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Ray E. Gallo (SBN 158903)  
rgallo@gallo.law  
Dominic Valerian (SBN 240001)  
dvalerian@gallo.law  
Nathaniel Simons (SBN 319065)  
nsimons@gallo.law  
GALLO LLP  
1604 Solano Ave., Suite B  
Berkeley, CA 94707  
Phone: 415.257.8800

Edward J. Wynne (SBN 165819)  
ewynne@wynnelawfirm.com  
George R. Nemiroff (SBN 262058)  
gnemiroff@wynnelawfirm.com  
WYNNE LAW FIRM  
80 E Sir Francis Drake Blvd, Suite 3G  
Larkspur CA 94939  
Phone: 415-461-6400

Attorneys for Plaintiff Alfred Morales

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

ALFRED MORALES, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

WALGREEN CO., an Illinois Corporation,  
and DOES 1-50, inclusive,

Defendants.

Case No.

**CGC-18-570597**

CLASS ACTION

**COMPLAINT FOR:**

- 1. Violations of California Bus. & Prof. Code § 17200**
- 2. Failure to Pay Overtime (Lab. Code § 510)**
- 3. Failure to Pay Premium for Missed Rest Breaks (Lab. Code § 226.7 & 8 CCR § 11070 ¶12(B))**
- 4. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code § 226)**
- 5. Waiting Time Penalties (Lab. Code § 201-203)**

**DEMAND FOR JURY TRIAL**

**ENDORSED  
FILED**  
San Francisco County Superior Court  
**OCT 16 2018**  
**CLERK OF THE COURT**  
BY: **ROSSALY DE LA VEGA**  
Deputy Clerk

**COPY**

**FAXED**

## INTRODUCTION

1           Walgreen Co. (“Walgreens”) called Alfred Morales (“Morales” or “Plaintiff”) the  
2 “Store Manager” at one of its drug stores. But, like others with that title in California Walgreens  
3 stores, Mr. Morales spent more of his time performing the hourly tasks of a cashier, pharmacy  
4 technician, etc., than he did managing the store, he did not regularly exercise independent  
5 judgment and discretion on matters of significance, and he worked overtime. California law  
6 entitles all such employees to overtime wages and to paid rest breaks. But Walgreens has failed to  
7 pay Morales and the class members their earned overtime wages, and has failed to provide legally  
8 required breaks. Walgreens owes Morales and the class unpaid wages, penalties, interest, and  
9 attorneys’ fees.

10           Morales brings this lawsuit pursuant to California Code of Civil Procedure § 382  
11 for himself and all others employed by Walgreens as a Store Manager, or the functional  
12 equivalent however titled, in California, at any time during the period from four years prior to the  
13 filing of this action until the date of certification (the “Class Period”).

14           The allegations herein concerning Morales individually are true to the best of  
15 Plaintiff’s current knowledge and belief. Morales is informed and believes the remainder are true  
16 based on the investigation of counsel.

## PARTIES

17  
18           4. Plaintiff is a natural person working and living in California. During the Class  
19 Period, Plaintiff was employed by Walgreens as a Store Manager in the State of California and in  
20 this judicial district.

21           5. Walgreen Co. is an Illinois corporation with its principal place of business located  
22 at 200 Wilmot Road, Deerfield, IL 60015.

23           6. The true names and capacities of persons or entities, whether individual, corporate,  
24 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
25 Plaintiff, who therefore sues these Defendants by these fictitious names under Code of Civil  
26 Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the  
27 Defendants designated herein as a DOE defendant is legally responsible in some manner for the  
28

1 unlawful acts referred to herein. DOES 1-50 include, but are not limited to, Walgreens co-  
2 employers, predecessors, successors, parent and affiliate corporations, and officers, directors, and  
3 managers. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and  
4 capacities of the Defendants designated hereinafter as DOES when ascertained.

5 **VENUE AND JURISDICTION**

6 7. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395  
7 and 395.5 because Walgreens employed Morales in this judicial district, Morales's injuries  
8 occurred in this judicial district, and a substantial part of the events and omissions giving rise to  
9 Morales's claims occurred in this judicial district.

10 8. This Court has general subject matter jurisdiction.

11 **CLASS ALLEGATIONS**

12 9. Morales seeks to represent a class defined as:

13 All individuals employed by Walgreens as a Store Manager, or the  
14 functional equivalent however titled, in California at any time  
15 during the period from four years prior to the filing of this action  
16 until the date of certification.

17 10. Morales seeks to represent a subclass defined as:

18 All class members whose employment by Walgreens was or is  
19 terminated during the period from four years prior to the filing of  
20 this action until the date of certification.

21 11. Numerosity. The proposed class and subclass are so numerous that joinder is  
22 impractical.

23 12. Typicality and Adequacy. There are questions of law and fact common to all  
24 members of the proposed class and subclass. Mr. Morales is similarly situated to the other  
25 members of the proposed class and subclass and is an adequate representative of the proposed  
26 class and subclass. Mr. Morales's claims are typical of the claims of class and subclass members.  
27 He suffered injuries like those suffered by the other class and subclass members from  
28 Defendant's common wage payment policies and practices. He will fairly and adequately protect  
the interests of the members of the class and subclass. He has no interest that is adverse to the  
interests of the other class and subclass members. He has retained attorneys who are competent

1 and experienced in the prosecution of wage and hour class action litigation.

2 13. Ascertainability. The proposed class and subclass are ascertainable. Their  
3 members can be identified and located using Defendant's records.

4 14. Commonality. Common questions of law and fact predominate over questions that  
5 affect only individual members of the proposed class and subclass. Common questions include,  
6 without limitation:

- 7 a. Whether the class members qualify for exempt status;
- 8 b. Whether Walgreens is a "retail or service establishment";
- 9 c. What Walgreens expectations are as to the duties and responsibilities of Store Managers,  
10 and whether these expectations are reasonable under the circumstances;
- 11 d. Whether Walgreens's illegal acts were wilful;
- 12 e. Whether and to what extent the Store Managers have been damaged; and,
- 13 f. Whether and to what extent the Store Managers are entitled to penalties, interest and  
14 attorneys' fees.

15 15. Superiority. A class or collective action is superior to other available means for the  
16 fair and efficient adjudication of this controversy because individual joinder of all members of the  
17 proposed classes is impractical. Class or collective treatment will permit a large number of  
18 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
19 efficiently, and without the unnecessary duplication of effort and expense that numerous  
20 individual actions would require. Furthermore, as the damages suffered by each individual  
21 member of the proposed classes may be relatively small, the expense and burden of individual  
22 litigation could make it impractical, difficult, and/or impossible for individual members of the  
23 class to redress the wrongs done to them while an important public interest will be served by  
24 addressing the manner as a class action. The unnecessary cost to the court system of adjudication  
25 of such individualized litigation would be substantial. Individualized litigation would also present  
26 the potential for inconsistent or contradictory judgments.

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

28 16. Walgreens is the second-largest pharmacy store chain in the United States.

1 17. The Store Managers were and are primarily engaged in unspecialized tasks, rather  
2 than executive, administrative, or professional tasks while employed by Walgreens.

3 18. The Store Managers customarily and regularly perform a minority of their work  
4 engaged in managerial activities. The Store Managers are and at all relevant times have been  
5 required by Walgreens to follow a specific set of internal compliance guidelines and therefore are  
6 closely supervised by Defendant. Mr. Morales and other Store Managers do not and have not  
7 regularly exercised independent judgment and discretion on matters of significance.

8 19. Store Managers customarily and regularly work at least eight hours on each  
9 workday. Store Managers are required to work overtime hours every month.

10 20. Walgreens paid the Store Managers on a salary basis with no premium for  
11 overtime work, despite requiring a majority of their job duties be unspecialized and manual.

12 21. Walgreens willfully, intentionally, and knowingly did not provide Plaintiff and  
13 other Store Managers the required number breaks including, without limitation, a 10-minute rest  
14 break for each and every 4 hours worked.

15 22. Walgreens willfully, intentionally, and knowingly did not provide Plaintiff and  
16 other Store Managers with itemized wage statements as required.

17 23. Walgreens willfully, intentionally, and knowingly failed to pay Plaintiff and other  
18 Store Managers their earned wages when due.

19 **FIRST CAUSE OF ACTION**

20 **Violations of Bus. & Prof. Code § 17200 et seq.**

21 **(Against All Defendants, by Morales and the Class)**

22 24. Morales incorporates all preceding and subsequent paragraphs as though repeated  
23 here.

24 25. California Labor Code § 510 requires Walgreens to pay all of its non-exempt  
25 employees overtime equal to 1.5 times the employee's regular rate of pay for all hours worked  
26 beyond 40 per week. Morales and the proposed class are not exempt under the California Labor  
27 Code. Among other things, they did not and do not perform work directly related to the  
28 management or general business operations of Walgreens, they are/were primarily engaged in  
manual labor, unspecialized, and/or sales related activities, and they did not and do not spend a

majority of their time on exempt tasks.

26. Walgreens has committed an act of unfair competition by not paying the required overtime pay to Morales and the Store Managers.

27. Pursuant to California Business & Professions Code § 17203, Morales requests an order requiring Walgreens to make restitution of all overtime wages due to him and the members of the class in an amount to be proved at hearing.

28. Labor Code § 226.7(c) and 8 CCR § 11070 ¶12(B) require that an employee receive rest periods, which shall be based on the total daily hours worked at the rate of 10 minutes net rest time per 4 hours or major fraction thereof. Morales and the proposed class are not exempt under the California Labor Code, because, among other things, they did not and do not perform work directly related to the management or general business operations of Walgreens, they are/were primarily engaged in manual labor, unspecialized and/or sales related activities, and they did not and do not spend a majority of their time on exempt tasks.

29. Walgreens has committed an act of unfair competition by not providing the required rest periods. Because Walgreens failed to provide Morales and the class with rest breaks, Walgreens is obliged by Labor Code § 226.7(c) and 8 CCR § 11070 ¶12(B) to pay one additional hour's wage for each rest break not provided for every 4 hours worked.

30. Pursuant to California Business & Professions Code § 17203, Morales requests an order requiring Walgreens to make restitution of all overtime wages due.

**SECOND CAUSE OF ACTION**

**Failure to Pay Overtime (Lab. Code § 510)**

**(Against All Defendants, by Morales and the Class)**

31. Morales incorporates all preceding and subsequent paragraphs as though repeated here.

32. California Labor Code § 510 and Wage Order 4-2001, 8 C.C.R. § 11070, require that an employee be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Morales and the members of the class are not exempt because, among other things, they did not and do not perform work directly related to the management or general business operations of Walgreens, they are/were primarily engaged in

1 manual labor, unspecialized and/or sales related activities, and they did not and do not spend a  
2 majority of their time on exempt tasks. Walgreens has violated California labor law by not paying  
3 the required overtime pay to Morales and the members of the class.

4 33. Pursuant to Labor Code § 218.6, Plaintiff requests prejudgment interest on all  
5 wages from the date the wages were due and payable.

6 34. Pursuant to California Labor Code §§ 218.5 and 1194, Morales requests an order  
7 requiring Walgreens to pay damages of all overtime wages due to them and the members of the  
8 class in an amount to be proved at hearing as well as attorneys' fees and costs.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Pay Premium for Missed Rest Breaks**

11 **(Lab. Code 226.7 & 8 CCR § 11070 ¶12(B))**

12 **(Against All Defendants, by Morales and the Class)**

13 35. Morales incorporates all preceding and subsequent paragraphs as though repeated  
14 here.

15 36. 8 C.C.R. § 11070 (12) requires that an employer authorize all employees to take  
16 one 10 minute rest period for every 4 hours worked, or portion thereof (excluding shifts of 3.5  
17 hours or less). Morales and the members of the class are not exempt because, among other things,  
18 they did not and do not perform work directly related to the management or general business  
19 operations of Walgreens, they are/were primarily engaged in manual labor, unspecialized and/or  
20 sales related activities, and they did not and do not spend a majority of their time on exempt tasks.  
21 Walgreens has violated California labor law by not providing Morales and the class with at least  
22 one 10 minute rest periods per each 4 hours of work.

23 37. Pursuant to Cal. Code Reg. tit. 8, § 11070(12), Plaintiff requests 1 hour of pay at  
24 his regular rate of compensation for each workday that the rest period was not provided.

25 **FOURTH CAUSE OF ACTION**

26 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**  
27 **Provisions (Lab. Code § 226)**

28 **(Against All Defendants, by Morales and the Class)**

38. Morales incorporates all preceding and subsequent paragraphs as though repeated  
here.

1 39. Labor Code § 226(a) requires an employer at the time of each payment of wages to  
2 furnish its employees with an accurate itemized statement in writing showing, among other  
3 things: (1) gross wage earned, (2) total hours worked, (3) all deductions, (4) net wages earned,  
4 and/or (5) all applicable hourly rates in effect during each respective pay period and the  
5 corresponding number of hours worked at each hourly rate.

6 40. Because Walgreens did not pay Morales and the class members the premium for  
7 missed rest breaks and overtime, Walgreens systematically failed to provide wage statements with  
8 accurate information and engaged in a policy of under-reporting hours actually worked.

9 41. Moreover, in violation of Labor Code § 226(b), Walgreens did not maintain  
10 employer records of the information required in Labor Code § 226(a), including the hours  
11 actually worked by Morales and the class members.

12 42. Walgreens knowingly and intentionally failed to provide Morales and the class  
13 members with statements itemizing the total hours worked during each pay period in violation of  
14 Labor Code § 226(e). Morales is entitled to recover the greater of all actual damages or fifty  
15 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent  
16 violation, up to four thousand dollars (\$4,000).

17 **FIFTH CAUSE OF ACTION**

18 **Waiting Time Penalties (Lab. Code § 201-203)**

19 **(Against All Defendants, by Morales and the Subclass)**

20 43. Morales incorporates all preceding and subsequent paragraphs as though repeated  
21 here.

22 44. Labor Code §§ 201-203 require an employer to timely pay all earned wages, and  
23 impose a penalty of one day's wages for each day of delay, to a maximum of 30 day's pay.

24 45. As earned wages, the rest break and overtime wages were due immediately upon  
25 discharge.

26 46. Throughout the Class Period, Defendant did not pay Morales and the subclass  
27 members the premium for missed rest breaks and overtime. Accordingly, Defendant  
28 systematically and willfully failed to pay wages earned.

47. Defendant willfully failed to pay wages earned for 30 days after they were due.



1 This failure requires Defendant to pay penalties equal to one day's wages for each day that  
2 payment is delayed, up to 30 days, pursuant to Labor Code §203.

3 48. Morales and the subclass seek and are entitled to penalties accordingly.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 6 1. For an order certifying the proposed class, and sub-class, and designating this  
7 action as a class action pursuant to C.C.P. § 382;
- 8 2. For an order appointing Plaintiff and his counsel to represent the proposed class  
9 and subclass as defined herein;
- 10 3. For compensatory damages according to proof;
- 11 4. For an order requiring Defendant to make restitution of all wages that were  
12 illegally withheld;
- 13 5. For waiting time penalties;
- 14 6. For prejudgment interest, in an amount according to proof, including but not  
15 limited to as authorized by Labor Code §§ 218.6 and 1194(a) and Civil Code  
16 §§3287(b) and 3289;
- 17 7. For an order requiring Defendant to pay all wages incurred as a result of  
18 Defendant's failure to provide Plaintiff and the class with required rest periods;
- 19 8. For damages sustained and/or penalties for not receiving accurate wage statements  
20 pursuant to Labor Code §226 in an amount according to proof;
- 21 9. For penalties equal to one day's wages for each day that payment was delayed, up  
22 to 30 days, pursuant to Labor Code §203 (for the subclass);
- 23 10. For preliminary and permanent injunctive relief, including but not limited to an  
24 order that Walgreens account for, disgorge, and restore to Plaintiff and other  
25 current and former Store Managers the unlawfully unpaid premium for non-  
26 compliant rest breaks, and for a court order enjoining Walgreens from continuing  
27 to fail to pay its employees in accordance with California law and from continuing  
28 to engage in the aforesaid unlawful and unfair practices;


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- 11. For other penalties and liquidated damages as alleged herein;
- 12. For reasonable attorneys' fees and costs; and,
- 13. For such other and further relief as the Court deems just and proper.

DATED: October 15, 2018

**RESPECTFULLY SUBMITTED,**

**GALLO LLP  
THE WYNNE LAW FIRM**

By:   
Ray E. Gallo  
Attorneys for Plaintiff Alfred Morales,  
individually and on behalf of all others  
similarly situated


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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial of all issues, matters, and claims so triable.

DATED: October 15, 2018

**GALLO LLP  
THE WYNNE LAW FIRM**

By:   
Ray E. Gallo  
Attorneys for Plaintiff Alfred Morales,  
individually and on behalf of all others  
similarly situated