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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/12/2016 at 08:45:00 AM

Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 CHEN-HUNG CHANG, an individual, on
behalf of himself, and all other persons
14 similarly situated,

15 Plaintiff,

16 v.

17 CVS PHARMACY, INC., a Rhode Island
18 corporation; CVS RX SERVICES, INC., a
New York corporation; GARFIELD BEACH
19 CVS, LLC, a California limited liability
company; and DOES 1 to 10 inclusive,

20 Defendants.

CASE NO.:37-2016-00027294-CU-OE-CTL

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF:**

- (1) **FAILURE TO PAY MINIMUM WAGES
AND OVERTIME COMPENSATION
(Lab. Code §§ 510, 1194, and 1197);**
- (2) **FAILURE TO PAY WAGES OWED
(Lab. Code §§ 201, 202, and 203);**
- (3) **FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS
(Lab. Code § 226);**
- (4) **UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code § 17200 et. seq.);
and**
- (5) **PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004
(Lab. Code § 2698 et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiff Chen-Hung Chang (hereinafter “Plaintiff”), by and through his attorneys of
2 record, brings this action on behalf of himself and all persons similarly situated, against
3 Defendants CVS Pharmacy, Inc., CVS RX Services, Inc., and Garfield Beach CVS, LLC
4 (collectively “Defendants” or “CVS”), on the following grounds:

5 **INTRODUCTION**

6 1. This class action is brought on behalf of all current and former employees of
7 Defendants who held a non-exempt, hourly position in the pharmacy department of a CVS
8 location in the state of California, who were not properly compensated for all hours worked, and
9 who were provided with inaccurate wage statements.

10 2. Plaintiff seeks damages, injunctive relief, and restitutionary disgorgement, as well
11 as reasonable attorneys’ fees and litigation costs, as provided under California law.

12 3. All allegations in this Complaint are based upon information and belief, except
13 those allegations that pertain to Plaintiff named herein and his counsel, which are based upon
14 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have
15 evidentiary support after a reasonable opportunity for further investigation and discovery.

16 **JURISDICTION AND VENUE**

17 4. This Court has jurisdiction over this action pursuant to Code Civ. Proc. § 410.10.
18 Pursuant to Code Civ. Proc. § 382 and Bus. & Prof. Code § 17203, Plaintiff brings this action on
19 behalf of himself, and on behalf of all persons within the Class, as defined below.

20 5. This Court has personal jurisdiction over Defendants because Defendants are doing
21 business in the state of California and have caused injuries in the county of San Diego and
22 throughout the state of California through their acts and omissions, and by their violations of the
23 California Labor Code and California Business and Professions Code.

24 6. Venue as to Defendants is proper in this judicial district, pursuant to Code Civ.
25 Proc. § 395(a). Defendants transact business, maintain offices, and/or reside in San Diego County
26 and are otherwise within this Court’s jurisdiction for purposes of service of process. The
27 unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within
28 the county of San Diego and the state of California.

1 11. Defendant CVS Pharmacy, Inc. (hereinafter “CVS Pharmacy”), is a Rhode Island
2 corporation, which operates as a subsidiary of CVS Health Corporation, that is engaged in the
3 business of providing pharmacy services and operating retail stores that sell pharmaceuticals and
4 general merchandise throughout the United States and the state of California.

5 12. Defendant CVS RX Services, Inc. (hereinafter “CVS Caremark”), is a New York
6 corporation, which operates as a subsidiary of CVS Health Corporation, that is engaged in the
7 business of providing pharmacy services throughout the United States and the state of California.

8 13. Defendant Garfield Beach CVS, LLC, (hereinafter “Garfield Beach CVS”) is a
9 California limited liability company, which operates as a subsidiary of CVS Health Corporation,
10 that is engaged in the business of operating drug and proprietary stores throughout the state of
11 California.

12 14. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate, or otherwise of Defendant Does 1 through 10, are unknown to Plaintiff,
14 who therefore sues these defendants by such fictitious names pursuant to Cal. Code Civ. Proc. §
15 474. Plaintiff will amend his complaint to allege the true names and capacities of Does 1 through
16 10 when they are ascertained.

17 15. At all times mentioned herein, the acts alleged to have been done by Defendants are
18 also alleged to have been done by the unascertained defendants mentioned above, and by each of
19 their agents and employees who acted within the scope of their agency and/or employment.

20 16. At all times mentioned herein, the acts and omissions of each of the defendants
21 concurrently contributed to the various acts and omissions of each and every one of the other
22 defendants in proximately causing the wrongful conduct, harm, and damages alleged herein.
23 Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of
24 the acts or omissions complained herein. Each defendant and all doe defendants were and are
25 acting with the authority of each and every other defendant and are acting as agents of each and
26 every other defendant or doe defendant.

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FACTUAL ALLEGATIONS

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2 17. Plaintiff Chang has been employed as a pharmacist by CVS since March 2013 at
3 various CVS pharmacy locations that are owned and/or operated by Defendants. Plaintiff is paid
4 an hourly wage.

5 18. CVS employs a number of individuals at its various CVS pharmacy locations,
6 including pharmacy managers, pharmacists, pharmacy technicians, and pharmacy service
7 associates (hereinafter “pharmacy employees”). Pharmacy employees are typically paid on an
8 hourly basis.

9 19. CVS requires all pharmacy employees to complete an extensive, initial training
10 session. CVS also requires pharmacy employees to complete ongoing training, about once a
11 month. These training sessions are not essential for any state certification, licensing, or
12 regulation.

13 20. CVS routinely sends notices to pharmacy employees when an upcoming training
14 session is required and available. The notices provide information about the training, an
15 approximate time for completion, and a due date. Failure to complete the training in a timely
16 fashion may result in disciplinary action. CVS also sends out reminder notices to pharmacy
17 employees who have yet to complete the training.

18 21. Training is typically carried out on a CVS web based training system. The system
19 keeps record of log-in and log-out times, as well as the time the pharmacy employee spent
20 completing each module.

21 22. CVS allegedly permits pharmacy employees to complete their training while
22 clocked in during a scheduled shift. However, due to Defendants’ staffing policies and the busy
23 nature of the pharmacy, pharmacy employees typically do not have time to complete the training
24 during their scheduled shifts.

25 23. To ensure that pharmacy employees complete their training, CVS provides all
26 pharmacy employees with remote access log-in credentials so that they may access the web based
27 training system from a remote location, such as the employee’s home.

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1 24. Pursuant to California law and CVS policy, pharmacy employees are to be paid for
2 the time they spend participating in the mandated training.

3 25. Although each training has an approximate time for completion, the training often
4 takes Plaintiff and other pharmacy employees more time to complete than the time allotted.

5 26. Store cash registers operate as the CVS timekeeping system. The CVS training
6 system is not integrated with the timekeeping system. CVS does not keep track of training time or
7 automatically add the training time to the pharmacy employees' clocked hours at their work
8 locations. As a result, all training completed off-the-clock has to be manually entered by a store
9 manager, despite the fact that the remote access log-in and log-out times are available to CVS
10 through the training software. Therefore much, if not all, of the time pharmacy employees spend
11 remotely completing the required training is never logged by CVS and the employees are not paid
12 for that time.

13 27. Store managers are directed and pressured by CVS to use the minimum number of
14 work hours and employees necessary to operate the store. The demand by CVS to minimize labor
15 costs is a policy that has created a strong disincentive for store managers to manually enter the
16 time pharmacy employees spend completing training remotely. The result of this company policy
17 is that pharmacy employees' actual time spent participating in the required training is often
18 uncompensated.

19 28. Despite the fact that CVS knows or should know that training takes more time than
20 allotted, it instructs store managers to compensate pharmacy employees for the allocated training
21 time instead of the actual time they spent completing the training.

22 29. Pharmacy employees often endure difficulties with store management when
23 reporting their training time due to CVS's demands and practices. CVS's scheme has ultimately
24 deterred pharmacy employees from reporting their actual time spent participating in training. As a
25 result, pharmacy employees are not being compensated for all the time they spend participating in
26 training.

27 30. CVS's conflicting policies and practices have knowingly resulted in pharmacy
28 employees not being compensated for some or all of the time they spend participating in the

1 required training.

2 31. CVS is aware or should be aware of their failure to compensate pharmacy
3 employees because they have payroll records for all pharmacy employees, as well as training
4 records for all pharmacy employees. From such records, CVS has the capability to determine
5 whether or not a pharmacy employee is appropriately compensated for their time spent
6 participating in the mandated training.

7 **CLASS ALLEGATIONS**

8 32. Plaintiff brings this action on behalf of himself and on behalf of all persons within
9 the defined Class.

10 33. This class action meets the statutory prerequisites for the maintenance of a class
11 action, as set forth in Code Civ. Proc. § 382 and Civ. Code § 1781, in that:

- 12 (a) The persons who comprise the Class are so numerous that the joinder of all
13 such persons is impracticable and the disposition of their claims as a class
14 will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
16 that are raised in this Complaint are common to the Class and will apply
17 uniformly to every member of the Class, and as a practical matter be
18 dispositive of the interests of the other members not party to the
19 adjudication;
- 20 (c) The parties opposing the Class have acted or have refused to act on grounds
21 generally applicable to the Class, thereby making final injunctive relief or
22 corresponding declaratory relief appropriate with respect to the Class as a
23 whole; and
- 24 (d) Common questions of law and fact exist as to the members of the Class and
25 predominate over any questions affecting only individual members, and a
26 class action is superior to other available methods for the fair and efficient
27 adjudication of the controversy, including consideration of:
- 28

- i. The interests of Class Members in individually controlling the prosecution or defense of a separate actions;
- ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
- iv. The difficulties likely to be encountered in the management of a class action.

34. The Court should permit this action to be maintained as a class action pursuant to Code Civ. Proc. § 382 and Civ. Code § 1781 because:

- (a) Questions of law and fact common to the Class are substantially similar and predominate over any questions affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of Class Members' claims;
- (c) The members of the Class are so numerous that it is impractical to bring all Class Members before the Court;
- (d) Plaintiff's claims are typical of the claims of the Class;
- (e) Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties alleged, and in obtaining adequate compensation for the damages that Defendants' actions have inflicted upon the Class;
- (g) Plaintiff can, and will, fairly and adequately protect the interest of the Class;
- (h) There is a community of interest in ensuring that the combined assets and available insurance of Defendants are sufficient to adequately compensate the members of the Class for the injuries sustained; and

1 (i) Defendants have acted or refused to act on grounds generally applicable to
2 the Class, thereby making final injunctive relief appropriate with respect to
3 the Class as a whole.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **(By Plaintiff Individually and on Behalf of the Class against Defendants and Does 1-10)**

7 **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION**

8 **[Lab. Code §§ 510, 1194, and 1197]**

9 35. Plaintiff realleges and incorporates by this reference, as though fully set forth
10 herein, all paragraphs of this Complaint.

11 36. Plaintiff alleges that Defendants willfully and intentionally violated California
12 Labor Code by failing to adequately compensate Plaintiff and Class Members for all hours spent
13 participating in CVS required training.

14 37. Section 1197 of the California Labor Code provides: “The minimum wage for
15 employees fixed by the commission is the minimum wage to be paid to employees, and the
16 payment of a lower wage than the minimum so fixed is unlawful.”

17 38. Pursuant to California law, an employer must pay each employee “not less than the
18 applicable minimum wage for all hours worked in the payroll period, whether the remunerations
19 is measured by time, piece, commission, or otherwise.” (*Gonzalez v. Downtown LA Motors, LP*
20 (2013) 215 Cal.App.4th 36, 44.)

21 39. California Labor Code § 510(a) provides:

22 Eight hours of labor constitutes a day’s work. Any work in excess of
23 eight hours in one workday and any work in excess of 40 hours in
24 any one workweek and the first eight hours worked on the seventh
25 day of work in any one workweeks shall be compensated at the rate
26 of no less than one and one-half times the regular rate of pay for an
27 employee. In addition, any work in excess of eight hours on any
28 seventh day of a workweek shall be compensated at the rate of no
less than twice the regular rate of pay. Nothing in this section
requires an employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work. (Emphasis added.)

1 40. An employee may not waive his or her right to overtime compensation and any
2 agreement by the employee to accept less than the statutorily required rate is unenforceable as a
3 matter of law. (*See Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

4 41. California Labor Code § 1194(a) states:

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

11 42. California Labor Code § 558(a) provides:

12 Any employer or other person acting on behalf of an employer who
13 violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the
15 Industrial Welfare Commission shall be subject to a civil penalty as
16 follows:

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover
20 unpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for
22 each underpaid employee for each pay period for which the
23 employee was underpaid in addition to an amount sufficient to
24 recover underpaid wages.

25 (3) Wages recovered pursuant to this section shall be paid to the
26 affected employee.

27 43. CVS requires all Class Members to participate in regular training. CVS allegedly
28 permits Class Members to complete their training during scheduled shifts or from a remote
location by using provided log-in credentials. However, when training is completed off-the-clock,
the Class Members' time is not automatically recorded. CVS store managers have to manually
enter any training time completed off-the-clock.

 44. CVS requires store managers to limit their labor costs. CVS also has a policy of
only compensating Class Members for the estimated time for completion of training instead of the
actual time spent in the training. CVS's policies and practices serve as a disincentive for store
managers to properly compensate Class Members for their training time. As a result, Class

1 Members are not compensated the legal minimum wage for all or some of the training time that
2 occurs off-the-clock, and/or at the applicable rate of overtime.

3 45. Defendants intentionally created a common scheme to deter Class Members from
4 reporting and being paid for all hours worked.

5 46. At all relevant times, Plaintiff and other members of the Class worked more than
6 eight hours in a single workday and/or more than 40 hours in a workweek due Defendants'
7 mandatory training requirements and limited staffing practice. Defendants knowingly failed to
8 compensate Class Members for all hours worked, and/or the applicable overtime in violation of
9 California Labor Code § 510.

10 47. By virtue of Defendants' unlawful failure to compensate Plaintiff and Class
11 Members for their time worked, Class Members have suffered, and will continue to suffer,
12 damages in amounts which are presently unknown to them, but which exceed the jurisdictional
13 limits of this Court and which will be ascertained according to proof at trial.

14 48. Having received less than the legal minimum wage and/or applicable rate of
15 overtime compensation, Plaintiff and Class Members now seek to recover all wages owed,
16 penalties, including penalties available pursuant to California Labor Code § 558, as well as
17 interest, reasonable attorneys' fees and costs pursuant to California Labor Code § 1194.

18 49. Plaintiff, on behalf of himself and Class Members, also requests further relief as
19 described in the below prayer.

20 **SECOND CAUSE OF ACTION**

21 **(By Plaintiff Individually and on Behalf of the Class against Defendants and Does 1-10)**

22 **FAILURE TO PAY WAGES OWED**

23 **[Lab. Code §§ 201, 202, and 203]**

24 50. Plaintiff realleges and incorporates by this reference, as though fully set forth
25 herein, all paragraphs of this Complaint.

26 51. The term "wages" is defined in California Labor Code § 200(a) to include "all
27 amounts for labor performed by employees of every description, whether the amount is fixed or
28 ascertained by the standard of time...or other method of calculation. Subsection (b) further

1 defines “labor” to include all “labor, work or service whether rendered or performed under
2 contract, subcontract, partnership...”

3 52. California Labor Code § 201(a) provides: “If an employer discharges an employee,
4 the wages earned and unpaid at the time of discharge are due and payable immediately.”

5 53. According to California Labor Code § 202(a):

6 If an employee not having a written contract for a definite period
7 quits his or her employment, his or her wages shall become due and
8 payable not later than 72 hours thereafter, unless the employee has
9 given 72 hours previous notice of his or her intention to quit, in
10 which case the employee is entitled to his or her wages at the time of
11 quitting. Notwithstanding any other provision of law, an employee
who quits without providing a 72-hour notice shall be entitled to
receive payment by mail if he or she so requests and designates a
mailing address. The date of mailing shall constitute the date of
payment for purposes of the requirement to provide payment with 72
hours of the notice of quitting.

12 54. California Labor Code § 203 further provides:

13 If an employer willfully fails to pay, without abatement or reduction,
14 in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
15 wages of an employee who is discharged or who quits, the wages of
16 the employee shall continue as a penalty from the due date thereof at
the same rate until paid or until an action thereof is commenced; but
the wages shall not continue for more than 30 days.

17 55. Defendants’ common scheme of limiting work hours and mandating training
18 knowingly prevented Class Members from being compensated for all the time they spent
19 participating in the required training.

20 56. A number of Class Members are no longer employed by Defendants. To date,
21 Defendants have yet to pay the wages owed to them as required under California law.

22 57. As a consequence of Defendants’ willful and deliberate refusal to tender such
23 wages, affected Class Members are entitled to a maximum of 30 days’ wages at their daily rate of
24 pay as a waiting time penalty pursuant to California Labor Code § 203.

25 58. Plaintiff, on behalf of himself and Class Members, also requests further relief as
26 described in the below prayer.

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1 **THIRD CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class against Defendants and Does 1-10)**

3 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

4 **[Lab. Code § 226]**

5 59. Plaintiff realleges and incorporates by this reference, as though fully set forth
6 herein, all paragraphs of this Complaint.

7 60. California Labor Code § 226 states in pertinent part:

8 Every employer shall, semimonthly or at the time of each payment of
9 wages, furnish each of his or her employees, either as detachable part
10 of the check, draft, or voucher paying the employee’s wages, or
11 separately when wages are paid by personal check or cash, an
12 accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee... (4) all
deductions... (5) net wages earned, (6) the inclusive dates of the
14 period for which the employee is paid... (8) the name and address of
15 the legal entity that is the employer, and (9) all applicable hourly
16 rates in effect during each period and the corresponding number of
17 hours worked at each hourly rate by the employee...”

14 61. California Labor Code § 226(e)(1) further provides:

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

19 62. California Labor Code § 266(h) states “an employee may also bring an action for
20 injunctive relief to ensure compliance with this section, and is entitled to an award of costs and
21 reasonable attorneys’ fees.”

22 63. An injury occurs where the employer fails to provide accurate information and the
23 employee cannot “promptly and easily determine” the total number of hours worked or the
24 “applicable hourly rates in effect during the pay period and the corresponding number of hours
25 worked at each hourly rate.” (Lab. Code § 226(a)(9)-(e)(2)(B)(i).)

26 64. California Labor Code § 226(e)(2)(c) explains that the phrase “promptly and easily
27 determine” means that “a reasonable person would be able to readily ascertain the information
28 without reference to documents or information.”

1 65. Defendants' conflicting policies and practices related to training, staffing, and
2 payroll records results in wage statements that do not accurately reflect Class Members' time
3 spent participating in the mandated training.

4 66. Defendants knowingly and intentionally failed to provide Plaintiff and Class
5 Members with wage statements that accurately reflected their actual time worked, including
6 regular and overtime wages earned for training.

7 67. Pursuant to California Law, Plaintiff and Class Members are deemed to have
8 suffered injury as a result of Defendants' knowing and intentional failure to provide them with
9 accurate wage statements, which properly reflects the appropriate compensation for their training
10 time.

11 68. Under California Labor Code § 226(e), Class Members are entitled to recover
12 liquidated damages in the amount of \$50.00 for the initial violation and \$100.00 for each
13 subsequent violation per employee, not to exceed \$4,000.00, as well as an award of costs and
14 reasonable attorneys' fees. Additionally, pursuant to California Labor Code § 226(h), Plaintiff
15 and Class Members are entitled to, and do seek, injunctive relief to ensure that Defendants
16 comply with California Labor Code § 266.

17 69. Plaintiff, on behalf of himself and Class Members, also requests further relief as
18 described in the below prayer.

19 **FOURTH CAUSE OF ACTION**

20 **(By Plaintiff Individually and on Behalf of the Class against Defendants and Does 1-10)**

21 **UNFAIR BUSINESS PRACTICES**

22 **[Bus. & Prof. Code § 17200 et seq.]**

23 70. Plaintiff realleges and incorporates by this reference, as though fully set forth
24 herein, all paragraphs of this Complaint.

25 71. As codified in California Business and Professions Code § 17200 et seq.,
26 California's Unfair Competition Law ("UCL") broadly prohibits "any unlawful, unfair or
27 fraudulent business act or practice."

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1 72. The UCL permits a cause of action to be brought if a practice violates some other
2 law. In effect, the “unlawful” prong of the UCL makes a violation of the underlying law a per se
3 violation of Bus. & Prof. Code § 17200. (*Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel.*
4 *Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state, statutory, or
5 common law – can serve as a predicate for a § 17200 “unlawful” violation. (*See Farmers Ins.*
6 *Exch. v. Superior Court (People)* (1992) 2 Cal.4th 377, 383.)

7 73. Under the UCL, a practice may be “unfair” even if some other law does not
8 specifically proscribe it. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134,
9 1143 [internal citations omitted].) Pursuant to the California Supreme Court, the “unfair” standard
10 is intentionally broad to allow courts maximum discretion is prohibiting new schemes to defraud.
11 (*Cel-Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-181.)

12 74. A business act or practice is deemed “fraudulent” under Cal. Bus. & Prof. Code §
13 17200 where “members of the public are likely to be deceived.” (*Blakemore v. Superior Court*,
14 (2005) 129 Cal.App.4th 36, 49.) A showing of actual deception, reasonable reliance, or damages
15 is not required. (*Id.*) The fraudulent prong may be used to attack the deceptive manner in which
16 otherwise lawful contract terms are presented to an individual. (*See Boschma v. Home Loan Ctr.,*
17 *Inc.* (2011) 198 Cal.App.4th 230, 253.) As such, even a true statement may be unlawful under §
18 17200 if it is “couched in such a manner that is likely to mislead or deceive..., such as by failing
19 to disclose other relevant information.” (*Id.*)

20 75. As discussed in the preceding paragraphs, Defendants’ business practices violate all
21 three prongs of California’s UCL.

22 76. Unlawful: As described herein, Defendants violated the California Labor Code by
23 refusing to properly compensate Class Members for all time spent completing the required
24 training. Failure to compensate employees for all time worked is a clear violation of California
25 law, and thus a per se violation of the UCL. (*See Cel-Tech Comm’cns, Inc. v. Los Angeles*
26 *Cellular Tel. Co., supra*, 20 Cal.4th at 180.) Additionally, Defendants failed to pay Class
27 Members prompt wages owed upon termination; as well as failed to furnish accurate wage
28

1 statements to Class Members in violation of the California Labor Code. Defendants have
2 therefore engaged in unlawful business practices pursuant to Bus. & Prof. Code § 17200.

3 77. Unfair: Defendants' practice of minimizing available work hours and staff, as well
4 as requiring pharmacy employees to participate in mandated monthly training, is an inherently
5 unfair practice pursuant to Cal. Bus. & Prof. Code § 17200 because the practice knowingly
6 prohibits Class Members from being compensated for all hours worked.

7 78. Fraudulent: Defendants' practice of providing Plaintiff and Class Members with
8 inaccurate and incomplete wage statements is not only unlawful, but constitutes a fraudulent
9 business practice under the UCL. This is particularly true as Plaintiff and other Class Members
10 are likely to be, and actually are deceived as to their earned wages because they are unable to
11 determine from their wage statements whether or not they were paid for all work performed,
12 especially as it relates to their training time.

13 79. As a direct and proximate result of Defendants' unlawful, unfair, and fraudulent
14 business practices, Plaintiff and Class Members have suffered injury-in-fact and have lost wages
15 rightfully owed to them.

16 80. Through their unlawful, unfair, and fraudulent conduct, Defendants have been
17 unjustly enriched by receiving and continuing to receive benefits and profits at the expense of
18 Class Members. Therefore, pursuant to Bus. & Prof. Code § 17200, Defendants should be
19 enjoined from this activity and made to disgorge all ill-gotten gains and restore Plaintiff and other
20 Class Members the wages wrongfully withheld from them.

21 81. Moreover, the unlawful, unfair, and fraudulent conduct alleged herein has
22 continued, and there is no indication that Defendants will refrain from such activity in the future.
23 This is especially true since Defendants have purposefully created an atmosphere that deters the
24 accurate reporting of training time. Plaintiff believes and alleges that if Defendants are not
25 enjoined from the conduct described herein, they will continue to violate California law at the
26 expense of its employees. Accordingly, Plaintiff requests that the Court issue a preliminary and
27 permanent injunction.

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1 82. Plaintiff, on behalf of himself and Class Members, also requests further relief as
2 described in the below prayer.

3 **FIFTH CAUSE OF ACTION**

4 **(By Plaintiff Individually and on Behalf of the Class against Defendants and Does 1-10)**

5 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

6 **[Lab. Code § 2698 et seq.]**

7 83. Plaintiff realleges and incorporates by this reference, as though fully set forth
8 herein, all paragraphs of this Complaint.

9 84. California Labor Code § 2698 et seq., also known as the Private Attorneys General Act
10 of 2004 (“PAGA”), expressly provides that any provision of the California Labor Code allowing for a
11 civil penalty to be assessed and collected by the Labor and Workforce Development Agency
12 (“LWDA”), or any of its departments, divisions, commissions, boards agencies or employees, for a
13 violation of the Labor Code, may be recovered through a civil action brought by an aggrieved
14 employee on behalf of himself or herself, and other current or former employees. These penalties are in
15 addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must be
16 allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved
17 employees.

18 85. Plaintiff is an “aggrieved employee” under PAGA, as he is currently employed by
19 CVS and suffered one or more violations of the California Labor Code as set forth above.

20 86. Plaintiff has complied with the procedures specified in Lab. Code § 2699.3. A letter was
21 sent to the LWDA by email on August 3, 2016, giving notice of Plaintiff’s PAGA claims, and a copy
22 was simultaneously sent by certified mail to Defendants’ agent for service of process.

23 87. The LWDA had until October 11, 2016, to provide notice of whether it intended to
24 investigate the alleged violations. As of the date of this Complaint, the LWDA has not provided notice
25 of whether it intends to investigate the alleged violations. Therefore, pursuant to Lab. Code § 2699.3,
26 Plaintiff has the right to pursue his claims under PAGA in a representative capacity.

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1 88. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court. Pursuant to *Arias v. Superior Court*
3 (2009) 46 Cal.4th 969, PAGA claims do not require class certification.

4 89. Plaintiff seeks civil penalties pursuant to PAGA for the following violations
5 committed by Defendants, as set forth above, of the California Labor Code as permitted by Lab.
6 Code § 2699.5:

- 7 (a) Failure to pay minimum wages and overtime compensation in violation of Lab.
8 Code §§ 510, 1194, and 1197;
- 9 (b) Failure to pay wages owed in violation of Lab. Code §§ 201, 202, and 203; and
- 10 (c) Failure to furnish accurate wage statements in violation of Lab. Code § 226.

11 90. California Labor Code § 2699(f) provides in pertinent part:

12 For all provisions of this code except those for which a civil penalty is
13 specifically provided, there is established a civil penalty for a violation
14 of these provisions as follows:

14 ...

15 (2) If, at the time of the alleged violation, the person employs one or
16 more employees, the civil penalty is one hundred dollars (\$100) for each
17 aggrieved employee per pay period for the initial violation and two
18 hundred dollars (\$200) for each aggrieved employee per pay period for
19 each subsequent violation.

18 91. As described herein, Defendants failed to compensate Plaintiff and other aggrieved
19 employees for all their time spent participating in training conducted off the clock in violation of
20 Lab. Code §§ 510, 1194, and 1197. Since, Lab. Code §§ 510, 1194 and 1197 do not provide for
21 civil penalties, Plaintiff respectfully seeks the applicable penalty outlined in Lab. Code §
22 2699(f)(2), in addition to the unpaid balance of the full amount of this minimum wage or overtime
23 compensation, including interest thereon, reasonable attorney's fees, and costs of suit as permitted
24 by Lab. Code § 1194. Plaintiff also respectfully requests the civil penalty and unpaid wages
25 pursuant to § 558.

26 92. As described herein, Defendants failed to compensate other aggrieved employees
27 for all their time spent participating in training conducted off the clock upon termination of the
28

1 employer/employee relationship in violation of Lab. Code §§ 201, 202, and 203. Since, Lab.
2 Code § 203 does not provide for a civil penalty, Plaintiff respectfully seeks the applicable penalty
3 outlined in Lab. Code § 2699(f)(2), in addition to the wages due to the aggrieved employee
4 pursuant to Lab. Code §§ 203 and 1197.1(a)(3).

5 93. As described herein, Defendants failed to provide Plaintiff and other aggrieved
6 employees with accurate wage statements, as the provided statements did not accurately reflect all
7 time worked and appropriate compensation for time spent participating in training. As such,
8 Plaintiff seeks civil penalties owed to him and other aggrieved employees pursuant to Lab. Code §
9 226(e)(1), as well as an award of costs and reasonable attorneys' fees.

10 94. Plaintiff, on behalf of himself and Class Members, also requests further relief as
11 described in the below prayer.

12 **PRAYER FOR RELIEF**

13 Plaintiff prays for judgment against Defendants as follows:

- 14 1. For an order determining that this action may be maintained as a class action with
15 the named Plaintiff as the class representative;
- 16 2. For the attorneys appearing on the above caption to be named class counsel;
- 17 3. For an order determining that this action may be maintained as a representative
18 action;
- 19 4. For Plaintiff to serve as the PAGA representative for all aggrieved employees and
20 for the state of California;
- 21 5. All minimum wages and overtime compensation owed pursuant to Lab. Code §§
22 1194 and 1197.1;
- 23 6. Waiting time penalties pursuant to Lab. Code § 203;
- 24 7. All liquidated damages pursuant to Lab. Code §§ 226(e), 1194.4(a), and 1197.1;
- 25 8. For civil penalties pursuant to Lab. Code §§ 558 and 1197.1;
- 26 9. For PAGA penalties pursuant to Lab. Code § 2699(f);
- 27 10. For injunctive relief pursuant to Lab. Code § 266(h) and Bus. & Prof. Code §
28 17203;

- 1 11. For disgorged profits from Defendants' unfair, unlawful, and fraudulent business
2 practices;
3 12. For reasonable attorneys' fees and costs of suit pursuant to Lab. Code §§ 266(e)(1),
4 2699(g), 1194, and/or other applicable law;
5 13. For any and all applicable penalties and other recoveries available pursuant to
6 PAGA;
7 14. For all interest accrued to date; and
8 15. For all such other and further relief, the Court may deem just and proper.
9

10 Dated: October 12, 2016

CLARK LAW GROUP

11
12
13 By: 

R. Craig Clark

Dawn M. Berry

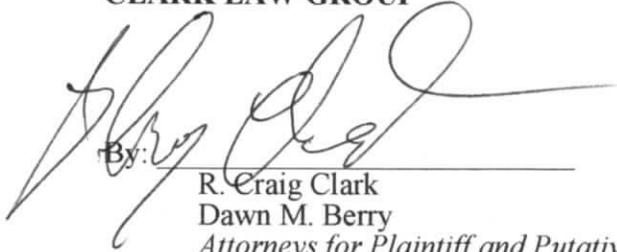
Attorneys for Plaintiff and Putative Class

14
15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff and the putative Class hereby demand a jury trial on all issues so triable.
18

19 Dated: October 12, 2016

CLARK LAW GROUP

20
21 By: 

R. Craig Clark

Dawn M. Berry

Attorneys for Plaintiff and Putative Class