

ENDORSED  
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ALAMEDA COUNTY

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By: *ed* Deputy

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF ALAMEDA**

11 PRAG TIERNO, individually, and on  
12 behalf of all others similarly situated,

13 Plaintiffs,

13 vs.

14 RITE AID CORPORATION, and DOES  
15 1 through 25, inclusive,

16 Defendants.

Case No. *RG* 05211860

CLASS ACTION

COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION

18 Representative Plaintiff alleges as follows:

20 PRELIMINARY STATEMENT

21 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,  
22 including unpaid overtime compensation and interest thereon, rest and meal period penalties, waiting  
23 time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under,  
24 *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 226,  
25 226.7, 512, 1174 and 1194, and CCP § 1021.5, on behalf of Plaintiff and all other persons who are  
26 or have been employed by defendant RITE AID CORPORATION and DOES 1 through 25, inclusive  
27 (collectively "RITE AID") in any of RITE AID's retail drugstores in the State of California at any  
28 time after the commencement of the pay period including May 9, 2001 as an allegedly-overtime

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1 exempt salaried Store Manager. The Representative Plaintiff, on behalf of himself and the Class  
2 Members, also seeks injunctive relief and restitution of all benefits RITE AID has enjoyed from its  
3 failure to pay overtime compensation under Business and Professions Code §§ 17200-17208.

4 2. The Class Period is designated as the time from at least the commencement of the pay  
5 period including May 9, 2001 through the trial date and each period is based upon the allegation that  
6 these respective violations of California's wage and hour laws, as described more fully below, have  
7 been ongoing since at least these dates. During the Class Period, RITE AID has had a consistent  
8 policy of (1) permitting, encouraging, and/or requiring their allegedly-overtime exempt salaried Store  
9 Managers, including Representative Plaintiff and Class Members, to work in excess of eight hours  
10 per day and in excess of forty hours per week without paying them overtime compensation as  
11 required by California state wage and hour laws; (2) unlawfully denying the Representative Plaintiff  
12 and the Class Members statutorily-mandated meal and rest periods; (3) willfully failing to pay  
13 compensation (including unpaid overtime) owing in a prompt and timely manner to the  
14 Representative Plaintiff and/or those Class Members whose employment with RITE AID terminated;  
15 and (4) willfully failing to provide Plaintiff and the Class Members with accurate semimonthly  
16 itemized statements of the total number of hours each of them worked, the applicable deductions and  
17 the applicable hourly rates in effect during the pay period.

### 18 INTRODUCTION

19  
20 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby  
21 setting California's first workday standard, long before the federal government enacted overtime  
22 protections for workers.

23 4. According to findings of the California Legislature, numerous studies have linked  
24 long work hours to increased rates of accident and injury and a loss of family cohesion when either  
25 or both parents are kept away from home for extended periods of time, on either a daily or weekly  
26 basis.

27 5. Since its inception, defendant RITE AID has offered a wide range of merchandise to  
28 the public, including food items, housewares, seasonal goods, candy, toys, health and beauty care,

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1 gifts, party goods, stationery, magazines, personal accessories, and other consumer items.  
2 Representative Plaintiff is informed and believes and, based thereon, alleges that, within the class  
3 period, RITE AID has operated numerous retail drugstores throughout the State of California. In so  
4 doing, RITE AID has employed hundreds, if not thousands, of individuals in recent years alone in  
5 salaried Store Manager positions, employment positions which have not and currently do not meet  
6 the test for exemption from the payment of overtime wages.

7 6. Despite actual knowledge of these facts and legal mandates, RITE AID has enjoyed  
8 an advantage over its competition and a resultant disadvantage to its workers by electing not to pay  
9 premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Store Managers nor has it  
10 provided them with statutorily-mandated meal and rest periods or accurate and complete  
11 semimonthly itemized statements.

12 7. Representative Plaintiff is informed and believes and, based thereon, alleges that  
13 officers of RITE AID knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized  
14 and/or ratified the violation of the laws cited herein.

15 8. Despite RITE AID's knowledge of the Plaintiff Class' entitlement to premium  
16 (overtime) pay for excess hours worked and to meal and rest periods, RITE AID failed to provide  
17 or require the use, maintenance or submission of accurate and complete time records by members  
18 of the Plaintiff Classes, in violation of California Labor Code §1174[d)]. This action is brought to  
19 redress and end this long-time pattern of unlawful conduct.

20  
21 **JURISDICTION AND VENUE**

22 9. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims  
23 for unpaid overtime wages under Labor Code § 1194, for penalties for failure to provide meal and  
24 rest periods under Labor Code §§ 226.7 and 512, for penalties for failure to pay wages of discharged  
25 employees under Labor Code § 203 and for penalties for failure to provide itemized statements of  
26 actual hours worked and all applicable hourly rates under Labor Code § 226.

27 10. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims  
28 for injunctive relief, and restitution of ill-gotten benefits arising from defendant RITE AID's

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

2 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
3 Civil Procedure § 395(a). Defendant RITE AID operates retail drugstores in Alameda County, and  
4 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of  
5 service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff  
6 and those similarly situated within the State of California and within Alameda County. Defendant  
7 RITE AID operates said retail supermarkets and has employed numerous Class Members in Alameda  
8 County.

9  
10 PLAINTIFFS

11 12. During a portion of the herein-relevant time period, the Representative Plaintiff  
12 identified herein was and is a natural person, and was, during the relevant time period identified  
13 herein, employed by defendant RITE AID as an allegedly-overtime-exempt salaried Store Manager,  
14 an employment position which was mis-classified as salaried/exempt from overtime pay.

15 13. As used throughout this Complaint, the terms "Plaintiffs" and/or "Class(es)" refer to  
16 the named plaintiff herein as well as each and every person eligible for membership in one or more  
17 of the Plaintiff Class, as further described and defined below.

18 14. The Plaintiff Class consists, generally, of all members who are/were employed as  
19 salaried Store Managers of RITE AID, and were classified thereby as overtime-exempt employees  
20 at any time between the commencement of the pay period including May 9, 2001 and the present.

21 15. At all times herein relevant, the Representative Plaintiff was and now is a person  
22 within the Classes of persons further described and defined herein.

23 16. The Representative Plaintiff brings this action on behalf of himself and as a class  
24 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities  
25 similarly situated and proximately damaged by the unlawful conduct described herein.

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**DEFENDANTS**

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17. At all times herein relevant, defendants RITE AID CORPORATION and Does 1 through 25, inclusive (collectively referred to as "RITE AID" and/or "Defendant") were corporations, duly licensed and located and doing business in, but not limited to, the County of Alameda, in the State of California.

18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the remaining defendants.

19. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

20. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

**CLASS ACTION ALLEGATIONS**

21. Representative Plaintiff PRAG TIERNO brings this action on behalf of himself and as a class action on behalf of all persons or entities similarly situated and proximately damaged by RITE AID's conduct as set forth herein, including, but not necessarily limited to the following Class:

All persons who are/were employed as a Store Manager position by Rite Aid Corporation, in one or more of Rite Aid Corporation's California retail drugstores and who were classified as overtime-exempt employees at any time between May 9, 2001 and the present.

22. Defendants, their officers and directors are excluded from the Class.

1           23.     This action has been brought and may properly be maintained as a class action under  
2 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation  
3 and the proposed classes are easily ascertainable.

4           a.     Numerosity: A class action is the only available method for  
5 the fair and efficient adjudication of this controversy. The  
6 members of the class are so numerous that joinder of all  
7 members is impractical, if not impossible, insofar as  
8 Representative Plaintiff is informed and believes and, on that  
9 basis, alleges that the total membership in the class is in the  
10 thousands of individuals. Membership in the Class will be  
11 determined upon analysis of employee and payroll, among  
12 other, records maintained by RITE AID.

13           b.     Commonality: The Representative Plaintiff and the Class  
14 Members share a community of interests in that there are  
15 numerous common questions and issues of fact and law  
16 which predominate over any questions and issues solely  
17 affecting individual members, including, but not necessarily  
18 limited to:

19           i.     whether defendant RITE AID violated IWC Wage  
20 Orders and/or Labor Code § 510 by failing to pay  
21 overtime compensation to Store Managers who  
22 worked in excess of forty hours per week and/or eight  
23 hours per day.

24           ii.    whether defendant RITE AID violated Business and  
25 Professions Code § 17200 by failing to pay overtime  
26 compensation to Store Managers who worked in  
27 excess of forty hours per week and/or eight hours per  
28 day.

          iii.    whether defendant RITE AID violated Labor Code §§  
226.7 and/or 512 by failing to consistently provide  
meal and rest periods to its Store Managers.

          iv.    whether defendant RITE AID violated Labor Code §  
1174 by failing to keep accurate records of  
employees' hours of work.

          v.     whether defendant RITE AID violated Labor Code §§  
201-203 by failing to pay overtime wages due and  
owing at the time that certain Class Members'  
employment with Defendant terminated.

          vi.    whether defendant RITE AID violated 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.

          vii.   whether Representative Plaintiff and the Class are

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entitled to "waiting time" penalties, pursuant to Labor Code § 203.

- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Class. The Representative Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by defendant RITE AID's common course of conduct in violation of law, as alleged herein.
  
- d. 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 members of the Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Class, 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.
  
- e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Class, in that the Representative Plaintiff's claims are typical of those of the Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

**COMMON FACTUAL ALLEGATIONS**

24. As described herein, RITE AID has, for years, knowingly failed to adequately compensate Store Managers within the class definition identified above for premium (overtime) wages due, thereby enjoying a significant competitive edge over other retail drugstore chains. Even upon termination or resignation of the employment of numerous class members, RITE AID has declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class Members' entitlement to premium (overtime) pay for excess hours worked, RITE AID violated California Labor Code §1174[d] by failing to provide or require the use, maintenance or submission

1 of time records by members of the Plaintiff Class. RITE AID also failed to provide Representative  
2 Plaintiff and members of the Class with accurate semimonthly itemized statements of the total  
3 number of hours worked by each and all applicable hourly rates in effect during the pay period in  
4 violation of California Labor Code § 226. In so doing, RITE AID has not only failed to pay its  
5 workers the full amount of compensation due, it has, until now, effectively shielded itself from its  
6 employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of  
7 hours worked) and financial impact of its wrongdoing.

8 26. California Labor Code §§ 201 and 202 require defendant RITE AID to pay its  
9 employees all wages due immediately upon discharge. California Labor Code § 203 provides that,  
10 if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to  
11 pay the subject employees' wages until the back wages are paid in full or until an action is  
12 commenced. The penalty cannot exceed 30 days of wages.

13 27. Representative Plaintiff and all persons similarly situated are entitled to unpaid  
14 compensation, yet, to date, have not received such compensation. More than 30 days have passed  
15 since certain class members have left defendant RITE AID's employ.

16 28. As a consequence of defendant RITE AID's willful conduct in not paying  
17 compensation for all hours worked and not paying for denied meal and rest periods, certain class  
18 members are entitled to 30 days wages as a penalty under Labor Code section 203, together with  
19 interest thereon and attorneys' fees and costs.

20 29. As a direct and proximate result of RITE AID's unlawful conduct, as set forth herein,  
21 Representative Plaintiff and particular Class Members have sustained damages, as described above,  
22 including, but not limited to a loss of earnings for hours of overtime worked on behalf of Defendants,  
23 in an amount to be established at trial. As a further direct and proximate result of Defendant's  
24 unlawful conduct, as set forth herein, certain Class Members herein are entitled to recover "waiting  
25 time" penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide  
26 semimonthly statements of actual hours worked and all applicable hourly rates (pursuant to Labor  
27 Code § 226) in an amount to be established at trial. As a further direct and proximate result of  
28 Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class are also



1 entitled to recover costs and attorneys' fees, pursuant to statute.  
2

3 **FIRST CAUSE OF ACTION**  
4 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
5 **(California Business & Professions Code §§ 17200-17208)**

6 30. Representative Plaintiff incorporates in this cause of action each and every allegation  
7 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

8 31. Representative Plaintiff further brings this cause of action on behalf of the general  
9 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of  
10 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business  
11 practices described herein.

12 32. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or  
13 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.  
14 Specifically, Defendant conducted business activities while failing to comply with the legal mandates  
15 cited herein.

16 33. Defendant's knowing failure to adopt policies in accordance with and/or adhere to  
17 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders  
18 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as  
19 set forth in California Business & Professions Code §§ 17200-17208.

20 34. Defendant has clearly established a policy of accepting a certain amount of collateral  
21 damage, as represented by the damages to Representative Plaintiff and the Plaintiff Class herein  
22 alleged, as incidental to its business operations, rather than accept the alternative costs of full  
23 compliance with fair, lawful and honest business practices ordinarily borne by responsible  
24 competitors of Defendant and as set forth in legislation and the judicial record.

25 **SECOND CAUSE OF ACTION**  
26 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**  
27 **(California Labor Code § 510)**

28 35. Representative Plaintiff incorporates 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.

1           36.     During the time period beginning as of the commencement of the pay period  
2 including May 9, 2001 and continuing through the present, Representative Plaintiff and the Class  
3 Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The  
4 precise number of hours will be proven at trial.

5           37.     During said time period, defendant RITE AID refused to compensate Representative  
6 Plaintiff and the Class Members for some and/or all of the overtime wages earned in violation of  
7 applicable Wage Order(s) and the California Labor Code.

8           38.     During said time period, particular Class Members herein were employed by and were  
9 thereafter terminated or resigned from their positions with RITE AID, yet were not paid all premium  
10 (overtime) and/or other wages due upon said termination or within seventy-two hours of said  
11 resignation of employment therefrom. Said non-payment was the direct and proximate result of a  
12 willful refusal to do so by Defendant.

13           39.     At all relevant times, Defendant was aware of and was under a duty to comply with  
14 various provisions of the California Labor Code. Some of these Labor Code provisions include(d):

- 15           a.     Labor Code §203:    “If an employer willfully fails to pay, without  
16 abatement or reduction, in accordance with Sections 201, 201.5, 202, and  
17 205.5, any wages of an employee who is discharged or who quits, the wages  
18 of the employee shall continue as a penalty from the due date thereof at the  
19 same rate until paid or until an action therefor is commenced; but the wages  
20 shall not continue for more than 30 days.”
- 21           b.     Labor Code § 226:    “Every employer shall semimonthly or at the time of  
22 each payment of wages, furnish each of his or her employees, either as a  
23 detachable part of the check, draft, or voucher paying the employee’s wages,  
24 or separately when wages are paid by personal check or cash, an itemized  
25 statement in writing showing . . . (2) total hours worked by the employee . .  
26 . and (9) all applicable hourly rates in effect during the pay period and the  
27 corresponding number of hours worked at each hourly rate by the employee.”
- 28           c.     Labor Code §510:    “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 or 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 . . . .”
- d.     Labor Code § 1194:    “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 attorney’s fees,  
and costs of suit.

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- 1 c. Labor Code §1198: “[t]he maximum hours of work and the standard
- 2 conditions of labor fixed by the commission shall be the maximum hours of
- 3 work and the standard conditions of labor for employees. The employment
- 4 of any employee for longer hours than those fixed by the order or under
- 5 conditions of labor prohibited by the order is unlawful.”
  
- 6 f. Labor Code §1199: “Every employer or other person acting either
- 7 individually or as an officer, agent, or employee of another person is guilty
- 8 of a misdemeanor and is punishable by a fine of not less than one hundred
- 9 dollars (\$100) or by imprisonment for not less than 30 days, or by both, who
- 10 . . . (a) Requires or causes any employee to work for longer hours than those
- 11 fixed, or under conditions of labor prohibited by an order of the commission.
- 12 . . . [or] (c) Violates or refuses or neglects to comply with any provision of
- 13 this chapter or any order or ruling of the commission.”

14 40. By refusing to compensate Representative Plaintiff and the Class Members for  
15 overtime wages earned, Defendant violated those California Labor Code provisions cited herein, as  
16 well as various IWC Wage Order provisions.

17 41. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,  
18 Representative Plaintiff and the Class Members have sustained damages, including loss of earnings  
19 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a  
20 further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, some Class  
21 Members are entitled to recover “waiting time” penalties/wages, in an amount to be established at  
22 trial, as well as costs and attorneys’ fees, pursuant to statute.

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

23 42. Representative Plaintiff incorporates in this cause of action each and every allegation  
24 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

25 43. California Labor Code § 512 provides:

26 An employer may not employ an employee for a work period of more  
27 than five hours per day without providing the employee with a meal  
28 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

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1 period may be waived by mutual consent of the employer and the  
2 employee only if the first meal period was not waived.

3 44. At all relevant times, Defendant was aware of and was under a duty to comply with  
4 California Labor Code § 512 as well as California Labor Code § 226.7.

5 45. Specifically, California Labor Code § 226.7 provides:

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

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

14 46. One or more Industrial Welfare Commission Wage Orders mandates that Defendant  
15 authorize and permit ten minutes of "net rest time" for every four hours of work "or major fraction  
16 thereof" for non-exempt employees such as Representative Plaintiff and members of the Plaintiff  
17 Classes.

18 47. By failing to consistently provide meal and rest periods to Representative Plaintiff  
19 and Class Members, Defendant violated these California Labor Code provisions.

20 48. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
21 Representative Plaintiff and the Class Members have sustained damages, including loss of earnings,  
22 in an amount to be established at trial. As a further direct and proximate result of Defendant's  
23 unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members are entitled  
24 to recover various penalties, in an amount to be established at trial, as well as costs and attorneys'  
25 fees, pursuant to statute.

26 **FOURTH CAUSE OF ACTION**  
27 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
28 **(California Labor Code § 226)**

49. Representative Plaintiff incorporates 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.

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

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

8 51. California Labor Code § 226(e) provides:

9 An employee suffering injury as a result of a knowing and intentional  
10 failure by an employer to comply with subdivision (a) is entitled to  
11 recover the greater of all actual damages or fifty dollars (\$50) for the  
12 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.

13 52. Representative Plaintiff seeks to recover actual damages (including prospective  
14 damages associated with filing restatements of earnings with taxing and/or other authorities), costs  
15 and attorneys' fees under this section on behalf of himself and the Plaintiff Class.

16 53. Defendant RITE AID failed to provide timely, accurate and complete itemized wage  
17 statements to Representative Plaintiff and the Plaintiff Class in accordance with Labor Code §  
18 226(a). Plaintiffs have suffered injuries due to this unlawful conduct insofar as they have lost use  
19 of the compensation due, were forced to bring this action to redress these violations, were forced to  
20 file inaccurate wage information with government agencies and, should this action be successful,  
21 may be required to restate earnings for prior years and/or incur time and costs in so doing.

22 54. None of the statements provided by Defendant has accurately reflected total number  
23 of hours worked, actual gross wages earned, net wages earned, or the appropriate deductions.

24  
25 **RELIEF SOUGHT**

26 **WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed Class,**  
27 **prays for judgment and the following specific relief against Defendants, and each of them, jointly**  
28 **and separately, as follows:**

- 1           1.       For an Order certifying the proposed Class and/or any other appropriate subclasses  
2       under Code of Civil Procedure § 382;
- 3           2.       That defendant RITE AID is found to have violated the overtime provisions of the  
4       Labor Code as to the Representative Plaintiff and the Class;
- 5           3.       That defendant RITE AID is found to have violated Labor Code §§ 226.7 and 512 for  
6       willful failure to provide meal periods, including second meal periods, and rest periods;
- 7           4.       That defendant RITE AID is found to have violated the record keeping provisions of  
8       Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiff and the Class and for willful failure  
9       to provide accurate semimonthly itemized statements thereto;
- 10          5.       That defendant RITE AID is found to have violated Labor Code §§ 201 and 202 for  
11       willful failure to pay all compensation owed at the time of termination of employment to particular  
12       members of the Plaintiff Class;
- 13          6.       That defendant RITE AID is found to have violated Business and Professions Code  
14       § 17200 by failing to pay Representative Plaintiff and Class Members overtime compensation,  
15       “waiting time” penalties and/or by failing to provide accurate and complete itemized wage  
16       statements;
- 17          7.       An award to Representative Plaintiff and the Plaintiff Class of damages for the  
18       amount of unpaid overtime compensation, the amount of wage due as a result of Defendant’s failure  
19       to provide meal and rest periods, the amount of prospective damages associated with filing  
20       restatements of earnings with taxing and/or other authorities, and related damages, including interest  
21       thereon, and penalties in an amount to be proven at trial;
- 22          8.       That defendant RITE AID be ordered to pay restitution to Representative Plaintiff and  
23       the Plaintiff Class due to defendant RITE AID’s unlawful activities, pursuant to Business and  
24       Professions Code §§ 17200-08;
- 25          9.       That defendant RITE AID further be enjoined to cease and desist from unlawful  
26       activities in violation of Business and Professions Code § 17200;
- 27          10.       For all other Orders, findings and determinations identified and sought in this  
28       Complaint;

- 1 11. For Interest on the amount of any and all economic losses, at the prevailing legal rate;
- 2 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§218.5 and 1194
- 3 and/or California Civil Code §1021.5; and
- 4 13. For costs of suit and any and all such other relief as the Court deems just and proper.
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6 Dated: May 9, 2005

7 **SCOTT COLE & ASSOCIATES, APC**

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9 By:   
10 Matthew R. Bainer, Esq.

11 Attorneys for the Representative Plaintiff  
12 and the Plaintiff Class

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