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Attorneys for Plaintiff TYLER ANDREW STAICER
on behalf of himself and others similarly situated

[Additional counsel on following page]

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

TYLER ANDREW STAICER, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

S-FER INTERNATIONAL
INCORPORATED, a New York
corporation; and DOES 1 to 10, inclusive

Defendant.

CASE NO. 37-2023-00006023-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
CONSOLIDATED COMPLAINT**

1. Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 and 1198;
2. Failure to pay all Wages and Minimum Wages in Violation of Labor Code §§ 1182, 1194, 1197, 1198;
3. Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7, 516, 1198;
4. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code § 226(a) and Failure to Maintain Accurate Records;
5. Failure to Timely Pay Wages During Employment in Violation of Labor Code § 204;
6. Waiting Time Penalties Pursuant to Labor Code § 201, 203;
7. Failure to Provide Suitable Seating in Violation of Labor Code § 1198;
8. Failure to Reimburse Business Expenses in violation of in Violation of Labor Code § 2802;
9. Failure to Provide Sick Pay in Violation of Labor Code § 246;
10. Failure to Provide Employee's Personnel File in Violation of Labor Code § 1198;
11. Failure to Provide Compliant Meal Periods in Violation of Labor Code §§ 226.7, 512, 516 and 1198;
12. Violations of Business & Professions Code § 17200 et seq.;
13. Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq.

DEMAND FOR JURY TRIAL

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1 Plaintiff, TYLER ANDREW STAICER (hereinafter “Plaintiff”) hereby submits his First
2 Amended Consolidated Complaint against Defendant S-FER INTERNATIONAL
3 INCORPORATED, a New York corporation, and DOES 1 to 10 (hereinafter referred to as
4 “Defendant”) on behalf of himself and the class of all other similarly situated current and former
5 employees of Defendant as follows:

6 **NATURE OF THE CASE**

7 1. This is a class and representative action arising out of Defendant’s failure to provide
8 their non-exempt employees with all wages, and rest periods, failing to provide suitable seating,
9 failing to reimburse expenses, by failing to provide compliant wage statements and by failing to
10 comply with the applicable wage order and/or the Labor Code regarding the payment of wages.

11 2. S-Fer International Inc. does business as Salvatore Ferragamo, and specializes in the
12 sale of shoes, leather goods, apparel, silk products and other accessories for men and women. At all
13 relevant times, Defendant issued and maintained uniform, standardized scheduling and timekeeping
14 practices and procedures for all non-exempt, hourly paid employees in California, including
15 Plaintiff and others similarly situated, regardless of their location or position.

16 3. Defendant has maintained practices across its locations which have failed and
17 continue to fail to pay Plaintiff and other non-exempt employees all wages. Specifically, Defendant
18 has a company-wide policy of discouraging Plaintiff and other non-exempt employees from
19 recording all hours worked as they are subject to off-the-clock bag checks. Moreover, when
20 working closing shifts employees must wait to be let out of the store. Defendant also communicates
21 with employees outside of work hours by texting them on their personal cell phones. This has
22 resulted in Defendant’s failure to pay overtime wages to Plaintiff and other non-exempt employees.
23 However, even when overtime wages are paid, Defendant pays employees at their base rate of pay
24 and does not factor in monthly bonuses, incentives, and retention bonuses into the regular rate of
25 pay.

26 4. Further, because non-exempt employees are required to utilize their personal cell
27 phones to communicate with managers, Plaintiff and non-exempt employees incurred business
28 expenses that were not reimbursed. Defendant also failed to provide rest breaks and failed to pay

1 premiums in lieu thereof. Moreover, Defendant failed to provide Plaintiff and other non-exempt
2 employees with suitable seating, and were required to stand for the duration of their shift.

3 5. Defendant also failed to provide Plaintiff and other non-exempt employees with
4 compliant wage statements and failed to timely pay final wages during employment and upon
5 separation.

6 6. Plaintiff brings Causes of Action One through Twelve (the “class claims”) as a class
7 action on behalf of himself and other similarly situated individuals who have worked for Defendant
8 in California, at any time from four-years prior to the filing of this complaint, through the resolution
9 of this action. Plaintiff, on his own behalf and on behalf of all Class Members, brings the class
10 claims pursuant to Labor Code sections 204, 221, 223, 226, 226.7, 246, 500, 510, 512, 516, 1174,
11 1194, 1194.2, 1197, 1198, 1391, 2802, the applicable wage order and under Business & Professions
12 Code sections 17200-17208, for unfair competition due to Defendant’s unlawful, unfair and
13 fraudulent business acts and practices.

14 7. Plaintiff brings Cause of Action Thirteen as a proxy of the State of California on
15 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
16 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
17 Development Agency (LWDA) for violations of applicable provisions of the California Labor
18 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
19 on behalf of himself and other current or former employees pursuant to procedures outlined in
20 California Labor Code § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
21 action on behalf of other aggrieved employees for violation of any other Labor Code provision that
22 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
23 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
24 per pay period for each subsequent violation.

25 8. On February 10, 2023, and February 3, 2025, Plaintiff provided written notice to the
26 LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code
27 alleged to have been violated, including the facts and theories to support the alleged violations.
28 More than sixty-five (65) calendar days have passed since the date notices were provided to the

1 LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under
2 California Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations
3 of California Labor Code identified in this Complaint.

4 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
5 engaged in, among other things a system of willful violations of the Labor Code and the applicable
6 IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny
7 employees the above stated rights and benefits.

8 **PARTIES**

9 10. Plaintiff, Tyler Andrew Staicer is an individual over the age of eighteen (18) and is
10 now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary of the
11 State of California. Plaintiff was hired by S-Fer International on approximately March 15, 2022.
12 Plaintiff worked in Carlsbad, California, until his date of separation of August 29, 2022. Plaintiff
13 was employed as a stock associate and earned approximately \$18 per hour.

14 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant S-Fer
15 International Incorporated Inc. is a New York corporation. Plaintiff is further informed and
16 believes that at all times relevant hereto, Defendant has transacted, and continues to transact,
17 business throughout the State of California.

18 12. Plaintiff is informed and believes, and based upon such information and belief
19 alleges, that Defendant is, now and/or at all times mentioned in this Complaint was in some manner
20 legally responsible for the events, happenings and circumstances alleged in this Complaint.

21 13. Plaintiff is further informed and believes, and based upon such information and
22 belief alleges, that at all times herein mentioned, Defendant proximately caused Plaintiff, all others
23 similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
24 complaints, injuries and/or damages alleged in this Complaint.

25 14. Plaintiff is informed and believes and based thereon alleges that at all times herein
26 mentioned Defendant and DOES 1 through 10, are and were corporations, business entities,
27 individuals, and partnerships, licensed to do business and actually doing business in the State of
28 California.

1 15. Plaintiff does not know the true names or capacities, whether individual, partner or
2 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
3 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
4 complaint when the true names and capacities are known. Plaintiff is informed and believes and
5 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
6 matters alleged herein and proximately caused Plaintiff and members of the general public and
7 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

8 16. At all times herein mentioned, each of said Defendants participated in the doing of
9 the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
10 Defendants, and each of them, were the agents, servants and employees of each of the other
11 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
12 within the course and scope of said agency and employment.

13 17. Plaintiff is informed and believes and based thereon alleges that at all times material
14 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint
15 venturer of, or working in concert with each of the other co-Defendants and were acting within the
16 course and scope of such agency, employment, joint venture, or concerted activity. To the extent
17 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
18 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

19 18. At all times herein mentioned, Defendants, and each of them, were members of, and
20 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
21 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

22 19. At all times herein mentioned, the acts and omissions of various Defendants, and
23 each of them, concurred and contributed to the various acts and omissions of each and all of the
24 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
25 herein mentioned, Defendants, and each of them, ratified each and every act or omission
26 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and
27 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
28 damages as herein alleged.

20. The members of the Classes (as defined below), including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

21. The Court has jurisdiction over this class action pursuant to article 6, section 10 of the California Constitution and Code of Civil Procedure section 410.10.

22. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for injunctive relief, including restitution of earned wages, arising from Defendant's unfair competition under Business & Professions Code section 17203 and 17204. The Court also has jurisdiction over Plaintiff's and the Class' claims pursuant to the applicable provisions. The Court also has jurisdiction over Plaintiff's and the Classes' claims for penalties pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698-99, as well as pursuant to the applicable provisions.

23. The Court has jurisdiction over Defendant because it has sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the advertising, marketing and sale of goods and services, to render the exercise of jurisdiction over Defendant by the California court consistent with traditional notions of fair play and substantial justice.

24. Venue is proper in San Diego County because the acts which give rise to this litigation occurred in this county and because Defendant has employed class members in this county and transacts business in this county.

FACTUAL ALLEGATIONS

25. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

26. Defendant has engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlined above.

27. As a direct result of the wage and hour violations herein alleged, Plaintiff and

1 members of the Classes have suffered, and continue to suffer substantial losses related to the use
2 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
3 to compel Defendant to fully perform its obligations under state law, all to Plaintiff's respective
4 damage in amounts according to proof at the time of trial.

5 ***Defendant's Failure to Pay Overtime Wages***

6 28. During the Class Period, upon information and belief, Defendant had, and continues
7 to have, a company-wide policy of discouraging and impeding Plaintiff and members of the
8 Classes from recording hours worked that were outside of their scheduled shifts in order to limit
9 the amount of overtime employees could accrue. On information and belief, this policy of limiting
10 overtime, led Plaintiff and members of the Classes to work off-the-clock before and after their
11 scheduled shift times. For example, following every shift, Plaintiff was required to undergo a
12 mandatory bag check. Further, Plaintiff alleges that he and other members of the Classes would
13 have to wait to be let out of the store when working a closing shift. Moreover, Plaintiff and
14 members of the Plaintiff Class would also be required to communicate with management outside of
15 their scheduled shifts.

16 29. Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day
17 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
18 premium pay. Furthermore, even when overtime was paid for other time worked, Defendant failed
19 to incorporate earned bonuses and other remuneration into Plaintiff and members of the Classes'
20 regular rate.

21 30. Therefore, Plaintiff and members of the Classes were not paid overtime wages for
22 all of the overtime hours they actually worked.

23 ***Defendant's Failure to Pay all Wages and Minimum Wages***

24 31. As stated above, during the relevant time period, as a result of Defendant's policy of
25 limiting the amount of overtime employees could accrue, and due to Defendant's policies and/or
26 practices of subjecting Plaintiff and other members of the Classes to off-the-clock work, Plaintiff
27 and other non-exempt employees were not paid all minimum wages.

28 32. Thus, Defendant did not pay at least minimum wages for all hours worked by

1 Plaintiff and other non-exempt employees. To the extent that these off-the-clock hours did not
2 qualify for overtime premium payment, Defendant did not pay at least minimum wages for those
3 hours worked off-the-clock.

4 ***Defendant's Failure to Provide Compliant Rest Breaks***

5 33. During the relevant time period, Defendant regularly failed to authorize and permit
6 Plaintiff and other non-exempt employees to take a ten (10) minute rest period per each four (4)
7 hour period worked or major fraction thereof.

8 34. Specifically, Plaintiff alleges that Defendant never provided rest breaks.

9 ***Defendant's Failure to Provide Compliant Wage Statements***

10 35. During the class period, Defendant has knowingly and intentionally provided
11 Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage
12 statements. For example, Defendant issued uniform wage statements to Plaintiff and other class
13 members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
14 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
15 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
16 each hourly rate.

17 36. Because Defendant did not record the time Plaintiff and other class members spent
18 working off-the-clock and failed to pay rest break premiums, Defendant did not list the correct
19 amount of gross wages and net wages earned by Plaintiff and other non-exempt employees in
20 compliance with Labor Code sections 226(a)(1) and 226(a)(5), respectively.

21 37. Defendant also failed to correctly list the total number of hours worked by Plaintiff
22 and other non-exempt employees and failed to list the applicable hourly rates of pay in effect
23 during the pay period and the corresponding accurate number of hours worked at each hourly rate.

24 38. Because Defendant failed to provide the correct net and gross wages earned,
25 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other
26 non-exempt employees have been prevented from verifying, solely from information on the wage
27 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other non-
28 exempt employees have had to look to sources outside of the wage statements themselves and

1 reconstruct time records to determine whether in fact they were paid correctly and the extent of
2 underpayment, thereby causing them injury.

3 ***Defendant's Failure to Timely Pay all Wages During Employment***

4 39. Labor Code section 204 requires that all wages earned by any person in any
5 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
6 wages due upon termination of an employee, are due and payable between the 16th and the 26th
7 day of the month during which the labor was performed, and that all wages earned by any person in
8 any employment between the 16th and the last day, inclusive, of any calendar month, other than
9 those wages due upon termination of an employee, are due and payable between the 1st and the
10 10th day of the following month.

11 40. Labor Code section 204 also requires that all wages earned for labor in excess of the
12 normal work period shall be paid no later than the payday for the next regular payroll period.
13 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
14 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
15 paid not more than seven (7) calendar days following the close of the payroll period.

16 41. During the class period, Defendants willfully failed to pay Plaintiff and members of
17 the Classes all wages due including, but not limited to, minimum wages, and/or rest period
18 premiums, within the time periods specified by Labor Code section 204. Moreover, Defendant
19 issued monthly bonuses based on store sales but paid the bonus on the second paycheck of the
20 month rather than when earned in violation of Labor Code section 204.

21 ***Defendant's Failure to Timely Pay Final Wage Upon Termination***

22 42. On information and belief, Defendant has a company-wide practice or policy of
23 paying departing employees their final wages on the next regular pay cycle, instead of adhering to
24 the time requirements set forth in Labor Code sections 201 and 202.

25 43. In addition, Defendant willfully failed to pay Plaintiff and other non-exempt
26 employees who are no longer employed by Defendants the earned and unpaid wages set forth
27 above, including but not limited to, overtime wages, minimum wages, and/or rest period premiums,
28 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'

1 employ. Further, Plaintiff was terminated on 8/29/22 but was not issued his final check until
2 8/31/22.

3 ***Defendant's Failure to Provide Suitable Seating***

4 44. Defendant's California stores' areas are generally similar in their layout and design
5 and there was, and continues to be, space in the stores to allow for the presence and use of a seat or
6 stool by Plaintiff and class members (with reasonable or no modification to these work areas)
7 during the performance of their work duties. Defendants could provide Plaintiff and class members
8 with a seat or stool, but instead denies them seating and forces aggrieved employees to stand
9 throughout the day. Plaintiff and other class members spent a substantial portion of their day
10 standing, regardless of their actual job title or description. The nature of the work of an employee
11 performing their job duties can reasonably be accomplished from a seated position. However,
12 Defendant systematically, and on a company-wide basis, did not provide seats or stools at or near
13 counters, forcing Plaintiff and other class members to stand throughout their work shifts.

14 45. Defendant did not provide Plaintiff and other class members with seats or stools in
15 reasonable proximity to their work areas to allow them to use seats when it would not interfere
16 with the performance of their duties for times when they were not engaged in active duties that
17 require standing. In other words, to the extent Plaintiff and class members engaged in duties in
18 which the nature of the work required standing, Defendant denied them the use of seats nearby
19 during lulls in their work duties. Moreover, Defendant did not inform Plaintiff and other class
20 members of their rights to a seat or stool under California law.

21 ***Defendants' Failure to Reimburse Business Expenses***

22 46. During the class period, Defendant had a company-wide policy of requiring Plaintiff
23 and class members to communicate with management on their personal cellphones and to clock in
24 and out on their phones. Specifically, Plaintiff and class members would have to use their internet
25 browser to log in to ADP, and clock in and out as well as for meals on their phones.

26 47. Although Defendant required Plaintiff and class members to utilize their personal
27 cellphones carry out their work-related duties, Defendant failed to reimburse them for this cost.
28 Defendant could have reimbursed employees for these costs or provided a phone allowance.

1 Instead, Defendants passed these operating costs off onto Plaintiff and other class members.

2 ***Defendant's Failure to Provide a Personnel File***

3 32. Plaintiff requested his personnel file with an authorization request through his
4 counsel of record, on 11/10/22, 12/20/22 and 1/5/23, and has received no response.

5 33. California *Labor Code* § 1198.5 provides that “(a) Every current and former
6 employee, or his or her representative, has the right to inspect and receive a copy of the personnel
7 records that the employer maintains relating to the employee’s performance or to any grievance
8 concerning the employee. (b) (1) The employer shall make the contents of those personnel records
9 available for inspection to the current or former employee, or his or her representative, at
10 reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the
11 employer receives a written request, unless the current or former employee, or his or her
12 representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the
13 records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of
14 the written request.” ... “(k) If an employer fails to permit a current or former employee, or his or
15 her representative, to inspect or copy personnel records within the times specified in this section, or
16 times agreed to by mutual agreement as provided in this section, the current or former employee or
17 the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the
18 employer.”

19 ***Defendant's Failure to Provide Sick Pay at the Regular Rate***

20 34. Plaintiff received compensation, including monthly bonuses based on sales and
21 incentive and retention bonuses, in addition to his hourly wages while employed by Defendant.
22 Those additional amounts should have been included when calculating his regular rate of pay and
23 used when paying overtime wages, premium wages, and sick leave wages, but were not. Instead,
24 Plaintiff and members of the Classes were paid sick wages at their base rate of pay.

25 ***Defendant's Failure to Provide Compliant Meal Periods***

26 35. Plaintiff is further informed and believes, and based thereon alleges, that as a matter
27 of policy and/or practice, Defendant routinely failed to provide Plaintiff and the members of the
28 plaintiff class, with meal periods during which they were relieved of all duties, by requiring them

1 to remain on duty. Specifically, Plaintiff regularly had to skip his meal breaks or cut them short in
2 order to meet the pressuring demands to get back to work made by Defendant.

3 36. Throughout the Class Period, Defendant regularly:

- 4 a. Failed to provide Plaintiff and the members of the plaintiff class with a first meal
5 period of not less than thirty (30) minutes during which they are relieved of all duty
6 before working more than five (5) hours;
- 7 b. Failed to provide Plaintiff and the members of the plaintiff class with a second meal
8 period of not less than thirty (30) minutes during which they are relieved of all duty
9 before working more than ten (10) hours per day;
- 10 c. Failed to pay Plaintiff and the members of the plaintiff class one hour of pay at their
11 regular rate of compensation for each workday that a meal period was not provided;
12 and,
- 13 d. Failed to accurately record all meal periods.

14 ***Facts Regarding Willfulness***

15 48. Plaintiff is informed and believes, and based thereon alleges, that Defendant is and
16 was advised by skilled lawyers, other professionals, employees with human resources background
17 and advisors with knowledge of the requirements of California wage and hour laws and that at all
18 relevant times, Defendant knew or should have known, that the Plaintiff Class Members, including
19 Plaintiff, were entitled to receive one hour of pay at the employee's regular rate of compensation
20 for each day that a rest period was not provided and were and are entitled to received pay for all
21 hours worked, accurate itemized wage statements, and final pay in a timely manner.

22 ***Unfair Business Practices***

23 49. Defendant has further engaged in, and continue to engage in, unfair business
24 practices in California by practicing, employing and utilizing the unlawful employment practices
25 and policies outlined above.

26 50. As a direct result of the wage and hour violations herein alleged, Plaintiff and
27 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
28 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel Defendant to perform their obligations under state law, all to Plaintiff's and the
2 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

3 ***Plaintiff's Exhaustion of Administrative Remedies***

4 51. Plaintiff is currently complying with the procedures for bringing suit specified in
5 Labor Code section 2699.3.

6 52. By letters dated February 10, 2023, and January __, 2025, required notice was
7 provided to Labor and Workforce Development Agency ("LWDA") and Defendant, of the specific
8 provisions of the Labor Code alleged to have been violated, including the facts and theories to
9 support the alleged violations.

10 53. More than sixty-five (65) days have passed since the dates the notices were mailed
11 to Defendant and the LWDA.

12 54. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of
14 California Labor Code identified in this Complaint.

15 **CLASS ACTION ALLEGATIONS**

16 55. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

17 56. Pursuant to Code of Civil Procedure section 382, this action is brought and may be
18 properly maintained as a class action. This action satisfies the ascertainability, numerosity,
19 commonality, typicality, adequacy, predominance, and superiority requirements of those
20 provisions.

21 57. Plaintiff brings this suit as a class action on behalf of two classes of individuals
22 defined as follows (collectively the "Classes"):

23 58. Plaintiff Class: All persons who have been, or currently are, employed by Defendant
24 and who held, or hold, job positions which Defendant has classified as "non-exempt" employees in
25 the State of California, at any time since four years prior to filing this action, through the date
26 judgment is rendered in this action.

27 59. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
28 during the Class Period.

1 60. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
2 the class period hundreds of class members have been employed by Defendant as non-exempt
3 employees in the State of California. Because so many persons have been employed by Defendant
4 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
5 impossible and/or impracticable.

6 61. Common Questions of Law and/or Fact: Common questions of law and fact exist as
7 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
8 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
9 adjudication of Class Members' claims are as follows:

- 10 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
- 11 California wage and hour statutes;
- 12 b. Whether Defendant failed to pay Plaintiff and Class Members for all hours worked;
- 13 c. Whether Defendant failed to pay Plaintiff and Class Members all overtime;
- 14 d. Whether Defendant had a standard policy of not providing compliant meal and rest
- 15 breaks and premiums to Plaintiff and members of the Plaintiff Class;
- 16 e. Whether Defendant unlawfully and/or willfully failed to provide Plaintiff and
- 17 members of the Plaintiff Class with true and proper wage statements upon payment
- 18 of wages, in violation of Labor Code section 226;
- 19 f. Whether Defendants failed to timely pay wages to Plaintiff and members of the
- 20 Plaintiff Class during their employment;
- 21 g. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the
- 22 Terminated Sub Class upon termination;
- 23 h. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class
- 24 with suitable seating;
- 25 i. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff Class
- 26 for business-related expenses;
- 27 j. Whether Defendants failed to pay Plaintiff and members sick pay wages at the
- 28 regular rate;

1 k. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
2 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
3 fees, and equitable relief;

4 l. Whether Defendant conduct as alleged herein violates the Unfair Business Practices
5 Act of California (Bus. & Prof. Code, § 17200 et seq.)

6 62. Typicality: The claims of the named Plaintiff are typical of the claims of the
7 members of the Plaintiff Class. Defendant's common course of conduct in failing to provide their
8 non-exempt employees with rest periods and all wages in compliance with the applicable wage
9 order, or premium compensation at the regular rate in lieu thereof, failing to timely pay wages,
10 failing to provide suitable seating, failing to reimburse business expenses, and failing to provide
11 them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the
12 same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-
13 extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the
14 same or similar injuries and damages arising from Defendant's common policies, practices,
15 procedures, protocols, routines, and rules which were applied to other Class Members as well as
16 Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were
17 suffered by other members of the proposed class.

18 63. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
19 classes because he is a member of the class, and his interests do not conflict with the interests of
20 the members he seeks to represent. Plaintiff has retained competent counsel, experienced in the
21 prosecution of complex class actions, and together Plaintiff and his counsel intend to prosecute this
22 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
23 adequately be protected by Plaintiff and his attorneys.

24 64. Superiority of Class Action: A class action is superior to other available methods for
25 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
26 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
27 to proceed on an individual basis, because this would potentially result in hundreds of individuals,
28 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or

1 contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable
2 allocation of recovery among those with equally meritorious claims. By contrast, the class action
3 device presents far fewer management difficulties, and provides the benefit of a single
4 adjudication, economics of scale, and comprehensive supervision by a single court.

5 65. The various claims asserted in this action are additionally or alternatively certifiable
6 under the provisions of the Code of Civil Procedure section 382 because:

7 a. The prosecution of separate actions by hundreds of individual class members would
8 create a risk of varying adjudications with respect to individual class members, thus establishing
9 incompatible standards of conduct for Defendant, and

10 b. The prosecution of separate actions by individual class members would also create
11 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the
12 interest of the other class members who are not a party to such adjudications and would
13 substantially impair or impede the ability of such non-party class members to protect their interests.

14 **FIRST CAUSE OF ACTION**

15 **Unpaid Overtime**

16 **(By Plaintiff and Members of the Putative Class Against Defendant)**

17 66. Plaintiff incorporates herein by reference the allegations set forth above.

18 67. At all times relevant herein, which comprise the time period not less than four (4)
19 years preceding the filing of this action, Defendant was required to compensate their hourly
20 employees for all overtime hours worked.

21 68. California Labor Code sections 510 and 1198 and the applicable Industrial Welfare
22 Commission (“IWC”) wage order require employers to pay employees working more than eight (8)
23 hours in a day or more than forty (40) hours in a workweek at the rate of one-and-one-half (1 ½)
24 times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than
25 forty (40) hours in a workweek. The applicable IWC wage order further provides that employers
26 are required to pay employees working more than twelve (12) hours in a day overtime
27 compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay
28 includes all remuneration for employment paid to, or on behalf of, the employee, including

1 nondiscretionary bonuses and incentive pay.

2 69. Defendant willfully failed to pay all overtime wages owed to Plaintiff and members
3 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
4 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
5 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
6 they worked were not recorded.

7 70. During the Class Period, upon information and belief, Defendant had, and continues
8 to have, a company-wide policy of discouraging and impeding Plaintiff and members of the
9 Classes from recording hours worked that were outside of their scheduled shifts in order to limit
10 the amount of overtime employees could accrue. On information and belief, this policy of limiting
11 overtime, led Plaintiff and members of the Classes to work off-the-clock before and after their
12 scheduled shift times. For example, following every shift, Plaintiff was required to undergo a
13 mandatory off-the-clock bag check. Further, Plaintiff alleges that he and other members of the
14 Classes would have to wait to be let out of the store when working a closing shift. Moreover,
15 Plaintiff and members of the Plaintiff Class would also be required to communicate with
16 management outside of their scheduled shifts.

17 71. Defendant knew or should have known that as a result of these company-wide
18 practices and/or policies, Plaintiff and members of the Classes were performing assigned duties
19 off-the-clock and were suffered or permitted to perform work for which they were not paid.
20 Because Plaintiff and members of the Classes worked shifts of eight (8) hours a day or more or
21 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
22 pay. Furthermore, even when overtime was paid for other time worked, Defendant failed to
23 incorporate earned sales bonuses, incentive and retention bonuses and other remuneration into
24 Plaintiff and members of the Classes' regular rate.

25 72. Defendant's failure to pay Plaintiff and members of the Classes the balance of
26 overtime compensation, as required by California law, violates the provisions of Labor Code
27 sections 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
28 attorney's fees, costs, and interest thereon.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay All Wages**

3 **(By Plaintiff and Members of the Putative Class Against Defendant)**

4 73. Plaintiff incorporates herein by reference the allegations set forth above.

5 74. At all times relevant herein, which comprise the time period not less than four (4)
6 years preceding the filing of this action, Defendant was required to compensate their hourly
7 employees for all hours worked.

8 75. For at least the four (4) years preceding the filing of this action, Defendant failed to
9 compensate employees for all hours worked. Defendant implemented policies that actively
10 prevented employees from being compensated for all time worked by subjecting Plaintiff and
11 members of the Classes to work off-the-clock as mentioned above.

12 76. Under the applicable wage order and state regulations, Plaintiff and the Plaintiff
13 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
14 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
15 accordance with Labor Code section 218.5, and penalties pursuant to Labor Code sections 203 and
16 206.

17 77. The applicable IWC wage order section 2(G) defines "hours worked" to mean "the
18 time during which an employee is subject to the control of an employer and includes all the time
19 the employee is suffered or permitted to work, whether or not required to do so."

20 78. Defendant suffered or permitted Plaintiff and members of the Classes to work
21 portions of the day for which Defendant failed to compensate them. This includes time spent under
22 Defendant's control during meal periods.

23 79. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
24 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
25 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
26 ... including interest thereon, reasonable attorney's fees, and costs of suit."

27 80. Labor Code section 1194.2(a) provides in relevant part: "In any action under section
28 1193.6 or section 1194 to recover wages because of the payment of a wage less than the minimum

1 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

3 81. Labor Code section 1197 provides: “The minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than
5 the minimum so fixed is unlawful.”

6 82. Plaintiff is informed and believes, and therefore alleges, that Defendant’s
7 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
8 spent performing their job duties.

9 83. 67. During the Class Period, upon information and belief, Defendant had, and
10 continues to have, a company-wide policy of discouraging and impeding Plaintiff and members of
11 the Classes from recording hours worked that were outside of their scheduled shifts in order to
12 limit the amount of overtime employees could accrue. On information and belief, this policy of
13 limiting overtime, led Plaintiff and members of the Classes to work off-the-clock before and after
14 their scheduled shift times. For example, following every shift, Plaintiff was required to undergo a
15 mandatory bag check. Further, Plaintiff alleges that he and other members of the Classes would
16 have to wait to be let out of the store when working a closing shift. Moreover, Plaintiff and
17 members of the Plaintiff Class would also be required to communicate with management outside of
18 their scheduled shifts.

19 84. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
20 Class for each and every hour worked violates Labor Code sections 1182.11-1182.12, 1194,
21 1194.2, and 1197; IWC wage order No. 16-2001 section 4; and Business & Professions Code.

22 85. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
23 for each and every hour worked violates Labor Code section 221 and 223; the applicable IWC
24 wage order section 3; and Business & Professions Code.

25 86. During the applicable time period, Defendant has and continues to have a pattern
26 and practice of not providing its employees all wages, by failing to include all compensable time,
27 including time worked off-the-clock.

28 87. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff

1 Class have been damaged in an amount according to proof at time of trial.

2 **THIRD CAUSE OF ACTION**

3 **Non-Compliant Rest Breaks**

4 **(By Plaintiff and Members of the Putative Class Against Defendant)**

5 88. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 89. Labor Code sections 226.7, 516, and 1198, and the applicable IWC wage order
8 require employers to provide rest periods and to pay an employee one (1) additional hour of pay at
9 the employee's regular rate for each work day that a meal or rest period is not provided. Labor
10 Code section 226.7 provides that no employer shall require an employee to work during any rest
11 period mandated by an applicable order of the IWC. The applicable IWC wage order provides that
12 "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as
13 practicable shall be in the middle of each work period" and that the "rest period time shall be based
14 on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
15 major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

16 90. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class
17 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
18 and every four (4) hours or major fraction thereof worked during the workday.

19 91. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
20 routinely failed to provide Plaintiff and the members of the Classes with such paid rest periods
21 notwithstanding the fact that Plaintiff and the members of the Classes had not waived their right to
22 the same. Specifically, rest breaks were typically missed and not scheduled.

23 92. Thus, Defendant failed to provide Plaintiff and Class Members with rest periods
24 required by Labor Code sections 226.7, 512, and 516, IWC wage order No. 16-2001 section 11 and
25 categorically failed to pay any and all rest period wages due.

26 93. Plaintiff and Class Members seek damages pursuant to Labor section 226.7(b) and
27 the applicable IWC wage order section 11(D), in the amount of one additional hour of pay at the
28 regular rate for each work day that the rest period is/was not provided or provided late to Plaintiff

1 and any member of the Classes, the cumulative sum of which is to be determined at trial.

2 94. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
3 for Defendant's failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of
4 suit pursuant to Labor Code section 226.7(b) and the applicable wage order.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Furnish Accurate Itemized Wage Statements and Maintain Accurate Records**

7 **(By Plaintiff and Members of the Putative Class Against Defendant)**

8 95. Plaintiff hereby incorporates by reference each and every one of the allegations
9 contained in the preceding paragraphs as if the same were fully set forth herein.

10 96. Labor Code section 226(a) and IWC wage order No. 16-2001 section 6(B) requires
11 employers to furnish each employee with a statement itemizing, among other things, the total hours
12 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

13 97. Labor Code section 226(e) provides that if an employer fails to comply with
14 providing an employee with properly itemized wage statements as set forth in section 226(a), then
15 the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period
16 in which a violation occurs and \$100 per employee for each violation in a subsequent pay period,
17 not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates
18 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation
19 in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which
20 the employer fails to provide the employee a wage statement or fails to keep the required records
21 pursuant to section 226(a).

22 98. Defendant knowingly and intentionally failed to furnish Plaintiff and the members
23 of the Classes with timely, itemized statements in compliance with Labor Code section 226(a) and
24 the applicable IWC Wage order section 6(B).

25 99. Plaintiff is informed and believes, and thereon alleges, that Defendant knowingly
26 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
27 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
28 applicable hourly rates in effect during each respective pay period and the corresponding number

1 of hours worked at each hourly rate by each respective individual as a result of non-compliant meal
2 and rest breaks and rest break premiums.

3 100. Plaintiff is informed and believes, and thereon alleges, that Defendant did not
4 maintain accurate business records pertaining to the total hours worked for Defendant by Plaintiff
5 and the members of the Classes as required under Labor Code section 1174.5. This is a result of
6 missing hours worked, and missed rest-break premiums, as illustrated above.

7 101. As a result of not having kept accurate records, Plaintiff and the Class Members
8 suffered injuries in the form of confusion over whether they received all wages owed to them, and
9 difficulty and expense in reconstructing pay records in addition to other injuries which may come
10 to light during the discovery process.

11 102. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
12 to Labor Code section 226(e) for Defendant's violations of Labor Code section 226(a).

13 103. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
14 and an award of reasonable attorneys' fees and costs pursuant to Labor Code section 226(h).

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Timely Pay Wages During Employment**

17 **(By Plaintiff and Members of the Putative Class Against Defendant)**

18 104. Plaintiff hereby incorporates by reference each and every one of the allegations
19 contained in the preceding paragraphs as if the same were fully set forth herein.

20 105. Labor Code section 204 requires that all wages earned by any person in any
21 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 16th and the 26th
23 day of the month during which the labor was performed, and that all wages earned by any person in
24 any employment between the 16th and the last day, inclusive, of any calendar month, other than
25 those wages due upon termination of an employee, are due and payable between the 1st and the
26 10th day of the following month.

27 106. Labor Code section 204 also requires that all wages earned for labor in excess of the
28 normal work period shall be paid no later than the payday for the next regular payroll period.

1 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
2 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
3 paid not more than seven (7) calendar days following the close of the payroll period.

4 107. During the class period, Defendant willfully failed to pay Plaintiff and members of
5 the Classes all wages due including, but not limited to, all wages, sick pay wages, vacation wages,
6 meal period premiums, and/or rest period premiums, within the time periods specified by Labor
7 Code section 204. Moreover, Defendant issued monthly bonuses based on store sales but paid the
8 bonus on the second paycheck of the month rather than when earned in violation of Labor Code
9 section 204.

10 108. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
11 Class have been damaged in an amount according to proof at time of trial.

12 **SIXTH CAUSE OF ACTION**

13 **Waiting Time Penalties**

14 **(By Plaintiff and Members of the Terminated Sub Class Against Defendant)**

15 109. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
16 forth herein.

17 110. At all times, relevant herein, Defendant was required to pay their employees all
18 wages owed in a timely fashion during and at the end of their employment, pursuant to Labor Code
19 section 201-203.

20 111. As a pattern and practice, Defendant regularly failed to pay Plaintiff and the
21 members of the Terminated Sub Class their final wages pursuant to Labor Code sections 201-203,
22 and accordingly owe waiting time penalties pursuant to Labor Code section 203.

23 112. Labor Code sections 201 and 202 provide that if an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
25 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
26 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
27 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
28 entitled to his or her wages at the time of quitting.

1 113. On information and belief, Defendant has a company-wide practice or policy of
2 paying departing employees their final wages late, instead of adhering to the time requirements set
3 forth in Labor Code sections 201 and 202.

4 114. Specifically, Plaintiff alleges that he received his final pay check late. Plaintiff was
5 terminated on 8/29/22 but was not issued his final check until 8/31/22.

6 115. In addition, Defendant willfully failed to pay Plaintiff and members of the
7 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
8 overtime wages, minimum wages, and/or rest period premiums, either at the time of discharge, or
9 within seventy-two (72) hours of their leaving Defendants employ.

10 116. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
11 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 256.

12 **SEVENTH CAUSE OF ACTION**

13 **Failure to Provide Suitable Seating**

14 **(By Plaintiff and Members of the Putative Class Against Defendant)**

15 117. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
16 forth herein.

17 118. Labor Code section 1198 makes it illegal to employ an employee under conditions
18 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
19 "the standard conditions of labor fixed by the commission shall be the ... standard conditions of
20 labor for employees. The employment of any employee ... under conditions of labor prohibited by
21 the order is unlawful." Code of Regulations, title 8, section 11070(14)(A) provides that "[a]ll
22 working employees shall be provided with suitable seats when the nature of the work reasonably
23 permits the use of seats."

24 119. "The 'nature of the work' refers to an employee's tasks performed at a given
25 location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the
26 entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks
27 being performed at a given location reasonably permit sitting, and provision of a seat would not
28 interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby*

1 v. *CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8. “Whether the nature of the work reasonably permits
2 sitting is a question to be determined objectively based on the totality of the circumstances. An
3 employer’s business judgment and the physical layout of the workplace are relevant but not
4 dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s
5 characteristics.” *Ibid.* The burden of proof to show suitable seating is not available is on the
6 employer. *Id.* at 24. In other words, the employer must show that compliance is “infeasible because
7 no suitable seating exists.” See *ibid.*

8 120. Defendant violated Labor Code section 1198 and Code of Regulations, title 8,
9 section 11070(14)(A) because Plaintiff and members of the Classes were not allowed to sit, even
10 when it would not have interfered with the performance of their duties, nor were they provided
11 with suitable seats within the stores. Defendant’s management did not inform Plaintiff and
12 members of the Classes that they were allowed to sit down, provide any means for them to sit
13 down, or mention any policy regarding sitting.

14 121. As a result of Defendant’s company-wide policy and/or practice of prohibiting
15 employees from sitting during their shifts and company-wide failure to provide suitable seating,
16 Plaintiff and members of the Classes were forced to stand during shifts and denied seats when
17 working. Defendant’s failure to provide suitable seating to Plaintiff and members of the Classes
18 violates Labor Code section 1198 and IWC wage order No. 7-2001 section 14(A).

19 122. Labor Code section 1198 makes it illegal to employ an employee under conditions
20 of labor that are prohibited by the applicable wage order. Labor Code section 1198 requires that
21 “the standard conditions of labor fixed by the commission shall be the ... standard conditions of
22 labor for employees. The employment of any employee ... under conditions of labor prohibited by
23 the order is unlawful.” Code of Regulations, title 8, section 11070(14)(B) provides that “[w]hen
24 employees are not engaged in the active duties of their employment and the nature of the work
25 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
26 the work area and employees shall be permitted to use such seats when it does not interfere with
27 the performance of their duties.”

28 123. The IWC states that section 14(B) applies during “lulls in operation” when an

1 employee, while still on the job, is not then actively engaged in any duties. *Kilby* citing IWC, 1976
2 Wage orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to
3 a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible,
4 while working there. *Ibid.* However, if other job duties take the employee to a different location
5 where he or she must perform tasks requiring standing, the employee would be entitled to a seat
6 under section 14(B) during “lulls in operation.” *Ibid.*

7 124. Defendant did not provide Plaintiff and members of the Classes with seats or stools
8 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
9 with the performance of their duties for times when they were not engaged in active duties that
10 require standing.

11 125. As a result of Defendant’s company-wide policy and/or practice of prohibiting
12 employees from sitting at any time, even when they were not engaged in active duties requiring
13 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
14 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
15 Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates
16 Labor Code section 1198 and IWC Wage order No. 7-2001 section 14(B).

17 126. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
18 attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
19 compliance with California’s seating requirements, pursuant to Labor Code section 1194.5.

20 **EIGHTH CAUSE OF ACTION**

21 **Failure to Reimburse Business Expenses**

22 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

23 127. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
24 forth herein.

25 128. Labor Code section 2802 requires employers to pay for all necessary expenditures
26 and losses incurred by the employee in the performance of his or her job. The purpose of Labor
27 Code section 2802 is to prevent employers from passing off their cost of doing business and
28 operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228

1 Cal.App.4th 1137, 1144.

2 129. The applicable wage order, IWC Wage order No. 7-2001, provides that: “[w]hen
3 tools or equipment are required by the employer or are necessary to the performance of a job, such
4 tools and equipment shall be provided and maintained by the employer, except that an employee
5 whose wages are at least two (2) times the minimum wage provided herein may be required to
6 provide and maintain hand tools and equipment customarily required by the trade or craft.”

7 130. During the class period, Defendant had a company-wide policy of requiring Plaintiff
8 and class members to communicate with management on their personal cellphones and to clock in
9 and out on their phones. Specifically, Plaintiff and class members would have to use their internet
10 browser to log in to ADP, and clock in and out as well as for meals on their phones.

11 131. Although Defendant required Plaintiff and members of the Classes to utilize
12 uniforms to carry out their work-related duties, Defendant failed to reimburse them for this cost.
13 Defendant could have reimbursed employees for the costs of using their phone for work-related
14 duties or provided a phone allowance. Instead, Defendant passed these operating costs off onto
15 Plaintiff and members of the Classes.

16 132. Thus, Defendant had, and continue to have, a company-wide policy and/or practice
17 of not reimbursing employees for expenses necessarily incurred in violation of Labor Code section
18 2802.

19 133. Plaintiff and members of the Classes are entitled to recover civil penalties,
20 attorney’s fees, costs, and interest thereon.

21 **NINTH CAUSE OF ACTION**

22 **Failure to Provide Sick Pay**

23 **(By Plaintiff and Members of the Putative Class Against Defendant)**

24 134. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
25 forth herein.

26 135. Sick pay must be compensated at the employee’s regular rate of pay, for the
27 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
28 (Lab. Code § 246(1).)

136. Defendant failed to pay Plaintiff and members of the Class sick pay at the correct rate. Plaintiff received compensation in addition to hourly wages, but those additional amounts were not included when calculating sick pay wages. Plaintiff received compensation, including monthly bonuses based on sales and incentive and retention bonuses, in addition to his hourly wages while employed by Defendant, which was not factored into his sick pay wages. By failing to pay Plaintiff and Class Members for sick pay at the correct rate, Defendant willfully violated Labor Code section 246.

137. Defendant's unlawful acts deprived Plaintiff and the Class of all wages. Plaintiff seeks to represent of sick pay in amounts to be determined at trial, and they are entitled to recover these amounts with interest, attorneys' fees, and costs.

TENTH CAUSE OF ACTION

FAILURE TO PROVIDE EMPLOYEE PERSONNEL FILE

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

138. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

139. Plaintiff requested his personnel file with an authorization request through his counsel of record, on 11/10/22, 12/20/22 and 1/5/23, and has received no response.

140. California *Labor Code* § 1198.5 provides that “(a) Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee. (b) (1) The employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer agree in writing to a date beyond 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer’s receipt of the written request.” ... “(k) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or

1 times agreed to by mutual agreement as provided in this section, the current or former employee or
2 the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the
3 employer.”

4 141. Plaintiff alleges that Defendant has a habit and practice of ignoring such requests.
5 Plaintiff was unable to review his employment records to support the violations he contends in this
6 Complaint and was unable to do so because of Defendant’s willful violation of the law.

7 **ELEVENTH CAUSE OF ACTION**

8 **Failure to Provide Compliant Meal Breaks**

9 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

10 142. Plaintiff hereby incorporates by reference each and every one of the allegations
11 contained in the preceding paragraphs as if the same were fully set forth herein.

12 143. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
13 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
14 not less than thirty (30) minutes without duty.

15 144. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that Defendant
16 routinely failed to provide Plaintiff and the members of the Class with such meal periods without
17 duty, notwithstanding the fact that Plaintiff and the members of the Class had not waived their right
18 to the same. Thus, Defendant failed to provide Plaintiff and the members of the Class with
19 compliant meal periods required by *Labor Code* §§ 226.7, 512, 516 and the applicable IWC wage
20 order section 10, and categorically failed to pay any and all meal period wages due.

21 145. Plaintiff and Class Members seek damages pursuant to *Labor Code* § 226.7(b) and
22 the applicable IWC wage order section 10(F), in the amount of one additional hour of pay at the
23 regular rate for each work day that the meal period is/was not provided to Plaintiff and any member
24 of the Class, the cumulative sum of which is to be determined at trial.

25 146. Under the foregoing, California employers must provide meal periods and authorize
26 and permit rest periods to all employees during their shifts. In *Augustus et al. v. ABM Security*
27 *Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court reaffirmed that the required meal
28 and rest periods must be “off-duty,” which means that employees must be relieved of “all work-

1 related duties,” including the duty to remain “on call,” and they must be “free from employer
2 control” over how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to
3 use meal and rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*
4 (2012) 53 Cal.4th 1004, 1038-39.

5 147. When employees must either “remain at the ready and capable of being summoned
6 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
7 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
8 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus, supra*, 2
9 Cal.5th at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Ibid.*

10 148. The Supreme Court’s decision in *Augustus* demonstrates a series of meal and rest
11 break cases affirming California’s broad, protective standard for employees.¹

12 149. Moreover, as the mere existence of a facially lawful meal and rest break policy is
13 unavailing if there are practical constraints and pressures on employees to perform their duties in
14 ways that omit breaks. See *Brinker, supra*, 53 Cal.4th at 1040.

15 150. Yet, Defendant did and does not provide Plaintiff and members of the Class with
16 meal periods during which they are completely relieved of duty for at least thirty (30) minutes by
17 the fifth hour of work and again by the tenth hour of work. Specifically, Plaintiff regularly had to
18 skip his meal breaks or cut them short when he was working for Defendant.

19 151. Plaintiff alleges that meal breaks were frequently late as described above. As a
20 result, Plaintiff and members of the Class were forced to work in excess of five (5) hours before
21 taking a meal period.

22 152. Thus, Defendant has failed to perform its obligations to provide Plaintiff and the
23 members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and
24 a second meal period by the end of the tenth hour of work. Defendant has also failed to pay
25

26 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Lubin v. Wackenhut Corp.*
27 (2016) 5 Cal.App.5th 926 , reh’g. denied (Dec. 14, 2016); *Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216
28 Cal.App.4th 220; *Berlanga v. Equilon Enterprises LLC* (N.D.Cal., Aug. 31, 2017, No. 17-CV-00282-MMC)
2017 WL 3782245 at *3 (a policy requiring employees to “remain in contact with supervisors and other
employees working in their units throughout their shifts... would appear to be unlawful under [*Augustus*.]”)

1 Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-
2 duty meal period that they have been denied.

3 153. Employers must pay premium payments to employees for missed meal, rest, and
4 recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate. *Ferra v.*
5 *Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

6 154. Defendant knew or should have known that as a result of its policies and/or
7 practices, that Plaintiff and members of the Class were not actually relieved of all duties to take
8 timely, uninterrupted meal periods. Defendant further knew or should have known that it did not
9 pay Plaintiff and members of the Class all meal period premiums when meal periods were missed,
10 late, short, and/or interrupted. Furthermore, Defendant has engaged in a company-wide practice
11 and/or policy of not paying meal period premiums owed when compliant meal periods are not
12 provided. Because of this practice and/or policy, Plaintiff and members of the Class have not
13 received all premium pay for missed, interrupted, or late meal periods. Accordingly, Defendant
14 failed to provide all meal periods in violation of *Labor Code* §§ 226.7, 512(a), 516, and 1198.

15 155. Plaintiff and members of the Class are entitled to civil penalties, attorney's fees,
16 costs, and interest thereon.

17 **TWELFTH CAUSE OF ACTION**

18 **Violation of California**

19 **Business and Professions Code Section 17200 et seq.**

20 **(By Plaintiff and the Members of the Plaintiff Class Against Defendant)**

21 156. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
22 forth herein.

23 157. Business and Professions Code section 17200 defines unfair competition to include,
24 "unlawful, unfair or fraudulent business practices."

25 158. Plaintiff and all proposed Class Members are "persons within the meaning of
26 Business and Professions Code section 17204, who have suffered injury in fact and have lost
27 money or property as a result of Defendant's unfair competition.

28 159. Defendant has been committing, and continues to commit, acts of unfair

1 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
2 described in this Complaint, including, but not limited to:

- 3 a) violations of Labor Code sections 510, 1198;
- 4 b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- 5 c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- 6 d) violations of Labor Code sections 226, 1174;
- 7 e) violations of Labor Code section 204;
- 8 f) violations of Labor Code sections 200-201;
- 9 g) violations of Labor Code section 2802;
- 10 h) violations of Labor Code section 1198;
- 11 i) violations of Labor Code §§ 226.7, 512, 516 and 1198.

12 160. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
13 Defendant has reaped and continues to reap unfair benefits and illegal profits at the expense of
14 Plaintiff and proposed Class Members. Defendant's unlawful, unfair, and/or fraudulent conduct has
15 also enabled Defendant to gain an unfair competitive advantage over law-abiding employers and
16 competitors.

17 161. Business and Professions Code section 17203 provides that the Court may restore to
18 an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or
19 fraudulent business acts or practices.

20 162. Plaintiff seeks a court order enjoining Defendant from the unlawful, unfair, and/or
21 fraudulent activity alleged herein.

22 163. Pursuant to Civil Code section 3287(a), Plaintiff and other members of the Plaintiff
23 Class are entitled to recover pre-judgment interest on wages earned, but not paid.

24 164. Plaintiff further seeks an order requiring an audit and accounting of the payroll
25 records to determine the amount of restitution of all unpaid wages owed to himself and members of
26 the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds
27 to be paid to current and former employees that can be identified and located pursuant to a court
28 order and supervision.

165. Plaintiff seeks restitution for himself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

THIRTEENTH CAUSE OF ACTION

Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)

(On Behalf of All Aggrieved Employees Against Defendants)

166. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

167. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California Labor Code §§ 2698-99) applied to Defendant's employment of Plaintiff and the proposed Class Members.

168. At all times set forth herein, California Labor Code § 2699(a) has provided that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code § 2699.3.

169. At all times set forth herein, the PAGA has also provided that for the violation of any Labor Code provision that does not itself contain a civil penalty, there are established civil penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

170. A civil action under PAGA may be brought by an “aggrieved employee,” any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

171. Defendants have been committing, and continue to commit, violations of the California Labor Code, including, but not limited to:

- a) violations of Labor Code sections 510, 1198;
- b) violations of Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198;

- c) violations of Labor Code sections 226.7, 512, 516, and 1198;
- d) violations of Labor Code sections 226, 1174;
- e) violations of Labor Code section 204;
- f) violations of Labor Code sections 200-201;
- g) violations of Labor Code section 2802;
- h) violations of Labor Code section 1198; and,
- i) violations of Labor Code §§ 226.7, 512, 516 and 1198.

172. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendant, and one or more of the alleged violations were committed against them.

173. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

174. On February 10, 2023, and February 3, 2025, Plaintiff provided written notices to

1 the LWDA and by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including the facts and theories to support the alleged
3 violations. More than sixty-five (65) calendar days have passed since the dates the notices were
4 provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative
5 prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against
6 Defendant for violations of California Labor Code identified in this Complaint.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, Class Members and Aggrieved Employees pray for judgment as follows:

- 9 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
- 10 2. For an order that counsel for Plaintiff be appointed class counsel
- 11 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
12 Sub-Class;
- 13 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated
14 Sub Class;
- 15 5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class
16 and disgorgement of all profits from the unlawful business practices of Defendant
- 17 6. An order appointing Plaintiff's counsel as class counsel;
- 18 7. Prejudgment and post judgment interest on all sums awarded;
- 19 8. For compensatory damages;
- 20 9. For penalties pursuant to Labor Code sections 226, 226.3, 226.7, 2699;
- 21 10. For interest accrued to date;
- 22 11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226
23 and 1194;
- 24 12. For reasonable attorneys' fees pursuant to Labor Code section 226, 2699(g)(1), and
25 Code of Civil Procedure section 1021.5, and/or other applicable law; and
- 26 13. A declaratory judgment that Defendant has knowingly and intentionally violated the
27 following provisions of law;
 - 28 a. Labor Code sections 510, 1198 for failing to pay overtime;

- 1 b. Labor Code sections 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for
2 failing to pay all wages;
- 3 c. Labor Code sections 226.7, 512, 1198 for failing to provide
4 compliant rest breaks;
- 5 d. Labor Code sections 226, 1174 for failing to provide compliant wage
6 statements and maintain accurate records;
- 7 e. Labor Code section 204 for failing to timely pay wages during
8 employment
- 9 f. Labor Code sections 246 for failing to pay sick wages at the regular
10 rate;
- 11 g. Labor Code sections 201 and 202 for failing to pay wages at
12 termination;
- 13 h. Labor Code section 1198 for failing to provide suitable seating;
- 14 i. Labor Code section 1198 for failing to provide Plaintiff's personnel file;
- 15 j. Labor Code section 226.7, 512, 516, and 1198 for failing to provide
16 compliant meal breaks;
- 17 k. Labor Code section 2802 for failing to reimburse business expenses;
- 18 l. Business & Professions Code sections 17200-08 for violating the
19 provisions set forth herein above.

20 14. For all such other and further relief that the Court may deem just and proper.

21
22 DATED: April 14, 2025

BRADLEY/GROMBACHER, LLP
MAJARIAN LAW GROUP APC

23
24 By: Marcus J. Bradley
25 Marcus Bradley, Esq.
26 Kiley Grombacher, Esq.
27 Garen Majarian, Esq.
28 Sahag Majarian, II, Esq.
 Attorneys for Plaintiff and others similarly
 situated

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PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On April 14, 2025, I served the foregoing documents described as

**1) FIRST AMENDED CLASS AND REPRESENTATIVE ACTION
CONSOLIDATED COMPLAINT**

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

X **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed April 14, 2025, at Westlake Village, California.

Suzette Boucher

Suzette Boucher

Tyler Andrew Staicer v. S-Fer International, Incorporated
San Diego County Superior Court
Case No. 37-2023-00006023-CU-OE-CTL

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