly situated are entitled to unpaid
4 compensation, yet, to date, have not received such compensation despite many of the same
5 having been terminated by and/or resigned from Rite Aid. More than 30 days have passed since
6 certain Class Members have left Defendant's employ.

7 29. As a consequence of Defendant's willful conduct in not paying former employees
8 compensation for all hours worked in a prompt and timely manner, Representative Plaintiffs and
9 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
10 Code § 203, together with attorneys' fees and costs.

11 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth
12 herein, Representative Plaintiffs and Class Members have sustained damages, as described
13 above, including compensation for loss of earnings for hours worked on behalf of Defendant, in
14 an amount to be established at trial. As a further direct and proximate result of Defendant's
15 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
16 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
17 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
18 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
19 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and Class
20 Members are also entitled to recover costs and attorneys' fees pursuant to California Labor Code
21 § 1194 and/or California Civil Code § 1021.5, among other authorities.

22 31. Representative Plaintiffs seek injunctive relief prohibiting Defendant from
23 engaging in the complained-of illegal labor acts and practices in the future. Representative
24 Plaintiffs also seek restitution of costs incurred by Representative Plaintiffs and Class Members
25 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
26 continue unchecked, while Representative Plaintiffs and Class Members bear the financial brunt
27 of Defendant's unlawful conduct. As a further direct and proximate result of Defendants'
28

1 unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class are also
2 entitled to recover costs and attorneys' fees, pursuant to statute

3 32. Representative Plaintiffs complied with the procedures for bringing suit specified
4 in California Labor Code § 2699.3. By letter dated November 4, 2011 and October 29, 2013,
5 Plaintiffs gave written notice, by certified mail, to the Labor and Workforce Development
6 Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code
7 alleged to have been violated, including the facts and theories to support the alleged violations.

8
9 **FIRST CAUSE OF ACTION**
10 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
11 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

12 33. Representative Plaintiffs and the individual Plaintiffs identified in Attachment
13 "A" hereto incorporate in this cause of action each and every allegation of the preceding
14 paragraphs, with the same force and effect as though fully set forth herein.

15 34. During the Class Period, the Representative Plaintiffs and the Class Members
16 worked, on many occasions, in excess of eight hours in a workday and/or 40 hours in a
17 workweek. The precise number of overtime hours will be proven at trial.

18 35. During the Class Period, Defendant refused to compensate the Representative
19 Plaintiffs and Class Members for all of the overtime wages earned, in violation of the applicable
20 IWC Wage Order and provisions of the California Labor Code.

21 36. Moreover, during said time period, many of the Class Members herein were
22 employed by and thereafter terminated or resigned from their positions with Rite Aid, including
23 Representative Plaintiffs, yet were not paid all wages due upon said termination or within 72
24 hours of said resignation of employment therefrom. Said non-payment of all wages due was the
25 direct and proximate result of a willful refusal to do so by Rite Aid.

26 37. At all relevant times, Defendant was aware of, and was under a duty to comply
27 with, the overtime provisions of the California Labor Code including, but not limited to,
28 California Labor Code §§ 510, 1194, and 1198.

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38. California Labor Code § 510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee

39. California Labor Code § 1194(a), in pertinent part, provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

40. California Labor Code § 1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

41. By refusing to compensate the Representative Plaintiffs and Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

42. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiffs and the Plaintiff Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Rite Aid, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

43. Representative Plaintiffs and the individual Plaintiffs identified in Attachment "A" hereto incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

44. At all relevant times, Rite Aid was aware of and was under a duty to comply with California Labor Code § 226.7 and § 512.

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45. California Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

46. Moreover, California Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

47. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

48. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

1 49. Moreover, Section 12 of the applicable IWC Wage Order provides:

2 (A) Every employer shall authorize and permit all employees to
3 take rest periods, which insofar as practicable shall be in the
4 middle of each work period. The authorized rest period time shall
5 be based on the total hours worked daily at the rate of ten (10)
6 minutes net rest time per four (4) hours or major fraction thereof

7
8 (B) If an employer fails to provide an employee a rest period in
9 accordance with the applicable provisions of this order, the
10 employer shall pay the employee one (1) hour of pay at the
11 employee's regular rate of compensation for each workday that the
12 rest period is not provided.

13 50. By failing to consistently provide uninterrupted thirty-minute meal periods within
14 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to
15 Representative Plaintiffs and the Class Members, Defendant violated the California Labor Code
16 and applicable IWC Wage Order provisions.

17 51. Representative Plaintiffs are informed and believe and, on that basis, allege that
18 Defendant has never paid the one hour of compensation to any Class Member due to its
19 violations of the California Labor Code and applicable IWC Wage Order provisions.

20 52. As a direct and proximate result of Rite Aid's unlawful conduct, as set forth
21 herein, Representative Plaintiffs and Class Members have sustained damages, including lost
22 compensation resulting from missed meal and/or rest periods, in an amount to be established at
23 trial.

24 53. As a further direct and proximate result of Defendant's unlawful conduct, as set
25 forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in
26 amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to
27 statute.

28 **THIRD CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

54. Representative Plaintiffs and the individual Plaintiffs identified in Attachment
"A" hereto incorporate in this cause of action each and every allegation of the preceding
paragraphs, with the same force and effect as though fully set forth herein.

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55. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

56. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

57. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

58. Representative Plaintiffs seeks to recover actual damages, costs, and attorneys' fees under these provisions on behalf of himself and on behalf of all Class Members.

59. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiffs and Class Members in accordance with California Labor Code § 226. Representative Plaintiffs are informed and believe and, on that basis, allege that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

1 **FIFTH CAUSE OF ACTION**
2 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
3 **(California Labor Code §§ 406 and 2802)**

4 66. Representative Plaintiffs and the individual Plaintiffs identified in Attachment
5 “A” hereto incorporate in this cause of action each and every allegation of the preceding
6 paragraphs, with the same force and effect as though fully set forth herein.

7 67. During the class period, Rite Aid required the Representative Plaintiffs and
8 members of the class to incur expenses related to the business operations of Defendant. These
9 expenses include(d), without limitation, mileage for performing deliveries to other stores. These
10 expenditures were incurred in direct consequence of the discharge of the duties of Representative
11 Plaintiffs and members of the class, or of their obedience to the directions of the employer and
12 have not yet been reimbursed by Defendant.

13 68. At all relevant times, Rite Aid was aware of and was under a duty to comply with
14 various provisions of the California Labor Code, including, but not necessarily limited to §§ 406
15 and 2802(a).

16 69. California Labor Code § 406 provides:

17 Any property put up by an employee, or applicant as a part of the contract
18 of employment, directly or indirectly, shall be deemed to be put up as a
19 bond and is subject to the provisions of this article whether the property is
20 put up on a note or as a loan or an investment and regardless of the
21 wording of the agreement under which it is put up.

22 70. California Labor Code § 2802(a) provides:

23 An employer shall indemnify his or her employee for all necessary
24 expenditures or losses incurred by the employee in direct consequence of
25 the discharge of his or her duties, or of his or her obedience to the
26 directions of the employer, even though unlawful, unless the employee, at
27 the time of obeying the directions, believed them to be unlawful.

28 71. By requiring the Representative Plaintiffs and members of the class to incur
uncompensated expenses in direct consequence of the discharge of their duties, Representative
Plaintiffs and members of the class were forced and/or brought to contribute to the capital and
expenses of Defendant’s business which is legally a cash bond and which must be refunded by
Defendant to each Class Member.

1 **SEVENTH CAUSE OF ACTION**
2 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
3 **(California Labor Code §§ 2699)**

4 78. Representative Plaintiffs and the individual Plaintiffs identified in Attachment
5 “A” hereto incorporate in this cause of action each and every allegation of the preceding
6 paragraphs, with the same force and effect as though fully set forth herein.

7 79. The Private Attorneys General Act of 2004, California Labor Code § 2699(a),
8 states:

9 Notwithstanding any other provision of the law, any provision of this code
10 that provides for a civil penalty to be assessed and collected by the Labor
11 and Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, for a violation of this code,
13 may, as an alternative, be recovered through a civil action brought by an
14 aggrieved employee on behalf of himself or herself and other current or
15 former employees...

16 80. Representative Plaintiffs are “aggrieved employees” as defined by California
17 Labor Code § 2699(c) because they were employed by Defendant and were four of many
18 employees against whom violations of the law were committed.

19 81. Representative Plaintiffs have met and/or will meet all of the requirements set
20 forth in California Labor Code § 2699.3 necessary to commence a civil action against
21 Defendants for violations of California Labor Code §§ 226.7 and 512.

22 82. Plaintiffs bring this action on behalf of themselves and all Class Members who
23 have not received meal and rest periods as they are entitled under California Labor Code
24 §§ 226.7 and 512. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
25 herein, Class Members have sustained damages, including loss of earnings, in an amount to be
26 established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as
27 set forth herein, Class Members are entitled to recover various penalties as provided by
28 California Labor Code § 2699, in an amount to be established at trial, as well as costs and
attorneys’ fees, pursuant to statute.

RELIEF SOUGHT

1
2 **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the
3 proposed Plaintiff Class, and the individual Plaintiffs identified in Attachment “A” hereto, pray
4 for judgment and the following specific relief against Defendants, and each of them, jointly and
5 separately, as follows:

6 1. That the Court declare, adjudge, and decree that this action is a proper class action
7 and certify the proposed Class and/or any other appropriate subclasses under California Code of
8 Civil Procedure § 382;

9 2. That the Court declare, adjudge, and decree that Defendant violated the overtime
10 provisions of the California Labor Code and the applicable California Industrial Welfare
11 Commission Wage Order as to the Representative Plaintiffs, Class Members and the individual
12 Plaintiffs identified in Attachment “A” hereto;

13 3. That the Court declare, adjudge, and decree that Defendant willfully violated its
14 legal duties to pay overtime under the California Labor Code and the applicable California
15 Industrial Welfare Commission Wage Orders;

16 4. That the Court declare, adjudge and decree that Defendant violated California
17 Labor Code §§ 406 and 2802(a) by, *inter alia*, willfully failing to reimburse the Representative
18 Plaintiffs, Class Members and the individual Plaintiffs identified in Attachment “A” hereto for
19 expenses made on behalf of Defendant;

20 5. That the Court make an award to the Representative Plaintiffs, Class Members
21 and the individual Plaintiffs identified in Attachment “A” hereto of one hour of pay at each
22 employee’s regular rate of compensation for each workday that a meal period was not provided;

23 6. That the Court make an award to the Representative Plaintiffs, the Class Members
24 and the individual Plaintiffs identified in Attachment “A” hereto of one hour of pay at each
25 employee’s regular rate of compensation for each workday that a rest period was not provided;

26 7. That the Court declare, adjudge, and decree that the Representative Plaintiffs,
27 Class Members and the individual Plaintiffs identified in Attachment “A” hereto were, at all
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 times relevant hereto, and are still, entitled to be paid overtime for work beyond 8 hours in a day
2 and 40 hours in a week;

3 8. That the Court make an award to the Representative Plaintiffs, Class Members
4 and the individual Plaintiffs identified in Attachment "A" hereto of damages and/or restitution
5 for the amount of unpaid overtime compensation, including interest thereon, and penalties in an
6 amount to be proven at trial;

7 9. That the Court order Defendant to pay restitution to the Representative Plaintiffs,
8 Class Members and the individual Plaintiffs identified in Attachment "A" hereto due to
9 Defendant's unlawful activities, pursuant to California Business and Professions Code §§ 17200-
10 17208;

11 10. That the Court further enjoin Defendant, ordering it to cease and desist from
12 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*

13 11. For all other Orders, findings and determinations identified and sought in this
14 Complaint;

15 12. For interest on the amount of any and all economic losses, at the prevailing legal
16 rate;

17 13. For reasonable attorneys' fees, pursuant to California Labor Code § 1194 and/or
18 California Code of Civil Procedure § 1021.5; and

19 14. For costs of suit and any and all such other relief as the Court deems just and
20 proper.

21
22 Dated: February 25, 2015

SCOTT COLE & ASSOCIATES, APC

23
24 By: Molly A. DeSario
25 Molly A. DeSario, Esq.
26 Attorneys for Representative Plaintiffs
27 and the Plaintiff Class
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOYA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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JURY DEMAND

Representative Plaintiffs, on behalf of themselves and the Plaintiff Class, as well as the individual Plaintiffs identified in Attachment "A," hereby demand a trial by jury.

Dated: February 25, 2015

SCOTT COLE & ASSOCIATES, APC

By: *Molly A. DeSario*
Molly A. DeSario, Esq.
Attorneys for Representative Plaintiffs
and the Plaintiff Class

ATTACHMENT "A"

1		
2	Gary Andrews	Jinu John
3	George Adams	Terri Kan
	Ali Ataya	George Kane
4	Jesus Ayala	Robert Kennedy
5	Leeanne Bargas	Abdolai Khojasteh
	Neil D. Bates	Rohitesh Kumar
6	De Ann Bennett	Yassir Labanieh
	Derek Bickett	Chadra Lacoy
7	Simone Bourgois-Freeberg	Keith Langstaff
8	Barbara Brackett	Robert Leggins
	Steve Caldwell	Kevin Lewis
9	Michael Carpenter	Dinodexter Lucas
	Akindele Carter	Lisa Madrigal
10	Bernadette Carter	Josefina Maldonado
11	Patricia Castro	Robert Maldonado
	Michael Chavez	John Manos
12	Mitch Cokeley	Herbert Marston
	Theresa Collins	Ronald May
13	Michael Copeland	Danae McGregor
14	Jarerd Crabtree	Lisa Mitchell
	Jesse De La O	John Moniz
15	Connie Del Pozo	Gilbert Perez
	Kirankumar N. Desai	Matthew Reed
16	Eric Fenton	Kevin Riley
17	Hector Fetes	Ronald Russell
	Albert Floreano	Oscar Salasar
18	Enrique Herrera	Antonio Sanchez
19	Cindy Hester	Todd Sawyer
	Esther Hidalgo	Steven Thome
20	Andy Holloway	Johnny Torrence
	Farhan Hussain	Robert Tripi
21	Susan James	
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