

FILED

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MARIN COUNTY SUPERIOR COURT  
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF MARIN

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24 WILCOX, SCOTT T. WOLATZ,  
25 ROBERT WOODS, CALVIN Y. YEUNG,  
and MOISES D. ZAPATA,

26 Plaintiffs,

27 v.

28 WALGREEN CO., an Illinois Corporation,

Case No. *CIV* 1904443

COMPLAINT FOR:

1. Failure to Pay Overtime
2. Failure to Provide Meal Periods
3. Failure to Provide Rest Breaks
4. Knowing and Intentional Failures to Comply with Itemized Employee Wage Statement Provisions
5. Waiting Time Penalties
6. Violations of California Bus. & Prof. Code § 17200

DEMAND FOR JURY TRIAL



and DOES 1-50, inclusive,

Defendants.

## INTRODUCTION

1. Plaintiffs each worked as the “Store Manager” at a Walgreen Co. (“Walgreens”) store in California. Notwithstanding their titles, Plaintiffs primarily performed hourly tasks like stocking shelves and cashiering. Plaintiffs did not regularly exercise independent judgment and discretion on matters of significance. California law entitles all such employees to overtime wages when applicable, to off-duty meal breaks, and to paid rest breaks. Plaintiffs regularly worked overtime without overtime compensation. Because Walgreens has failed to pay Plaintiffs their earned overtime wages, and has failed to provide legally required breaks, Walgreens owes Plaintiffs unpaid wages, penalties, interest, and their attorneys’ fees.

2. The allegations herein concerning each individual Plaintiff are true to the best of each Plaintiff’s current knowledge and belief. The remainder are made on information and belief based on the investigation of counsel.

## PARTIES

3. Each Plaintiff worked as a Walgreens Store Manager in California within the applicable statutory limitations period. Each Plaintiff resides in California.

4. Walgreen Co., doing business as Walgreens, is an Illinois corporation with its principal place of business located at 200 Wilmot Road, Deerfield, IL 60015. Walgreens does business throughout California.

5. The true names and capacities of persons, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs, who therefore sue these Defendants by these fictitious names. Plaintiffs are informed and believe that each of DOES 1 through 50 is legally responsible in some manner for the unlawful acts referred to herein. DOES 1-50 include, but are not limited to, Walgreens co-employers, predecessors, successors, parent and affiliate corporations, and officers, directors, and managers. Plaintiffs will seek to amend this Complaint to reflect the true names and capacities of the

1 Defendants designated hereinafter as DOES when ascertained.

2 **VENUE AND JURISDICTION**

3 6. Venue is proper in this Court pursuant to Code of Civil Procedure Section 395  
4 because Walgreens is a foreign corporation without a principal place of business in California.

5 7. This Court has general subject matter jurisdiction.

6 8. This Court has personal jurisdiction over the parties because at all times relevant  
7 hereto Plaintiffs were California residents who worked in California for Defendant and Defendant  
8 has systematically and continuously conducted business in the State of California.

9 **STATEMENT OF FACTS**

10 9. Walgreens is the second-largest pharmacy store chain in the United States.

11 10. Plaintiffs customarily and regularly spent most of their worktime performing  
12 nonexempt activities like stocking shelves, unloading trucks, unpacking boxes, cashiering,  
13 working as a pharmacist or pharmacy technician, or cleaning the store.

14 11. Plaintiffs did not customarily and regularly exercise discretion and independent  
15 judgment on matters of significance while working as Walgreens Store Managers. Walgreens  
16 closely supervised Plaintiffs.

17 12. Plaintiffs customarily and regularly worked at least eight hours on each workday  
18 as Walgreens Store Managers. Plaintiffs customarily and regularly worked overtime as Walgreens  
19 Store Managers.

20 13. For their work as Store Managers, Walgreens paid Plaintiffs on a salary basis with  
21 no premium for overtime work.

22 14. Walgreens willfully, intentionally, and knowingly did not provide Plaintiffs the  
23 required number of breaks including, without limitation, a 10-minute rest break for each and  
24 every 4 hours worked, a first duty-free meal period of not less than 30 minutes before working  
25 more than five hours, and a second duty-free meal period of not less than 30 minutes before  
26 working more than 10 hours per day.

27 15. Walgreens willfully, intentionally, and knowingly did not provide Plaintiffs with  
28 statutorily compliant itemized wage statements.

1 16. Walgreens willfully, intentionally, and knowingly failed to pay Plaintiffs their  
2 earned wages when due including, without limitation, premium wages for overtime and missed  
3 rest breaks and meal periods.

4 **FIRST CAUSE OF ACTION**  
5 **Failure to Pay Overtime**  
6 **(Lab. Code §§ 510, 1194 & 8 C.C.R. § 11070 ¶3(A))**  
7 **(By All Plaintiffs)**

8 17. Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
9 here.

10 18. California Labor Code § 510 and Wage Order 7-2001, 8 C.C.R. § 11070 ¶3(A),  
11 require an employer to pay overtime of:

- 12 a. One and one-half times the employee's regular rate of pay for all hours  
13 worked in excess of eight hours, up to and including 12 hours in any  
14 workday, for any work in excess of 40 hours in any work week, and for the  
15 first eight hours worked on the seventh consecutive day of work in a  
16 workweek; and  
17 b. Double the employee's regular rate of pay for all hours worked in excess of  
18 12 hours in any day, and for all hours worked in excess of eight hours on  
19 the seventh consecutive day of work in a workweek.

20 19. Plaintiffs are not exempt because, among other things, as Walgreens Store  
21 Managers they spent most of their time performing non-exempt duties and did not regularly  
22 exercise discretion and independent judgment on matters of significance.

23 20. Pursuant to California Labor Code §§ 218.5 and 1194, Plaintiffs are entitled to  
24 recover all overtime wages due to them, attorneys' fees, and costs. Each Plaintiff no longer  
25 employed by Walgreens additionally seeks penalties pursuant to Labor Code § 203.

26 21. Pursuant to Labor Code § 218.6, Plaintiffs each request prejudgment interest on all  
27 wages from the date the wages were due and payable.  
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**SECOND CAUSE OF ACTION**  
**Failure to Provide Meal Periods**  
**(Lab. Code 226.7, 512 & 8 CCR § 11070 ¶11)**  
**(By All Plaintiffs)**

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3       22.     Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
4 here.

5       23.     Labor Code § 226.7 and 512 and Wage Order 7-2001, 8 C.C.R. § 11070 ¶11  
6 require that employers provide non-exempt employees with a first meal period of not less than 30  
7 minutes during which they are relieved of all duty before working more than five hours, and a  
8 second duty-free meal period of not less than 30 minutes before working more than 10 hours per  
9 day.

10       24.     To comply with the Labor Code, an employer must affirmatively relieve its  
11 employee of all duty during the meal period, relinquish control over the employee's activities,  
12 and permit the employee a reasonable opportunity to take an uninterrupted 30-minute break.

13       25.     Labor Code § 226.7(c) and Cal. Code Reg. tit. 8, § 11070 ¶11 require an employer  
14 fails to provide an employee a meal period as required to pay the employee one hour of pay at the  
15 employee's regular rate of compensation for each workday that the required meal period is not  
16 provided.

17       26.     Plaintiffs are not exempt because, among other things, as Walgreens Store  
18 Managers they spent most of their time performing duties that qualify as exempt and/or they did  
19 not regularly exercise independent judgment and discretion on matters of significance.

20       27.     Because Walgreens misclassified Plaintiffs as exempt employees, Walgreens  
21 failed to provide Plaintiffs with the required meal periods or pay Plaintiffs the wages due for  
22 missed meal periods.

23       28.     Walgreens is therefore is liable to each Plaintiff for additional compensation  
24 pursuant to Labor Code § 226.7(c) and Wage Order 7-2001, 8 C.C.R. § 11070 ¶11(D).

**THIRD CAUSE OF ACTION**  
**Failure to Provide Rest Breaks**  
**(Lab. Code 226.7 & 8 CCR § 11070 ¶12)**  
**(By All Plaintiffs)**

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3       29.     Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
4 here.

5       30.     Labor Code § 226.7(b) prohibits an employer from requiring an employee to work  
6 during any rest break mandated by an applicable wage order. Wage Order 7-2001, 8 C.C.R. §  
7 11070 ¶12(A) requires that an employer authorize and permit all employees to take one 10-  
8 minute rest period for every 4 hours worked, or a portion thereof, which insofar as practicable  
9 shall be in the middle of each work period.

10       31.     Plaintiffs are not exempt because, among other things, as Walgreens Store  
11 Managers, they spent less than fifty percent of their worktime performing duties that qualify as  
12 exempt and/or they did not regularly exercise discretion and independent judgment on matters of  
13 significance.

14       32.     Because Walgreens misclassified Plaintiffs as exempt employees, Walgreens  
15 failed to provide Plaintiffs with the required rest periods or pay Plaintiffs premium wages for  
16 missed rest breaks.

17       33.     Labor Code § 226.7(c) and Cal. Code Reg. tit. 8, § 11070 ¶12(B) each require an  
18 employer who fails to provide an employee a rest break as required to pay the employee one hour  
19 of pay at the employee's regular rate of compensation for each workday that the required rest  
20 period is not provided.

21       34.     Walgreens is therefore is liable to each Plaintiff for damages pursuant to Labor  
22 Code § 226.7(c) and Wage Order 7-2001, 8 C.C.R. § 11070 ¶12(B).

**FOURTH CAUSE OF ACTION**  
**Itemized Wage Statement Violations**  
**(Lab. Code § 226)**  
**(By All Plaintiffs)**

23  
24  
25       35.     Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
26 here.

27       36.     Labor Code § 226(a) requires employers paying employees to give each employee  
28 an accurate itemized written statement showing, among other things: (1) gross wage earned, (2)

1 total hours worked, (3) all deductions, (4) net wages earned, and (5) all applicable hourly rates in  
2 effect during each respective pay period and the corresponding number of hours worked at each  
3 hourly rate. Walgreens knowingly and intentionally failed to provide timely, accurate, itemized  
4 wage statements that included all of this information.

5 37. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing  
6 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of  
7 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and  
8 one hundred dollars (\$100) for each violation in a subsequent pay period, up to a maximum  
9 amount of \$4,000.

10 38. As a direct and proximate result of Walgreens' conduct, each Plaintiff has been  
11 injured by, among other things, not being paid all wages due, and not knowing how many hours  
12 he or she worked and at what rate(s), and has been required to file this action to recover his or her  
13 wages and penalties. Plaintiffs are entitled to recover the damages or penalties provided by Labor  
14 Code § 226(e), including interest thereon, attorney's fees, and costs.

15 **FIFTH CAUSE OF ACTION**  
16 **Waiting Time Penalties (Lab. Code §§ 201-203)**  
17 **(By the Former Employee Plaintiffs Only)**

18 39. Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
19 here.

20 40. Certain of the above-named Plaintiffs are no longer employed by Walgreens (the  
21 "Former Employee Plaintiffs"). Labor Code §§ 201 and 202 require Walgreens to pay its  
22 employees all wages due immediately upon discharge, or within seventy-two (72) hours of  
23 quitting without notice. Labor Code § 203 requires an employer that willfully fails to make such  
24 timely payment, as a penalty, to continue to pay the subject employees' wages until the back  
25 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days' wages.

26 41. The Former Employee Plaintiffs' employment with Walgreens ended without  
27 Walgreens paying them the overtime and meal period wages that are due to them within the time  
28 required by Labor Code §§ 201 and 202. The Former Employee Plaintiffs did not secret or absent  
themselves to avoid being paid their final wages. Walgreens' failure to pay these wages is and has

1 been willful.

2 42. As a result of Walgreens' conduct, each Former Employee Plaintiff is entitled to  
3 waiting time penalties of up to thirty (30) days' wages under Labor Code § 203, interest thereon,  
4 and attorneys' fees and costs.

5 **SIXTH CAUSE OF ACTION**  
6 **Violations of Bus. & Prof. Code § 17200, et seq.**  
7 **(By All Plaintiffs)**

8 43. Plaintiffs incorporate all preceding and subsequent paragraphs as though repeated  
9 here.

10 44. The Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*  
11 prohibits all unlawful, unfair, and/or fraudulent business practices.

12 45. During the four-year period preceding the filing of this Complaint, and continuing  
13 to the present, Walgreens violated California Business and Professions Code §§ 17200, *et seq.* by,  
14 without limitation, violating the following statutes and wage orders:

- 15 a. Labor Code §§ 510 and 1194 (failure to pay all wages due, including  
16 overtime and double-time wages);
- 17 b. Labor Code §§ 226.7 and 512 (failure to provide meal periods and  
18 authorize and permit rest periods);
- 19 c. Labor Code §§ 201-203 (failure to pay all wages at time of discharge); and
- 20 d. Wage Order 7-2001, 8 C.C.R. § 11070.

21 46. As a result, Plaintiffs have suffered injury in fact, lost wages, and are entitled to  
22 restitution of those wages.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiffs pray for judgment against Defendant as follows:

- 25 1. For compensatory damages according to proof;
- 26 2. For restitution of all wages, including premium wages, that have been illegally  
27 withheld;
- 28 3. For prejudgment interest, including but not limited to as authorized by Labor Code  
§§ 218.6 and 1194(a), and Civil Code §§3287(b) and 3289;



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- 4. For an order requiring Defendant to pay all wages due as a result of Defendant's failure to provide Plaintiffs with required rest periods;
- 5. For premium pay for meal periods and rest periods Defendant failed to provide pursuant to Labor Code § 226.7(c) and the applicable wage order;
- 6. For damages sustained and/or penalties for not receiving accurate wage statements pursuant to Labor Code §226;
- 7. For penalties equal to one day's wages for each day that payment was delayed, up to 30 days, pursuant to Labor Code §203;
- 8. For an injunction requiring Walgreens to pay its employees in accordance with California law and prohibiting it from engaging in the above-alleged unlawful and unfair practices;
- 9. For other penalties and liquidated damages as alleged herein;
- 10. For attorneys' fees and costs pursuant to all applicable laws, including but not limited to Labor Code §§ 218.5, 226(e), and 1194, Civil Code Section 1021.5, and the common law private attorney general doctrine; and
- 11. For such other and further relief as the Court deems just and proper.

DATED: December 4, 2019

**RESPECTFULLY SUBMITTED,**  
**GALLO LLP**  
**THE WYNNE LAW FIRM**

By:   
Ray E. Gallo  
Attorneys for Plaintiffs

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial of all issues, matters, and claims so triable.

DATED: December 4, 2019

**GALLO LLP  
THE WYNNE LAW FIRM**

By:   
\_\_\_\_\_  
Ray E. Gallo  
Attorneys for Plaintiffs