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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARINE BARGAS,

Plaintiff,

v.

RITE AID CORPORATION, and DOES 1  
through 50, inclusive,

Defendant.

} Case No. CV 13-03865- MWF (JEMx)

} **AMENDED FINDINGS OF FACT**  
} **AND CONCLUSIONS OF LAW**

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This matter came on for trial before the Court sitting without a jury on November 1 through November 10, 2016. Following the presentation of evidence and the parties' closing arguments, the matter was taken under submission.

Having carefully reviewed the record and the arguments of counsel, as presented at the trial and in their written submissions, the Court now makes the following findings of fact and reaches the following conclusions of law under Rule 52 of the Federal Rules of Civil Procedure. Any finding of fact that constitutes a conclusion of law is also hereby adopted as a conclusion of law, and any conclusion of law that constitutes a finding of fact is also hereby adopted as a finding of fact.

1           The Court awards a modest verdict to Plaintiff Marine Bargas based on certain  
2 weeks in which she was classified improperly as an exempt employee. That sentence  
3 encompasses why this action was unusual. The dispute was not whether overtime hours  
4 were worked, although the Court concludes that Plaintiff overstated her hours to a degree.  
5 Ultimately, the dispute was not even whether the job itself could properly be classified as  
6 exempt or not. Defendant Rite Aid Corporation (“Rite Aid”) acknowledged that the job  
7 included a mix of exempt and nonexempt duties, and that managers of smaller stores are  
8 not exempt employees.

9           The real dispute then was, week by week, whether *this* Plaintiff’s nonexempt work  
10 as actually performed constituted more than 50% of her time. The Court finds that, in  
11 general, Plaintiff did not spend most of her time on nonexempt work. In other words, Rite  
12 Aid largely proved its affirmative defense of the executive exemption. However, the  
13 parties do not really dispute that Plaintiff is entitled to a week by week determination of  
14 her correct classification. As for those weeks in which Plaintiff was assigned to other  
15 stores for remodeling or inventory, her work as performed was primarily nonexempt.

16           The following witnesses were called and examined by the parties in the order  
17 recited below:

18           On November 1, 2016, Michael Righetti appeared on behalf of Plaintiff Marine  
19 Bargas and gave an opening statement. Elena R. Baca and Justin M. Scott appeared on  
20 behalf of Defendant Rite Aid Corporation (“Rite Aid”) and gave an opening statement.

21           On November 2, 2016, Mr. Righetti examined **Kandice Valdivia**, a former Rite  
22 Aid store employee who worked for Plaintiff. Ms. Baca cross-examined Ms. Valdivia;  
23 Mr. Righetti conducted a redirect examination; and Ms. Baca conducted a recross  
24 examination. Mr. Righetti next examined **Mauricio Quintanilla**, a former Rite Aid store  
25 employee who worked for Plaintiff. Ms. Baca cross-examined Mr. Quintanilla. Finally,  
26 Mr. Scott examined **Paul Bennie**, a former Senior Director of Human Resources for Rite  
27 Aid. Mr. Righetti cross-examined Mr. Bennie.

1 On November 3, 2016, Mr. Righetti examined **Carlos Aguila**, a Rite Aid store  
2 employee who worked on a remodeling project with the Plaintiff. Mr. Scott cross-  
3 examined Mr. Aguila; and Mr. Righetti conducted a redirect examination. Next, Mr.  
4 Righetti examined **Marilyn Contreras**, a current District Manager for Rite Aid and  
5 Plaintiff's former District Manager, as a hostile witness. Ms. Baca cross-examined Ms.  
6 Contreras; Mr. Righetti conducted a redirect examination; and Ms. Baca conducted a  
7 recross examination.

8 On November 4, 2016, Mr. Righetti examined **Rebecca Yam**, a former Store  
9 Manager for Rite Aid. Ms. Baca cross-examined Ms. Yam; Mr. Righetti conducted a  
10 redirect examination; and Ms. Baca conducted a recross examination. Next, Mr. Righetti  
11 examined Plaintiff **Marine Bargas**. Plaintiff was not cross-examined on November 4.  
12 Finally, Ms. Baca examined **David Markley**, the current Vice President of Financial and  
13 Labor Analysis for Rite Aid. Mr. Righetti cross-examined Mr. Markley.

14 On November 8, 2016, Mr. Righetti examined **Roger Ceballos**, a current Senior  
15 Director of Human Resources for Rite Aid, as a hostile witness. Mr. Scott cross-examined  
16 Mr. Ceballos; and Mr. Righetti conducted a redirect examination. Mr. Scott next  
17 examined **Imelda Fernandez**, a current Rite Aid store employee who previously worked  
18 for Plaintiff. Mr. Righetti cross-examined Ms. Fernandez. Ms. Baca then examined  
19 **Maria Garcia**, a current Rite Aid store employee who previously worked for Plaintiff.  
20 Mr. Righetti cross-examined Ms. Garcia; Ms. Baca conducted a redirect examination; and  
21 Mr. Righetti conducted a recross examination. Finally, Mr. Scott examined **Cynthia**  
22 **Pena**, a current Rite Aid store employee who previously worked for Plaintiff. Mr.  
23 Righetti cross-examined Ms. Pena; Mr. Scott conducted a redirect examination.

24 On November 9, 2016, Ms. Baca cross-examined Plaintiff. Mr. Righetti began a  
25 redirect examination of Plaintiff.

26 On November 10, 2016, Mr. Righetti concluded his redirect examination of  
27 Plaintiff; Ms. Baca conducted a recross examination. Next, Mr. Scott examined **Lisa**  
28 **Angulo**, a current Rite Aid store employee who previously worked for Plaintiff. Mr.

1 Righetti cross-examined Ms. Angulo. Mr. Scott next examined **Leodoro Rodriguez** and  
2 **Robyn Brouillette**, both current Rite Aid store employees who previously worked for  
3 Plaintiff. Mr. Righetti cross-examined Ms. Brouillette but did not cross-examine Mr.  
4 Rodriguez. Mr. Scott then examined **Bonnie Reyes**, a current Rite Aid store employee  
5 who previously worked for Plaintiff. Mr. Righetti cross-examined Ms. Reyes. Finally,  
6 Mr. Scott examined **Kellie Reyes**, a former Rite Aid store employee who worked for  
7 Plaintiff. Mr. Righetti cross-examined the second Ms. Reyes.

8 At the end of the day on November 10, Mr. Righetti made his closing argument for  
9 Plaintiff. Ms. Baca made her closing argument for Rite Aid.

10 An appendix listing all exhibits admitted into evidence during trial is attached.  
11

## 12 I. FINDINGS OF FACT

### 13 A. Background

14 1. Plaintiff Marine Bargas is an individual and citizen of the State of California.

15 2. Defendant Rite Aid is a corporation duly organized and existing under the  
16 laws of the State of Delaware with its principal place of business in the Commonwealth of  
17 Pennsylvania.

18 3. Rite Aid runs a national chain of drugstores. Each store is split between the  
19 pharmacy side and the retail side. Pharmacy and retail each have separate, independent  
20 management structures, labor budgets, corporate mandates, and so on. Plaintiff worked  
21 on the retail side of the business.

22 4. Corporate oversight of stores is divided by region. The western region,  
23 encompassing all of the stores where Plaintiff worked, includes California, Oregon, Idaho,  
24 Washington, and Colorado. Regions are further subdivided into states and districts within  
25 states. Each district is run by a team of managers: a Loss Prevention Manager, a Human  
26 Resources Manager, a District Manager for pharmacy, and a District Manager for retail.

27 5. In California, each store within a district typically is staffed with a Store  
28 Manager, an Assistant Manager, two Shift Supervisors (sometimes divided between a

1 Merchandising Supervisor and a Service Supervisor), a Price Accuracy Coordinator  
2 (“PAC”), and regular non-management staff, typically referred to as clerk/cashiers.

3 6. The duties of clerk/cashiers include carrying out day-to-day tasks on the sales  
4 floor. Clerk/cashiers complete merchandising, unload stock when shipments come in  
5 (what witnesses commonly referred to as “breaking down truck”), price changes, keeping  
6 stock and the sales floor clean, neat, and orderly, and ringing up customers.

7 7. In training materials, Rite Aid describes the duties of the remaining staff  
8 positions as follows (*see* Ex. 183):

9 a. **Store Managers** are expected to provide leadership and development  
10 opportunities to associates (*i.e.*, every other store employee), to hire  
11 and train new associates (which includes ensuring the store team is  
12 properly trained and adheres to regulations, legislation, and Rite Aid  
13 policies), and to implement the annual corporate plan. Store Managers  
14 are responsible for meeting store retail sales budgets, labor and  
15 expense budgets, and generally ensuring that operating earnings before  
16 interest, tax, depreciation and amortization (“EBITDA”) targets are  
17 achieved. Store Managers are also responsible for store inventory,  
18 including ordering and loss prevention.

19 b. **Assistant Managers** are expected to assist the Store Manager with all  
20 store operations. Assistant Managers must be able to complete all  
21 Store Manager duties in the Store Manager’s absence, ensure Rite Aid  
22 policies and procedures are enforced among associates, and oversee  
23 merchandizing and stocking. Those duties include overseeing the  
24 stocking of regular store aisles and those aisles dedicated to seasonally-  
25 available merchandise (the “seasonal aisles”), the stocking of aisle end  
26 caps, and generally ensuring that all merchandise is arranged according  
27 to the corporate plan (the “planogram”). Like Store Managers,  
28 Assistant Managers must interact with vendors to order seasonal and

1 promotional inventory, request store maintenance when required,  
2 process returned, recalled, damaged, and outdated merchandise, and  
3 help keep track of vendors' accounts payable.

4 c. **Shift Supervisors** assist Store Managers and Assistant Managers in  
5 executing corporate plans, and supervising clerk/cashiers in their floor  
6 tasks and in the provision of customer service. Shift Supervisors focus  
7 on working with the front line retail cashiers and clerks on a daily  
8 basis.

9 d. **PACs** implement weekly price changes, ad sale pricing, and generally  
10 ensure that items are priced correctly based on corporate directives.  
11 PACs conduct audits; additionally, PACS report the results of third  
12 party and government audits to the proper corporate entities. The PAC  
13 role is particularly circumscribed, as PACs are forbidden from helping  
14 with the other day-to-day tasks of running the store.

15 **B. The Store Manager Position**

16 8. Of all the in-store employees on the retail side of the business, only the Store  
17 Manager is classified as exempt from California's overtime law. (The Court discusses  
18 California's overtime law and the relevant exemptions thereto in greater detail below.)

19 9. The Store Manager job description for California lists the following  
20 "Essential Duties and Responsibilities" for the position (*see* Ex. 4), which the Court has  
21 lightly paraphrased for readability:

- 22 a. Implement company business plans and objectives to drive sales, be  
23 profitable and provide a superior customer and associate experience.
- 24 b. Attend to opening and closing the store and maintaining proper  
25 accountability for cash handling and company banking.
- 26 c. Manage an individual store while meeting store retail budgeted sales,  
27 margin, labor, expenses and overall [profit and loss] monthly results.  
28

- d. Interview, hire, train, direct, reward, and discipline associates; evaluate associate performance; and resolve complaints.
- e. Provide leadership and development opportunities for associates by communicating career opportunities, providing regular performance feedback, and demonstrating good customer service behaviors to both external and internal customers and associates.
- f. Ensure the store complies with regulations, legislation, and policies.
- g. Direct and assist store associates by providing a clean, safe, and pleasing environment to customers and associates. Follow company standards for safety regulations and overall store appearance, including keeping the store clutter free.
- h. Maintain merchandise as required by the various tools provided by Rite Aid, including the profit planner, corporate planograms, and other regularly updated corporate mandates.
- i. Supervise store inventory, and develop plans for loss prevention.
- j. Manage the store's vendor relationships.
- k. Ensure price accuracy of merchandise.

10. However, not every store in California is staffed the same; Rite Aid may expand or contract the management staff depending on the sales volume of the store. (*See* Ex. 183). Each store always has a PAC and some number of clerk/cashiers.

- a. In stores with a "front end volume" (that is, the sales volume of the retail side of the business) of \$750,000 to \$1.5 million, the Store Manager position is nonexempt. The Store Manager does not have an Assistant Manager, but is afforded three Shift Supervisors, two full time and one part time.
- b. In stores with a front end volume higher than \$1.5 million, the Store Manager position is exempt.

- c. Stores with a front end volume between \$1.25 million and \$2.5 million are staffed with an Assistant Manager, and two full-time Shift Supervisors, in addition to the Store Manager.
- d. Stores with a front end volume greater than \$2.5 million are staffed with a Store Manager, an Assistant Manager, and three full-time Shift Supervisors.

11. Accordingly, at least in some limited circumstances, Rite Aid itself recognizes that the Store Manager position may necessarily be classified as nonexempt. That is, the duties a Store Manager must perform require a mixture of exempt and nonexempt work; and, in some circumstances, the volume of nonexempt duties exceeds more than half of the workload, requiring those Store Managers to be officially classified as nonexempt.

12. In its training materials, Rite Aid further recognizes that even Store Managers who are classified as exempt may at times find themselves performing more nonexempt duties than exempt duties.

- a. In a training program in 2005, Rite Aid handed out a “self-audit” to Store Managers, asking them to report whether they spent more than 50% of their time on nonexempt, nonmanagerial tasks.
- b. In 2006, Rite Aid distributed a “Front End Manager Audit” to California Store Managers via Rite Aid’s electronic communications system. Store Managers were again asked to evaluate how much time they spent each day performing managerial and nonmanagerial tasks.
- c. Rite Aid stopped asking Store Managers to report how they divided their time between managerial and nonmanagerial tasks after 2006.

13. Paul Bennie, former Senior Director of Human Resources for Rite Aid, testified that Store Managers are informed, via computer based training modules, of Rite Aid’s expectations that Store Managers will spend more than 50% of their time on

1 managerial tasks. Rite Aid presented evidence that Plaintiff completed these computer  
2 based trainings.

3 14. However, Plaintiff testified that it was easy for Store Managers to skip  
4 through the computer based training without paying close attention. Indeed, to some  
5 extent it was incentivized: the trainings themselves were two, sometimes three hours  
6 long, and employees could access them from cash registers. Many Store Managers and  
7 other Rite Aid associates completed their computer based trainings while checking out  
8 customers.

9 15. Plaintiff explained that, while clicking through the slides, “I’m going back  
10 and forth. I’m not really paying attention. We’re just trying to get [the computer based  
11 trainings (“CBT”)] done because we have a lot of work to do. And that takes — some of  
12 these take two hours, three hours.” Later, Plaintiff testified “I don’t remember really  
13 going through them. I’m just trying to get them out of the way to get back to what I’m  
14 supposed to be doing in the store.” And later still, Plaintiff illustrated:

15 [S]ay, for instance, if I’m in the register and I’m doing my CBT, I could be helping  
16 a customer here, and then over here, I’m doing my CBT training. And I let it run so  
17 I could go faster. And then I come back again, take care of [a] customer. I would  
18 just skip to the next page. And then come back to my—to my customer. And then  
19 I’ll go back. And I’m looking at it. I’m just trying to skip, next, next. Because I’m  
20 just trying to get it out of the way because we already have so many things to do.  
21 We didn’t care—not that we didn’t care. But everybody just wanted to get the  
22 CBTs out of the way.

23 **C. Marine Bargas’ Employment with Rite Aid**

24 16. In about June 2001, Plaintiff Marine Bargas applied for a cashier/clerk  
25 position at Rite Aid. She was hired to work at a store located in downtown Los Angeles.  
26 Plaintiff worked at that store for about three years. During that time, Plaintiff was  
27 promoted from cashier/clerk to PAC.  
28

1           17. After about three years, Plaintiff's husband (then, her boyfriend), with whom  
2 she had been working, received a promotion. As a result, Plaintiff was transferred to a  
3 different downtown store. In about 2003 or 2004, after a few months working in the new  
4 downtown location, Plaintiff received a promotion to Shift Supervisor. This promotion  
5 elevated Plaintiff to the management team for the first time.

6           18. As a Shift Supervisor, Plaintiff received a set of keys to the store and the  
7 office, and access to the safe. Plaintiff was authorized to open and close the store, and to  
8 do most other tasks associated with management outside of hiring, firing, and scheduling  
9 store associates.

10          19. After about six or seven months, Plaintiff was transferred to another Rite Aid  
11 store in downtown Los Angeles. Soon after the transfer, Plaintiff was promoted to  
12 Assistant Manager. Plaintiff worked as an Assistant Manager at the third downtown store  
13 for about two to three years.

14          20. After about three years, Plaintiff's District Manager asked to her to take on a  
15 new role traveling between stores in southern California to help Store Managers stay  
16 caught up with their obligations. Often, Plaintiff was asked to help with some of the  
17 physical labor in the stores in order to free up trainee Store Managers to focus on learning  
18 their management duties.

19          21. Plaintiff estimated that, in her new role, she worked at a new store about  
20 every three months. Plaintiff worked at stores in Alhambra, Rosemead, Pico Rivera,  
21 Compton, Commerce, and others.

22          22. Eventually, Plaintiff was promoted to Store Manager. Rite Aid employed  
23 Plaintiff as a Store Manager from June 14, 2009 to April 5, 2013. The whole time Rite  
24 Aid employed Plaintiff as a Store Manager, it classified her as an exempt employee under  
25 California's labor laws.

26          23. In June 2009, Plaintiff was assigned to a store in the city of **Downey**,  
27 California. Plaintiff worked at the Downey store for about a year.

28

1           24.    Near the end of June 2010, Plaintiff went on maternity leave. When she  
2 returned to Rite Aid in October 2010, she was assigned to a different store in the city of  
3 **Commerce**, California. Plaintiff managed the Commerce store for a little over two years.

4           25.    In September 2012, Plaintiff was transferred to a store in the city of  
5 **Maywood**, California. Plaintiff remained a Store Manager at the Maywood store until she  
6 left Rite Aid in April 2013.

7           26.    For the pay periods between June 14, 2009 and April 24, 2010, Plaintiff's  
8 weekly salary as a Rite Aid Store Manager was **\$1,038.46**. For the pay periods between  
9 April 24, 2010 and April 24, 2011, Plaintiff's weekly salary was **\$1,064.42**. For the pay  
10 periods between April 24, 2011 and May 5, 2012, Plaintiff's weekly salary was **\$1,080.38**.  
11 For the pay periods between May 5, 2012 and April 5, 2013, Plaintiff's weekly salary was  
12 **\$1,107.39**. Plaintiff's salary as a Store Manager was at least twice the state minimum  
13 wage for full time employment.

14           27.    Rite Aid required that a member of the management team with keys (that is, a  
15 Store Manager, an Assistant Manager, or a Shift Supervisor) be present in the store at all  
16 times during open business hours.

17           28.    During her employment as a Store Manager, Rite Aid did not pay Plaintiff  
18 premium overtime wages when Plaintiff worked more than 40 hours per week. Rite Aid  
19 also did not pay Plaintiff premium overtime wages when she worked more than eight  
20 hours per day.

21           29.    Rite Aid did not keep records of the actual hours Plaintiff worked.

22           30.    Rite Aid did not keep records of when Plaintiff's meal periods began and  
23 ended, or whether Plaintiff was afforded rest breaks.

24           31.    As a Store Manager, Plaintiff never received an additional hour of pay on  
25 days when she did not receive an uninterrupted, off-duty meal period lasting at least 30  
26 minutes before the end of the fifth hour of work (*i.e.* meal period premium wages).

1           32. As a Store Manager, Plaintiff never received an additional hour of pay on  
2 days when she did not receive an uninterrupted, off-duty rest break lasting at least ten  
3 minutes for every four hours of work (*i.e.* rest break premium wages).

4           **D. Marine Bargas' Schedule**

5           33. DOWNEY: Plaintiff testified that she worked 12 hour days five days per  
6 week for the first three months she managed the Downey store. Plaintiff testified that she  
7 worked 10–12 hour days about three days per week thereafter, until she went on maternity  
8 leave. Plaintiff testified that she worked a sixth day per week about twice per month and  
9 said that she worked a 24 hour shift between four and seven times while managing the  
10 Downey store.

11           34. COMMERCE: Plaintiff testified that for about the first three months she  
12 managed the Commerce store, she worked 12 hour days five days per week. Plaintiff did  
13 not testify to her typical schedule thereafter at Commerce.

14           35. MAYWOOD: Plaintiff testified that she worked 12 hour days six days per  
15 week for about the first six months that she worked there. She estimated that there was  
16 only about one week per month during that time that she did not work six days per week.  
17 Plaintiff did not testify to her typical schedule thereafter at Maywood.

18           **1. Schedule Data**

19           36. Rite Aid kept a record of the times that Plaintiff was scheduled to work  
20 between December 2009 (about six months after Plaintiff became a store manager at  
21 Downey) and March 2013 (about a month before Plaintiff left Rite Aid, on April 4, 2013).  
22 These records were admitted into evidence as a Microsoft Excel file. (*See* Exhibit 185A).  
23 In total, Exhibit 185A includes 741 time entries for Plaintiff.

24           37. Plaintiff testified that a typical shift lasted nine hours, comprised of an eight  
25 hour workday plus one hour for lunch. Of the 741 entries, 205 (or about 28%) recorded a  
26 scheduled shift of greater than nine hours. Eighty six entries (or about 12%) recorded a  
27 scheduled shift of less than nine hours. Plaintiff was thus scheduled to work a regular  
28 nine hour shift about 60% of the time.

1           38. Exhibit 185A also records that Plaintiff was scheduled to work six days per  
2 week for 20 out of 144 total weeks. She was scheduled to work seven days per week for  
3 three weeks. In sum, Plaintiff was scheduled to work more than five days per week about  
4 16% of the time.

5           39. At the Downey store, Plaintiff was typically scheduled to work a 9:00 a.m. to  
6 6:00 p.m. shift, although she was not infrequently scheduled to work 9:00 a.m. to 7:00  
7 p.m. or 8:00 a.m. to 5:00 p.m.

8           40. At the Commerce store, Plaintiff was typically scheduled to work from 7:00  
9 or 8:00 a.m. to 5:00 p.m. Near the end of her time at Commerce, Plaintiff typically was  
10 scheduled to work from 7:30 a.m. to 4:30 p.m.

11           41. At the Maywood store, Plaintiff was typically scheduled to work either 6:00  
12 a.m. to 3:00 p.m. or 7:00 a.m. to 4:00 p.m. Plaintiff was also occasionally scheduled to  
13 work from 5:00 a.m. to 2:00 p.m. or 6:30 a.m. to 3:30 p.m.

## 14                   **2. Testimony re Actual Hours Worked**

15           42. Plaintiff testified that the schedule was not an accurate representation of the  
16 amount of time she actually worked. Plaintiff testified that she occasionally arrived to  
17 work later than she was scheduled or left earlier than she was scheduled to leave. Plaintiff  
18 testified that on other occasions, she would arrive to work one or two hours earlier than  
19 she was scheduled and often stayed several hours later than she was scheduled. Plaintiff  
20 further testified that she often was asked to attend meetings or take part in inventories on  
21 days when she was scheduled to be off.

22           43. Mauricio Quintanilla, who was a shift supervisor with Plaintiff at the  
23 Downey store, testified that his shift overlapped with Plaintiff's about four out of five  
24 days per week. Quintanilla typically worked from 3:00 p.m. until 11:00 p.m. Quintanilla  
25 testified that he believed Plaintiff usually started work at 7:00 a.m. He typically saw  
26 Plaintiff leave work at 6:30 or 7:00 p.m.

27           44. Bonnie Ray Reyes, who was a cashier/clerk for Plaintiff in the Downey  
28 Store, testified that Plaintiff typically left work at 6:00 or 7:00 p.m.

1           45.   Kandice Valdivia, who was first a shift supervisor and later an assistant  
2 manager with Plaintiff at the Commerce store, testified that on days when the store  
3 received stock (“load days”), Valdivia would arrive at 5:00 a.m. to unload the truck. Load  
4 days occurred about once per week. On those days, Plaintiff would arrive at 7:00 a.m. to  
5 open the store. Sometimes, this pattern was reversed: Plaintiff would arrive at 5:00 a.m.  
6 to help with the load, while Valdivia would arrive at 7:00 a.m. to open the store. Valdivia  
7 testified that on load days Plaintiff would typically leave around 6:00 or 7:00 p.m.

8           46.   Valdivia testified that she typically observed Plaintiff leave work at 5:00 or  
9 6:00 p.m., but also remembered seeing Plaintiff stay until the store closed at 9:00 or 10:00  
10 p.m. a few times per month.

11          47.   Imelda Fernandez, who occasionally worked the opening shift at the  
12 Commerce store with Plaintiff, testified that she would sometimes arrive half an hour to  
13 an hour later than she was scheduled. Fernandez testified that when she worked the  
14 closing shift she would typically arrive at 3:30 or 4:30 p.m., at which time Plaintiff  
15 typically would have already left for the day. Fernandez testified that she never saw  
16 Plaintiff stay for a full eight hour shift.

17          48.   Maria Garcia, who regularly worked the opening shift at the Commerce store  
18 with Plaintiff, testified that Plaintiff would arrive half an hour later than she was  
19 scheduled about 80% of the time. Garcia further testified that it was her understanding  
20 that Store Managers were expected by their District Managers to work ten hours per day,  
21 at least five days per week, and that Store Managers were expected to be in the store until  
22 at least 5:00 p.m.

23          49.   Cynthia Pena, who often worked the opening shift at the Commerce store  
24 with Plaintiff, testified that Plaintiff would usually arrive between ten minutes and half an  
25 hour later than she was scheduled.

26          50.   Carlos Aguila was an assistant store manager at the Maywood store with  
27 Plaintiff starting in October of 2012. He testified that Plaintiff typically worked the  
28

1 morning shift, whereas he typically worked either the mid or closing shift. Aguila  
2 testified that his shift would overlap with Plaintiff's about three or four times per week.

3 51. Aguila testified that he typically saw Plaintiff leave work at 6:00 or 7:00 p.m.  
4 He remembered that she would stay late stocking, building displays, and so on. Aguila  
5 never saw Plaintiff leave earlier than 5:00 p.m.

6 52. Aguila testified that Plaintiff frequently came in to work on her day off; that  
7 is, he frequently saw her working a sixth, unscheduled day.

8 53. Lisa Angulo, who was an assistant manager for Plaintiff for three months at  
9 the Maywood store, testified that she sometimes observed Plaintiff leave early; typically,  
10 Plaintiff would explain that she was leaving early because she had not taken a lunch.

11 54. Marilyn Contreras, Plaintiff's District Manager at Maywood, testified that  
12 she sent out the email in Exhibit 78 informing Store Managers that they were not to leave  
13 before 5:00 p.m. without specific permission. Contreras explained that she was criticized  
14 by a supervisor for that email, but never expressly communicated to her Store Managers  
15 that they were permitted to leave before 5:00 p.m.

### 16 3. Findings

17 55. Based on the foregoing, the Court finds that Plaintiff typically worked in  
18 excess of 40 hours per week. Even crediting the testimony that Plaintiff regularly arrived  
19 a half hour late to work, most of the testimony confirms that Plaintiff left after 6:00 p.m.  
20 nearly every time she worked a morning shift, which was most of the time.

21 56. The Court also relies on Plaintiff's scheduled hours to provide a baseline  
22 estimate of the hours Plaintiff actually worked. Although the witnesses consistently  
23 testified to the fact that Plaintiff's schedule was not an accurate record of the time she  
24 actually spent at work, the Court finds it instructive that, consistent with the testimony  
25 regarding her actual hours, Plaintiff was occasionally scheduled to work six or even seven  
26 days per week, and that Plaintiff was scheduled to work more than nine hours per day  
27 almost a third of the time. Considering Plaintiff's schedule together with the testimony  
28 that Plaintiff often came to work late but typically worked later than she was scheduled,

1 and sometimes worked days when she was not scheduled, the Court finds that, on average,  
2 Plaintiff worked between 45 and 50 hours per week throughout her time as a Rite Aid  
3 Store Manager.

4 **E. Marine Bargas' Weekly Tasks**

5 57. Mauricio Quintanilla, who worked with Plaintiff at the Downey store,  
6 testified that he frequently saw her on the floor doing the sorts of work that other store  
7 associates do, including stocking merchandise, working on the seasonal displays, working  
8 at the registers, dipping ice cream, or working in the photo department. Quintanilla  
9 estimated that he saw Plaintiff engaged in these tasks about 80% of the time and rarely  
10 saw her in the back office.

11 58. Quintanilla testified that his lunch hour was typically at 5:30 or 6:00 p.m. He  
12 testified that Plaintiff would usually take over whatever he was doing — whether he was  
13 on the register or the sales floor stocking shelves — while he took an hour for lunch.

14 59. Robyn Brouillette, who worked with Plaintiff for about two months at the  
15 Downey store, testified that Plaintiff spent most of her time in the office — about five or  
16 six hours per day. Brouillette testified that when Plaintiff did come out onto the floor, she  
17 typically was responding to an associate request for assistance (*e.g.*, voiding a transaction  
18 or approving a return) rather than assisting the associates with the manual labor of running  
19 the store.

20 60. Bonnie Ray Reyes, who worked with Plaintiff for a few months at the  
21 Downey store, testified that Plaintiff was in the office about 85% of the time. Reyes  
22 usually overlapped with Plaintiff in the afternoon. When Reyes saw Plaintiff on the sales  
23 floor, Plaintiff was typically walking the store and checking in with associates, rather than  
24 scooping ice cream, stocking, breaking down load, or cleaning.

25 61. Kellie Reyes, who also worked with Plaintiff for a few months at the Downey  
26 store, testified that she saw Plaintiff in the office about 75% of the time. Reyes testified  
27 that when she saw Plaintiff out on the floor, it was typically to do managerial tasks, such  
28 as checking on stock. Reyes testified that because she worked with Plaintiff while

1 Plaintiff was pregnant, Reyes rarely saw Plaintiff do much manual labor. Occasionally  
2 Reyes saw Plaintiff stocking and cleaning the area around the registers.

3 62. Kandice Valdivia, who worked with Plaintiff at the Commerce store, testified  
4 that Plaintiff did not typically sit in the office while she was working with Valdivia.  
5 Plaintiff would complete any tasks that had to be done in the office early in the day, and  
6 then would come out onto the floor to help out her associates. Valdivia frequently saw  
7 Plaintiff breaking down load, stocking shelves, and working on the floor. Valdivia  
8 testified that Plaintiff would frequently relieve employees on the register to allow them to  
9 do other tasks in the store.

10 63. Imelda Fernandez, who worked with Plaintiff at the Commerce store,  
11 testified that Plaintiff spent most of her time in the office. Fernandez testified that when  
12 Plaintiff did come out of the office, she would check in at the front, greet customers, give  
13 instructions for restocking, and then return to the office. Fernandez rarely saw Plaintiff  
14 doing manual labor in the store, *e.g.* scooping ice cream, stocking, breaking down load, or  
15 cleaning.

16 64. Fernandez testified that she frequently saw Plaintiff take a lunch, but that the  
17 associates in the store felt free to interrupt Plaintiff's lunch with questions about work.  
18 Fernandez testified that, on occasion, she herself interrupted Plaintiff's lunch with work-  
19 related questions.

20 65. Maria Garcia, who worked with Plaintiff at the Commerce store, testified that  
21 she saw Plaintiff in the office more often than Garcia saw Plaintiff on the floor doing  
22 manual labor. When Garcia had questions for Plaintiff, or needed help with a task,  
23 typically she would find Plaintiff in the office.

24 66. Garcia also testified that on most days, Plaintiff would spend a full hour  
25 eating lunch in the breakroom with Garcia.

26 67. Cynthia Pena, who worked with Plaintiff at the Commerce store, testified that  
27 in her estimation Plaintiff spent about 80% of her time in the office. Pena did not recall  
28

1 seeing Plaintiff doing much manual labor in the store; specifically, Pena did not frequently  
2 see Plaintiff stocking, breaking down the load, scooping ice cream, or cleaning.

3 68. Carlos Aguila, who was an assistant manager for Plaintiff at the Maywood  
4 store, testified that on load days Plaintiff would typically work the registers and stock the  
5 front part of the store while the rest of the employees pulled the merchandise off the truck  
6 and stocked the shelves. This occurred during a period of about six to seven hours once  
7 per week.

8 69. Lisa Angulo, who worked with Plaintiff at the Maywood store, testified that  
9 she saw Plaintiff spend more time in the office doing paperwork than on the floor.  
10 Angulo testified that she only occasionally saw Plaintiff stocking or breaking down load  
11 and never saw Plaintiff cleaning. She testified that of the three or four hours that she  
12 typically overlapped with Plaintiff, she would see Plaintiff doing floor tasks like helping  
13 customers or scooping ice cream for about an hour.

14 70. Leodoro Rodriguez, who worked with Plaintiff at the Maywood store,  
15 testified that Plaintiff spent more time on the floor than in the office. He testified that  
16 Plaintiff frequently received phone calls from her husband, which she had to go into the  
17 office to take.

### 18 **1. Inventories**

19 71. Plaintiff testified that while she managed the Downey store, she took part in  
20 preparations for inventories in about five other stores. She often was asked to help with  
21 inventory preparations on her days off. Each inventory took about six hours.

22 72. Plaintiff's tasks included organizing and packing away product, stocking  
23 shelves, completing paperwork, and so on.

### 24 **2. Remodels**

25 73. Plaintiff testified that while she managed the Commerce store, she took part  
26 in remodels at two other stores: Long Beach/Compton and Downey. Plaintiff's  
27 responsibilities during the remodels included cleaning and stocking shelves, putting new  
28 labels on product, unloading stock from the truck, and setting up planograms.

1           74. Plaintiff testified that she worked three days per week for four weeks on the  
2 Long Beach remodel.

3           75. Carlos Aguila testified that he met Plaintiff while working on the remodel of  
4 the Long Beach store. He testified that the Long Beach remodel occurred in about 2009  
5 and lasted about a month. Aguila saw Plaintiff working on the remodel at Long Beach “a  
6 couple” times per week, for multiple weeks. During the remodel, Aguila saw Plaintiff  
7 stocking shelves and otherwise generally taking part in the physical tasks of the remodel.

8           76. The Court infers that Plaintiff adjusted her schedule at the Commerce store  
9 accordingly, such that she worked a typical 45–50 hour week during the remodel.

10          77. Plaintiff testified that she only worked the day of the grand opening for the  
11 Downey remodel. She spent a day cleaning the store, organizing it, and setting up tables.

12          78. Plaintiff testified that during the Downey remodel, she sent two Assistant  
13 Managers to help with the remodel. As a result, she was short-handed, and had to work a  
14 full eight hour shift on her day off. Plaintiff estimated that during the remainder of the  
15 three-week Downey remodel, she worked twelve hours per day, five days per week, to  
16 make up for the missing labor.

17          79. Additionally, the Maywood store was remodeled while Plaintiff was  
18 employed as its Store Manager.

19          80. Carlos Aguila testified that he worked on the remodel of the Maywood store  
20 with Plaintiff. He testified that the remodel lasted about a month. During that time,  
21 Aguila testified that Plaintiff worked alongside the other store associates to complete the  
22 physical work of the remodel, including stocking shelves and so on.

### 23           **3. Findings**

24          81. Although there is conflicting testimony on this point, the Court credits the  
25 numerous, relatively uninterested witnesses who testified that Plaintiff was usually in the  
26 office during the work day.

27          82. In addition to the time Plaintiff spent in the office, the testimony makes clear  
28 that Plaintiff also spent some portion of her time on the floor performing managerial tasks.

1 There is ample testimony that Plaintiff conducted walk-throughs, trained associates on the  
2 floor, and otherwise took the opportunity to direct her associates in their tasks.  
3 Accordingly, the Court finds that Plaintiff typically spent more than 50% of her time on  
4 managerial tasks.

5 83. The Court further finds, however, that Plaintiff spent the majority of her time  
6 performing nonmanagerial work during those periods in which she was asked to help with  
7 inventories and remodels at other stores. The Court credits Plaintiff's uncontroverted  
8 testimony that when she was sent to other stores to help with these tasks she spent  
9 approximately six hours per day performing manual labor, such as stocking shelves,  
10 cleaning, unloading the truck, and so on.

11 84. Specifically, the Court finds that Plaintiff spent 16 weeks performing  
12 nonexempt work in connection with remodels and inventories: Plaintiff spent four weeks  
13 working on the Long Beach remodel; four weeks working on the Maywood remodel; three  
14 weeks working on the Downey remodel; and five additional weeks helping other Rite Aid  
15 stores with inventory.

16 85. Assuming that Plaintiff adjusted her schedule to keep to her typical 45–50  
17 hour week while working on the Long Beach and Maywood remodels, the Court infers  
18 that Plaintiff worked four, 45–50 hour weeks during each remodel.

19 86. During the Downey remodel, when two of her associates were loaned to the  
20 remodel effort, Plaintiff spent the majority of her time on nonmanagerial tasks to  
21 compensate for the missing labor. Accordingly, the Court finds that during the Downey  
22 remodel, Plaintiff spent the majority of her time performing nonmanagerial tasks for three  
23 weeks, at 12 hours per shift, five days per week; plus one additional eight hour shift on  
24 Plaintiff's day off and one additional six hour shift for the grand opening.

25 87. Finally, the Court finds that during weeks in which Plaintiff helped other  
26 stores with inventory, she worked her typical 45–50 hour week in addition to spending six  
27 hours on her day off helping with inventory at the other store.

28

1           **F.    Failure to Pay Wages Timely**

2           88.    Plaintiff resigned her employment on April 5, 2013.

3           89.    All of Plaintiff's wages were due to be paid within 72 hours of Plaintiff's  
4 resignation, *i.e.* by April 8, 2013.

5           90.    Rite Aid did not pay Plaintiff any of the overtime wages or meal and rest  
6 break premiums to which Plaintiff believes she is entitled.

7           91.    Plaintiff's daily wage rate at the time of her resignation was \$27.68 per hour.

8           **G.    Procedural History of This Action**

9           92.    On March 22, 2013, before Plaintiff resigned from Rite Aid, she filed this  
10 action in the Los Angeles Superior Court.

11          93.    On its face, Plaintiff's Complaint alleged two claims. First, the Complaint  
12 alleged that Rite Aid failed to pay her overtime wages in violation of California Labor  
13 Code section 1194 and the applicable California Industrial Welfare Commission Wage  
14 Order 7-2001(3). Second, the Complaint alleged that Rite Aid engaged in an unfair  
15 business practice under California Business & Professions Code sections 17200, *et seq.*  
16 (the "UCL") by requiring Plaintiff to work without providing meal and rest breaks as  
17 required by California Labor Code section 226.7 and Wage Order 7-2001(11)–(12).

18          94.    On October 26, 2016, the Court held that Plaintiff was entitled to pursue a  
19 third claim for Rite Aid's failure to pay her earned and unpaid wages upon termination of  
20 her employment, in violation of California Labor Code sections 201 and 202. (*See* Order  
21 re Defendant Rite Aid Corporation's Motion for Partial Judgment on the Pleadings and  
22 Motion to Exclude Claim for Waiting-Time Penalties from the Pre-Trial Order (the  
23 "October Order"), at 1 (Docket No. 118)). In that same October Order, the Court held that  
24 Plaintiff's second claim for unpaid meal and rest break wage premiums was restitutionary,  
25 and thus properly could be alleged under the UCL.

26          95.    Trial in this action commenced on November 1, 2016. On November 10,  
27 2016, the matter was submitted to the Court for deliberation.

1           **H.    Damages Calculation**

2           96.    The Court will conclude below that Plaintiff has met her burden of proof as  
3 to liability for the weeks in which she worked on remodels or store inventories in other  
4 Rite Aid stores. Accordingly, Plaintiff is entitled to unpaid overtime wages and meal and  
5 rest break wage premiums for those weeks.

6           97.    The legal standards governing the award of (1) damages for Plaintiff’s unpaid  
7 overtime wages and (2) restitution for Plaintiff’s unpaid meal and rest break wages are set  
8 forth below, in the Court’s Conclusions of Law. Based on the Court’s legal conclusions,  
9 the Court finds Plaintiff’s award should be calculated as follows:

10                   **1.    Overtime Premiums**

11           98.    The Court previously found that Plaintiff worked between 45 and 50 hours  
12 per week and that Plaintiff was misclassified as an exempt employee for a total of sixteen  
13 weeks. The Court will take the average of Plaintiff’s typical hours and assume that a  
14 typical, five-day work week entailed 48 hours of work.

15           99.    California mandates that an employee be paid one and a half times the  
16 employee’s regular rate of pay for time worked in excess of 40 hours per week. (*See*  
17 *infra*, ¶¶ 42–44).

18           100. Plaintiff presented evidence of her weekly salary for each yearly salary  
19 period. The Court will use Plaintiff’s salary during the June 14, 2009 to April 24, 2010  
20 pay period (\$1,038.46 per week, or \$25.96 per hour) as the “regular rate of pay” for  
21 calculating overtime wages while Plaintiff worked as Store Manager of the Downey store.  
22 Plaintiff received this salary for the majority of the time she worked at the Downey store.  
23 The overtime premium wage for this salary is \$38.94 per hour.

24           101. The Court will use Plaintiff’s salary during the April 24, 2011 to May 5, 2012  
25 pay period (\$1,080.38 per week, or \$27.01 per hour) as the “regular rate of pay” for  
26 calculating overtime wages while Plaintiff worked as Store Manager of the Commerce  
27 store. Plaintiff came in to the Commerce store earning a lower salary and received two  
28 raises while working there. The April 2011 to May 2012 pay period is the only pay period

1 in which Plaintiff worked entirely in Commerce, and is the salary she earned for the  
2 majority of the time she worked at the Commerce store. The overtime premium wage for  
3 this salary is \$40.52 per hour.

4 102. The Court will use Plaintiff's salary during the May 5, 2012 to April 5, 2013  
5 pay period (\$1,107.39 per week, or \$27.68 per hour) as the "regular rate of pay" for  
6 calculating overtime wages while Plaintiff worked as Store Manager of the Maywood  
7 store. This is the only salary Plaintiff that earned while working at the Maywood store.  
8 The overtime premium wage for this salary is \$41.52 per hour.

9 103. **Long Beach Remodel**: Plaintiff presented no evidence that she worked  
10 more than a typical five-day week while participating in the Long Beach remodel. The  
11 Court previously found that Plaintiff spent four weeks working on the remodel.  
12 Therefore, Plaintiff's overtime hours for the duration of the Long Beach remodel amount  
13 to eight hours per week, for a total of 32 hours. Plaintiff worked at the Commerce store  
14 during the Long Beach remodel. The Court thus awards Plaintiff **\$1,296.64** in premium  
15 overtime wages for the period of the Long Beach remodel.

16 104. **Maywood Remodel**: Plaintiff presented no evidence that she worked more  
17 than a typical five day week while participating in the Maywood remodel. The Court  
18 previously found that Plaintiff spent four weeks working on the remodel. Therefore,  
19 Plaintiff's overtime hours for the duration of the Maywood remodel amount to eight hours  
20 per week, for a total of 32 hours. Plaintiff worked at the Maywood store while it was  
21 being remodeled. The Court thus awards Plaintiff **\$1,328.64** in premium overtime wages  
22 for the period of the Maywood remodel.

23 105. **Downey Remodel**: The Court previously found that Plaintiff worked 12  
24 hours per day, five days per week for three weeks during the Downey remodel. In  
25 addition, Plaintiff worked one eight hour day on her day off and a six hour day during the  
26 grand opening of the Downey store. Assuming the grand opening added an additional six  
27 hour day to her work week during the three-week period of the Downy remodel, that  
28 amounts to 72 hours of overtime. Plaintiff worked at the Commerce store during the

1 Downey remodel. The Court thus awards Plaintiff **\$2,998.48** in premium overtime wages  
2 for the period of the Downey remodel.

3 106. **Inventory**: The Court previously found that, while working at the Downey  
4 store, Plaintiff five times spent six hours on her day off helping other stores with their  
5 inventory. That amounts to 70 hours of overtime over the course of the five weeks (again,  
6 assuming Plaintiff worked a 48 hour week each of those weeks). The Court thus awards  
7 Plaintiff **\$2,725.80** in premium overtime wages for those weeks in which she assisted  
8 other Rite Aid stores with inventory.

9 107. In sum, Plaintiff is owed **\$8,349.56** in unpaid premium overtime wages.

## 10 2. Meal and Rest Break Premiums

11 108. The Court concludes below that on those days when Plaintiff properly was  
12 classified as nonexempt but worked in her capacity as a Store Manager in her own store,  
13 she was denied meal and rest breaks in violation of section 226.7. On those days when  
14 Plaintiff properly was classified as nonexempt and worked as a laborer to assist with  
15 remodels and inventory, she was not denied meal and rest breaks.

16 109. The Court will apply the same scheme for determining Plaintiff's "regular  
17 rate of pay" as outlined above. California mandates that an employee be paid an  
18 additional hour of compensation for each work day that a meal or rest break was not  
19 provided. (*See infra*, ¶¶ 45–48).

20 110. **Long Beach Remodel**: The Court previously found that during the Long  
21 Beach remodel, Plaintiff worked three days per week for four weeks on the remodel. The  
22 Court further found that Plaintiff did not work more than a five day week during the Long  
23 Beach remodel. Plaintiff was thus denied meal and rest breaks on eight days during the  
24 Long Beach Remodel (*i.e.*, those days when she worked as a Store Manager in the  
25 Commerce store). Accordingly, Plaintiff is owed **\$216.08** in premium wages for missed  
26 meal and rest breaks during the Long Beach remodel.

27 111. **Maywood Remodel**: The Court previously found that during the Maywood  
28 remodel, Plaintiff worked primarily on remodeling tasks every day of the week.

1 Accordingly, Plaintiff is not owed premium wages for missed meal and rest breaks during  
2 the Maywood remodel.

3 112. **Downey Remodel**: The Court previously found that during the Downey  
4 remodel, Plaintiff performed primarily nonexempt labor as a Store Manager for three  
5 weeks, at 12 hours per shift, five days per week; plus one eight hour additional shift on  
6 Plaintiff's day off and one six hour day for the grand opening. Plaintiff thus was denied  
7 meal and rest breaks on 16 days during the Downey remodel (*i.e.*, every day except the  
8 grand opening). Accordingly, Plaintiff is owed **\$432.16** in premium wages for missed  
9 meal and rest breaks during the Downey remodel.

10 113. **Inventory**: The Court previously found that Plaintiff spent five weeks while  
11 employed as Store Manager of the Downey store participating in inventory days at other  
12 Rite Aid stores on her day off. Plaintiff is thus owed premium wages for missed meal and  
13 rest breaks for 25 days during that period. (As discussed above, Plaintiff is not owed meal  
14 and rest break premium wages for the inventory days themselves.) Accordingly, Plaintiff  
15 is owed **\$649** in premium wages for missed meal and rest breaks during those weeks.

16 114. In sum, Plaintiff is owed an additional **\$1,297.24** in restitution for unpaid  
17 meal and rest break premiums.

18 115. **In total, Plaintiff is awarded \$9,646.80 in damages and restitution.**

## 19 20 **II. CONCLUSIONS OF LAW**

21 1. The Court concludes that Plaintiff is entitled to some damages for unpaid  
22 overtime wages and some restitution for unpaid meal and rest break premiums while she  
23 was employed as a Store Manager at Rite Aid. Plaintiff is not entitled to compensation for  
24 Rite Aid's refusal to pay Plaintiff those wages when she resigned.

### 25 **A. Claim One: Failure to Pay Overtime**

26 2. Plaintiff has the initial burden of proving the amount and extent of the work  
27 she performed "as a matter of just and reasonable inference." *Duran v. U.S. Bank Nat.*  
28 *Assn.*, 59 Cal. 4th 1, 40–41, 172 Cal. Rptr. 3d 371 (2014) (quoting *Anderson v. Mt.*

1 *Clemens Pottery Co.*, 328 U.S. 680, 687 (1946)). “The burden then shifts to the employer  
2 to come forward with evidence of the precise amount of work performed or with evidence  
3 to negative the reasonableness of the inference to be drawn from the employee’s  
4 evidence. If the employer fails to produce such evidence, the court may then award  
5 damages to the employee, even though the result be only approximate.” *Id.* (quoting *Mt.*  
6 *Clemens*, 328 U.S. at 687–88). The purpose of this burden-shifting framework is to  
7 prevent employers from benefitting from their own poor recordkeeping. *Id.*; accord  
8 *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1053 n.l, 139 Cal. Rptr. 3d 315  
9 (2012) (Werdegar, J., concurring) (relying on *Mt. Clemens*).

10 3. Plaintiff has met her burden. Here, as in *Duran*, Rite Aid failed to keep  
11 accurate records of Plaintiff’s work. See *Duran*, 59 Cal. 4th at 18 (finding that the  
12 employer “kept no records of [its employees’] working hours or the proportion of time  
13 spent either in or outside bank offices”). Based on the testimony of the witnesses and the  
14 scheduling data, the Court has found that Plaintiff typically worked in excess of 40 hours  
15 per week. Accordingly, the burden shifts to Rite Aid to come forward with evidence of  
16 the precise amount of work performed.

17 4. The evidence Rite Aid offers in response — that Plaintiff regularly arrived a  
18 half hour late to work, and that she occasionally left early — is not sufficient to show the  
19 precise amount of work Plaintiff performed. Nor does the evidence negate the  
20 reasonableness of the Court’s inference that Plaintiff typically worked in excess of 40  
21 hours per week. Plaintiff testified that she regularly left work more than an hour after she  
22 was scheduled to leave, and several witnesses corroborated Plaintiff’s testimony.  
23 Moreover, Plaintiff’s former District Manager, Marilyn Contreras, informed Store  
24 Managers in her district that they were not to leave before 5:00 p.m. without specific  
25 permission during a time when Plaintiff was regularly scheduled to arrive at work between  
26 5:00 and 6:30 a.m. Even assuming Plaintiff did not arrive to work until 7:00 a.m. on those  
27 days, complying with her direct supervisor’s directive would have required Plaintiff to  
28 work ten-hour days.

1           5.     Accordingly, Plaintiff’s showing that she typically worked between 45  
2 and 50 hours per week stands unrebutted.

3           6.     Nevertheless, under California law, Plaintiff is not entitled to overtime pay if  
4 Rite Aid can affirmatively prove that Plaintiff qualifies for a statutory exemption. *See*  
5 Cal. Lab. Code §§ 510, 515; *Conley v. Pacific Gas & Electric Co.*, 131 Cal. App. 4th 260,  
6 266, 31 Cal. Rptr. 3d 719 (2005). Rite Aid contends that the executive exemption  
7 precludes Plaintiff from being awarded overtime pay. In the alternative, Rite Aid  
8 contends that the administrative exemption applies. The Court agrees with Rite Aid that  
9 the executive exemption applies, at least in part, and accordingly does not reach the  
10 applicability of the administrative exemption.

11          7.     The executive exemption is an affirmative defense that precludes Rite Aid  
12 from liability if: (1) Plaintiff’s duties and responsibilities involved the management of an  
13 enterprise in which she was employed, or of a customarily recognized department or  
14 subdivision thereof; (2) Plaintiff customarily and regularly directed the work of two or  
15 more other employees; (3) Plaintiff had the authority to hire or fire other employees; (4) in  
16 the course of her duties Plaintiff customarily and regularly exercised discretion and  
17 independent judgment; (5) Plaintiff was engaged primarily in the above duties, which  
18 meet the test of the exemption; and (6) Plaintiff earned a monthly salary equivalent to no  
19 less than two times the state minimum wage for full-time employment. *See* Cal. Code  
20 Regs. tit. 8, § 11070(1)(A)(1). Because the executive exemption is an affirmative defense,  
21 Rite Aid has the burden of proof to show it applies. *See Ramirez v. Yosemite Water Co.*,  
22 20 Cal. 4th 785, 794–95, 85 Cal. Rptr. 2d 844 (1999).

23          8.     The parties do not meaningfully dispute that Plaintiff meets the first three  
24 prongs of the executive exemption test. To meet the first prong, an employee “must be in  
25 charge of and have as his [or her] primary duty the management of a recognized unit  
26 which has a continuing function . . . .” *In re United Parcel Serv. Wage & Hour Cases*,  
27 190 Cal. App. 4th 1001, 1016–17, 118 Cal. Rptr. 3d 834 (2010) (“UPS”) (quoting 29  
28 C.F.R. § 541.104(a)) (finding first prong met where plaintiff managed a package center

1 and supervised an identifiable group of employees within that center). While not  
2 mandatory, “a fixed location and continuity of personnel are both helpful in establishing  
3 the existence of such a unit.” *Id.* Rite Aid’s individual retail locations meet this  
4 definition. *See, e.g., Smith v. Equinox Holdings, Inc.*, No. 14-CV-00846-LB, 2015 WL  
5 1952564, at \*6 (N.D. Cal. Apr. 10, 2015) (holding that “brick-and-mortar retail shops,  
6 with fixed personnel daily carrying out routinized duties” unquestionably “constitute a  
7 ‘customarily recognized department or subdivision’” of the employer). As a Store  
8 Manager, Plaintiff managed a customarily recognized department or subdivision of the  
9 larger Rite Aid corporation.

10 9. Similarly, Plaintiff does not suggest that she did not customarily and  
11 regularly direct the work of two or more employees, and the evidence shows that she  
12 directed the work of (at least) one Assistant Manager or Shift Supervisor and one  
13 clerk/cashier during the course of a typical day.

14 10. Plaintiff also does not dispute that she had the authority to hire or fire Rite  
15 Aid employees. Plaintiff admitted as much in her testimony at trial. Plaintiff’s argument  
16 that her hiring and firing authority was subject to the approval of her supervisors is better  
17 addressed in the discussion of whether she exercised discretion and independent judgment  
18 in her capacity as a Store Manager.

19 11. Finally, Plaintiff admits that while she was employed as a Store Manager she  
20 earned a monthly salary greater than or equal to two times the state minimum wage for  
21 full-time employment, the sixth element of the executive exemption test.

22 12. Plaintiff vigorously disputes that she qualifies for the executive exemption  
23 under the remaining two prongs of the test.

#### 24 **1. Discretion and Independent Judgment**

25 13. The *UPS* court clarified that the requirement that an employee exercise  
26 discretion and independent judgment generally calls for “the comparison and the  
27 evaluation of possible courses of conduct and acting or making a decision after the various  
28 possibilities have been considered. The term implies that the person has the authority or

1 power to make an independent choice, free from immediate direction or supervision and  
2 with respect to matters of significance.” *UPS*, 190 Cal. App. 4th at 1024 (internal  
3 alterations removed) (quoting 29 C.F.R. § 541.207(a)). “The requirement that discretion  
4 be exercised with respect to ‘matters of significance’ means the decision being made must  
5 be relevant to something consequential and not merely trivial.” *Id.* (quoting 29 C.F.R.  
6 § 541.207(a)). The *UPS* court emphasized that “[a]n employee who merely applies his [or  
7 her] knowledge in following prescribed procedures or determining which procedure to  
8 follow, or who determines specified standards are met or whether an object falls into one  
9 or another of a number of definite grades, classes, or other categories, with or without the  
10 use of testing or measuring devices, is not exercising discretion and independent  
11 judgment.” *Id.* at 1026. On the other hand, “where . . . employer policies and procedures  
12 simply *channel* the exercise of discretion and judgment, as opposed to *eliminating* it  
13 entirely or otherwise constraining it to a degree where any discretion is largely  
14 inconsequential, the executive exemption may still apply. . . . Our charge to construe  
15 exemptions narrowly is not a directive to render them nonexistent.” *Id.* (emphasis in  
16 original) (holding that employees who managed individual package locations exercised  
17 discretion and independent judgment).

18       14. Plaintiff contends that she did not have discretion as to any matters of  
19 significance. For one thing, Rite Aid suggested a weekly schedule for Store Managers to  
20 follow in certain training materials. Similarly, although Plaintiff was responsible for  
21 scheduling employees, the number of hours available to her was strictly rationed  
22 according to a labor budget. Plaintiff was not subject to formal discipline for failing to  
23 meet her labor budget, but was constantly reminded by her superiors of the labor budget’s  
24 importance. Rite Aid even provided Store Managers with a checklist to guide them on  
25 store walkthroughs. Therefore, Plaintiff contends, her daily decisionmaking was  
26 routinized and automated, leaving Plaintiff with little discretion over any significant  
27 decisions regarding the management of the store.

1           15.    However, like the employee in *UPS*, Plaintiff was regularly called upon to  
2 exercise her discretion as to other matters of consequence: Plaintiff was given  
3 discretionary power over training employees and appraising employee performance;  
4 imposing discipline on her own initiative, including talking with an offending employee to  
5 attempt to correct a problem before proceeding through the discipline system; adjusting  
6 inventory orders and maintaining relationships with vendors; developing and  
7 implementing plans for achieving Rite Aid's various initiatives regarding cleanliness,  
8 increased sales, and efficiency (even when the initiatives themselves were passed down to  
9 Plaintiff by her District Manager); advising employees on teamwork and proper customer  
10 service; and adjusting the labor budget to account for likely variations in customer foot  
11 traffic. *See UPS*, 190 Cal. App. 4th at 1024–25.

12           16.    Therefore, although Plaintiff's discretion may have been curtailed in some  
13 instances, Plaintiff still had discretion as to other matters of significance. For example,  
14 Plaintiff was given discretion to hire, discipline, train, and fire employees. Plaintiff  
15 testified that she trained new hires and retrained associates who struggled to complete  
16 their work timely and correctly. If one of Plaintiff's employees continued to provide poor  
17 service, Plaintiff had the discretion to counsel the employee informally before speaking  
18 with human resources about whether to write up the employee formally.

19           17.    Plaintiff also had discretion in prioritizing and delegating tasks to her  
20 employees on a daily basis. It was Plaintiff who assigned her employees work day to day.  
21 Even when a District Manager directed Plaintiff to prioritize one task over another, it was  
22 Plaintiff who determined how her staff could best accomplish that directive. Similarly,  
23 although to some extent Plaintiff's discretion over inventory was channeled by Rite Aid's  
24 various ads and promotions, Plaintiff could adjust ordering based on what historically sold  
25 well in the store, nearby competitors' upcoming sales, and so forth.

26           18.    The Court concludes that, like the employees in *UPS*, Plaintiff exercised  
27 discretion and independent judgment in her work as Store Manager.  
28

1                   2.     **“Primarily Engaged” in Exempt Activities**

2             19.     “Under California law, the phrase ‘primarily engaged’ means ‘more than  
3 one-half of the employee’s worktime’ is spent performing duties that qualify as exempt.”  
4 *UPS*, 190 Cal. App. 4th at 1018. Plaintiff emphasizes that the trier of fact may not  
5 consider otherwise nonexempt duties to be exempt just because “the manager continues to  
6 supervise while performing them.” *Heyen v. Safeway Inc.*, 216 Cal. App. 4th 795, 826,  
7 157 Cal. Rptr. 3d 280 (2013). Rather, “the trier of fact must categorize tasks as either  
8 ‘exempt’ or ‘nonexempt’ based on the purpose for which [Plaintiff] undertook them.” *Id.*

9             20.     Here, Rite Aid itself acknowledged that its Store Managers are not always  
10 properly classified as exempt. The duties of the job may vary, depending on the  
11 individual circumstances in each store. For example, Rite Aid classifies all Store  
12 Managers of stores with a front end sales volume of less than \$1.5 million as nonexempt.  
13 Presumably, this is because these Store Managers must help out with the nonmanagerial  
14 side of the business to such an extent that they cannot properly be classified as exempt.  
15 Therefore, it is quite conceivable that some Store Managers who manage stores with a  
16 front end sales volume of more than \$1.5 million would also find themselves primarily  
17 engaged in nonexempt duties. A particularly diligent or particularly under-staffed Store  
18 Manager might find that she spends more time stocking and serving customers than  
19 supervising her employees, overseeing payroll, and managing the labor budget. In other  
20 words, it is quite likely that in certain of Rite Aid’s stores there is more work to delegate  
21 than hourly employees available to delegate to.

22             21.     Nevertheless the Court concludes that, for the most part, *this* Plaintiff was  
23 primarily engaged in exempt duties. As discussed above, the Court credits the testimony  
24 of those witnesses who recalled that Plaintiff was more likely than not to be in the office  
25 during the work day. Although the parties debated what Plaintiff was doing while in the  
26 office, the Court finds this issue to be irrelevant. If Plaintiff was in the office, she  
27 logically could not have been performing the sorts of nonmanagerial, manual tasks  
28 typically assigned to nonexempt store associates. Plaintiff could not have been, for

1 example, stocking shelves, ringing up customers, or cleaning bathrooms while she was  
2 inside the office. Rather, she must have been engaging primarily in managerial tasks,  
3 such as reviewing payroll, scheduling employees, speaking on the phone with vendors, or  
4 any one of a number of other discretionary tasks for which Plaintiff was responsible.  
5 Therefore, any time Plaintiff spent in the office was necessarily dedicated primarily to  
6 managerial tasks. And, as the Court also found above, Plaintiff performed at least some  
7 de minimus managerial tasks while walking the floor. Accordingly, the Court concludes  
8 that during a typical work week Plaintiff spent the bare majority of her time engaged in  
9 exempt activities.

10 22. Because the Court concludes that Plaintiff was not “multitasking” while  
11 completing most of her managerial tasks, the Court does not consider Plaintiff’s  
12 arguments under *Ramirez v. Yosemite Water Co., Inc.*, 20 Cal. 4th 785, 802, 85 Cal. Rptr.  
13 2d 844 (1999) (requiring work time to be apportioned as either exempt or nonexempt).  
14 Nor need the Court consider Rite Aid’s affirmative defense under *Ramirez* that Plaintiff  
15 was not performing her job duties according to Rite Aid’s reasonable expectations —  
16 Plaintiff typically performed her Store Manager duties according to the job description.

17 23. However, as discussed above in the Findings of Fact, Plaintiff spent a  
18 majority of her time on nonmanagerial — and thus, nonexempt — tasks during weeks in  
19 which she helped with remodels and inventories. The Court previously found that during  
20 remodels and inventories, Plaintiff spent most of her time on manual tasks like stocking  
21 shelves, cleaning, unloading the truck, and so on. Even during weeks in which Plaintiff  
22 assisted with inventory or a remodel only on her day off, the Court concludes that this was  
23 sufficient to shift the balance of her time, such that she was primarily engaged in  
24 nonexempt work during that week. In total, this amounts to sixteen weeks in which  
25 Plaintiff was misclassified because she was primarily engaged in nonexempt work.

26 **B. Claim Two: Failure to Provide Meal Periods and Rest Breaks**

27 24. California Labor Code section 226.7 states that “[i]f an employer fails to  
28 provide [a nonexempt] employee a meal or rest or recovery period . . . the employer shall

1 pay the employee one additional hour of pay at the employee’s regular rate of  
2 compensation for each workday that the meal or rest or recovery period is not provided.”  
3 *Id.*; see also Cal. Lab. Code § 512; Cal. Code Regs., tit. 8 § 11050(11). In *Brinker*, the  
4 California Supreme Court recently clarified an employer’s duty with respect to meal  
5 breaks under section 512(a) “is an obligation to provide a meal period to its employees.”  
6 53 Cal. 4th at 1040. “The employer satisfies this obligation if it relieves its employees of  
7 all duty, relinquishes control over their activities and permits them a reasonable  
8 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage  
9 them from doing so.” *Id.* Therefore, to comply with the Labor Code, an employer must  
10 affirmatively relieve its employee of all duty: “doing so transforms what follows into an  
11 off-duty meal period, whether or not work continues.” *Id.* at 1039–40.

12 25. Employers also must provide “a net 10 minutes of rest . . . in each ‘work  
13 period’ and the rest period must be, as the language implies, duty-free.” *Augustus v. ABM*  
14 *Sec. Servs., Inc.*, 2 Cal. 5th 257, 267, 211 Cal. Rptr. 3d 634 (2016) (quoting and adopting  
15 Dept. Industrial Relations, DLSE Opn. Letter No. 2002.02.22 (2002)). “That is, during  
16 rest periods employers must relieve employees of all duties and relinquish control over  
17 how employees spend their time.” *Id.* at 269.

18 26. In its October Order, the Court held, joining the majority of courts in the  
19 Central District, that Plaintiff’s claims for payments under section 226.7 of the California  
20 Labor Code are restitutionary because they are akin to overtime wages. Therefore, any  
21 unpaid meal and rest break premiums are recoverable under the UCL. To the extent that  
22 Rite Aid renews its arguments that unpaid meal and rest break premiums are not wages  
23 and are not recoverable under the UCL, the Court declines to revisit its prior Order.

24 27. Because Plaintiff was classified as an exempt employee, Rite Aid did not  
25 make an effort affirmatively to relieve Plaintiff of all duty for 30 minutes to permit her to  
26 take an off-duty lunch break. Similarly, Rite Aid did not make an effort to ensure Plaintiff  
27 received rest breaks. Rather, Plaintiff was expected to be on duty to field questions  
28 throughout her shift, even during her lunch hour. The testimony at trial reflected, and the

1 Court thus found, that Plaintiff regularly was interrupted during her lunch break to field  
2 associate questions or assist with a problem on the floor. Often, no other member of the  
3 management team was available to assist store associates during Plaintiff’s lunch hour. If  
4 associates had questions, Plaintiff’s lunch was interrupted by necessity.

5 28. In contrast, when Plaintiff assisted with remodels and inventories, the  
6 testimony reflects that Rite Aid appropriately treated Plaintiff like an hourly employee,  
7 ensuring that she was provided the opportunity to take uninterrupted meal and rest breaks.

8 29. Accordingly, the Court concludes that on those days when Plaintiff should  
9 have been classified as nonexempt and worked in her capacity as a Store Manager in her  
10 own store, she was denied meal and rest breaks in violation of section 226.7. On those  
11 days when Plaintiff properly should have been classified as nonexempt and worked as a  
12 laborer to assist with remodels and inventory, she was not denied meal and rest breaks.

13 **C. Claim Three: Failure to Pay Timely Wages**

14 30. California Labor Code section 203 provides that “[i]f an employer willfully  
15 fails to pay . . . any 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  
17 paid or until an action therefor is commenced . . . .” Plaintiff contends that Rite Aid  
18 willfully failed to pay her overtime wages and meal and rest break premium wages when  
19 she terminated her employment, and thus Rite Aid should be required to pay the waiting  
20 time penalty under section 203.

21 31. “Willfulness” is defined in the California Code of Regulations to occur  
22 “when an employer *intentionally* fails to pay wages to an employee whose wages are  
23 due.” Cal. Code Regs. tit. 8, § 13520 (emphasis added). “[A] good faith dispute that any  
24 wages are due will preclude imposition of waiting time penalties under Section 203.” *Id.*  
25 The regulations further define a “good faith dispute” as occurring “when an employer  
26 presents a defense, based in law or fact which, if successful, would preclude any recovery  
27 on the part of the employee.” *Id.* § 13520(a). The fact that a defense is ultimately  
28 unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.*

1           32. Here, the Court concludes that Rite Aid disputed in good faith whether  
2 Plaintiff was properly classified as an exempt employee, precluding the application of  
3 waiting time penalties. Rite Aid’s exemption defense was partially successful, and thus  
4 was based on a good faith reading of the law. Rite Aid’s arguments that it did not owe  
5 Plaintiff unpaid overtime or meal and rest break premium wages were “neither  
6 unreasonable nor frivolous[.]” *FEI Enterprises, Inc. v. Kee Man Yoon*, 194 Cal. App.  
7 4th 790, 802, 124 Cal. Rptr. 3d 64 (2011). Plaintiff is not entitled to waiting time  
8 penalties under section 203.

9           **D. Rite Aid’s Affirmative Defenses**

10           33. In the Final Pretrial Conference Order (Docket No. 125), Rite Aid indicated  
11 that, in addition to its exemption defenses, it planned to pursue a plethora of other  
12 affirmative defenses at trial. The Court need not separately address most of these; Rite  
13 Aid’s affirmative defenses regarding unpaid wages, for example, are addressed above in  
14 the context of Plaintiff’s claims. Others, such as Rite Aid’s contention that Plaintiff failed  
15 to mitigate her damages, or Rite Aid’s statute of limitations defense, were not  
16 meaningfully pursued at trial. Therefore, Rite Aid did not meet its burden of proof as to  
17 those affirmative defenses. The Court notes that virtually all of the affirmative defenses  
18 were simply different iterations of Rite Aid’s factual and legal arguments.

19           34. One affirmative defense was regularly alluded to by the parties during trial,  
20 and thus remains to be addressed. Rite Aid contends that Plaintiff is estopped from  
21 pursuing her claims for unpaid overtime and meal and rest break premiums under the  
22 UCL. The theory hinted at by both parties during trial appears to be that, by continuing to  
23 work as a Store Manager without challenging her misclassification, Plaintiff misled Rite  
24 Aid to its detriment. Throughout the trial, Rite Aid emphasized that it includes in training  
25 materials its expectation that Store Manager spend at least 50% of their time performing  
26 exempt labor. Rite Aid’s theory appears to be that, having been made aware of Rite Aid’s  
27 expectation that Store Managers would primarily perform exempt duties, Plaintiff misled  
28 Rite Aid by not reporting that she was unable to meet those expectations.

1           35. In support of its defense, Rite Aid cites only to generic authorities on  
2 equitable estoppel. Neither of the two cases upon which it relies, *Lantzy v. Centex Homes*,  
3 31 Cal. 4th 363, 384 (2003), or *Shaffer v. Debbas*, 17 Cal. App. 4th 33, 43 (1993), applies  
4 the doctrine of equitable estoppel to an employment claim.

5           36. An action under the UCL is equitable in nature and thus allows a plaintiff to  
6 “recover money or property obtained from the plaintiff or persons represented by the  
7 plaintiff through unfair or unlawful business practices.” *Cortez v. Purolator Air Filtration*  
8 *Prod. Co.*, 23 Cal. 4th 163, 173, 96 Cal. Rptr. 2d 518 (2000). Equitable considerations,  
9 including defenses like equitable estoppel, “may enter into the court’s disposition of a  
10 UCL action.” *Id.* at 179. However, equitable defenses are only partial defenses; they  
11 “may not be asserted to wholly defeat a UCL claim since such claims arise out of  
12 unlawful conduct.” *Id.*; *see also*, *Salas v. Sierra Chem. Co.*, 59 Cal. 4th 407, 432, 173  
13 Cal. Rptr. 3d 689 (2014) (“Equitable defenses . . . may not, however, be used to wholly  
14 defeat a claim based on a public policy expressed by the Legislature in a statute.”);  
15 *Dominguez–Curry v. Nevada Transp. Dept.*, 424 F.3d 1027, 1041 (9th Cir.  
16 2005) (recognizing that a “partial affirmative defense” is one that limits or influences the  
17 remedies that the court may impose but does not preclude liability). Therefore, although  
18 Rite Aid’s equitable estoppel defense may be taken into consideration by the Court when  
19 awarding restitution, it may not preclude recovery entirely.

20           37. Here, the Court sees little reason to limit Plaintiff’s recovery. Although it  
21 may be technically true that Rite Aid informed its Store Managers that it expected them to  
22 spend the majority of their time on exempt work, the information was primarily conveyed  
23 via computer based trainings — trainings that were easy to ignore, especially because  
24 Store Managers could easily click through them while engaged in other tasks, like helping  
25 customers at the register. Rite Aid managed to make clear to Store Managers its  
26 expectations regarding labor budgets, store cleanliness, and sales targets through regular  
27 emails and reminders by District Managers. If Rite Aid had truly cared to emphasize the  
28 need for Store Managers to spend a majority of their time on exempt tasks, it could have

1 done so. Indeed, prior to Plaintiff's time as a Store Manager, Rite Aid provided self-  
2 audits to Store Managers, at least partially to encourage mindfulness as to how they were  
3 spending their time. The Court thus finds and concludes that Plaintiff did not mislead Rite  
4 Aid by failing to self-report her misclassification.

5 38. Rite Aid fails to prove its partial affirmative defense.

6 **E. Remedies**

7 39. It is Plaintiff's burden to prove the amount of adequate compensation with  
8 reasonable certainty. *E.g.*, *Clemente v. State of California*, 40 Cal. 3d 202, 219, 219 Cal.  
9 Rptr. 445 (1985). However, Plaintiff need not prove the amount of compensation with the  
10 same definiteness that was required to show liability. *Id.*; *see also Carlin v.*  
11 *DairyAmerica, Inc.*, 705 F.3d 856, 881 n.26 (9th Cir. 2012) (applying the *Clemente*  
12 standard to hold that, in California, "some uncertainty can arise in any calculations of  
13 damages, but that does not preclude recovery where it is clear that some damage has  
14 occurred"). As the *Clemente* court explained, "[i]t is desirable that responsibility for harm  
15 should not be imposed until it has been proved with reasonable certainty that the harm  
16 resulted from the wrongful conduct of the person charged. It is desirable, also, that there  
17 be definiteness of proof of the amount of damage as far as is reasonably possible. It is  
18 even more desirable, however, that an injured person not be deprived of substantial  
19 compensation merely because [she] cannot prove with complete certainty the extent of  
20 harm [she] has suffered." *Clemente*, 40 Cal. 3d at 219.

21 40. This general principle favoring recovery applies to the wage and hour  
22 context, as well. As the Court discussed above, California courts allow that "[i]f the  
23 employer fails to produce such evidence," that Plaintiff worked compensable overtime  
24 hours, "the court may then award damages to the employee, even though the result be only  
25 approximate." *Duran*, 59 Cal. 4th at 41 (quoting *Mt. Clemens*, 328 U.S. at 687-88).

26 41. Here, Plaintiff has proved her damages with sufficient certainty.  
27  
28

1                   **1.     Overtime Premiums**

2           42.     California mandates that an employee be paid one and a half times the  
3 employee’s regular rate of pay for time worked in excess of 40 hours per week. *See* Cal.  
4 Lab. Code § 510(a); *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 667, 174 Cal.  
5 Rptr. 3d 287 (2014) (“Employers must compensate such employees [who work more than  
6 40 hours in any one workweek] ‘at the rate of no less than one and one-half times the  
7 [employee’s] regular rate of pay.’”). Plaintiff provided evidence of her hourly rate of pay  
8 for the duration of her employment as a Store Manager.

9           43.     The Court previously concluded that Rite Aid incorrectly classified Plaintiff  
10 as exempt on those weeks when she worked as a laborer to assist with remodels and  
11 inventory. Because Rite Aid failed to meet its burden of proof to show that Plaintiff was  
12 primarily engaged in exempt labor during those weeks, it owes Plaintiff overtime wages  
13 for any overtime hours worked.

14           44.     As calculated above in the Findings of Fact, Plaintiff is owed **\$8,349.56** in  
15 unpaid premium overtime wages.

16                   **2.     Meal and Rest Break Premiums**

17           45.     In its October Order, the Court agreed with the majority of courts in the  
18 Central District that meal and rest break premium wages are a form of restitution under  
19 the UCL. (Oct. Order at 3–5). Accordingly, the Court next considers what unpaid wages  
20 are owed to Plaintiff as a result of missed meal and rest breaks during weeks in which she  
21 was misclassified as an exempt employee.

22           46.     As discussed above, an employer is required to make available to its  
23 nonexempt employees an uninterrupted, 30 minute meal period after five hours of work.  
24 California further provides that, “[i]f an employer fails to provide an employee a meal or  
25 rest or recovery period in accordance with a state law . . . the employer shall pay the  
26 employee one additional hour of pay at the employee’s regular rate of compensation for  
27 each workday that the meal or rest or recovery period is not provided.” Cal. Lab. Code §  
28 226.7(c); *see also Kirby v. Immoos Fire Prot., Inc.*, 53 Cal. 4th 1244, 1256, 140 Cal. Rptr.

1 3d 173 (2012) (reaffirming that “the remedy for a violation of the statutory obligation to  
2 provide IWC-mandated meal and rest periods is one additional hour of pay at the  
3 employee’s regular rate of compensation for each work day that the meal or rest period is  
4 not provided”) (quotation marks and citations omitted).

5 47. The Court previously concluded that on those weeks when Plaintiff should  
6 have been classified as nonexempt and worked in her capacity as a Store Manager in her  
7 own store, she was denied meal and rest breaks in violation of section 226.7. On those  
8 days when Plaintiff properly should have been classified as nonexempt and worked as a  
9 laborer to assist with remodels and inventory, she was not denied meal and rest breaks.

10 48. As calculated above in the Findings of Fact, Plaintiff is owed an additional  
11 **\$1,297.24** in restitution for unpaid meal and rest break premium wages



1 Appendix 1

2 List of Exhibits at Trial

3  
4 **Exhibit 2.** Documents produced by Plaintiff Marine Bargas at Deposition

5 Exhibit 2 includes a number of documents, all of which Plaintiff brought with her to  
6 her deposition. At trial, the following documents were discussed:

- 7
- 8 • An email from Marilyn Contreras to Plaintiff and two other people, dated October  
9 1, 2012, congratulating Plaintiff for passing a “tobacco sting.” After reading the  
10 email, Plaintiff agreed that she spent time training her staff to be prepared for  
11 unexpected audits, mystery shoppers, and government regulators.
  - 12 • A document titled “Rite Report: *Store Leadership View*,” dated September 8, 2012,  
13 that provides an overview of the Maywood store’s performance according to several  
14 metrics (including payroll as a percentage of profits, out of stock, etc.). Certain  
15 metrics had been circled, and it could be inferred that Plaintiff discussed these  
16 metrics with her staff and took steps to improve the store’s performance.
  - 17 • Plaintiff’s Self Evaluation for her 2013 Performance Review, in which she  
18 mentioned an interest in taking management development courses.

19 **Exhibit 3.** 6/11/01 Bargas’ Application for Employment

20 Exhibit 3 was used to impeach Plaintiff on cross examination. Her application for  
21 employment at Rite Aid included some untrue statements, even though Plaintiff signed to  
22 certify that everything included in the application was true.

23  
24 **Exhibit 4.** Rite Aid Job Description for Store Manager (California Only)

25 The Store Manager Job Description was introduced through the testimony of Paul  
26 Bennie, who explained that it had been distributed to Store Managers, including Plaintiff,  
27 at a training. (Plaintiff testified that she did not remember ever receiving the job  
28 description or attending the Store Manager training.) The Job Description instructed

1 managers to spend the majority of their time on tasks that require them to “exercise their  
2 independent judgment and discretion.” Counsel for Plaintiff questioned several witnesses  
3 about whether the tasks listed in the Job Description truly were managerial in nature, and  
4 how long Rite Aid expected any given task to take.

5 Plaintiff testified that she regularly performed all of the essential job duties listed in  
6 the Job Description.

7  
8 **Exhibit 8.** 2011 Bargas Annual Performance Review

9 Exhibit 8 is Plaintiff’s performance review for 2011, when she was managing the  
10 Commerce store. Plaintiff was rated “competent,” generally met or exceeded  
11 expectations, and was given a raise. The performance reviews do not include a metric to  
12 ensure that Store Managers perform more than 50 percent of their time on exempt work.

13  
14 **Exhibit 9.** 2012 Bargas Annual Performance Review

15 Exhibit 9 is Plaintiff’s performance review of 2012; Plaintiff was still managing the  
16 Commerce store. Plaintiff was rated “competent,” generally met or exceeded  
17 expectations, and was given a raise. The performance review included a statement from  
18 the District Manager that Plaintiff did a “solid job at leading her store team” and  
19 “improved the working environment . . . .”

20  
21 **Exhibit 10.** 2/7/13 Counseling / Development Form issued to Bargas

22 Exhibit 10 reflects that in 2013, District Manager Marilyn Contreras wrote Plaintiff  
23 up for failing to meet “basic operating procedures,” which Contreras attributed to a “lack  
24 of leadership and organization.” Contreras testified that Plaintiff had been failing to meet  
25 her labor budget, and that Contreras had received a few complaints about Plaintiff from  
26 her employees.

1 **Exhibit 11.** 6/2/10 Counseling / Development Form issued to Bargas

2 Exhibit 11 reflects that in 2010, District Manager Jason Jalili wrote Plaintiff up for  
3 arriving late to work.

4  
5 **Exhibit 13.** 2012 Overall Compensation Performance Summary for Bargas

6 Exhibit 13 reflects that Plaintiff received a bonus based on the volume of front end  
7 sales within the Commerce store in 2012. The bonus was awarded for certain managerial  
8 decisions that Plaintiff made, which improved the customer and employee experience.

9  
10 **Exhibit 14.** Rite Aid 30(b)(6) Deposition Notice

11 Marilyn Contreras testified that she believed she was knowledgeable on the topics  
12 contained in the 30(b)(6) Deposition Notice.

13  
14 **Exhibits 18–22.** Emails Regarding Labor Plans

15 Plaintiff's counsel discussed a number of emails with Marilyn Contreras, all on the  
16 topic of labor budgets and labor plans. The emails emphasized that Store Managers were  
17 expected to meet their labor budgets as closely as possible. One email, sent to Plaintiff  
18 and Contreras, along with other Store Managers, stated that Store Managers "[m]ust make  
19 [the] labor plan every week without exception." Store Managers were also forwarded  
20 emails indicating whether they were over- or under- budget; Store Managers were  
21 expected to make corrections right away if they were not meeting the budget.

22  
23 **Exhibit 24.** Objections and Responses to 30(b)(6) Deposition Notice

24 Exhibit 24 was used to lay the foundation for a discussion of Marilyn Contreras'  
25 designation as Rite Aid's 30(b)(6) witness. Contreras was noticed to testify regarding the  
26 number of hours plaintiff was expected to work per workday and/or workweek, but Rite  
27 Aid did not keep track of Plaintiff's hours while she was employed as a Store Manager.

1 **Exhibit 33.** Ceballos Deposition Notes

2 Roger Ceballos' notes from his deposition included a list of managerial tasks that a  
3 store manager was expected to do. These tasks included interviewing, hiring, training,  
4 and disciplining associates; reviewing performance and providing feedback; resolve  
5 customer complaints; and reviewing sales results and strategizing how to improve those  
6 results. Ceballos could not say whether or how much time Plaintiff spent on any of the  
7 tasks in his list while she was employed as a Store Manager.

8  
9 **Exhibit 44.** 4/18/11 Email from Jalili

10 Exhibit 44 is an email from Jason Jalili emphasizing to Store Managers that Rite  
11 Aid strongly preferred to avoid paying employees overtime wages. Marilyn Contreras  
12 testified that Rite Aid's preference was consistent from before she arrived through the  
13 time that Plaintiff left Rite Aid.

14  
15 **Exhibit 45.** 2/6/13 Email from Contreras

16 Exhibit 45 is an email from Marilyn Contreras to Plaintiff and other Store Managers  
17 instructing them to have schedule completed by early morning on Wednesday. The email  
18 states that it is important to have schedules out by then because Contreras would schedule  
19 weekly visits to stores based on the submitted schedules. She expected store managers to  
20 be in the store at times when they were scheduled.

21  
22 **Exhibit 46.** 3/30/12 Email from Barron

23 Exhibit 46 is an email from Hector Barron, addressed to Plaintiff and other Store  
24 Managers. The email includes a list titled "A few priorities": the first item states "[l]abor  
25 non-negotiable must make planned hours" while most of the remaining items in the list  
26 emphasize various tasks for keeping the store clean and neat. Ultimately, Store Managers  
27 were responsible for keeping their stores neat and clean.

1 **Exhibits 49, 51–55.** Emails from dmaasc@sysm.riteaid.com in 2011

2 Exhibits 49 and 51–55 include labor statistics for various stores in the district,  
3 including Plaintiff’s store. Recipients were instructed to cut any scheduled hours  
4 exceeding the labor budget and to correct their schedules to achieve an efficiency of at  
5 least 65%. Marilyn Contreras testified that at some point she began instructing Store  
6 Managers to achieve an efficiency of at least 70%.

7  
8 **Exhibit 59.** 9/7/10 Email from dmalal@sysm.riteaid.com

9 Exhibit 59 is an email from an individual identified as “KN,” dated September 7,  
10 2010. The email instructs Store Managers to email KN if their number of scheduled hours  
11 is greater than their labor budget. In testimony, it became clear that this could happen  
12 when minimum union hour requirements conflicted with the labor budget.

13  
14 **Exhibit 61.** Spreadsheet of Bargas Payroll History

15 Exhibit 61 includes data from Rite Aid’s payroll system, and includes data  
16 regarding Plaintiff’s paychecks from March 28, 2009 through March 31, 2013.

17  
18 **Exhibit 63.** CA Front End Manager Audit

19 Exhibit 63 is a print-out of an electronic communication sent in 2006. The  
20 worksheet asked Store Managers to conduct a self-audit to determine whether they were  
21 spending more than 50% of their time on nonexempt duties. Rite Aid stopped distributing  
22 this sort of self-audit after 2006.

23  
24 **Exhibit 68.** Kronos Time Records

25 Exhibit 68 is data from Rite Aid’s time and attendance system. It includes data  
26 regarding Plaintiff’s time punches and scheduled time from December 5, 2009 through  
27 March 18, 2013.

1 **Exhibit 69.** FE Inventory Day Expectations Checklist

2 Exhibit 69 is a document titled “Inventory Day Expectations” that sets out  
3 requirements for Store Managers on inventory day.  
4

5 **Exhibits 74–75.** Emails from Jalili

6 Exhibits 74 is an email authored by Paul Bennie and forwarded by Jason Jalili to  
7 “undisclosed recipients” in 2010. The email explains that Store Managers are expected to  
8 attend refresher courses on the on-site leadership training (the same training at which,  
9 Bennie testified, the Job Description was circulated to Store Managers). The 2011 email  
10 states that Jalili expects 100% of his store managers to have completed the online  
11 leadership refresher training “by the end of the week.”  
12

13 **Exhibit 78.** 9/2/12 Email from Contreras

14 Exhibit 78 is an email from Marilyn Contreras to all of the Store Managers under  
15 her supervision, including Plaintiff. The email instructs Store Managers to work 2  
16 weekends per month, 1 to 2 nights per week, and states that “[n]o manager is to leave the  
17 store before 5pm unless previously discussed with the [District Manager.]”  
18

19 **Exhibit 92.** 2010 Bargas Annual Performance Review Including Self Assessment and  
20 Supervisor Assessment

21 Exhibit 92 is Plaintiff’s performance review for 2010, when she was managing the  
22 Downey store. Plaintiff was rated “competent,” generally met or exceeded expectations,  
23 and would have been qualified for a raise.  
24

25 **Exhibit 104.** 2013 Bargas Annual Performance Review Including Self Assessment and  
26 Supervisor Assessment

27 Exhibit 104 is Plaintiff’s 2013 performance review. Marilyn Contreras completed  
28 the Supervisor Assessment but did not give the form to Plaintiff because Plaintiff left Rite

1 Aid first. Plaintiff was rated “needs development,” meaning her performance only meets  
2 some job requirements, and Contreras wrote that Plaintiff “needs to understand the  
3 Manager role before she can move on to the next step; we will put together an [Associate  
4 Development Plan].”  
5  
6

7 **Exhibits 106–125.** Counseling/Development Forms

8 Exhibits 106–25 are examples of Counseling/Development Forms that Plaintiff  
9 issued to her employees while she was employed as a Store Manager. A  
10 Counseling/Development Form is a form of informal discipline for Rite Aid employees.  
11

12 **Exhibit 148.** Computer-Based Training History for Bargas

13 Exhibit 148 is a record of all the computer-based trainings, or “CBTs”, that Plaintiff  
14 completed starting in February 2011. Page 8 includes an entry for “CA Store Manager  
15 Leadership Training,” marked completed by Plaintiff on October 11, 2009. The entry is  
16 an acknowledgement that Plaintiff attended the on-site leadership training at which the  
17 Job Description was distributed to Store Managers.  
18

19 **Exhibit 149.** Store Management Guide

20 Exhibit 149 is a thick packet titled “Store Management Guide.” It contains a  
21 number of forms, including the Store Visit Guide (page 72), which District Managers used  
22 to evaluate stores during walk-throughs.  
23

24 **Exhibits 155–56.** Store Bonus Program Quick Reference Guide

25 Exhibits 155 and 156 set out bonus requirements for fiscal years 2011 and 2012.  
26 Store Managers were evaluated, in part, on the store’s earnings before interest, tax,  
27 depreciation, and amortization (“EBITDA”). Plaintiff testified that she was not trained on  
28 the bonus program and did not pay much attention to the requirements in the guides.

1 **Exhibit 160.** New Hire Orientation — Store Management Guide

2 Exhibit 160 is a large binder containing Rite Aid’s 2010 management development  
3 program. Rite Aid provides the materials to employees it is training to become managers.  
4 Plaintiff likely completed a similar program in 2009. Page 3 states that “[l]abor budgets  
5 are tighter than previous years and our capital expenditures are minimized however, every  
6 associate can be friendly, we can engage each and every customer and all stores can be  
7 clean and orderly.” The page goes on to state, “We need to beat our labor and expense  
8 plans. Operating more efficiently and spending less are vital to our bottom line. We have  
9 very challenging budgets. Driving costs out of the operating model will remain a priority.  
10 Everyone is accountable to the P&L”

11 The binder gives Store Managers instructions on training, customer service, and  
12 other Store Manager responsibilities.

13  
14  
15 **Exhibits 175–76.** Store Managers as Leaders — Field Management Training (Video)

16 Exhibit 175 is a video of the computer based training given to Store Managers to  
17 refresh them on the 2009 on-site leadership training developed by Bennie. The training  
18 stated that Rite Aid expects Store Managers to regularly spend more than 50% of their  
19 time on managerial tasks. Exhibit 176 is the visual demonstrative that accompanied the  
20 video.

21  
22 **Exhibit 177–78.** California Store Manager Leadership Training (Video)

23 Exhibit 177 is a video of a computer based training given to Store Managers,  
24 covering Rite Aid’s expectations for Store Managers. Exhibit 178 is the visual  
25 demonstrative that accompanied the training. Page 3 includes a button for the Store  
26 Manager to click upon finishing the training, titled “I Acknowledge.” The page states,  
27 “By clicking on ‘I Acknowledge,’ you indicate that you will follow Rite Aid’s California  
28 Store Manager Leadership Structure expectations.” Plaintiff testified that she clicked “I

1 Acknowledge” at the end of the training, although she also testified that she likely did not  
2 pay much attention to the training itself.

3  
4 **Exhibit 180.** California Store Manager Leadership Expectations

5 Exhibit 180 is a demonstrative for the computer based training video, “CA Store  
6 Manager Leadership Expectations.” This video training was distributed to Store  
7 Managers in 2010. Exhibit 148 indicates that Plaintiff completed Exhibit 180 on October  
8 24, 2010 at 3:08 a.m. The exhibit states that the objective of the training was to provide  
9 Store Managers with a refreshed understanding of the primary purpose of the California  
10 store manager position, Rite Aid’s expectations regarding California store manager  
11 leadership, and awareness of how Store Managers spend their time and whom to contact  
12 with concerns regarding leadership expectations.

13  
14 **Exhibit 182.** California Store Manager Leadership Expectations

15 Exhibit 182 is essentially the same as Exhibit 180, except it was distributed to Store  
16 Managers in 2011.

17  
18 **Exhibit 183.** Powerpoint Presentation Related to 2009 Store Manager Training

19 Exhibit 182 is the PowerPoint presentation created to accompany the 2009 on-site  
20 Store Manager training developed by Paul Bennie. The PowerPoint presentation includes  
21 instructions to store managers regarding the importance of training and delegation. The  
22 PowerPoint presentation also includes several slides noting that Store Managers of stores  
23 with a low volume of sales (\$750 thousand to \$1.25 million) are classified as nonexempt.

24  
25 **Exhibits 185, 185A–D.** Scheduling Data

26 Exhibit 185 is an excel file containing Rite Aid’s scheduling data for the relevant  
27 time period. Exhibit 185 A is a printout of a spreadsheet including all of the data related to  
28

1 Plaintiff's schedule from December 2009 through March 2013. Exhibits 185B through D  
2 organize the scheduling information as a series of demonstrative graphics for the Court.

3  
4 **Exhibit 188.** Labor and Sales Statistics for Store Nos. 5466, 5432, and 5479 When  
5 Bargas was Store Manager at Each Location

6 Exhibit 188 includes labor and sales statistics for all of Plaintiff's stores (Maywood,  
7 Downey, and Commerce) during the time in which she was the Store Manager of each  
8 location. The data indicates that Plaintiff sometimes exceeded and sometimes came in  
9 under her labor budget.

10 **Exhibit 192.** Chart of Bargas' Schedule

11 Exhibit 192 contains a chart summarizing Plaintiff's schedule data, as contained in  
12 Exhibit 185A. The chart contains an empty space between approximately late June and  
13 early October 2010, during which time Plaintiff was on maternity leave. Otherwise, the  
14 chart shows that Plaintiff typically was scheduled for a 9 hour shift, with some variation.  
15 The parties dispute whether the schedule data, contained in Exhibit 185A and displayed in  
16 Exhibit 192, accurately reflects times when Plaintiff was actually at work.

17  
18 **Exhibits 193–95.** Store 5432 Labor and Sales

19 Exhibits 193–95 are graphical representations of the data contained in Exhibit 188.  
20 The charts show that Plaintiff sometimes exceeded and sometimes came in under her  
21 budget at the three stores she managed. Defendants contended that these charts show that  
22 Plaintiff did not face strong pressure to meet her labor budget.

23  
24 **Exhibit 203.** Yam's Employee Action Forms

25 Exhibit 203 contains performance reviews and associate development plans for  
26 Rebecca Yam. The performance reviews include self-assessments discussing Yam's  
27 managerial activities. In one self-assessment, Yam mentioned that she could improve by  
28 delegating to associates more often.

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**Exhibit 211. Daily Routine Chart**

Exhibit 211 is a list of routines that Marilyn Contreras gave to Store Managers in her district. Yam testified that Contreras provided the Store Managers with daily, weekly, and monthly routines that she expected Store Managers to follow.

**Exhibit 212. Store Manager Work-Time Self Audit**

Exhibit 212 is a document that was given to store managers at a meeting, to fill out by hand. Exhibit 212, like Exhibit 63, asked store managers to self-report whether more than 50% of their time was spent on nonexempt, nonmanagerial tasks. According to testimony, Rite Aid stopped asking Store Managers to fill out self-audits after about 2006.

This particular self-audit was apparently filled out by Rebecca Yam and signed by her on February 15, 2005. Yam testified that she filled out the audit at an offsite meeting.

**Exhibit 213. Punch Records**

Exhibit 213 is a disk containing the punch records for Cynthia Pena, who was a Price Accuracy Coordinator under Plaintiff.