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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF KING

10 Shakura Felder, Michelle Merrick,
11 and Caleb Brix, individually and on
12 behalf of all those similarly situated,

13 Plaintiffs,

14 v.

15 SMX, LLC, AF Operations, LLC, and DOEs
16 1-50, jointly and severally,

17 Defendants.

No.

CLASS ACTION COMPLAINT FOR
DAMAGES

18 Plaintiffs claim against Defendants as follows:

19 **INTRODUCTION**

20 1. Plaintiffs bring this class action for money damages and statutory penalties for
21 wage law violations on behalf of current and former employees of Defendants SMX, LLC
22 ("SMX"), AF Operations, LLC ("AF Operations"), and DOEs 1-50 (collectively,
23 the "Defendants"), jointly and severally, for breach of contract and violations of the
24 Washington Minimum Wage Act ("WMWA"), RCW 49.46, the Washington Industrial
25 Welfare Act ("IWA"), RCW 49.12, and the Washington Administrative Code ("WAC"),
26 WAC 296-126-092.

2. Plaintiffs complain that Defendants violated the WMWA, IWA, and WAC 296-126-092 by requiring their hourly workers at AF Operations's fulfillment centers to pass through a security clearance before taking lunch and again at the end of each shift, for which they were not compensated.

JURISDICTION AND VENUE

3. The Superior Court of Washington has jurisdiction of Plaintiffs' claims pursuant to RCW 2.08.010.

4. Venue in King County is appropriate pursuant to RCW 4.12.025.

5. A significant portion of the acts and omissions alleged herein took place in the state of Washington and King County.

6. At least two thirds of the Class members, as alleged herein, are citizens of Washington State.

PARTIES

7. Plaintiff Shakura Felder is an individual who resides in Federal Way, Washington, and worked for SMX at AF Operations from November 2012 until February 2013.

8. Plaintiff Michelle Merrick is an individual who resides in Federal Way, Washington, and worked for AF Operations from July 2008 until May 2012.

9. Plaintiff Caleb Brix is an individual who resides in Shoreline, Washington, and worked for SMX at AF Operations from November 2010 until August 2011, and directly for AF Operations from August 2011 until January 22, 2014.

10. Defendant AF Operations is a Washington corporation headquartered in Bellevue, Washington, doing business in King County and in the State of Washington. AF Operations is an employer for purposes of the WMLA and IWA.

11. Defendant SMX is an Illinois corporation headquartered in Chicago, Illinois, doing business in King County and in the State of Washington. SMX is an employer for

1 purposes of the WMWA and IWA.

2 **COMMON ALLEGATIONS**

3 12. AF Operations operates AmazonFresh fulfillment centers and offers same-day
4 and early morning delivery of a broad selection of items, including fresh grocery and local
5 products.¹

6 13. SMX provides “sustainable workforce management solutions across the
7 Americas, Europe and the Asia-Pacific region” and is “the leading workforce management
8 provider with deep domain expertise supporting clients in the manufacturing, distribution and
9 logistics segments.”²

10 14. Plaintiffs and the putative Class members work and have worked for
11 Defendants in fulfillment centers operated by AF Operations.

12 15. There exists a written contract between AF Operations and SMX to staff
13 fulfillment centers operated by AF Operations whereby SMX is paid an hourly rate for the
14 amount of hours its employees work at AF Operations’s fulfillment centers.

15 16. Defendants share a joint employment relationship in connection with Plaintiffs
16 and the putative Class members who were direct employees of SMX.

17 17. Fulfillment center workers, like Plaintiff Caleb Brix, often begin working for
18 staffing companies SMX and later become direct employees of AF Operations.

19 18. AF Operations maintained, enforced, and implemented a security clearance
20 policy for all hourly fulfillment center employees who worked at AF Operations in
21 Washington. Neither AF Operations nor SMX pays their employees for time spent in the
22 security clearance lines.

23 19. SMX is a vendor that contracts with AF Operations for staffing services.
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25 ¹ See <http://fresh.amazon.com/help> (last visited Feb. 18, 2013).

26 ² See <http://www.staffmanagement.com/Staffing/Company.aspx> (last visited Feb. 18, 2013)

1 SMX has knowledge of the security clearance policy implemented by AF Operations and
2 requires its employees to adhere to it so as to retain its contractual relationship with AF
3 Operations.

4 20. SMX employees are a third party beneficiary to the contract between SMX
5 and AF Operations. The benefit to SMX employees flows directly from the contract between
6 SMX and AF Operations and is not merely incidental.

7 21. Plaintiffs were required to undergo a daily security clearance before leaving
8 for lunch and again at the end of each shift. Plaintiffs were not compensated for the time
9 spent undergoing the security clearance before they were released from work and permitted
10 to leave the fulfillment center facility.

11 22. Defendants' requirement that hourly fulfillment center workers undergo a
12 thorough security clearance before being released from work and permitted to leave the
13 facility was solely for the benefit of the employers and their customers.

14 23. During the class period, Plaintiffs and the putative Class members routinely
15 worked 40 hours per week, not including time spent passing through the security clearance
16 lines, and routinely worked more than 40 hours per week when such security clearance time
17 is included.

18 24. At the direction and control of Defendants, and solely for the benefit of the
19 Defendants and/or their customers, Plaintiffs and the putative Class members were required
20 to wait before each lunch period and again at the end of each shift for approximately 10-15
21 minutes each day without any compensation in order to undergo a search for possible
22 contraband or pilferage of inventory.

23 25. Defendants forced Plaintiffs and the putative Class members to undergo an
24 intense security clearance: fulfillment center workers were required to remove all personal
25 belongings like wallets, keys, and belts and would then pass through metal detectors before
26 being released from work and permitted to leave the facility. In addition, fulfillment center

1 workers were unable to engage in any personal activities during the wait.

2 26. Plaintiffs were required to undergo security clearances at the beginning of
3 their meal break that resulted in less than a 30-minute uninterrupted meal break even though
4 they were forced to clock-out for 30-minutes.

5 27. Defendants did not pay any of their hourly fulfillment center workers any
6 compensation for the time spent waiting for and undergoing daily security clearances.

7 28. Defendant SMX knew that its employees assigned to work in AF Operations
8 fulfillment centers were required to pass through security clearances at the beginning of meal
9 periods and at the end of daily shifts and knew that its employees were not paid for this time.
10 As a result, SMX knowingly suffered or permitted its employees to engage in uncompensated
11 hours worked and failed to assure that its employees received the full 30-minute
12 uninterrupted meals periods required by Washington law.

13 **WASHINGTON CLASS ACTION ALLEGATIONS**

14 29. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure
15 23(b)(3) and (c)(4) on behalf of a putative Class defined to include:

16 All current and former hourly fulfillment center workers who
17 worked for AF Operations, LLC, and/or SMX, LLC in
18 Washington during the three years prior to October 15, 2013
19 and thereafter, who were not paid for time spent waiting for
20 and undergoing mandatory daily security clearances and/or had
their 30-minute meal periods truncated or interrupted by
mandatory security clearance procedures.

21 30. *Numerosity*: The members of the Washington Class are so numerous that
22 joinder of all members in the case would be impracticable. On information and belief the
23 number of hourly fulfillment center workers is approximately 300.

24 31. *Commonality/Predominance*: There is a well-defined community of interest
25 among Washington Class members and common questions of *both* law and fact predominate
26

1 in the action over any questions affecting individual members. These common legal and
2 factual questions include, but are not limited to, the following:

- 3 a. Whether the time Washington Class members spent waiting for
4 and undergoing mandatory daily security clearances is
5 compensable under the Washington Minimum Wage Act and/or
6 the Washington Industrial Welfare Act;
- 7 b. Whether Washington Class members are owed wages (above the
8 state mandated overtime due under the Washington Minimum
9 Wage Act) for time spent waiting for and undergoing mandatory
10 daily security clearances;
- 11 c. Whether Washington Class members were deprived of proper
12 meal periods under the Washington Industrial Welfare Act and
13 the Washington Administrative Code, WAC 296-126-092, as a
14 result of the time spent on security clearances; and
- 15 d. Whether Defendants breached their employment agreements with
16 Washington Class members by paying them less than their regular
17 agreed-upon rate of pay for work as a result of undergoing
18 mandatory daily security clearances.

19 32. *Typicality*: Plaintiffs' claims are typical of those of the Washington Class in
20 that Plaintiffs and all other Class members suffered damages as a direct and proximate result
21 of Defendants' common and systemic payroll policies and practices. Plaintiffs' claims arise
22 from Defendants' similar policies, practices, and course of conduct as all other Washington
23 Class members' claims and Plaintiffs' legal theories are based on the same legal theories as
24 all other Washington Class members.

25 33. *Adequacy*: Plaintiffs will fully and adequately protect the interests of the
26 Washington Class and Plaintiffs have retained national counsel and Washington counsel who
are qualified and experienced in the prosecution of wage-and-hour class actions. Neither
Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the interests
of the Washington Class.

34. *Superiority:* A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because, *inter alia*, it is economically infeasible for Washington Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of employer reprisals.

35. The case will be manageable as a class action. Plaintiffs and their counsel know of no unusual difficulties in the case and Defendants have advanced networked computer and payroll systems that will allow the class, wage, and damages issues in the case to be resolved with relative ease.

36. Because the elements of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue her claim as a class action”).

COUNT I

VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT
(All Defendants)

37. Plaintiffs re-allege and incorporate all previous paragraphs herein.

38. The time spent by Plaintiffs and the putative Class members on security clearances, as alleged above, are “hours worked” within the meaning of RCW 49.46 and associated state wage laws and regulations.

39. Plaintiffs and the putative Class members are non-exempt employees entitled to be paid a minimum wage for all hours worked and overtime compensation for all hours worked in excess of 40 in a workweek.

40. Defendants' failure to pay Plaintiffs and the putative Class members for time spent in security clearance lines at one and one-half times their regular rate of pay for hours worked in excess of forty in their workweeks constitutes a violation of RCW 49.46.130.

41. Defendants' failure to pay Plaintiffs and the putative Class members for time spent in security clearance lines at the minimum wage for hours worked less than forty in their workweeks constitutes a violation of RCW 49.46.020.

42. Defendants' failure to pay Plaintiffs and the putative Class members for the time represented by legally insufficient meal periods at one and one-half times their regular rate of pay for hours worked in excess of forty in their workweeks constitutes a violation of RCW 49.46.130.

43. Defendants' failure to pay Plaintiffs and the putative Class members for the time represented by legally insufficient meal periods at least at minimum wage for hours worked less than forty in their workweeks constitutes a violation of RCW 49.46.020.

44. As a result of Defendants' acts and omissions, Plaintiffs and the putative Class members have been damaged in amounts as will be proven at trial.

COUNT II

VIOLATION OF THE WASHINGTON INDUSTRIAL WELFARE ACT
(All Defendants)

45. Plaintiffs re-allege and incorporate all previous paragraphs herein.

46. Defendants' failure to provide and pay for legally sufficient meal periods, as alleged above, constitutes a violation of RCW 49.12 and WAC 296-126-092.

47. Plaintiffs and the putative Class members were required to spend a substantial amount of time every day during their 30-minute meal period undergoing security clearances. Thus, Plaintiffs and the putative Class members were only permitted to

1 take an uninterrupted meal period of less than 30-minutes even though they were forced to
2 clock-out for 30-minutes.

3 48. As a result of Defendants' acts and omissions, Plaintiffs and the putative Class
4 members have been damaged in amounts as will be proven at trial.

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6 **COUNT III**

7 **BREACH OF CONTRACT**
8 **(All Defendants)**

9 49. Plaintiffs re-allege and incorporate all previous paragraphs herein.

10 50. Defendants breached their employment agreement with Plaintiffs and the
11 putative Class members by paying them less than their regular agreed-upon rate of pay for
12 time spent in mandatory security clearance lines.

13 51. As a result of Defendants' acts and omissions, Plaintiffs and the putative Class
14 members have been damaged in amounts as will be proven at trial.

15 **COUNT IV**

16 **RECOVERY AS THIRD-PARTY BENEFICIARY**
17 **(Defendant AF Operations)**

18 52. Plaintiffs re-allege and incorporate all previous paragraphs herein, and plead
19 the following claim against Defendant AF Operations in addition and in the alternative to the
20 claims pled in Counts I through III above.

21 53. AF Operations and SMX entered into a contract whereby SMX is paid an
22 hourly rate for each employee it produces to work at fulfillment centers operated by AF
23 Operations predicated upon the time the SMX employee works at the facility. SMX, in turn,
24 pays SMX employees the agreed-to hourly rate out of the funds it receives from AF
25 Operations. In short, SMX employees are the "beneficiaries of" the contract between AF
26 Operations and SMX.

1 54. Plaintiffs and the putative Class members who worked directly for SMX are
2 third party beneficiaries of the contract between AF Operations and SMX. The benefits from
3 the contract flow directly to Plaintiffs and the putative Class members and are not incidental
4 or indirect. Instead, the contract was made for the direct benefit of a third person, i.e.,
5 Plaintiffs and the putative Class members.
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7 55. AF Operations breached its contract with SMX by failing to pay SMX for
8 each hour its employees worked at fulfillment centers operated by AF Operations, thereby
9 preventing SMX from paying its employees for each hour they worked. As a result,
10 Plaintiffs and the putative Class members have been damaged in amounts as will be proven at
11 trial.
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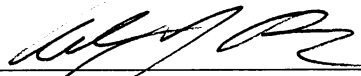
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request the following relief:

- 15 a. Certifying this action as a class action pursuant to Rule 23 (b)(3) or
16 23(c)(4);
17 b. Designating Plaintiffs as the representatives of the Class and undersigned
18 counsel as Class Counsel;
19 c. Damages for lost wages in amounts to be proven at trial;
20 d. Attorneys' fees and costs pursuant to RCW 49.46.090 and RCW
21 49.48.030;
22 e. Prejudgment interest; and
23 f. Such other and further relief as the Court deems just and proper.

24 Respectfully submitted this 18th day of February, 2014.

25 SCHROETER GOLDMARK & BENDER

26 
Adam J. Berger, WSBA #20714
Attorneys for Plaintiffs