

FEB 09 2016

Sherri R. Carter, Executive Officer/Clerk

By: Kim E. Clark, Deputy
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MATTHEW OGURA, individually; and on
behalf of others similarly situated and on
behalf of the general public,

Plaintiffs,

vs.

RITE-AID CORPORATION, and DOES 1-
1000,

Defendants.

Case No.: BC605968

CLASS ACTION

FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF:

(1) FAILURE TO PROVIDE MEAL AND
REST PERIODS IN VIOLATION OF
CAL. LAB CODE § 226.7;

(2) UNFAIR BUSINESS PRACTICES IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 et seq.; AND

(3) PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004, CAL. LAB. CODE § 2698
et seq. (PAGA)

DEMAND FOR JURY TRIAL

VIA FAX

1 Comes now MATTHEW OGURA (hereinafter “PLAINTIFF”), on behalf of himself and all
2 persons similarly situated, allege as follows:

3 This class action is brought on behalf of all present and former employees of RITE-AID
4 CORPORATION, (hereinafter “RITE-AID” or “DEFENDANT”) in California who are and were paid
5 on an hourly basis. All allegations in this Complaint are based upon information and belief except for
6 those allegations which pertain to the PLAINTIFF named herein and his counsel which are based on
7 personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have
8 evidentiary support after a reasonable opportunity for further investigation and discovery.

9 **JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code § 410.10.
11 The action is brought pursuant to Cal. Lab. Code § 226.7. PLAINTIFF brings this action on his own
12 behalf, and on behalf of all persons within the class defined.

13 2. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5
14 because the injuries to the persons complained of herein occurred in the county of Los Angeles and
15 Defendant conducts business in this county currently and at all relevant times.

16 **CLASS DEFINITION**

17 3. The PLAINTIFF CLASS consists of all persons who are current and former employees
18 of DEFENDANT who held the position of assistant manager while employed in California by
19 DEFENDANT who were paid on an hourly basis and who were not paid for rest periods during the
20 period commencing in the date that is within four years prior to the filing of this complaint and through
21 the present date (“Class Period”). To the extent that equitable tolling operates to toll claims by the
22 Class against the DEFENDANT, the Class period should be adjusted accordingly.

23 **CLASS ALLEGATIONS**

- 24 4. PLAINTIFF Matthew Ogura at all material times mentioned herein:
- 25 (a) Is an individual who resides in the city of Covina in the state of California;
 - 26 (b) Was employed by DEFENDANT in its store located in Los Angeles County;
 - 27 (c) Was not provided legally required rest periods;
 - 28 (d) Was a member of the Class as defined in paragraph 3 of this Complaint.

1 5. This Class Action meets the statutory prerequisites for the maintenance of a Class
2 Action as set forth in California Code of Civil Procedure § 382, in that:

- 3 (a) The persons who comprise the CLASS are so numerous that the joinder of all
4 such persons is impracticable and the disposition of their claims as a class will
5 benefit the parties and the Court;
- 6 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
7 are raised in this Complaint are common to the CLASS and will apply uniformly
8 to every member of the CLASS, and as a practical matter be dispositive of
9 interests of the other members not party to the adjudication or substantially
10 impair or impede their ability to protect their interests.
- 11 (c) The parties opposing the CLASS have acted or refuse to act on grounds
12 generally applicable to the CLASS, thereby making appropriate final injunctive
13 relief or corresponding declaratory relief with respect to the CLASS as a whole;
14 and
- 15 (d) Common questions of law and fact exist as to the members of the CLASS and
16 predominate over any question affecting only individual members, and a Class
17 Action is superior to other available methods for the fair and efficient
18 adjudication of the controversy, including consideration of
- 19 1) The interests of the members of the CLASS in individually controlling
20 the prosecution or defense of separate actions;
- 21 2) The extent and nature of any litigation concerning the controversy
22 already commenced by or against members of the CLASS;
- 23 3) The desirability or undesirability of concentrating the litigation of the
24 claims in the particular forum; and
- 25 4) The difficulties likely to be encountered in the management of a Class
26 Action.

27 6. This Court should permit this action to be maintained as a Class Action pursuant to
28 California Code of Civil Procedure § 382 because:

- 1 (a) The questions of law and fact common to the CLASS predominate over any
2 question affecting only individual members;
- 3 (b) A Class Action is superior to any other available method for the fair and
4 efficient adjudication of the claims of the members of the CLASS;
- 5 (c) The members of the CLASS are so numerous that it is impractical to bring all
6 members of the CLASS before the Court;
- 7 (d) PLAINTIFF, and the other CLASS members, will not be able to obtain effective
8 and economic legal redress unless the action is maintained as a Class Action;
- 9 (e) There is a community of interest in obtaining appropriate legal and equitable
10 relief for the common law and statutory violations and other improprieties, and
11 in obtaining adequate compensation for the damages and injuries which RITE-
12 AID's actions have inflicted upon the CLASS;
- 13 (f) There is a community of interest in ensuring that the combined assets and
14 available insurance of RITE-AID are sufficient to adequately compensate the
15 members of the CLASS for the injuries sustained;
- 16 (g) RITE-AID has acted or refused to act on grounds generally applicable to the
17 CLASS, thereby making final injunctive relief appropriate with respect to the
18 CLASS as a whole.

19 **DEFENDANTS**

20 7. PLAINTIFF is informed and believes and thereupon alleges that at all times mentioned
21 herein that DEFENDANT is licensed to do business and actually doing business in the state of
22 California. RITE-AID is a corporation whose corporate headquarters are located at 300 Hunter Lane,
23 Camp Hill, PA 17011.

24 8. According to its website (<https://www.riteaid.com/>), DEFENDANT provides products
25 and pharmacy services to the general public. PLAINTIFF is informed and believes that DEFENDANT
26 operates hundreds of stores throughout the state of California.

27 9. DEFENDANT owns and operates business establishments within the state of
28 California, and within this judicial district, and claims to be one of the nation's leading drugstore

1 chains.

2 10. DEFENDANT is subject to Cal. Lab. Code § 226.7 and the applicable wage order(s)
3 issued by the industrial Welfare Commission of the state of California, as to its employment
4 relationship with its employees working in California and nationwide because: (i) the company is
5 situated in California; (ii) it operates stores in and throughout the state of California; and, (iii)
6 PLAINTIFF worked for the DEFENDANT in the state of California.

7 **THE CONDUCT**

8 11. PLAINTIFF was employed by RITE-AID from August 28, 2012 to June 19, 2015.
9 During his tenure, PLAINTIFF held the position of assistant manager at the Hacienda Heights,
10 California location. He was paid hourly for his time.

11 12. In his capacity as an assistant manager, PLAINTIFF was required to oversee the
12 sweeping and mopping of the store, mainly the restrooms and front of the store; oversee the
13 organization and straightening of the seasonal department and stock room; maintain end caps to ensure
14 their compliance with diagrams as directed by the corporate office; organize the liquor and beer coolers
15 in the front of the store; shipping and receiving; closing out registers; cash flow; maintaining the
16 cleanliness of the ice cream station; assist the price accuracy coordinator in ensuring expired products
17 were not on the shelves; and provide managerial approval for all exchanges and returns.

18 13. PLAINTIFF was told that he could not take rest periods or even take a restroom break if
19 there were customers waiting in the Exchanges and Returns department. Managerial approval was
20 always needed in the form of a fingerprint and PLAINTIFF was the only managerial employee on
21 duty. On the occasions that PLAINTIFF did receive rest periods, they were always interrupted.
22 PLAINTIFF was told he was not allowed to leave the store during rest breaks and that he must remain
23 “on call.” PLAINTIFF was never paid for missed rest periods or for rest periods that he remained on
24 call.

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**FIRST CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS
[Cal. Lab. Code § 226.7]
(By PLAINTIFF and the CLASS and against all DEFENDANT)**

14. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, the preceding paragraphs of this Complaint.

15. Cal. Lab. Code § 226.7 provides that employers shall authorize and permit employees to take “rest periods at the rate of ten (10) minutes net rest time per four (4) hours of work.”

16. Cal Lab Code § 226.7 provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

17. RITE-AID has intentionally and improperly denied rest periods to PLAINTIFF, and other members of the CLASS, in violation of Cal. Lab. Code § 226.7.

18. By virtue of RITE-AID’s unlawful failure to provide rest periods to him, PLAINTIFF, and other members of the CLASS have suffered, and will continue to suffer, damages in the amounts which are presently unknown to them, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

19. PLAINTIFF, and other members of the CLASS, are entitled to seek and recover reasonable attorneys’ fees and costs pursuant to Cal. Lab. Code § 226.7.

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**SECOND CAUSE OF ACTION
FOR UNFAIR BUSINESS PRACTICES
[Cal. Bus. & Prof. Code § 17200 et seq.]
(By PLAINTIFF and the CLASS and against DEFENDANT)**

20. PLAINTIFF, and other members of the CLASS, reallege and incorporate by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

21. RITE-AID is a “person” as the term is defined under Cal. Bus. & Prof. Code § 17201.

22. Cal. Bus. & Prof. Code § 17200 defines unfair competition as “any unlawful, unfair, or fraudulent business act or practice.”

1 23. At all times relevant, by and through the conduct described herein, RITE-AID has
2 engaged in unfair and unlawful practices by failing to provide PLAINTIFF, and other members of the
3 CLASS, with rest periods in violation of Cal. Lab. Code § 226.7, and has thereby deprived
4 PLAINTIFF, and other members of the CLASS, of fundamental rights and privileges owed to them by
5 law.

6 24. By and through the unfair and unlawful business practices described herein, RITE-AID
7 has obtained valuable property, money, and services from PLAINTIFF, and other members of the
8 CLASS, and has deprived them of valuable rights and benefits guaranteed by law, all to their
9 detriment.

10 25. All the acts described herein as violations of, among other things, the California Labor
11 Code and IWC Wage Orders, are unlawful and in violation of public policy; and in addition are
12 immoral, unethical, oppressive, and unscrupulous, and thereby constitute unfair and unlawful business
13 practices in violation of Cal. Bus. & Prof. Code § 17200 et seq.

14 26. PLAINTIFF, and other members of the CLASS, are entitled to, and do, seek such relief as
15 may be necessary to restore to them the money and property which RITE-AID has acquired, or of which
16 PLAINTIFF, and other members of the CLASS, have been deprived, by means of the above described
17 unfair and unlawful business acts and practices.

18 27. PLAINTIFF, and other members of the CLASS, are further entitled to, and do seek a
19 declaration, that the above described business practices are unfair and unlawful and that injunctive relief
20 should be issued restraining RITE-AID from engaging in any such unfair and unlawful practices in the
21 future.

22 28. PLAINTIFF, and other members of the CLASS, have no plain, speedy, and/or adequate
23 remedy at law to redress the injuries they have suffered as a consequence of the unfair and unlawful
24 business practices of RITE-AID. As a result of the unfair and unlawful business practices described above,
25 PLAINTIFF, and other members of the CLASS, have suffered and will continue to suffer irreparable harm
26 unless RITE-AID is restrained from continuing to engage in these unfair and unlawful business practices.
27 In addition, RITE-AID should be required to disgorge the unpaid moneys to PLAINTIFF, and other
28 members of the CLASS.

1 **THIRD CAUSE OF ACTION**
2 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**
3 **[Cal. Lab. Code § 2698 et seq.]**
4 **(By PLAINTIFF in his Representative Capacity against DEFENDANT)**

5 29. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
6 herein, the proceeding paragraphs of this Complaint.

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

15 31. PLAINTIFF and the other members of the CLASS are aggrieved employees within the
16 meaning of Cal. Lab. Code § 2699(c), in that they are all current or former employees of RITE-AID
17 has committed one or more violations against them.

18 32. As set forth above, RITE-AID has committed, and continues to commit, numerous
19 violations for which the Labor Code entitles PLAINTIFF, as a private attorney general, to recover, on
20 behalf of himself, all aggrieved employees, and the general public, interest, attorneys’ fees and costs,
21 as well as all statutory penalties against RITE-AID, for violations of Cal. Lab. Code § 226.7, 558,
22 2699(a), and 2699(f).

23 33. Cal. Labor Code § 2699(f) provides in pertinent part:

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

27 ...

28 (2) If, at the time of the alleged violation, the person employs one or more
employees, the civil penalty is one hundred dollars (\$100) for each
aggrieved employee per pay period for the initial violation and two hundred

dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

34. PLAINTIFF has complied with the procedures specified in Cal. Lab. Code § 2699.3. A letter was sent to the LWDA by certified mail on January 5, 2016, giving notice of PLAINTIFF's PAGA claims. A copy was simultaneously sent by certified mail to RITE-AID through its agent for service of process.

35. The LWDA had until February 7, 2016 to provide notice of whether it intended to investigate the alleged violations. As of the date of this First Amended Complaint, the LWDA has not provided notice of whether it intends to investigate the alleged violations. Therefore, under Cal. Lab. Code § 2699.3, PLAINTIFF has the right to pursue his claims under PAGA, on behalf of himself and all other aggrieved current and former employees.

PRAYER

WHEREFORE, PLAINTIFF prays for judgment against RITE-AID in favor of PLAINTIFF and the CLASS as follows:

**ON THE FIRST CAUSE OF ACTION
(Violation of Cal. Lab. Code § 226.7)**

- A) One (1) hour of pay at the employees' regular rate for each workday in which a rest period was not provided; and
- B) For reasonable attorneys' fees and costs.

**ON THE SECOND CAUSE OF ACTION
(Violation of Cal. Bus. & Prof. Code § 17200 et seq.)**

- A) For restitution and disgorgement;
- B) For injunctive relief ordering the above-described unfair business acts and practices to cease, or as the Court otherwise deems just and proper; and
- C) For other injunctive relief ordering DEFENDANT to notify The CLASS that they have not been reimbursed the proper amounts required in accordance with California law.

**ON THE THIRD CAUSE OF ACTION
(Violation of Cal. Lab. Code § 2698 et seq.)**

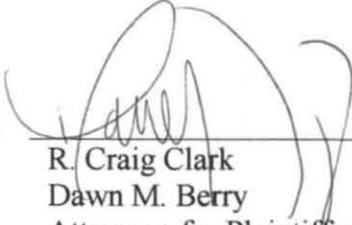
- A) For civil penalties pursuant to Cal. Lab. Code § 2698 et seq.;
- B) For such other and further relief as the Court deems just and proper.

1 **ON ALL CAUSES OF ACTION**

- 2 A) An Order certifying the CLASS, approving PLAINTIFF as the Representative of the
3 CLASS, and permitting this case to proceed as a class action; and
4 B) For such other and further relief as the Court deems just and proper.
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6 Dated: February 8, 2016

CLARK & TREGLIO

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9 By: 

R. Craig Clark

Dawn M. Berry

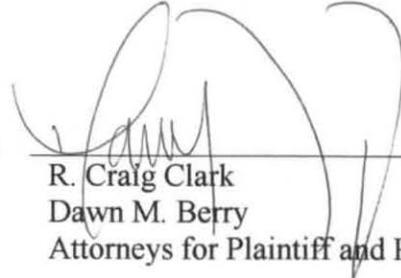
Attorneys for Plaintiff and Putative Class
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15 **DEMAND FOR JURY TRIAL**

16 PLAINTIFFS demand jury trial on issues triable to a jury.
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18 Dated: February 8, 2016

CLARK & TREGLIO

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21 By: 

R. Craig Clark

Dawn M. Berry

Attorneys for Plaintiff and Putative Class
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