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8 *Attorneys for Plaintiff, Arthur Hage on*
9 *behalf of himself and all others similarly situated*

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 ARTHUR HAGE, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 vs.

16 SEARS HOME IMPROVEMENT PRODUCTS,
17 INC., TRANSFORM SR HOME IMPROVEMENT
18 PRODUCTS LLC, and Does 1 through 50, inclusive,

19 Defendants.
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Case No. 34-2022-00315102

**AMENDED CLASS ACTION
COMPLAINT**

BY FAX

1 Plaintiff Arthur Hage (“Plaintiff”), by his attorneys, brings this action on behalf of himself,
2 all others similarly situated, and the general public, on information and belief, and hereby alleges
3 as follows:

4 **JURISDICTIONAL ALLEGATIONS**

5 1. Plaintiff alleges, on a class basis, that Sears Home Improvement Products, Inc.
6 (“SHIP”) and Transform SR Home Improvement Products LLC (“Transform SHIP”) (collectively
7 referred to as “Defendants”) engaged in unlawful conduct by their: (1) failure to reimburse
8 Plaintiff and proposed class members for work-related expenses, including, but not limited to, the
9 use of their personal vehicles to do their jobs, the purchase of required materials and equipment to
10 do their jobs, and the cost of smart phones, cell and internet services, including data usage charges,
11 in violation of California Labor Code section 2802 and applicable Industrial Welfare Commission
12 Orders (“Wages Orders”); (2) failure to provide accurate itemized wage statements to Plaintiff and
13 proposed class members, in violation of California Labor Code section 226; (3) failure to pay all
14 wages due immediately or within seventy-two (72) hours of termination or resignation, and all
15 associated waiting time penalties, in violation of California Labor Code sections 201-203; and, (4)
16 failure to provide Plaintiff and proposed class members, whom Defendants paid commissions,
17 with signed written contracts that set forth the method by which commissions would be computed
18 and paid, in violation of California Labor Code section 2751. These failures further constitute
19 unfair business practices, in violation of California Business and Professions Code section 17200,
20 et. seq., and violations of California Labor Code section 2698, et. seq., the Private Attorneys
21 General Act of 2004 (“the PAGA”), through which Plaintiff seeks civil penalties.

22 2. Defendants are, and at all relevant times were, corporations doing business within
23 the State of California and are employers under applicable Industrial Welfare Commission Orders.

24 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
25 resident of California, Defendants are qualified to do business in California, and Defendants
26 regularly conduct business in California. Further, there is no federal question at issue, as the
27 claims herein are based solely on California law.

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AMENDED CLASS ACTION COMPLAINT -3- 3291\PLEADINGS\AMENDEDCLASSACTIONCOMPLAINT

1 7. Plaintiff is a current employee of Defendants. Defendants employed Plaintiff as a
2 Sales Consultant. Defendants require Plaintiff, and proposed class members, to drive their
3 personal vehicles to scheduled sales appointments, required work meetings, and mandatory
4 trainings. Defendants also require Plaintiff, and proposed class members, transport in their
5 personal vehicles all of Defendants' materials required to perform their jobs, such as building and
6 marketing supplies, bags of demo items, display cases up to 50 to 70 lbs., window samples, etc.
7 Defendants had in place a reimbursement plan that compensated Plaintiff, and proposed class
8 members, at a rate of 42 cents per mile and only for miles driven between scheduled sales
9 appointments. As there was no central work location, Plaintiff and proposed class members begin
10 their work days at their residences, reading and responding to emails, obtaining sales
11 appointments, preparing materials for sales appointments, and routing their trips. Plaintiff and
12 proposed class members end their work days at their residences, filling out required paperwork
13 and finalizing contracts. Defendants did not reimburse Plaintiff, and proposed class members, for
14 all the miles they drive for work, including the substantial amount of miles Plaintiff and proposed
15 class members drive from their residences to their first scheduled sales appointment and from their
16 last scheduled sales appointment to their residences. Defendants further require Plaintiff and
17 proposed class members to maintain vehicle insurance greater than the state minimum liability
18 coverage amount. Defendants do not reimburse Plaintiff and proposed class members for the
19 amount of this difference. While the reimbursement plan compensates Plaintiff and proposed
20 class members for some portion of the expenses they incur, it is paid out in the form of ordinary
21 income, so that it is taxed. In so doing, Defendants fail to reimburse Plaintiff and proposed class
22 members for all costs incurred in the process of doing their jobs, in violation of California Labor
23 Code section 2802.

24 8. Defendants further require Plaintiff and proposed class members to purchase and
25 transport items and materials necessary for their job including, but not limited to, ladders, tape
26 measures, drop clothes and business cards. Defendants further require Plaintiff and proposed class
27 members to transport large roofing and flooring samples to scheduled sales appointments.
28 Plaintiff and proposed class members need these items and materials in order to successfully

1 complete their scheduled sales appointments. Defendants do not reimburse Plaintiff and proposed
2 class members for the purchase, maintenance, and transport of these items for work-related
3 purposes, in violation of California Labor Code section 2802.

4 9. Defendants further require Plaintiff and proposed class members to provide
5 customers with their personal cell phone numbers, by listing them on required business cards.
6 Defendants expect, as part of their job duties, Plaintiff and proposed class members to respond to
7 calls from customers and other employees pertaining to potential or completed sales. In addition,
8 Defendants require that Plaintiff and proposed class members have smart cellular phones to do
9 their jobs, because Defendants require them to download and use several cellular phone
10 applications in order to do their jobs. These cellular phone applications include, but are not
11 limited to, “Velux Roof Pitch,” “Pitch Gauge” and Google Maps or similar map applications.
12 Defendants do not reimburse Plaintiff and proposed class members for the purchase of smart
13 cellular phones, for the use of their personal cellular phones, or the data usage incurred from the
14 use their cellular phone for work-related purposes, in violation of California Labor Code section
15 2802.

16 10. Defendants further require Plaintiff and proposed class members to use laptop
17 computers to research and schedule appointments and create invoices of sales to do their jobs.
18 Plaintiff and proposed class members use these laptops in various locations including, but not
19 limited to, their personal residences and potential customer’s residences. Defendants provide
20 Plaintiff and proposed class members the required laptops. Defendants, however, do not
21 reimburse Plaintiff and proposed class members for the data usage charges incurred through use of
22 the laptops for work-related purposes, in violation of California Labor Code section 2802.

23 11. Defendants fail to furnish accurate itemized statements to Plaintiff and proposed
24 class members. Defendants issue wage statements to Plaintiff and proposed class members that
25 do not include the gross wages earned, total hours worked, net wages earned, the correct address
26 of the legal entity that is the employer, all applicable hourly rates in effect during the pay period
27 and the number of hours worked at each rate, in violation of California Labor Code sections
28 226(a)(1),(2),(5),(8) and (9).

12. During the relevant period, the employment of numerous proposed class members with Defendants ended. Defendants did not pay these proposed class members all wages due either immediately or within seventy-two (72) hours of termination or resignation, and failed to pay those sums for up to thirty (30) days thereafter, in violation of California Labor Code sections 201 and 202. Plaintiff therefore seeks wages as civil penalties on behalf of those proposed class members who were not paid all wages due either immediately or within seventy-two (72) hours of termination or resignation, pursuant to California Labor Code section 203.

13. Defendants failed to provide Plaintiff and proposed class members with signed written contracts that set forth the method by which commissions would be computed and paid. Instead, Defendants give Plaintiff and proposed class members a website link, and displays an online PowerPoint Presentation, which states that “ONLY online versions of this document will be used for commission/incentive payouts.” Defendants failed to provide Plaintiff and proposed class members a written commission contract, in violation of California Labor Code section 2751(a). Defendants further fail to give a signed copy of the commission contract to Plaintiff and proposed class members and fail to obtain from Plaintiff and proposed class members a signed receipt for the commission contracted, in violation of California Labor Code section 2751(b).

14. Given the violations of the aforementioned California Labor Code sections and Wage Orders, Defendants are therefore liable for unfair business practices, in violation of California Business & Professions Code section 17200, et. seq.

15. Given the violations of the aforementioned California Labor Code sections and Wage Orders, Defendants are therefore liable for civil penalties set forth within, and authorized by, the PAGA, California Labor Code section 2698, et. seq.

CLASS ALLEGATIONS

16. Plaintiff is, and at all relevant times was, a resident of the State of California. Plaintiff sues on behalf of himself and the following class of employees of Defendants in California from February 11, 2019, to the present: “all persons employed by Defendants as Sales Consultants and/or Sales Project Consultants (including New SHP Sales Representatives,

1 SHP Sales Representatives, Field Sales Trainers, Sr. SHP Sales Representatives, and Field
2 Sales Leads)”.
3

4 17. Because Plaintiff, in his employment with Defendants as a Sales Consultant,
5 was subject to the policies and procedures that Plaintiff alleges violates the California Labor
6 Code, Plaintiff’s claims are typical of those of the proposed class.

7 18. Plaintiff will fairly and adequately represent and protect the interests of the
8 members of the proposed class in that he has no disabling conflict of interest that would be
9 antagonistic to those of the other members of the proposed class. Plaintiff retained counsel
10 who are competent and experienced in the prosecution of class action wage and hour
11 violations.

12 19. The proposed class is sufficiently numerous, and the class members are
13 geographically dispersed throughout California, the joinder of whom in one action is
14 impracticable, such that the disposition of whose claims in a class action will provide substantial
15 benefits to both the parties and the Court.

16 20. There is a well-defined community of interest in the questions of law and fact
17 involved affecting the parties to be represented. The questions of law and fact common to the
18 proposed class predominate over questions that may affect individual class members, include
19 but are not limited to the following:

- 20 (a) Whether Defendants implemented and engaged in a pattern and practice
21 whereby Defendants unlawfully failed to reimburse sales consultants for
22 work-related expenses as required by law;
- 23 (b) Whether Defendants implemented and engaged in a pattern and practice of
24 failing to provide sales consultants with signed written contracts that set
25 forth the method by which commissions would be computed and paid;
- 26 (c) Whether Defendants implemented and engaged in a pattern and practice
27 whereby Defendants failed to provide California employees accurate
28 itemized wage statements;

- 1 (d) Whether Defendants implemented and engaged in a pattern and practice
2 whereby Defendants failed to timely pay California employees all wages
3 due immediately or within seventy-two (72) hours of termination or
4 resignation, and all associated waiting time penalties
- 5 (e) Whether the acts and practices of Defendants as alleged herein violated,
6 inter alia, applicable provisions of the California Labor Code, including but
7 not limited to sections 201, 202, 203, 226, 2751, 2802, applicable Industrial
8 Welfare Commission Orders, California Business & Professions Code
9 section 17200, et seq., and the Private Attorneys General Act of 2004 (the
10 PAGA), California Labor Code section 2698, et. seq.

11 21. Plaintiff and proposed class members have all similarly suffered irreparable harm
12 and damages as a result of Defendants' unlawful and wrongful conduct, including, but not limited
13 to, Defendants' pattern and practice of failing to reimburse proposed class members for work-
14 related expenses; pattern and practice of failing to provide accurate itemized wage statements to
15 proposed class members; pattern and practice of failing to pay proposed class all wages due
16 immediately or within seventy-two (72) hours of termination or resignation, and all associated
17 waiting time penalties; and pattern and practice of failing to provide proposed class members with
18 signed written contracts that set forth the method by which commissions would be computed and
19 paid. These issues are common to all proposed class members, making class treatment especially
20 appropriate. Because the action of Defendants toward the proposed class members follows
21 common patterns, all of which are reflected in the records possessed by Defendants, this action
22 will provide substantial benefits to all proposed class members. Absent this action, Defendants'
23 unlawful conduct will continue unremedied and uncorrected.

24 **FIRST CAUSE OF ACTION**

25 **(Waiting Time Penalties: Cal. Lab. Code § 201-203)**

26 22. Plaintiff and proposed class members incorporate by reference the allegations
27 contained the foregoing paragraphs of this complaint as if fully set forth herein.
28

1 23. During the relevant period, the employment of proposed class members with
2 Defendants ended and they were not paid all wages due either immediately or within seventy-
3 two (72) hours of termination or resignation, and failed to pay those sums for up to thirty (30)
4 days thereafter, in violation of California Labor Code sections 201 and 202.

5 24. Defendants' willful failure to pay wages to the proposed class members violates
6 California Labor Code section 203 because Defendants knew or should have known wages
7 were due to proposed class members, but Defendants failed to pay them.

8 25. These violations give rise to civil penalties, pursuant to California Labor Code
9 section 203. Plaintiff and proposed class members are therefore entitled to the relief requested
10 below.

11 26. Pursuant to California Labor Code section 218.6, and Civil Code section 3287, the
12 members of the proposed class seek recovery of pre-judgment interest on all amounts recovered
13 herein.

14 27. Pursuant to California Labor Code section 218.5 the members of the proposed class
15 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

16 **SECOND CAUSE OF ACTION**

17 **(Reimbursement Violations: Cal. Lab. Code § 2802)**

18 28. Plaintiff and proposed class members incorporate by reference the allegations
19 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

20 29. Pursuant to California Labor Code section 2802(a), "an employer shall indemnify
21 his or her employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
23 employer."

24 30. As a matter of Defendants' established policy, Plaintiff and members of the
25 proposed class were and are required to personally incur work-related expenses in the course of
26 their employment, including, but not limited to, costs associated with the use of their personal
27 vehicles, the purchase, transport and maintenance of required materials and equipment, and the
28

1 cost of smart phones, cellular and internet service, including data usage charges. Defendants
2 failed to reimburse Plaintiff and proposed class members for all expenses incurred. While
3 Defendants maintained a reimbursement plan for mileage, the amount was insufficient to cover all
4 expenses incurred by Plaintiff and proposed class members to do their jobs.

5 31. Defendants' work-related expense reimbursement policies applied to Plaintiff and
6 members of the proposed class, such that all are due reimbursement, and interest thereon, for
7 Defendants' failure to comply with California Labor Code section 2802.

8 32. Plaintiff also seeks penalties and attorneys' fees for Defendants' violation of
9 California Labor Code section 2802, pursuant to sections 2802(b) and (c), and the PAGA,
10 including California Labor Code sections 2699(g)(1), 2699.3, and 2699.5.

11 33. Plaintiff and proposed class members are therefore entitled to the relief requested
12 below.

13 **THIRD CAUSE OF ACTION**

14 **(Wage Statement Violations: Cal. Lab. Code § 226)**

15 34. Plaintiff and proposed class members incorporate by reference the allegations
16 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

17 35. During the relevant time period, Defendants failed to furnish accurate itemized
18 wage statements to Plaintiff and members of the proposed class, containing information as
19 required by California Labor Code sections 226(a)(1) gross wages earned, (2) total hours worked,
20 (5) net wages earned, (8) the address of the legal entity that is the employer; and, (9) all applicable
21 hourly rates in effect during the pay period and number of hours worked at each hourly rate. With
22 respect to section 226(a)(8), Defendants also did not furnish members of the proposed class
23 members with accurate itemized wage statements in that Defendants do not and did not list the
24 address of the legal entity that is the employer. These failures caused Plaintiff and members of the
25 proposed class to suffer injury as defined by California Labor Code section 226(e)(2)(B)(i) and
26 (iii). As a result of Defendants' failures, Plaintiff and members of the proposed class are entitled
27 to recover the penalties and attorneys' fees as set forth in California Labor Code section 226(e)(1).

28 36. As a result of Defendants' violations of California Labor Code section 226(a),

1 Plaintiff and proposed class members are also entitled to recover the penalties, as set forth in
2 California Labor Code section 226.3.

3 37. Plaintiff also seeks penalties for Defendants' violations of California Labor Code
4 section 226(a)(1), (2), (5), (8) and (9), pursuant to California Labor Code sections 2699.3 and
5 2699.5, and attorneys' fees pursuant to section 2699(g)(1).

6 38. Plaintiff and proposed class members are therefore entitled to the relief requested
7 below.

8 **FOURTH CAUSE OF ACTION**

9 **(Unlawful, Unfair And Fraudulent Business Practices: Business & Professions Code § 17200, et seq.)**

10 39. Plaintiff and proposed class members incorporate by reference the allegations
11 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

12 40. Business & Professions Code section 17200, et seq., prohibits acts of unfair
13 competition, defined as an "unlawful, unfair, or fraudulent business act or practice."

14 41. The policies, acts and practices heretofore described were and are unlawful
15 business acts or practices because of Defendants' (1) failure to reimburse Plaintiff and members
16 of the proposed class for work-related expenses, in violation of California Labor Code section
17 2802 and applicable Wage Orders; (2) failure to provide accurate itemized wage statements to
18 Plaintiff and members of the proposed class, in violation of California Labor Code section 226;
19 (3) failure to pay members of the proposed class all wages due immediately or within seventy-two
20 (72) hours of termination or resignation, and all associated waiting time penalties, in violation of
21 California Labor Code sections 201-203; and, (4) failure to provide Plaintiff and members of the
22 proposed class, with signed written contracts that set forth the method by which commissions
23 would be computed and paid, in violation of California Labor Code section 2751. These practices
24 violate applicable California Labor Code sections, Industrial Welfare Commission Wage Orders,
25 the Private Attorneys General Act of 2004, Labor Code section 2698 et seq., and other provisions
26 of California common and/or statutory law. Plaintiff reserves the right to allege additional
27 statutory and common law violations by Defendants.
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1 42. Further, the policies, acts or practices described herein were and are an unfair
2 business acts or practices because any justifications for Defendants' illegal and wrongful conduct
3 were and are vastly outweighed by the harm such conduct caused to Plaintiff, proposed class
4 members, aggrieved employees, and the members of the general public.

5 43. As a result of its unlawful and/or unfair and/or fraudulent acts, Defendants reaped
6 unfair benefits and illegal profits at the expense of Plaintiff and proposed class members.
7 Defendants should be made to disgorge ill-gotten gains and provide restitution to Plaintiff and
8 proposed class members for the wrongfully withheld wages pursuant to Business and Professions
9 Code section 17203.

10 44. Accordingly, Plaintiff and proposed class members respectfully request that the
11 Court award judgment and relief in their favor, to provide restitution, and other types of equitable
12 relief.

13 45. Plaintiff and the proposed class members are therefore entitled to the relief
14 requested below.

FIFTH CAUSE OF ACTION

**(Violations of the Private Attorneys General Act of 2004 (the "PAGA")
Pursuant To Labor Code § 2698, *et seq.*)**

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18 46. Plaintiff and proposed class members incorporate by reference the allegations
19 contained in the foregoing paragraphs of this complaint as if fully set forth herein.

20 47. As set forth above, Defendants failure to reimburse Plaintiff and members of the
21 proposed class for work-related expenses, in violation of California Labor Code section 2802 and
22 applicable Wage Orders; (2) failure to provide accurate itemized wage statements to Plaintiff and
23 members of the proposed class, in violation of California Labor Code section 226; (3) failure to
24 pay members of the proposed class all wages due immediately or within seventy-two (72) hours
25 of termination or resignation, and all associated waiting time penalties, in violation of California
26 Labor Code sections 201-203; and, (4) failure to provide Plaintiff and members of the proposed
27 class, with signed written contracts that set forth the method by which commissions would be
28 computed and paid, in violation of California Labor Code section 2751, and gives rise to statutory

1 and civil penalties as a result of such conduct, including but not limited to penalties as provided
2 by Labor Code sections 2698, 2699(f), 2699.3, and 2699.5, and applicable Industrial Welfare
3 Commission Wage Orders. Plaintiff, and proposed class members, as aggrieved employees,
4 hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorney General
5 Act of 2004 on behalf of themselves.

6 48. On February 4, 2022, Plaintiff exhausted his administrative resources by filing a
7 PAGA complaint with the California Department of Industrial Relations, alleging that Defendants
8 violated the California Labor Code.

9 49. Plaintiff, and proposed class members, seek attorneys' fees to achieve the same,
10 pursuant to the Labor Code section 2699(g)(1).

11 **PRAYER FOR RELIEF**

12 WHEREFORE Plaintiff prays for judgment and relief as follows:

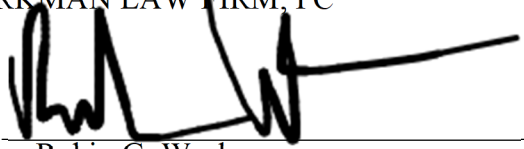
- 13 1. An order certifying that the action may be maintained as a class action;
- 14 2. Compensatory and statutory damages, penalties and restitution, as appropriate and
15 available under each cause of action, in an amount to be proven at trial based on, inter alia, the
16 unpaid balance of compensation Defendants owes;
- 17 3. Punitive damages;
- 18 4. Reasonable attorneys' fees pursuant to California Labor Code sections 218.5,
19 226(e)(1), 2699(g)(1), and 2802;
- 20 5. Costs of this suit;
- 21 6. Pre- and post-judgment interest; and
- 22 7. Such other and further relief as the Court deems just and proper.

23 **JURY DEMAND**

24 Plaintiff hereby demands a trial by jury.

25 Date: April 25, 2022

WORKMAN LAW FIRM, PC

26
27 By: 

Robin G. Workman

*Attorneys for Arthur Hage, and all others
similarly situated*

1 **PROOF OF SERVICE**

2 I, Cheryl Porter, hereby declare:

3 I am employed in the City and County of San Francisco, California in the office of a
4 member of the bar of this court at whose direction the following service was made. I am over the
5 age of eighteen years and not a party to the within action. My business address is Workman Law
6 Firm, PC, 2325 3rd Street, Suite 329, San Francisco, California. My email address is
7 cheryl@workmanlawpc.com. I am personally and readily familiar with the business practice of
8 Workman Law Firm, PC for collection and transmission of documents for service via U.S. mail,
Facsimile, Federal Express or other overnight mail service, personal delivery and electronic mail.
On the date and time set forth below, I served the following document(s) in the following
manners:

9 **AMENDED CLASS ACTION COMPLAINT**

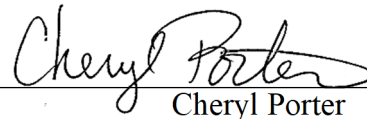
10 ☐ **BY U.S. MAIL.** By enclosing the document(s) in a sealed envelope addressed to the
11 person(s) set forth below, and placing the envelope for collection and mailing, following our
12 ordinary course business practices. On the same day that correspondence is placed for collection
13 and mailing, it is deposited in the ordinary course of business with the United States Postal
Service, in a sealed envelope with postage fully prepaid.

14 ☐ **BY OVERNIGHT DELIVERY.** By enclosing the document(s) in a sealed envelope or
15 package provided by an overnight delivery carrier with postage thereon fully prepaid. The
envelope(s) were addressed to the person(s) as set forth below.

16 ☒ **BY ELECTRONIC MAIL (EMAIL).** By sending the document(s) to the person(s) at the
17 email address(es) listed below. I did not receive a notification that delivery failed.

18 Beecher, Evan D. Evan.Beecher@jacksonlewis.com
19 Palmer, Cary G. Cary.Palmer@jacksonlewis.com
Baum, Gail Gail.Baum@jacksonlewis.com>

20 I declare under penalty of perjury under the laws of the United States and the State of
21 California that the foregoing is true and correct, and that this declaration was executed on April
22 25, 2022, at San Francisco, California.

23 
Cheryl Porter