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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES-UNLIMITED JURISDICTION**

17 [REDACTED],

18 Plaintiff,

19 vs.

20 SAFEWAY, INC.; THE VONS
21 COMPANIES, INC; and DOES 1 through
22 50, inclusive,

23 Defendants.

24 Case No.:

25 **CLASS ACTION**

26 **COMPLAINT FOR DAMAGES
27 AND INJUNCTIVE RELIEF**

- 28 **1. FAILURE TO PROVIDE MEAL BREAKS;**
- 2. FAILURE TO PROVIDE REST BREAKS;**
- 3. CLAIM FOR STATUTORY WAITING TIME PENALTIES FOR FAILURE TO PAY WAGES PURSUANT TO CALIFORNIA LABOR CODE §203; and**
- 4. UNLAWFUL BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

Demand for Jury Trial

1 Plaintiff [REDACTED] (“Plaintiff”) individually and on behalf of all
2 other similarly situated individuals, alleges as follows against defendants, SAFEWAY,
3 INC. and THE VONS COMPANIES, Inc. (“Defendants”), and DOES 1 through 50:
4

5 PARTIES AND VENUE

6 1. Plaintiff.

7
8 (a) Plaintiff [REDACTED] is a citizen of the State of California and
9 resides in the County of Los Angeles. Commencing on or about June, 2006 and
10 continuing through on or about May, 2007, Plaintiff was employed by Defendants as a
11 licensed pharmacist.
12

13 2. Defendants.

14 (a) Plaintiff is informed and believes and thereon alleges defendant
15 SAFEWAY, INC. is, and at all times mentioned in this complaint was, a corporation
16 organized and existing under the laws of the State of Delaware, with its principal place of
17 business located in Pleasanton, California.
18

19 (b) Plaintiff is informed and believes and thereon alleges defendant THE
20 VONS COMPANIES, INC. is, and at all times mentioned in this complaint was, a
21 corporation organized and existing under the laws of the State of Michigan, with its
22 principal place of business located in Arcadia, California.
23

24 (c) Plaintiff is informed and believes and thereon alleges defendant THE
25 VONS COMPANIES, INC. is, and at all times mentioned in this complaint was a wholly
26 owned subsidiary of defendant SAFEWAY, INC.
27
28

1 (d) Plaintiff is informed and believes and thereon alleges that at all times
2 mentioned in this complaint Defendants owned, operated, managed and controlled
3 approximately three hundred supermarkets in California which included licensed retail
4 pharmacy stores under the trade names of “Vons Pharmacy” and “Pavilions Pharmacy”.
5 Defendants’ pharmacy stores are, and during all times mentioned in this complaint were,
6 open to the general public in numerous counties of the State of California, including the
7 County of Los Angeles.
8

9
10 (e) Plaintiff is unaware of the true names and capacities of defendants sued
11 herein as DOES 1 through 50, inclusive, and for that reason sues said defendants by such
12 fictitious names. Plaintiff is informed and believes and thereon alleges that each of the
13 fictitiously named defendants is responsible in some manner for, and proximately caused,
14 the harm and damages alleged herein below. Plaintiff will file and serve an amendment
15 to this complaint alleging the true names and capacities of said fictitiously named
16 defendants if and when such true names and capacities become known to Plaintiff.
17
18

19 (f) At all times alleged herein, one of the primary businesses of Defendants
20 and DOES 1 through 50 was the provision of pharmaceutical services for their customers,
21 including but not limited to, filling prescriptions.
22

23 (g) Plaintiff is informed and believes and thereon alleges that Defendants acted
24 as the employee, agent, partner, alter-ego and/or joint venturer of each of the other
25 defendants named herein, and, in doing the acts and in carrying out the wrongful conduct
26 alleged herein, each of said defendants acted within the scope of said relationship and
27
28

1 with the permission, consent and ratification of each of the other defendants named
2 herein.

3
4 **3. Venue.**

5 (a) Venue is proper in Los Angeles County as at least some of the acts
6 complained of herein occurred in Los Angeles County as Defendants own or operate
7 retail pharmacy stores in Los Angeles County.
8

9 (b) Throughout his employment with Defendants, Plaintiff worked as a
10 registered pharmacist in several of Defendants' retail pharmacy stores including stores
11 located in the County of Los Angeles, California.
12

13 **CLASS ACTION ALLEGATIONS**

14 4. Plaintiff brings this action pursuant to California Code of Civil Procedure
15 section 382, against Defendants, including the DOE defendants, on his behalf and all
16 individuals similarly situated in the State of California. All claims alleged herein arise
17 under California law for Plaintiff and members of the class identified herein seek relief
18 authorized under California law. The classes that Plaintiff represents are comprised of,
19 and are defined as:
20
21

- 22 a) All current and former non-exempt licensed
23 pharmacists employed by defendant SAFEWAY,
24 INC. and defendant THE VONS COMPANIES,
25 INC. at any time during the past four (4) years
26 from the filing of the complaint herein, who
27 worked at Defendants' retail pharmacy stores in
28 excess of five (5) hours per workday in one or
more workdays, and did not receive one or more
30-minute meal break(s).

1 b) All current and former non-exempt licensed
2 pharmacists employed by defendant SAFEWAY,
3 INC. and defendant THE VONS COMPANIES,
4 INC. at any time during the past four (4) years
5 from the filing of the complaint herein, who
6 worked at Defendants' retail pharmacy stores in
7 excess of four (4) hours per workday in one or
8 more workdays, and did not receive one or more
9 daily rest break(s).

10 5. All members of the putative class described above have had their rights
11 under the California Labor Code, and California Business & Professions Code violated
12 by Defendants' employment practices.

13 6. Ascertainable Class. The plaintiff classes described at Paragraph 4,
14 above, are ascertainable. Members of the plaintiff classes can be readily identified from
15 personnel files and computer databases maintained by Defendants and from payroll and
16 other records maintained by the Defendants. The litigation of the questions of fact and
17 law involved in this action will resolve the rights of all members of the class and hence
18 will have a binding effect on all class members. The class members are numerous and
19 joinder of all class members is impracticable due to both a reluctance of class members to
20 sue their current or former employers and relatively small monetary recovery for each
21 class member in comparison to the costs associated with separate and individual actions.

22 7. Community of Interest. The plaintiff classes described at Paragraph 4,
23 above, have a well-defined community of interest in the questions of fact and law to be
24 litigated. The common questions of law and fact are predominant with respect to the
25 liability issues, relief issues and anticipated affirmative defenses. The named plaintiff has
26 claims typical of members of the classes alleged above. The named plaintiff can fairly
27
28

1 and adequately represent and protect the interests of the classes in that there is no conflict
2 between his interests and the interests of other class members. This action is not
3 collusive. The named plaintiff and his counsel have the resources to litigate this action,
4 and counsel have the experience and the ability required to prosecute this case as a class
5 action.
6

7
8 8. **Superiority of Class Adjudication.** The certification of a class in this
9 action is superior to the litigation of a multitude of cases by members of the putative
10 classes. Class adjudication will conserve judicial resources and will avoid the possibility
11 of inconsistent rulings. Moreover, there are class members who are unlikely to join or
12 bring an action due to, among other reasons, their reluctance to sue their current
13 employers and/or their inability to afford a separate action. Finally, equity dictates that
14 all persons who stand to benefit from the relief sought herein should be subject to the
15 lawsuit and hence subject to an order spreading the costs of litigation among the class
16 members in relationship to the benefits received.
17

18
19 9. Throughout the statutory period alleged herein, Industrial Welfare
20 Commission, Wage Order No. 4-2001, “Professional, Technical, Clerical, Mechanical
21 and Similar Occupations”, as amended, contained in Title 8 of the California Code of
22 Regulations (hereinafter “Wage Order”), applied to Plaintiff and to each of the class
23 members in his or her employment with Defendants.
24

25
26 10. During the applicable statutory period alleged herein, the Wage Order
27 required every employer to authorize and permit all employees to take meal breaks and
28 rest breaks.

1 **FIRST CAUSE OF ACTION**
2 **(Against Defendants, Including Doe Defendants, by Plaintiff, and on Behalf of All**
3 **Other Licensed Pharmacists Similarly Situated, For Failure to Provide Meal**
4 **Breaks)**

5 11. Plaintiff incorporates by reference each and every allegation set forth in
6 paragraphs 1 through 10, as if set forth in full herein.

7 12. Labor Code section 512, subdivision (a) provides:

8 An employer may not employ an employee for a
9 work period of more than five hours per day without
10 providing the employee with a meal period of not less
11 than 30 minutes, except that if the total work period
12 per day of the employee is no more than six hours,
13 the meal period may be waived by mutual consent of
14 both the employer and employee. An employer may
15 not employ an employee for a work period of more
16 than 10 hours per day without providing the
17 employee with a second meal period of not less than
18 30 minutes, except that if the total hours worked is no
19 more than 12 hours, the second meal period may be
20 waived by mutual consent of the employer and the
21 employee only if the first meal period was not
22 waived.

23 13. Labor Code section 226.7, subdivision (a) provides:

24 “No employer shall require any employee to work
25 during any meal or rest period mandated by an
26 applicable order of the Industrial Welfare
27 Commission.”

28 14. Throughout the statutory period alleged herein, Plaintiff and all other class
members similarly situated worked as pharmacists at Defendants’ California pharmacy
stores for more than five (5) hours during each work period without being allowed to take
the mandatory 30-minute meal break for each five (5) hours of work as required by
California law.

1 15. Throughout the statutory period alleged herein, Defendants did not
2 authorize or permit, and failed to provide their employee pharmacists employed in
3 California including Plaintiff, and all other class members similarly situated, meal
4 periods as required by California law including the Wage Order.
5

6 16. Throughout the statutory period alleged herein, the working conditions and
7 work schedules at Defendants' pharmacy stores located in California deprived
8 pharmacists including Plaintiff, and all other class members similarly situated, a
9 meaningful opportunity to take the meal breaks required by California law including the
10 Wage Order.
11

12 17. Throughout the statutory period alleged herein, Defendants required their
13 employee pharmacists employed in California including Plaintiff, and all other class
14 members similarly situated, as a condition of maintaining their employment with
15 Defendants, to regularly work through their meal periods.
16

17 18. Plaintiff is informed and believes and thereon alleges that at no times
18 mentioned in this complaint Plaintiff or any of the class members entered into any
19 agreement with Defendants expressly or impliedly waiving their right to the mandatory
20 meal breaks.
21

22 19. Defendants possess or should possess the exact information regarding the
23 number of hours worked by Plaintiff and each class member similarly situated for the
24 relevant statutory period.
25

26 20. The class which Plaintiff represents is comprised of all licensed
27 pharmacists, presently and formally, employed in California by Defendants at the Vons
28

1 Pharmacy and Pavilions Pharmacy stores during the relevant statutory period, who were
2 denied the mandatory meal breaks.

3
4 21. As a direct and proximate result of Defendants' multiple violations of the
5 meal period provisions of the California Labor Code sections 512 and 226.7 and the
6 Wage Order, there is due and owing to Plaintiff and to each class member wages in
7 excess of \$25,000.

8
9 22. California Labor Code section 218.5 provides for the recovery of attorney's
10 fees and costs in a civil action to recover wages by an employee. Plaintiff, on his behalf
11 as well as those similarly situated, seeks reasonable attorney's fees and interest on all
12 sums due and outstanding, plus interest and costs of suit.

13
14 **SECOND CAUSE OF ACTION**
15 **(Against Defendants, Including Doe Defendants, by Plaintiff, and on Behalf of All**
16 **Other Licensed Pharmacists Similarly Situated, For Failure to Provide Rest Breaks)**

17 23. Plaintiff incorporates by reference each and every allegation set forth in
18 paragraphs 1 through 10, as if set forth in full herein.

19 24. Beginning on and after January 1, 2001, failure by an employer to provide
20 an employee a 10-minute paid rest break for every four (4) hours, or major fraction
21 thereof, that they work will require the employer to pay the employee one (1) additional
22 hour of pay at the employee's regular rate of compensation for each work day that the
23 employee fails to take the required rest period. (California Labor Code section 226.7,
24 subdivision (b); Industrial Welfare Commission Wage Order 4-2001)

25
26 25. The one (1) additional hour of pay required under California Labor Code
27 section 226.7, subdivision (b) when an employee fails to take a required rest break is
28

1 considered a “premium wage”. (Murphy v. Kenneth Cole Productions, Inc. (2007) 40
2 Cal.4th 1094).

3
4 26. Throughout the statutory period alleged herein, Plaintiff and all other class
5 members similarly situated worked as licensed pharmacists at Defendants’ California
6 pharmacy stores for more than four (4) hours during each work period without being
7 allowed to take a 10-minute paid rest break as required by California law.
8

9 27. Throughout the statutory period alleged herein, Defendants did not
10 authorize or permit, and failed to provide their employee pharmacists employed in
11 California including Plaintiff, and other class members similarly situated, rest periods as
12 required by California law including the Wage Order.
13

14 28. Throughout the statutory period alleged herein, the working conditions and
15 work schedules at Defendants’ pharmacy stores located in California deprived
16 pharmacists including Plaintiff, and other class members similarly situated, a meaningful
17 opportunity to take paid rest breaks required by California law including the Wage Order.
18

19 29. Throughout the statutory period alleged herein, Defendants required their
20 employee pharmacists employed in California including Plaintiff, and other class
21 members similarly situated, as a condition of maintaining their employment with
22 Defendants, to regularly work through their rest breaks.
23

24 30. Defendants possess or should possess the exact information regarding the
25 number of hours worked by Plaintiff and each class member for the relevant statutory
26 period.
27
28

1 36. Defendants intentionally and willfully failed to pay Plaintiff and each class
2 member who separated from, or was discharged by, Defendants the wages owed to them
3 as required by law.
4

5 37. At no time has Plaintiff or a class member who terminated their
6 employment with Defendants during the statutory period secreted or absented themselves
7 or otherwise refused to accept payment of wages earned and due to them upon separation
8 of their employment from Defendants. Plaintiff brings this action, pursuant to California
9 Code of Civil Procedure section 382, against Defendants on his behalf and on behalf of
10 all persons similarly situated in California. The class which Plaintiff represents is
11 comprised of (a) all licensed pharmacists who were employed by Defendants and who
12 worked in the Vons Pharmacy and Pavilion Pharmacy locations in stores located in
13 California during the statutory period; (b) who were paid on an hourly basis; (c) who
14 worked five (5) hours or more per workday without receiving a 30-minute duty free meal
15 break; (d) who worked four (4) hours or more per workday without receiving a 10-minute
16 paid rest break ; and (e) who no longer is employed by Defendants.
17
18
19
20

21 38. Plaintiff seeks against Defendants for himself and for each class member
22 the statutory waiting time penalty under California Labor Code section 203. Thirty (30)
23 days has expired since the end of Plaintiff's, and others similarly situated, employment
24 with Defendants. Therefore, Plaintiff seeks an award of the statutory waiting time
25 penalty from Defendants in the amount of thirty (30) days' wages for himself and for
26 each class member similarly situated, with interest thereon.
27
28

1 **PRAYER**

2 **WHEREFORE**, Plaintiff, and class members, pray for judgment against
3 Defendants, and each of them, and DOES 1 through 50 as follows:

4 ON THE FIRST CAUSE OF ACTION:

- 5 a. For compensatory damages in an amount according to proof including, but not
6 limited to, lost wages in excess of \$25,000.
7 b. For pre- and post-judgment interest.
8 c. For reasonable attorney’s fees and costs pursuant to California Labor Code
9 section 218.5.

10 ON THE SECOND CAUSE OF ACTION:

- 11 d. For compensatory damages in an amount according to proof including, but not
12 limited to, lost wages in excess of \$25,000.
13 e. For pre- and post-judgment interest.
14 f. For reasonable attorney’s fees and costs pursuant to California Labor Code
15 section 218.5.

16 ON THE THIRD CAUSE OF ACTION:

- 17 g. For the statutory waiting time penalties pursuant to California Labor Code
18 section 203.
19 h. For pre- and post-judgment interest.

20 ON THE FOURTH CAUSE OF ACTION:

- 21 i. For a temporary restraining order, preliminary injunction and permanent
22 injunction restraining Defendants and their agents and employees from
23 continuing to commit unlawful, unfair and fraudulent practices in violation of
24 Business & Professions Code sections 17200 et seq., including from
25 continuing to commit violations of the wage and hour law by use of economic
26 force against Plaintiff and the members of the putative class.
27 j. For a temporary restraining order, preliminary injunction and permanent
28 injunction preventing Defendants from destroying employee time records

1 during the pendency of this lawsuit and, thereafter, only if such records are
2 more than three years old.

- 3 k. For restitution to Plaintiff and the members of the putative class of those wages
4 which Defendants have wrongfully refused to pay, in violation of wage and
5 hour law.

6 ON ALL CAUSES OF ACTION:

- 7 l. For costs and expenses in this action; and
8 m. Any other and further relief as the nature of the case may require, and, or that
9 the Court deems proper.

10
11 DATED: February 13, 2008

MARCARIAN LAW FIRM

12
13 By: _____

14 ARMOND MARCARIAN
15 Attorneys for Plaintiff

16
17 **JURY DEMAND**

18 Plaintiff respectfully demands a trial by jury on all claims so triable and an
19 advisory jury for a factual determination on all equitable claims.

20
21 DATED: February 13, 2008

Respectfully submitted,

22
23
24
25 _____
26 ARMOND MARCARIAN
27 MARCARIAN LAW FIRM
28