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Attorneys for Plaintiff OSCAR ALBARRAN,
as an individual and on behalf of all others similarly
situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

OSCAR ALBARRAN, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

KAMRAN STAFFING, INC., a California
corporation; PARTNERS ALLIANCE
COLD STORAGE, INC., a California
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: CIVSB2129425

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Recovery of Unpaid Minimum Wages and Liquidated Damages
2. Recovery of Unpaid Overtime Wages
3. Failure to Provide Meal Periods or Compensation in Lieu Thereof
4. Failure to Provide Rest Periods or Compensation in Lieu Thereof
5. Failure to Furnish Accurate Itemized Wage Statements
6. Failure to Timely Pay All Wages Upon Separation of Employment
7. Failure to Reimburse Business Expenses
8. Unfair Competition and
9. Violation of Private Attorneys General Act (PAGA)

DEMAND FOR JURY TRIAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 04 2022
By *[Signature]* Deputy

1 Plaintiff, OSCAR ALBARRAN (“PLAINTIFF”), as an individual on behalf of herself, the
2 state of California, Aggrieved Employees (defined below) and on behalf of all other similarly
3 situated Class Members (defined below), hereby files this Second Amended Complaint against
4 Defendant KAMRAN STAFFING, INC., Defendant PARTNERS ALLIANCE COLD STORAGE,
5 INC., and DOES 1-100, inclusive (collectively referred to as “DEFENDANTS”). PLAINTIFF is
6 informed and believes and thereon alleges as follows:

7 **JURISDICTION AND VENUE**

8 1. This court possesses original subject matter jurisdiction over this matter. Venue is
9 proper in San Bernardino, California, because Defendant KAMRAN STAFFING, INC. maintains
10 its principal place of business in San Bernardino County. Moreover, DEFENDANTS transact
11 business within this judicial district and some of the complained of conduct occurred in this judicial
12 district. *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069
13 (venue in a PAGA action is proper in any county where the defendants committed Labor Code
14 violations against some of its employees).

15 **THE PARTIES**

16 2. PLAINTIFF resides in Los Angeles County, in the State of California. PLAINTIFF
17 worked for DEFENDANTS in the State of California as a non-exempt, hourly-paid employee during
18 the relevant time period.

19 3. Defendant KAMRAN STAFFING, INC., (“KAMRAN STAFFING”) is a California
20 corporation that, at all relevant times, was authorized to do business within the State of California
21 and is doing business in the State of California. KAMRAN STAFFING and its managing agents
22 own, operate, or otherwise manage a large staffing agency.

23 4. Defendant PARTNERS ALLIANCE COLD STORAGE, INC. (“PARTNERS
24 ALLIANCE”) is a California corporation that, at all relevant times, was authorized to do business
25 within the State of California and is doing business in the State of California. PARTNERS
26 ALLIANCE is a warehousing and distribution company with multiple warehouse locations in
27 Southern California.

28 5. The true names and capacities of the DOE Defendants sued herein as DOES 1

1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
2 Defendant by said fictitious names. Each of the DEFENDANTS designated herein as a DOE is
3 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
4 amend this Complaint to reflect the true names and capacities of the Doe DEFENDANTS when
5 such identities become known.

6 6. PLAINTIFF is informed and believes that, at all relevant times, each Defendant was
7 the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder,
8 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some
9 or all of the other DEFENDANTS, and was engaged with some or all of the other defendants in a
10 joint enterprise for profit, and bore such other relationships to some or all of the other
11 DEFENDANTS so as to be liable for their conduct with respect to the matters alleged in this
12 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
13 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
14 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
15 controlled, aided and abetted the conduct of all other DEFENDANTS.

16 **JOINT LIABILITY**

17 7. Under California law, the definition of the terms “to employ” are broadly construed
18 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
19 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
20 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
21 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
22 was to reach situations in which multiple entities control different aspects of the employment
23 relationship. Supervision of the work, in the specific sense of exercising control over how services
24 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
25 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary
26 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

27 8. During PLAINTIFF’s assignment with DEFENDANTS, PLAINTIFF, Aggrieved
28 Employees and the Class Members (defined below) were jointly employed by these Defendants for

1 purposes of the Wage Orders, under the alternative definitions of “to employ” adopted by the
2 California Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1)
3 exercised control over wages, hours and working conditions of PLAINTIFF, Aggrieved Employees,
4 and the Class Members; (2) suffered or permitted PLAINTIFF, Aggrieved Employees, and the Class
5 Members to work for them; and, (3) engaged PLAINTIFF, Aggrieved Employees and the Class
6 Members to work for them.

7 9. In particular, KAMRAN STAFFING hired PLAINTIFF and entered into a written
8 employment agreement with PLAINTIFF. During PLAINTIFF’s employment, KAMRAN
9 STAFFING maintained control over many aspects of PLAINTIFF’s employment, including, among
10 other things, having the authority to discipline PLAINTIFF, change PLAINTIFF’s job assignment,
11 change PLAINTIFF’s work hours, change PLAINTIFF’s rates of pay, and to terminate
12 PLAINTIFF’s employment.

13 10. In addition, when PLAINTIFF was first hired, KAMRAN STAFFING provided
14 PLAINTIFF with orientation and training materials. KAMRAN STAFFING issued PLAINTIFF
15 written policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of
16 PLAINTIFF’s wages, with which PLAINTIFF was required to comply. Based on information and
17 belief, among other things, these policies provided that PLAINTIFF’s weekly time records be
18 submitted to KAMRAN STAFFING; and KAMRAN STAFFING was supposed to process
19 PLAINTIFF’s time records and pay PLAINTIFF for all hours worked. KAMRAN STAFFING
20 exercised ultimate control over the payment of PLAINTIFF’s wages, as KAMRAN STAFFING
21 issued PLAINTIFF his paychecks. Finally, KAMRAN STAFFING directed PLAINTIFF to comply
22 with PARTNERS ALLIANCE’s policies and directions. PLAINTIFF is informed and believes that
23 KAMRAN STAFFING exercised the same control over, applied the same policies and practices,
24 and engaged in the same acts and omissions with regard to the other Class Members and Aggrieved
25 Employees.

26 11. PARTNERS ALLIANCE similarly suffered or permitted PLAINTIFF to work for
27 them or engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that
28 PARTNERS ALLIANCE entered into a written agreement with KAMRAN STAFFING, pursuant

1 to which PARTNERS ALLIANCE paid KAMRAN STAFFING to provide it with workers,
2 including PLAINTIFF, to conduct PARTNERS ALLIANCE's business operations – namely, to
3 work in PARTNERS ALLIANCE's warehouses/distribution centers. PARTNERS ALLIANCE
4 suffered or permitted PLAINTIFF to work at PARTNERS ALLIANCE and for the entirety of
5 PLAINTIFF's employment.

6 12. PARTNERS ALLIANCE further exercised control over PLAINTIFF's wages, hours
7 and working conditions. PARTNERS ALLIANCE also: (1) set PLAINTIFF's work hours and
8 provided PLAINTIFF with PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies
9 regarding meal periods and rest breaks, with which PLAINTIFF was required to comply; (3) directly
10 supervised PLAINTIFF's work through its employees; (4) assigned PLAINTIFF job duties and
11 trained PLAINTIFF on said job duties; (5) exercised authority to reprimand and counsel
12 PLAINTIFF regarding any work performance and other issues; (6) exercised authority to end
13 PLAINTIFF's work assignment at any time, which essentially equated to a termination of
14 employment as PLAINTIFF was not guaranteed any other job assignments; (7) required
15 PLAINTIFF to use its timekeeping system for purposes of recording time worked; (8) determined
16 whether and when PLAINTIFF would receive meal periods and rest breaks; (9) subjected
17 PLAINTIFF to unlawful schedules for taking meal periods and rest breaks; and, (10) was
18 responsible for recording when PLAINTIFF began and ended work shifts. On information and
19 belief, PARTNERS ALLIANCE issued further written policies and practices and guidelines
20 governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply.
21 PLAINTIFF is informed and believes that PARTNERS ALLIANCE exercised the same control
22 over, applied the same policies and practices, and engaged in the same acts and omissions with
23 regard to the other Class Members and Aggrieved Employees.

24 **PARTNERS ALLIANCE'S LIABILITY UNDER CALIFORNIA LABOR CODE SECTION**

25 **2810.3**

26 13. California Labor Code section 2810.3(b)(1) provides that "a client employer shall
27 share with the labor contractor all civil legal responsibility and civil liability for all workers supplied
28 by that labor contractor for . . . the payment of wages." A "labor contractor" means "an individual

1 or entity that supplies, either with or without a contract, a client employer with workers to perform
2 labor within the client employer's usual course of business." Cal. Labor Code § 2810.3(a)(3). A
3 "client employer" is "a business entity, regardless of its form, that obtains or is provided workers to
4 perform labor within its usual course of business from a labor contractor." Cal. Labor Code §
5 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
6 twenty-five workers or with five or fewer workers provided by a labor contractor or labor contractors
7 to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). "Usual course of business"
8 means "the regular and customary work of a business, performed within or upon the premises or
9 worksite of the client employer." Cal. Labor Code § 2810.3(a)(6).

10 14. KAMRAN STAFFING is a "labor contractor" in that KAMRAN STAFFING
11 supplies a client employer, PARTNERS ALLIANCE, with workers to perform labor within
12 PARTNERS ALLIANCE'S usual course of business, namely, the provision of warehousing, cold
13 storage and or distribution services.

14 15. PARTNERS ALLIANCE is a "client employer" as it obtains or is provided workers
15 to perform labor within its usual course of business from labor contractors, including KAMRAN
16 STAFFING. PARTNERS ALLIANCE has a workforce of at least twenty-five workers and
17 PARTNERS ALLIANCE is supplied with more than five workers from a labor contractor,
18 including, KAMRAN STAFFING, at any given time.

19 16. Under California Labor Code section 2810.3, PARTNERS ALLIANCE, a client
20 employer, shares with the labor contractors, including KAMRAN STAFFING, all civil legal
21 responsibility and civil liability for all workers supplied by that labor contractor for the payment of
22 wages.

23 17. PLAINTIFF complied with Labor Code section 2810.3 by mailing certified a letter
24 outlining the substance of the allegations alleged herein to the "Client Employer," namely
25 PARTNERS ALLIANCE, thirty (30) days before filing suit.

26 18. Whenever and wherever reference is made in this complaint to any act or failure to
27 act by a DEFENDANTS or co-Defendant, such allegations and references shall also be deemed to
28 mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

1 **CLASS ALLEGATIONS**

2 19. PLAINTIFF brings this action on behalf of PLAINTIFF and all others similarly
3 situated as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF
4 seeks to represent are defined as follows based on the following subclasses and referred to
5 collectively as the “Class Members”:

6 A. PARTNERS ALLIANCE Temporary Hires Class: “All non-exempt workers who were
7 assigned/staffed to work at PARTNERS ALLIANCE by KAMRAN STAFFING and/or
8 any other staffing/temporary service agencies in California at any time within the four
9 years prior to the filing of the initial complaint.”

10 B. PARTNERS ALLIANCE Direct Hires Class: “All non-exempt workers who were
11 directly employed by PARTNERS ALLIANCE in California at any time within the four
12 years prior to the filing of the initial complaint.”

13 i. **Numerosity.** While the exact number of Class Members is unknown to
14 PLAINTIFF at this time, PLAINTIFF is informed and believes the class
15 consists of at least 100 individuals. The class is so numerous that the individual
16 joinder of all members is impractical under the circumstances of this case.

17 ii. **Common Questions of Law and Fact.** This lawsuit is suitable for class
18 treatment because common questions of law and fact predominate over
19 individual issues. Common questions include, but are not limited to, the
20 following: (1) whether DEFENDANTS understated hours worked and failed to
21 pay all amounts due to PLAINTIFF and the Class Members for wages earned,
22 including minimum and overtime wages, under California law, as a result of
23 DEFENDANTS’ unlawful time-rounding policies and practices; (2) whether
24 DEFENDANTS underpaid overtime wages due PLAINTIFF and the Class
25 Members for failure to incorporate all non-discretionary compensation, such
26 as, non-discretionary bonus pay, into the overtime rate calculation; (3) whether
27 DEFENDANTS provided PLAINTIFF and the Class Members with all meal
28 periods or premium payments in lieu thereof in compliance with California law;

1 (4) whether DEFENDANTS provided PLAINTIFF and the Class Members
2 with all rest periods or premium payments in lieu thereof, in compliance with
3 California law; (5) whether DEFENDANTS provided PLAINTIFF and the
4 Class Members with accurate, itemized wage statements in compliance with
5 California law, displaying, including but not limited to, all owed and accrued
6 sick leave pay and the true total hours worked; (6) whether DEFENDANTS
7 timely paid PLAINTIFF and the Class Members all wages due upon separation
8 of employment; (7) whether DEFENDANTS failed to reimburse for business
9 expenses; and (8) whether DEFENDANTS violated California Business and
10 Professions Code sections 17200, et seq.

11 **iii. Ascertainable Class.** The proposed class is ascertainable as its members can
12 be identified and located using information in DEFENDANTS' business,
13 payroll and personnel records.

14 **iv. Typicality.** PLAINTIFF's claims are typical of the claims of the Class
15 Members. PLAINTIFF suffered a similar injury as the other Class Members
16 as a result of DEFENDANTS' common practices regarding, *inter-alia*, failure
17 to calculate and pay all owed minimum and overtime wages, failure to provide
18 proper meal and rest periods or premium compensation in lieu thereof, failure
19 to provide accurate wage statements, failure to pay all wages due upon
20 separation of employment, and failure to reimburse business expenses.

21 **v. Adequacy.** PLAINTIFF will fairly and adequately protect the interests of the
22 Class Members. PLAINTIFF has no interests adverse to the interests of the
23 other Class Members. Counsel who represent PLAINTIFF are competent and
24 experienced in litigating similar class action cases and are California lawyers
25 in good standing. Counsel for PLAINTIFF have the experience and resources
26 to vigorously prosecute this case.

27 **vi. Superiority.** A class action is superior to other available means for the fair and
28 efficient adjudication of this controversy since individual joinder of all

1 members of the class is impractical. Class action treatment will permit a large
2 number of similarly situated persons to prosecute their common claims in a
3 single forum simultaneously, efficiently, and without the unnecessary
4 duplication of effort and expense that numerous individual actions would
5 engender. Furthermore, as the damages suffered by each individual member
6 of the class may be relatively small, the expenses and burden of individual
7 litigation would make it difficult or impossible for individual members of the
8 class to redress the wrongs done to them, while an important public interest
9 will be served by addressing the matter as a class action. The cost to the court
10 system of adjudication of such individualized litigation would be substantial.
11 Individualized litigation would also present the potential for inconsistent or
12 contradictory judgments. Finally, the alternative of filing a claim with the
13 California Labor Commissioner is not superior, given the lack of discovery in
14 such proceedings, the fact that there are fewer available remedies, and the
15 losing party has the right to a trial de novo in the Superior Court.

16 **FACTUAL ALLEGATIONS**

17 20. During the four-year period preceding filing of this complaint, PLAINTIFF, and each
18 of the Class Members, were employed by DEFENDANTS in the State of California as non-exempt,
19 hourly-paid workers. During the one year and sixty-five-day period preceding filing of this
20 Complaint, PLAINTIFF and the Aggrieved Employees (defined below) were employed at all
21 relevant times by DEFENDANTS as non-exempt employees in the state of California. At all times
22 referenced herein, DEFENDANTS exercised control over PLAINTIFF, Aggrieved Employees and
23 each of the Class Members and suffered and/or permitted them to work.

24 21. PLAINTIFF began working for KAMRAN STAFFING in or about 2016 and was
25 placed by KAMRAN STAFFING with PARTNERS ALLIANCE, at PARTNERS ALLIANCE's
26 warehouse facility in Ontario, California, from in or about April 2021, through the separation of
27 PLAINTIFF's employment, in August 2021. PLAINTIFF typically worked approximately ten to
28 twelve hours per day, six (6) days per week. PLAINTIFF was employed by DEFENDANTS as a

1 warehouse worker/forklift operator. PLAINTIFF was paid on an hourly basis, but only for time
2 counted by DEFENDANTS as hours worked. PLAINTIFF was also compensated with non-
3 discretionary bonus pay. At all relevant times, PLAINTIFF was an hourly paid, non-exempt
4 employee.

5 22. PLAINTIFF was not paid for all hours worked because of DEFENDANTS' time-
6 rounding policies and practices. DEFENDANTS implemented a time-rounding system that, as
7 applied, systemically deprived PLAINTIFF of compensable time because the time-rounding system
8 implemented by DEFENDANTS understated actual compensable work time. DEFENDANTS
9 adjusted PLAINTIFF's time entries and or instructed PLAINTIFF to record only the scheduled
10 beginning and end times of PLAINTIFF's shifts rather than the actual times PLAINTIFF began and
11 stopped working, resulting in understating actual time worked and the underpayment of both
12 minimum and overtime wages owed to PLAINTIFF. For example, when DEFENDANTS required
13 PLAINTIFF to work a second shift at PARTNERS ALLIANCE's Riverside/Loma Linda facility
14 following PLAINTIFF's usual scheduled shift at the Ontario warehouse facility, DEFENDANTS
15 did not compensate PLAINTIFF for all time worked, including but not limited to, time spent driving
16 between the two warehouse facilities. Based on information and belief, DEFENDANTS rounded
17 PLAINTIFF's time entries to at least the nearest quarter hour, which more often than not, resulted
18 in understating actual time worked and thus the underpayment of minimum and overtime wages
19 owed to PLAINTIFF, in violation of California's minimum and overtime wage laws.
20 DEFENDANTS also failed to relieve PLAINTIFF of all duties and employer control during unpaid
21 meal periods, resulting in uncompensated work time and thus the underpayment of minimum and
22 overtime wages owed to PLAINTIFF.

23 23. DEFENDANTS further violated California's overtime wage laws by failing to
24 incorporate all non-discretionary compensation, including but not limited to, non-discretionary
25 bonus compensation, into the regular pay rate used to calculate the overtime rate of pay. Failing to
26 include non-discretionary compensation in the regular pay rate resulted in a miscalculation of the
27 overtime wage rate, resulting in the underpayment of overtime wages owed PLAINTIFF.

28 24. PLAINTIFF consistently worked shifts longer than ten hours but was never provided

1 with a second, thirty-minute, off-duty, uninterrupted meal period before the end of the tenth hour of
2 work. Per DEFENDANTS' unlawful meal period policy and practice, DEFENDANTS only
3 provided a single meal period per shift, regardless of the number of hours worked, and even this
4 single meal period would often be cut short, interrupted, late, worked through, and or on duty due
5 to the nature and constraints of PLAINTIFF's job duties, lack of relief workers available and or
6 pressure from supervisors to take non-compliant meal breaks or skip meal breaks completely.
7 DEFENDANTS implemented policies and practices that failed to relieve PLAINTIFF of all duties
8 and employer control during unpaid meal breaks. For example, PLAINTIFF was required to monitor
9 his personal cell phone during uncompensated meal periods for communications from management.
10 PLAINTIFF's supervisors would call/text PLAINTIFF on his personal cell phone during meal
11 periods regarding deliveries and instruct him to return to work because a delivery had arrived that
12 required immediate attending to. PLAINTIFF would also be instructed to take his meal periods late
13 – i.e. after the end of his fifth hour of work – to accommodate/attend to incoming deliveries.
14 DEFENDANTS instructed PLAINTIFF to clock out thirty minutes for these missed or
15 noncompliant meal periods but suffered or permitted PLAINTIFF to continue working or otherwise
16 remain on duty. DEFENDANTS implemented a policy and practice of automatically deducting
17 thirty minutes per shift/requiring PLAINTIFF clock out thirty minutes per shift for these
18 missed/noncompliant meal periods, despite having actual and/or constructive knowledge that
19 PLAINTIFF did not receive compliant meal periods.

20 25. DEFENDANTS did not pay PLAINTIFF an additional hour of wages at his regular
21 rate of pay for each workday a compliant meal period was not provided. DEFENDANTS either
22 failed to pay a meal period premium at all for each workday a compliant meal period was denied or
23 failed to pay the proper meal period premium for failure to incorporate all non-discretionary
24 compensation, including but not limited to, non-discretionary bonus pay into the regular pay rate
25 used to calculate the owed meal period premium.

26 26. Based on information and belief, DEFENDANTS rounded the start and end times of
27 employee meal periods and start and end time of employee shifts resulting in PLAINTIFF not being
28 paid for all time worked. PLAINTIFF is further informed and believes and thereon alleges that

1 DEFENDANTS had actual or constructive knowledge that its time-rounding policies and practices
2 and meal period policies and practices resulted in the denial of lawful meal periods to PLAINTIFF
3 and the underpayment of wages owed PLAINTIFF, in violation of California's minimum and
4 overtime wage and meal period laws.

5 27. DEFENDANTS did not authorize nor permit PLAINTIFF to take compliant rest
6 breaks. DEFENDANTS did not advise PLAINTIFF when rest breaks should be taken, how long
7 rest breaks should be, how many rest breaks PLAINTIFF should receive in a given shift, nor that
8 rest breaks should be free of all duties and employer control.

9 28. PLAINTIFF did not receive compliant, timely net ten-minute rest periods every four
10 (4) hours worked or major fraction thereof. DEFENDANTS did not properly authorize and provide
11 PLAINTIFF with appropriate rest periods at a rate of every four (4) hours worked or major fraction
12 thereof. PLAINTIFF was not adequately informed, authorized, instructed about, nor permitted an
13 opportunity to take proper rest breaks per California law. Any purported rest periods would be
14 interrupted, cut short, on duty, and or late due to the nature and constraints of PLAINTIFF's job
15 duties, lack of relief workers available, and or commentary from supervisors pressuring PLAINTIFF
16 to take non-compliant rest breaks or skip rest breaks completely. DEFENDANTS implemented
17 policies and practices that failed to relieve PLAINTIFF of all duties and employer control during
18 rest breaks. For example, PLAINTIFF was required to monitor his personal cell phone for
19 communications from management during any rest periods. PLAINTIFF's supervisors would
20 call/text PLAINTIFF during rest periods regarding deliveries and instruct him to return to work
21 because a delivery had arrived that required immediate attending to.

22 29. DEFENDANTS had no policy in place nor instruction as to the taking, timing, or
23 duty-free nature of rest periods. PLAINTIFF did not receive a third rest period when he worked
24 shifts of over ten hours. PLAINTIFF was never paid a rest period premium for any missed/improper
25 rest period in violation of California law.

26 30. DEFENDANTS failed to furnish PLAINTIFF with complete and accurate wage
27 statements that complied with Labor Code section 226. DEFENDANT's wage statements do not
28 accurately reflect, the total gross and net wages earned, including, all earned minimum and overtime

1 wages, all accrued and owed sick leave, and do not accurately reflect all applicable hourly rates in
2 effect during the pay period and the corresponding number of hours worked at each hourly rate.

3 31. Notably, due to DEFENDANTS' automatic deduction for on-
4 duty/shortened/interrupted/missed meal periods, time-rounding policies and practices, payment
5 according to scheduled hours instead of actual hours worked and failing to relieve employees of all
6 duties during uncompensated meal periods, DEFENDANTS' wage statements fail to reflect the true
7 total hours worked, a stand-alone violation of Labor Code section 226.

8 32. DEFENDANTS' wage statements fail to display all applicable hourly rates in effect
9 during the pay period and the corresponding number of hours worked at each hourly rate due to
10 DEFENDANTS' time-rounding policies and practices and other mandated off-the-clock work
11 alleged herein and because the wage statements fail to display proper overtime and sick leave pay
12 rates for failure to include all non-discretionary compensation earned during the pay period such as,
13 but not limited to, non-discretionary bonus pay into the overtime and sick leave pay rates.

14 33. Upon separation of employment, DEFENDANTS failed to timely furnish
15 PLAINTIFF his final paycheck, and PLAINTIFF's final paycheck, once provided, did not contain
16 all earned and unpaid wages, including but not limited to, all minimum and overtime wages and all
17 sick leave wages at the properly accrued rate and paid time off.

18 34. PLAINTIFF was improperly required to pay for business expenses that are supposed
19 to be the responsibility of the employer, such as, but not limited to, cell phone/data plan charges.
20 DEFENDANTS required PLAINTIFF to use his personal cell phone/mobile device to communicate
21 with management without providing any reimbursement for these expenses he incurred as a direct
22 consequence of the discharge of his job duties. DEFENDANTS' failure to provide PLAINTIFF
23 with full reimbursement for all reasonable expenses associated with carrying out his duties
24 required PLAINTIFF to subsidize and/or carry the burden of business expenses in violation of Labor
25 Code section 2802.

26 35. Based on information and belief, DEFENDANTS had a uniform policy and practice
27 of failing to reimburse its employees for all expenses DEFENDANTS required they incur as a direct
28 consequence of the performance of their job duties. Based on information and belief, PLAINTIFF

1 was improperly required to pay for business expenses that are supposed to be the responsibility of
2 the employer, including but not limited to, cell phone/data plan charges. DEFENDANTS required
3 PLAINTIFF to use his personal cell phone/mobile device to communicate with management and/or
4 conduct work-related activities, such as but not limited to, to receive text messages and/or calls from
5 DEFENDANTS regarding, e.g., scheduling of deliveries/work tasks that required immediate
6 attention, but DEFENDANTS failed to provide reimbursement of these expenses, which
7 PLAINTIFF was required to incur as a direct consequence of the discharge of his job duties.
8 DEFENDANT's failure to provide PLAINTIFF with full reimbursement for all reasonable expenses
9 associated with carrying out his duties required PLAINTIFF to subsidize and/or carry the burden of
10 business expenses in violation of Labor Code section 2802.

11 36. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
12 engaged in these same herein described unlawful policies and practices with regard to all of the
13 Class Members and Aggrieved Employees (defined below), and that DEFENDANTS applied these
14 same herein described unlawful policies and practices to Class Members and Aggrieved Employees
15 that it applied to PLAINTIFF.

16 **FIRST CAUSE OF ACTION**

17 **Recovery of Unpaid Minimum Wages and Liquidated Damages**
18 **(Against All DEFENDANTS)**

19 37. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

20 38. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage
21 Commission ("IWC") Wage Orders, an employer must pay its employees for all hours worked, up
22 to 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
23 Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
24 period is unlawful.

25 39. DEFENDANTS violated California's minimum wage laws by failing to compensate
26 PLAINTIFF and the Class Members for all hours worked by virtue of, among other things,
27 DEFENDANTS' rounded time entries for meal periods and shift beginning and end times and or
28 payment of wages based on scheduled hours and not actual hours worked and practice of requiring

1 PLAINTIFF and the Class Members to work through/remain on duty for uncompensated meal
2 periods.

3 40. DEFENDANTS have and continue to have a continuous policy of failing to pay
4 PLAINTIFF and the Class Members for all hours worked.

5 41. DEFENDANTS have and continue to have a continuous policy of clocking out
6 PLAINTIFF and the Class Members/requiring PLAINTIFF and the Class Members to clock out for
7 thirty minutes for a meal period, even though PLAINTIFF and Class Members were not relieved of
8 all duties and employer control during said meal periods, rendering the unpaid time compensable
9 under California law.

10 42. DEFENDANTS have and continue to have a continuous policy of rounding
11 PLAINTIFF and Class Members time entries, including any meal period time entries. On
12 information and belief, this policy favored DEFENDANTS more often than not, resulting in
13 significant uncompensated time worked by PLAINTIFF and Class Members.

14 43. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class
15 Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon,
16 plus attorney's fees and costs, in an amount to be proved at trial.

17 **SECOND CAUSE OF ACTION**
18 **Recovery of Unpaid Overtime Wages**
19 **(Against All DEFENDANTS)**

20 44. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

21 45. Employees in California must be paid overtime, equal to one and one-half times the
22 employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including
23 twelve hours in any workday, and for the first eight (8) hours worked on the seventh consecutive
24 day of work in a workweek, and they must be paid double the regular rate of pay for all hours worked
25 in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh
26 consecutive day of work in a workweek, unless they are exempt.

27 46. PLAINTIFF and the Class Members worked overtime hours for which they were not
28

1 compensated by DEFENDANTS by virtue of DEFENDANTS' time-rounding/time-shaving
2 policies and other mandated off-the-clock work policies and practices imposed on PLAINTIFF and
3 the Class Members as described above.

4 47. DEFENDANTS further violated California's overtime wage laws by failing to
5 incorporate all non-discretionary compensation, including but not limited to, non-discretionary
6 bonus compensation, into the regular pay rate used to calculate the overtime rate of pay. Failing to
7 include non-discretionary compensation in the regular pay rate resulted in a miscalculation of the
8 overtime wage rate, resulting in the underpayment of overtime wages owed PLAINTIFF and the
9 Class Members.

10 48. DEFENDANTS' conduct described above is in violation of California Labor Code
11 sections 510 and 1194 and all applicable Industrial Wage Commission Wage Orders.

12 49. PLAINTIFF and the Class Members are entitled to recover all unpaid overtime
13 wages, plus attorney's fees and costs, in an amount to be proved.

14 **THIRD CAUSE OF ACTION**
15 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
16 **(Against All DEFENDANTS)**

17 50. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

18 51. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders,
19 DEFENDANTS were required to provide PLAINTIFF and the Class Members with one thirty-
20 minute meal break free from all duties and employer control for all shifts longer than five (5) hours,
21 and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal
22 periods can be waived, but only under the following circumstances: (1) if an employee's total work
23 period in a day is over five (5) hours but no more than six (6) hours, the required meal period may
24 be waived by mutual consent of the employer and employee, and (2) if an employee's total work
25 period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal
26 period may be waived by mutual consent of the employer and employee, but only if the first meal
27 period was not waived. Employers covered by the Wage Orders have an obligation to both (1)
28 relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to
record having done so. If the employer fails to properly record a valid meal period, it is presumed

1 no meal period was provided.

2 52. PLAINTIFF and the Class Members consistently worked shifts longer than ten hours
3 but were never provided with a second, thirty-minute, off-duty, uninterrupted meal period before
4 the end of the tenth hour of work. Per DEFENDANTS' unlawful meal period policy and practice,
5 DEFENDANTS only provided a single meal period per shift, regardless of the number of hours
6 worked, and even this single meal period would often be cut short, interrupted, late, worked through,
7 and or on duty due to the nature and constraints of PLAINTIFF's job duties, lack of relief workers
8 available and or pressure from supervisors to take non-compliant meal breaks or skip meal breaks
9 completely. For example, PLAINTIFF and the Class Members were required to monitor their
10 personal cell phones during uncompensated meal periods for communications from management.
11 PLAINTIFF's and the Class Members' supervisors would call/text PLAINTIFF and the Class
12 Members during uncompensated meal periods regarding deliveries and instruct them to return to
13 work because a delivery had arrived that required immediate attending to. PLAINTIFF and the
14 Class Members would also be instructed to take their meal periods late – i.e. after the end of their
15 fifth hour of work – to accommodate/attend to incoming deliveries.

16 53. DEFENDANTS did not pay PLAINTIFF and the Class Members an additional hour
17 of wages at their respective regular rates of pay for each workday a compliant meal period was not
18 provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a
19 compliant meal period was denied or failed to pay the proper meal period premium for failure to
20 incorporate all non-discretionary compensation, including but not limited to, non-discretionary
21 bonus pay into the regular pay rate used to calculate the owed meal period premium.

22 54. DEFENDANTS have and continue to have a continuous policy and practice of either
23 failing to record meal periods at all or failing to accurately record meal periods. While missed meal
24 breaks are one of those things that will, on occasion, happen, a systemic absence of records showing
25 the provision of meal periods more than likely shows systemic violations; indeed, in such a situation,
26 an employer has and must always carry the burden of proof in establishing the affirmative defense
27 of waiver. *Safeway, Inc. v. Superior Court* (2015) 238 Cal. App. 4th 1138, 1159. An employer is
28 required to pay premiums for missed meal breaks, regardless of the reasons why an employee misses

1 his/her break.

2 55. DEFENDANTS had actual and/or constructive knowledge that PLAINTIFF and the
3 Class Members did not receive compliant meal periods. Based on further information and belief,
4 DEFENDANTS rounded the start and end times of employee meal periods resulting in PLAINTIFF
5 and the Class Members receiving late or shortened meal periods. PLAINTIFF is further informed
6 and believes and thereon alleges that DEFENDANTS had actual or constructive knowledge that its
7 time-rounding and auto-deduction policies and practices resulted in the denial of meal periods to
8 PLAINTIFF, in violation of California's meal period laws.

9 56. DEFENDANTS did not pay PLAINTIFF and the Class Members an additional hour
10 of wages at their regular rate(s) of pay for each workday a proper meal period was not provided.
11 Based on information and belief, DEFENDANTS never paid a single meal period premium to
12 PLAINTIFF or the Class Members.

13 57. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
14 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
15 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
16 proper premium pay rate for each day a meal period was missed, late or interrupted, all in an amount
17 to be proved at trial.

18 **FOURTH CAUSE OF ACTION**
19 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
20 **(Against All DEFENDANTS)**

21 58. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

22 59. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
23 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
24 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
25 "insofar as practicable." The rest period requirement obligates employers to permit and authorize
26 employees to take off-duty rest periods, meaning employers must relieve employees of all duties
27 and relinquish control over how employees spend their time. *Augustus v. ABM Security Services,*
28 *Inc.*, (2016) 5 Cal.5th 257. If the employer fails to provide any required rest period, the employer
must pay the employee one hour of pay at the employee's regular rate of compensation for each

1 workday the employer did not provide at least one legally required rest period, pursuant to Labor
2 Code section 226.7.

3 60. PLAINTIFF and the Class Members did not receive compliant, timely ten-minute
4 rest periods every four (4) hours worked or major fraction thereof. DEFENDANTS did not properly
5 authorize and provide PLAINTIFF and the Class Members with appropriate rest periods at a rate of
6 every four (4) hours worked or major fraction thereof. PLAINTIFF and the Class Members were
7 not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper
8 rest breaks per California law. Any purported rest periods would be interrupted, cut short, on duty,
9 and or late due to the nature and constraints of PLAINTIFF's and the Class Members' job duties and
10 commentary from supervisors pressuring PLAINTIFF and the Class Members to take non-
11 compliant breaks or skip rest breaks completely.

12 61. DEFENDANTS implemented policies and practices that failed to relieve
13 PLAINTIFF and the Class Members of all duties and employer control during rest breaks, *to wit*:
14 DEFENDANTS required PLAINTIFF and the Class Members to monitor their work
15 communication devices throughout their shifts, including during any rest periods. Due to pressure
16 to complete work duties within time frames imposed by DEFENDANTS that prohibited the taking
17 of proper rest periods, instruction from supervisors to skip rest periods or take noncompliant rest
18 periods, and DEFENDANTS' policy and practice of requiring PLAINTIFF and the Class Members
19 to monitor their work communication devices during rest periods, PLAINTIFF and the Class
20 Members were consistently denied legally compliant rest periods during the relevant period.

21 62. PLAINTIFF and the Class Members were not provided third rest periods at all
22 despite consistently working shifts of ten hours or more and thus being entitled to a third duty-free,
23 paid rest period per each shift of more than ten hours. PLAINTIFF and the Class Members were
24 not provided compliant first, second nor third rest periods. Per DEFENDANTS' unlawful rest period
25 policy and practice, PLAINTIFF and the Class Members were only permitted two rest periods per
26 shift, regardless of the number of hours worked, and even those purportedly allowed rest periods
27 were typically worked through/on duty or otherwise noncompliant with California. DEFENDANTS
28 had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods.

1 PLAINTIFF and the Class Members were never paid a rest period premium for any missed/improper
2 rest period in violation of California law.

3 63. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
4 hour of additional pay at the regular rate of compensation for each workday that a require rest
5 periods was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
6 Order, plus pre-judgment interest.

7 **FIFTH CAUSE OF ACTION**
8 **Failure to Furnish Accurate Itemized Wage Statements**
9 **(Against All DEFENDANTS)**

10 64. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

11 65. Pursuant to California Labor Code section 226, subdivision (a), PLAINTIFF and the
12 Class Members were entitled to receive, semimonthly or at the time of each payment of wages, an
itemized wage statement accurately stating the following:

13 (1) gross wages earned, (2) total hours worked by the employee,
14 except for any employee whose compensation is solely based on a
salary and who is exempt from payment of overtime under
15 subdivision (a) of Section 515 or any applicable order of the Industrial
Welfare Commission, (3) the number of piece-rate units earned and
16 any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided that all deductions made on written orders
17 of the employee may be aggregated and shown as one item, (5) net
wages earned, (6) the inclusive dates of the period for which the
18 employee is paid, (7) the name of the employee and her or her social
security number, except that by January 1, 2008, only the last four
19 digits of her or her social security number or an employee
identification number other than a social security number may be
20 shown on the itemized statement, (8) the name and address of the
legal entity that is the employer, and (9) all applicable hourly rates in
21 effect during the pay period and the corresponding number of hours
worked at each hourly rate by the employee.

22 66. During the relevant period, DEFENDANTS knowingly and intentionally failed to
23 provide PLAINTIFF and the Class Members with accurate, itemized wage statements as the wage
24 statements provided by DEFENDANTS do not accurately reflect the total hours worked per pay
25 period, do not reflect all applicable hourly rates in effect during the pay period and the hours worked
26 at each rate, and do not reflect all earned gross and net wages.

27 67. Notably, due to DEFENDANTS' unlawful rounding policies and practices, payment
28 according to scheduled hours instead of actual hours worked, failing to relieve employees of all

1 duties for uncompensated meal periods, DEFENDANTS' wage statements fail to reflect the true
2 total hours PLAINTIFF and the Class Members worked each pay period, a stand-alone violation of
3 Labor Code section 226. DEFENDANTS' wage statements fail to display all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each hourly
5 rate due to DEFENDANTS' rounding policies and practices, payment according to scheduled hours
6 instead of actual hours worked, failing to relieve employees of all duties for uncompensated meal
7 periods as well as DEFENDANTS' failure to incorporate all non-discretionary compensation,
8 including but not limited to, non-discretionary bonus pay into the overtime and sick pay calculations.

9 68. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
10 Members have suffered injury. The absence of accurate information on their wage statements has
11 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
12 mathematical computations to determine the amounts of wages owed, and will cause difficulty and
13 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
14 submission of inaccurate information about wages and amounts deducted from wages to state and
15 federal government agencies. As a result, PLAINTIFF and the Class Members are required to
16 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
17 Members from having to reconstruct time and pay records than if DEFENDANTS had complied
18 with its legal obligations.

19 69. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
20 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
21 Section 226 violation occurred and one hundred dollars per employee per violation for each
22 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

23 70. Pursuant to California Labor Code section 226(h), PLAINTIFF and the Class
24 Members are entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance
25 with California Labor Code section 226(a). Injunctive relief is warranted because DEFENDANTS
26 continues to provide currently employed Class Members with inaccurate wage statements or no
27 wage statements at all in violation of California Labor Code section 226(a). Currently employed
28 Class Members have no adequate legal remedy for the continuing injuries that will be suffered as a

1 result of DEFENDANTS’ ongoing unlawful conduct. Injunctive relief is the only remedy available
2 for ensuring DEFENDANTS’ compliance with California Labor Code section 226(a).

3 71. Pursuant to California Labor Code sections 226(e) and 226(h), PLAINTIFF and the
4 Class Members are entitled to recover the full amount of penalties due under Section 226(e),
5 reasonable attorneys’ fees, and costs of suit.

6 **SIXTH CAUSE OF ACTION**
7 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
8 **(Against All DEFENDANTS)**

9 72. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

10 73. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
11 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
12 payable immediately.”

13 74. California Labor Code section 202(a) provides, in relevant part, that “[i]f an
14 employee not having a written contract for a definite period quits his or her employment, his or her
15 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
16 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
17 to her or her wages at the time of quitting.”

18 75. DEFENDANTS failed to timely pay PLAINTIFF and the Class Members all wages
19 that were due and owing upon termination or resignation, as described herein. Upon separation of
20 employment, PLAINTIFF and the Class Members’ final paychecks were not timely provided, and
21 PLAINTIFF and the Class Members’ final paychecks, once provided, did not include all
22 remuneration owed as it was devoid of, including but not limited to, all owed minimum and overtime
23 wages and all owed sick leave wages at the properly accrued rates. Under Labor Code section 203,
24 PLAINTIFF and the Class Members who no longer are employed with DEFENDANTS are entitled
25 to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount
26 to be proved at trial.

27 **SEVENTH CAUSE OF ACTION**
28 **Failure to Reimburse Business Expenses**
(Against All DEFENDANTS)

76. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

77. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members were entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their employer and/or carrying out the duties assigned by their employers.

78. PLAINTIFF and the Class Members were improperly required to pay for business expenses that are legally the responsibility of the employer, including but not limited to, cell phone/data plan charges incurred in connection with having to use their personal cell phones/mobile devices to carry out their job duties.

79. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

80. As a result of DEFENDANT's unlawful conduct, PLAINTIFF and the Class Members have suffered injury in that they were not completely reimbursed as mandated by California law.

81. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable attorneys' fees, and costs of suit.

EIGHTH CAUSE OF ACTION
Unfair Competition
(Against All DEFENDANTS)

82. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

83. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200. This unfair conduct includes all unlawful conduct alleged herein, including but not limited to: DEFENDANTS' failure to pay minimum and overtime wages by virtue of its illegal policies and practices; DEFENDANTS' failure to authorize or permit, or provide, all required meal and rest periods or pay proper premiums in lieu thereof; DEFENDANT's failure to furnish complete and accurate itemized wage statements; DEFENDANTS' failure to pay all sick leave pay at the properly accrued rates; failure to timely pay all earned and unpaid wages upon separation of employment;

1 and failure to reimburse for business expenses.

2 84. Due to DEFENDANTS' unfair and unlawful business practices in violation of the
3 California Labor Code, DEFENDANTS have gained a competitive advantage over other
4 comparable companies doing business in the State of California that comply with their obligations
5 to pay all owed minimum and overtime wages, authorize or permit rest and meal periods or pay
6 proper meal and rest period premiums in lieu thereof, to provide proper notice and properly accrue
7 and pay sick time benefits, to provide complete and accurate itemized wage statements, and to timely
8 pay all earned and unpaid wages upon separation of employment.

9 85. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
10 and the Class Members have suffered injury in fact and lost money or property, as described in more
11 detail above. Pursuant to California Business and Professions Code section 17200, et seq.,
12 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
13 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of its
14 unlawful and unfair business practices.

15 86. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
16 Members, enjoining DEFENDANTS and any and all persons acting in concert with it from engaging
17 in each of the unlawful practices and policies set forth herein.

18 **NINTH CAUSE OF ACTION**
19 **Violation of the Private Attorneys General Act of 2004**
20 **(By PLAINTIFF, Aggrieved Employees, and the State of California Against All**
21 **DEFENDANTS)**

22 87. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

23 88. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
24 Labor Code sections 2698, et seq., ("PAGA"), as a representative action on behalf of the State of
25 California and all Aggrieved Employees, regarding violations of the California Labor Code as set
26 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

27 All non-exempt workers who were assigned/staffed to work at
28 PARTNERS ALLIANCE by KAMRAN STAFFING and/or any
other staffing/temporary service agencies in California at any time

1 within the one year and sixty-five days prior to the filing of the initial
2 complaint, through the present and all non-exempt workers who were
3 directly employed by PARTNERS ALLIANCE in California at any
4 time from the one year and sixty-five days prior to the filing of the
5 initial complaint, through the present.”

6 89. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
7 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
8 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
9 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
10 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
11 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
12 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
13 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
14 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
15 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

16 90. PLAINTIFF has complied with the administrative exhaustion procedures for
17 bringing suit specified in Labor Code sections 2699.3 and 2699.5. PLAINTIFF gave timely written
18 notice by certified mail to DEFENDANTS of the violation of various provisions of the California
19 Labor Code as alleged in this complaint and filed notice of the violations online with the Labor and
20 Workforce Development Agency (“LWDA”). On October 14, 2021, PLAINTIFF filed
21 PLAINTIFF’s notice with the LWDA (“PAGA Notice”) and sent DEFENDANTS the PAGA Notice
22 via certified mail. The LWDA assigned PLAINTIFF the following case number: LWDA-CM-
23 848622-21. Attached hereto as **Exhibit 1** is a true and correct copy of PLAINTIFF’s PAGA Notice.

24 91. The LWDA did not provide notice of its intention to investigate PLAINTIFF’s
25 claims on behalf of the State of California and the Aggrieved Employees after expiration of the 65-
26 day waiting time period, or at any time. To the extent any of the alleged violations were curable,
27 DEFENDANTS failed to cure within the time allotted by PAGA. Accordingly, PLAINTIFF has
28 exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently,

1 PLAINTIFF's right to file the instant lawsuit has duly accrued.

2 92. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
3 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
4 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

5 93. From one-year prior to PLAINTIFF's filing of the required PAGA notice with the
6 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated Labor Code
7 sections 201-202, 204, 216, 221-223, 226, 226.7, 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558,
8 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and all relevant sections of the applicable Wage
9 Orders, as to PLAINTIFF and the Aggrieved Employees. These violations subject
10 DEFENDANTS to civil penalties as set forth in the foregoing statutes as well as other
11 provisions of the Labor Code, including without limitation, Labor Code sections 203, 210,
12 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

13 94. As set forth above, DEFENDANTS have committed numerous violations of the
14 California Labor Code due to including but not limited to their failure to pay PLAINTIFF and
15 Aggrieved Employees all owed minimum wages and all owed overtime wages, failure to provide
16 lawful PLAINTIFF and Aggrieved Employees with lawful meal and rest periods or compensation
17 in lieu thereof, failure to provide PLAINTIFF and Aggrieved Employees with accurate wage
18 statements, failure to reimburse PLAINTIFF and Aggrieved Employees for business expenses, and
19 failure to timely pay all wages owed upon separation of employment as alleged above. PAGA
20 penalties are in addition to any other relief available under the Labor Code.

21 95. Additionally, DEFENDANTS have violated the following Labor Code sections and
22 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

23 96. **Record Keeping.** California Labor Code sections 226 and 1174 require employers
24 to keep "accurate and complete" payroll records showing, among other things, the hours worked
25 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly requires
26 employers to keep time records showing, *inter alia*, when the employees begin and end each work
27 period and reflecting the true start and end times during which all owed meal periods are provided
28 each day. At all relevant times, DEFENDANTS have failed, and continue to fail, to keep the required

1 time records, as DEFENDANTS have failed to record the true start and end times of PLAINTIFF's
2 and the Aggrieved Employees' workdays and failed to record employee meal periods as time
3 worked. DEFENDANTS' failure to keep "accurate and complete" payroll records for PLAINTIFF
4 and the Aggrieved Employees violates Labor Code sections 1174, 1198-99, and Section 7 of all
5 applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under the
6 Labor Code, including without limitation sections 1174.5 and 2699. Each violation of each Labor
7 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
8 penalty.

9 **97. Refusal to Pay Wages Due.** Labor Code section 216 declares unlawful an
10 employer's refusal to pay wages due and payable and/or an employer's denial of the validity of any
11 claim to wages due. DEFENDANTS have violated this section by, *inter-alia*, failing to pay
12 PLAINTIFF and the Aggrieved Employees for all hours worked at the proper wage rate and by
13 failing to pay PLAINTIFF and the Aggrieved Employees an additional hour of premium wages for
14 each meal or rest period not provided/that was invalid. These violations subject DEFENDANTS to
15 civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for
16 each aggrieved employee, for each pay period during which the statute provisions were violated.

17 **98. Statutory Wages.** California Labor Code section 223 makes it unlawful for an
18 employer to secretly pay wages lower than required by statute while purporting to pay legal wages.
19 As described above, DEFENDANTS willfully and systematically denied the Aggrieved Employees
20 minimum and overtime wage compensation for all hours worked which resulted in the payment of
21 less than statutorily required wages to them. DEFENDANTS acted with the intent to deprive them
22 of statutory wages, including, but not limited to, overtime wages and minimum wages, to which
23 they were entitled to under California law.

24 **99. Unpaid Sick Leave Wages.** DEFENDANTS failed to provide PLAINTIFF and the
25 Aggrieved Employees paid sick days in accordance with Labor Code sections 245 through 248.5,
26 further failing to put them on notice of their paid sick leave rights—or thereby putting their
27 entitlement to sick leave in a Labor Code section 2810.5 notice. DEFENDANTS failed to maintain
28 accurate records documenting the hours worked and paid sick days accrued and used by employees

1 in violation of Labor Code section 247.5, permitting the presumption that Aggrieved Employees
2 were entitled to the maximum number of hours accruable at the time of their respective separations
3 of employment. By failing to correctly account for the true hours worked by Aggrieved Employees
4 (by virtue of the auto-deduction and time rounding policies, and failure to account and pay for all
5 hours worked, as described herein) and or by failing to incorporate all non-discretionary
6 remuneration, including but not limited to, non-discretionary bonus compensation into the sick rate
7 calculation and or failing to provide paid sick leave at all, DEFENDANTS unlawfully retained and
8 continue to retain paid sick leave that should have been paid and was not. Accordingly,
9 DEFENDANTS have violated Labor Code sections 233 and 234 as to the Aggrieved Employees.
10 DEFENDANTS either failed to pay sick leave at all or improperly calculated the sick leave accrual
11 and the rate of sick leave pay owed to the Aggrieved Employees by failing to include all non-
12 discretionary remuneration, including but not limited to, non-discretionary bonuses in the sick leave
13 rate calculation and by failing to base the accrued sick leave hours on the correct number of hours
14 worked due to the auto-deduction and time rounding policies, and failure to pay for all hours worked,
15 as described herein. DEFENDANTS further failed to comply with Labor Code section 246 by failing
16 to provide PLAINTIFF and the Aggrieved Employees with wage statements or separate documents
17 showing the amount of paid sick leave available, or paid time off leave in lieu of sick leave.
18 DEFENDANTS violated and continue to violate Labor Code section 246 by failing to provide
19 Aggrieved Employees with a Labor Code 226 wage statement or separate writing containing amount
20 of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the
21 time it pays wages.

22 100. **Background Check Violations/Unlawful Agreements** Based on information and
23 belief, DEFENDANTS required PLAINTIFF and Aggrieved Employees to submit to an unlawful
24 criminal and/or financial background check as a condition of obtaining and/or holding employment
25 in violation of Labor Code sections 1024.5 and/or 432.7. Based on further information and belief,
26 DEFENDANTS also required PLAINTIFF to agree in writing to unlawful background checks not
27 in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code
28 sections 1786, et seq. (“ICRAA”), and the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et

1 seq. ("FCRA"), in violation of Labor Code section 432.5. Based on information and belief,
2 DEFENDANTS required PLAINTIFF to agree in writing to a background check which failed to
3 abide by the requirements set forth in CA Civil Code section 1786, et seq. and/or 15 U.S.C. section
4 1681, *et seq.*, by including but not limited to, failing to provide a clear and conspicuous disclosure,
5 failing to provide disclosures free of extraneous information (including but not limited to,
6 information that is solely relevant to applicants from different states), failing to provide a lawful
7 purpose for the background check, failing to provide a summary of rights under the ICRAA and/or
8 the FRCA, failing to provide a way by which the individual could request a copy of the report, and
9 failing to properly obtain authorization or consent to such a background check, and thus was an
10 unlawful background check. Upon information and belief, DEFENDANTS, in violation of
11 California law, including but not limited to Labor Code section 432.7 and California's Fair Chance
12 Act, asked about arrests not resulting in convictions on its employment application, asked about
13 convictions prior to extending an offer of employment to Aggrieved Employees and/or otherwise
14 impermissibly inquired into criminal history on its employment application in violation of California
15 law. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor Code
16 section 432.7. By asking about convictions at the application phase or prior to extending an
17 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
18 Labor Code 432.5 by unlawfully requiring the Aggrieved Employees to agree in writing to disclose
19 arrests or convictions as a condition of employment. These violations subject DEFENDANTS to
20 civil penalties under the Labor Code, including without limitation Labor Code sections 432.5, 432.7
21 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
22 employee, results in a separate civil penalty.

23 101. Under the provisions of PAGA and Labor Code sections 201-203, 210, 221-223, 226,
24 226.7, 233-234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1,
25 1198, 1199, 2802, 2810.5 and all relevant sections of the applicable Wage Orders, as well as all
26 interpretations of these laws by California Courts and administrative bodies, as well as any other
27 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

28 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant

California Labor Code provisions listed herein only if permitted by the PAGA statute, pursuant to Labor Code section 2699(a); and

b. Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code section 2699(f).

c. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against PLAINTIFF or any Aggrieved Employee, whether a party to this action or not.

102. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of PLAINTIFF, Aggrieved Employees, and the Class Members:

1. For an order that the action be certified as a class action;
2. For an order that PLAINTIFF be appointed class representative;
3. For an order that counsel for PLAINTIFF be appointed class counsel;
4. For compensatory damages according to proof;
5. For liquidated damages according to proof;
6. For penalties according to proof;
7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully withheld from PLAINTIFF and the Class Members;
8. For an order finding DEFENDANTS have engaged in unfair competition in violation of section 17200, *et seq.* of the California Business and Professions Code;
9. For an order enjoining DEFENDANTS from further acts of unfair competition;
10. For pre-judgment interest as permitted by law;
11. For attorney's fees and costs reasonably incurred;
12. For civil penalties according to proof, including PAGA penalties (75% payable to the LWDA and 25% payable to Aggrieved Employees); and

1 13. For such other and further relief that the Court deems just and proper.

2 Dated: October 3, 2022

CROSNER LEGAL, PC

3 By:  _____

4 Michael R. Crosner, Esq.
5 Zachary M. Crosner, Esq.
6 Blake R. Jones, Esq.
7 Jonathan Stilz, Esq.
8 Attorneys for Plaintiff,
9 OSCAR ALBARRAN

10 **DEMAND FOR JURY TRIAL**

11 PLAINTIFF demands a trial by jury on all claims so triable.

12 Dated: October 3, 2022

CROSNER LEGAL, PC

13 By:  _____

14 Michael R. Crosner, Esq.
15 Zachary M. Crosner, Esq.
16 Blake R. Jones, Esq.
17 Jonathan Stilz, Esq.
18 Attorneys for Plaintiff,
19 OSCAR ALBARRAN

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2
3 PROOF OF SERVICE
4 OSCAR ALBARRAN vs. KAMRAN STAFFING, INC
5 San Bernardino Superior Court Case No. CIVSB2129425

6 At the time of service, I was over 18 years of age and not a party to this action. I am
7 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
8 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

9 On October 3, 2022, I served true copies of the following document(s) described as

10 **PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT**

11 on the interested parties in this action as follows:

12 SEE ATTACHED SERVICE LIST

13 ☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
14 document(s) on the interested parties in this action by electronic transmission. Said electronic
15 transmission was reported as complete and without error.

16 ☐ BY FACSIMILE TRANSMISSION. I transmitted copies of the above-referenced
17 document(s) on the interested parties in this action by facsimile transmission from
18 (310) 510-6429. A transmission report was properly issued by the transmitting facsimile machine
19 and the transmission was reported as complete and without error.

20 ☐ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf
21 format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail
22 portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service
23 List as set forth herein. I caused an envelope containing the documents to be placed for collection
24 and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s
25 ordinary business practices. I am readily familiar with our business practices and the business
26 practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
27 same day that correspondence is placed for collection and mailing, it is deposited in the ordinary
28 course of business with the United States Postal Service, in a sealed envelope with postage fully
29 prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope,
30 with postage paid, and deposited with a a post office, mail box, sub-post office, substation, mail
31 chute, or other facility or postal pick up/drop off regularly maintained by the United States Postal
32 Service or an affiliate thereof, at or near Phoenix, Arizona.

33 ☐ BY OVERNIGHT MAIL SERVICE. I enclosed the documents in electronic pdf format
34 and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail portal
35 (letterstream.com) addressed to the entities and/or persons listed in the Service List as set forth
36 herein. I caused an envelope containing the documents to be placed for collection and mailing and
37 to be mailed by Overnight Mail via Federal Express, following our law firm and Letterstream,
38 Inc.'s ordinary business practices. I am readily familiar with our business practices and the
39 business practices of Letterstream, Inc. for collecting and processing correspondence for mailing.
40 On the same day that correspondence is placed for collection and mailing, it is deposited in the
41 ordinary course of business with Federal Express, an express carrier, in Phoenix, Arizona, or

1 delivered with any and all delivery fees to an authorized courier or driver authorized by the
2 express service carrier to receive documents.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct and that I am employed in the office of a member of the bar of this
Court at whose direction the service was made.

5 Executed on October 3, 2022, at Los Angeles, California.

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8 _____
9 Jessica Ball
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1 PROOF OF SERVICE

2 *OSCAR ALBARRAN vs. KAMRAN STAFFING, INC*

3 *San Bernardino Superior Court Case No. CIVSB2129425*

4 Barry M. Walker

5 **WALKER TRIAL LAWYERS, LLP**

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12 Jason E. Guerra, Esq.

13 Joshua S. Stein, Esq.

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Attorney for Defendant

PARTNERS ALLIANCE COLD

STORAGE, INC.

Attorney for Defendant

KAMRAN STAFFING, INC.