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FILED
 Superior Court of California
 County of Los Angeles
 12/14/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: K. Martinez Deputy

Attorneys for Plaintiff OMAR RIOS ROMERO, individually and on behalf of other persons similarly situated and similarly aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

OMAR RIOS ROMERO, individually and
 on behalf of other persons similarly
 situated and similarly aggrieved
 employees,

Plaintiffs,

v.

PARTNERS PERSONNEL –
 MANAGEMENT SERVICES, LLC;
 POTENTIAL INDUSTRIES, INC; and
 DOES 1 through 50,

Defendants.

Case No.: 22STCV22509

Assigned to: Hon. Elihu M. Berle
 Department: SS-6
 Complaint Filed: July 11, 2022

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Breaks;
3. Failure to Pay Wages Owed;
4. Failure to Pay Accrued Sick Leave and Vacation
5. Failure to Reimburse Business Expenses;
6. Failure to Timely Pay Wages at Termination/Separation; and
7. Violation of Unfair Business Practices Act – Bus. & Prof. Code

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

Plaintiff OMAR RIOS ROMERO (“Plaintiff”), on behalf of himself and all others similarly situated, based on information and belief, complains, and alleges:

INTRODUCTORY ALLEGATIONS

1. Defendants PARTNERS PERSONNEL – MANAGEMENT SERVICES, LLC; POTENTIAL INDUSTRIES, INC; and DOES 1 through 50 (collectively referred to herein as “Defendants”) have been engaged in the business of staffing, recycling, and other businesses in the state of California.
2. During the applicable statutory period, Defendants have employed more than 100 people in the State of California, including Plaintiff and each member of the putative class and subclass defined here.
3. This class and representative action lawsuit arises out of the following illegal employment practices committed by Defendants with respect to their non-exempt employees (including Plaintiff and the putative class members):
 - a. Failing to provide legally compliant meal periods,
 - b. Failing to provide legally compliant rest breaks,
 - c. Failing to pay all wages owed (including regular wages, minimum wages, and overtime wages),
 - d. Failing to pay employees accrued sick leave and vacation benefits,
 - e. Failing to reimburse employees for business expenses, and
 - f. Failing to timely pay all wages owed to employees who are terminated or separated employees in a timely manner.

THE PLAINTIFF

4. At all times relevant here, Plaintiff OMAR RIOS ROMERO was a resident of the County of Los Angeles, State of California.
5. Plaintiff was employed by Defendants from 2014 through on or about June

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

25, 2021.

6. At all times during her employment with Defendants, Plaintiff was classified as a non-exempt employee and worked at Defendants' facility in the County of Los Angeles, located at 720 East E. Street, Wilmington, CA 90744.

THE DEFENDANTS

7. Defendant PARTNERS PERSONNEL – MANAGEMENT SERVICES, LLC, is an active Delaware corporation, at all times during the claims of Plaintiff and the putative class, and it was doing business in California through its headquarters at 20767 S. Avalon Blvd., Carson, California 90746 – as set forth in the Earnings Statements of Plaintiff. Defendant POTENTIAL INDUSTRIES, INC., is an active California corporation, at all times during the claims of Plaintiff and the putative class, with its principal place of business in the County of Los Angeles, located at 720 East E. Street, Wilmington, California 90744.
8. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, but Plaintiff is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. As required, Plaintiff will amend this First Amended Complaint.
9. Plaintiff is informed and believes and thereon alleges that all Defendants herein were employers and joint employers and acted in all respects pertinent to this action as the agent of the other Defendants. Said Defendants were engaged in a joint enterprise and carried out a joint scheme, business plan and/or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.
10. Defendants employed Plaintiff and the putative class members during the

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

1 applicable statutory period and during that period, Defendants consistently
2 utilized policies and procedures in violation of Labor Code § 200, et seq.,
3 Labor Code § 500, et seq., Labor Code § 1194, et seq., Labor Code § 1197, et.
4 seq. Labor Code § 2800, et seq., and the applicable Wage Orders issued by the
5 California Industrial Welfare Commission.

6 **GENERAL ALLEGATIONS**

- 7 11. At all times within the applicable statutory period, Defendants have had a
8 consistent policy of failing to provide their employees (including Plaintiff and
9 the putative class members) with at least one 30-minute unrestricted and
10 uninterrupted meal period within the first 5 hours of their workday. To the
11 extent Defendants' employees (including Plaintiff and the putative class
12 members) were provided with a so-called meal period, the meal period was
13 not legally compliant because the meal periods were interrupted/cut short and
14 because Defendants retained control over the employees during the meal
15 period. Defendants have also failed to pay Plaintiff and the putative class
16 members who were denied legally compliant meal periods, one (1) hour of pay
17 at the employees' regular rate of compensation for each workday that a
18 legally compliant meal period was not provided.
- 19 12. At all times within the applicable statutory period, Defendants have had a
20 consistent policy of failing to allow their employees (including Plaintiff and
21 the putative class members) to take rest breaks of at least ten (10) minutes
22 per four (4) hours, or a major fraction, worked. To the extent rest breaks were
23 provided, the breaks were not provided in the middle of the shift even though
24 it was practicable for such breaks to be provided. Additionally, in violation of
25 California rest break laws, Defendants retained control over the employees
26 during rest breaks and restricted the actions of employees during their rest
27 breaks. Defendants also failed to pay Plaintiff and the putative class
28 members who were denied legally compliant rest breaks, one (1) hour of pay

- 1 at the employees' regular rate of compensation for each workday that a
2 legally compliant rest break was not provided.
- 3 13. At all times within the applicable statutory period, Defendants have had a
4 consistent policy of not paying their employees (including Plaintiff and the
5 putative class members) all of the wages owed to them for all of the hours
6 they worked (including regular and overtime wages) and did not compensate
7 employees for time worked off-the-clock. Defendants also engaged in
8 rounding practices.
- 9 14. At all times within the applicable statutory period, Defendants have had a
10 consistent policy of not paying their employees at least the minimum wage for
11 all time worked.
- 12 15. At all times within the applicable statutory period, Defendants have had a
13 consistent policy of failing to pay employees their accrued sick leave and
14 vacation pay.
- 15 16. At all times within the applicable statutory period, Defendants have had a
16 consistent policy of failing to reimburse their employees (including Plaintiff
17 and the putative class members) for business-related expenses as required
18 under California law.
- 19 17. At all times within the applicable statutory period, Defendants have had a
20 consistent policy of failing to pay their employees (including Plaintiff and the
21 putative class members), all the wages they were due at the time of their
22 termination or separation from employment with Defendants, in violation of
23 California state wage and hour laws.
- 24 18. Plaintiff, on behalf of himself and the putative class members, brings this
25 action pursuant to Labor Code §§ 200, 201, 202, 203, 204, 204b, 210, 226,
26 226.7, 227.3, 233, 246, 500, 510, 512, 516, 1194, 1194.2, 1197, 1198, 2800, and
27 2802 as well as the applicable IWO seeking unpaid wages, penalties,
28 equitable relief, and reasonable attorneys' fees and costs to the fullest extent

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

permitted under California law.

19. Plaintiff, on behalf of himself and the putative class members, also brings this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants as a result of Labor Code and applicable Wage Order violations.

20. Plaintiff, on behalf of the State of California, himself, and other similarly aggrieved employees, also brings this action pursuant to California Private Attorney General Act (“PAGA”), Cal. Lab. Code §2698, *et seq.* seeking unpaid wages and other compensation, penalties, and reasonable attorneys’ fees and costs.

JURISDICTION AND VENUE

21. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The County of Los Angeles is the proper venue because said County is where the Defendants reside at the commencement of this action, the work was performed by Plaintiff and other class members for Defendants in the County of Los Angeles and the legal obligations owed by Defendants to Plaintiff and other class members were breached in the County of Los Angeles.

22. The California Superior Court has jurisdiction in this matter, because Plaintiff is a resident of State of California, Defendants are qualified to do business in California, and regularly conduct business in California.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this action on behalf of himself and all other employees of Defendants who are similarly situated persons as a class action pursuant to California Code of Civil Procedure § 382. Plaintiff and all members of the putative class are described below with specificity and fall in several categories of subclasses whose rights have been violated under the law. Defendants have made no effort as of the filing of this First Amended

1 Complaint to correct or remedy the violations of law specified here.

2 24. There is a well-defined common interest by and among Plaintiff and the
3 putative class members, and it is impractical to bring all those individuals
4 before the court under separate, different, and repetitive actions. Plaintiff
5 also reserves the right to amend or modify the class descriptions set forth
6 below in greater specificity or clarity if required in the future in accordance
7 with California Rules of Court, rule 3.765 (b).

8 25. The Plaintiff Class (i.e., the class which Plaintiff seeks to represent) is
9 composed of and defined as follows: All of Defendants' current and former
10 non-exempt employees who worked for Defendants in California during the
11 four years before the filing of the Complaint up through the time of class
12 certification.

13 26. Plaintiff seeks to certify the following subclasses of employees:

14 a. "Meal Period Subclass" – All members of the Plaintiff Class who
15 worked each period exceeding five (5) hours without a legally
16 compliant thirty (30) minute meal period and/or periods in excess of
17 ten (10) hours without a second legally compliant thirty (30) minute
18 meal periods; and, who were also not provided compensation of one
19 hour's pay at the employee's regular rate for each day that a legally
20 compliant meal period was not provided.

21 b. "Rest Break Subclass" – All members of the Plaintiff Class who
22 worked periods of four (4) hours or major fraction thereof without
23 legally compliant rest breaks of at least 10-minutes; and who were
24 also not compensated one hour's pay at the employee's regular rate
25 for each day that a legally compliant rest break was not permitted.

26 c. "Unpaid Wage Subclass" – All members of the Plaintiff Class who
27 were not paid the regular rate wages (including at least the minimum
28 wage) that were owed to them for time worked off-the-clock, as well

as overtime wages for hours worked in excess of eight hours per day at the one and a half rate or at a double time rate as required under California law.

- d. "Sick Leave Subclass" – All members of the Plaintiff Class who were not paid their accrued sick leave and vacation benefits as permitted under California law.
- e. "Expense Reimbursement Subclass" – All members of the Plaintiff Class to whom Defendants failed to fully reimburse employee business expenses as required by Labor Code §2802.
- f. "Waiting Time Subclass" – All members of the Plaintiff Class to whom Defendants failed to pay all wages due to them upon termination or resignation under Labor Code §§ 201-203.
- g. "UCL Subclass" – All members of the Meal Period, Rest Break, Unpaid Wage, Sick Leave, Expense Reimbursement, Waiting Time Subclasses who were subject to unlawful, illegal, unfair and/or deceptive business acts and practices by Defendants and are entitled to disgorgement and restitution of unpaid wages.

27. There is a well-defined community of interest among many persons who comprise a readily ascertainable class:

- a. Numerosity: The potential members of the Class and Subclasses as defined here are so numerous that the individual joinder of all of them as named plaintiff is impracticable. The number of members of the Class and Subclasses is unknown to Plaintiff. It is however estimated that the members are more than 100 individuals, and their identities may readily be ascertained from Defendants' records.
- b. Typicality: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses, who sustained similar damages arising out of Defendants' common course of conduct in violation of

1 law as alleged.

- 2 c. Ascertainable Class: The proposed Class and Subclasses are
3 ascertainable as the members can readily be identified and located
4 based on the Defendants' payroll and personnel records.
- 5 d. Adequacy: Plaintiff is an adequate representatives of the Class and
6 Subclasses: Plaintiff will fairly protect the interests of the members,
7 he has no interest that is adverse to the members, and he will
8 vigorously pursue this lawsuit on behalf of all the members of the
9 Class and Subclasses. Plaintiff's attorneys are competent, skilled, and
10 experienced in litigating large employment law class actions.
- 11 e. Superiority: Class action treatment will allow a large number of
12 similarly situated persons to prosecute their common claims in a
13 single forum simultaneously, efficiently, and without the unnecessary
14 duplication of effort and expense that numerous individual actions
15 would require. Further, the monetary amounts due to many
16 individual members of the Class and Subclasses are likely to be
17 relatively small, and the burden and expense of individual litigation
18 would make it difficult or impossible for the members to seek and
19 obtain relief. A class action will serve an important public interest by
20 permitting employees harmed by Defendants' unlawful practices to
21 effectively pursue recovery of the sums owed to them.
- 22 f. Common Questions of Law and Fact: There are common questions of
23 law and fact as to the members of the Class and Subclasses which are
24 superior to questions affecting only individual members of the Class
25 and Subclasses. The common questions of law and fact may be
26 summarized as follows and, if necessary, will be refined with the
27 progress of formal discovery in the case:
- 28 i. Whether Defendants failed to provide members of the Plaintiff

1 Class who ceased employment with Defendants all wages owed
2 at the time of the cessation of the employee-employer
3 relationship.

- 4 ii. Whether Defendants violated California law and applicable
5 Wage Orders by failing to provide Plaintiff Class members with
6 paid ten-minute (10) rest breaks for each four hours worked.
- 7 iii. Whether the remedy for an employer's failure to provide rest
8 breaks as required by law is a premium wage for hardship of
9 missing a lawful rest break.
- 10 iv. Whether Defendants violated California law and applicable
11 Wage Orders by failing to provide Plaintiff Class members with
12 an off-duty thirty-minute (30) meal period for more than five
13 hours of work.
- 14 v. Whether Defendants violated California law and applicable
15 Wage Orders by failing to provide members of the Plaintiff
16 Class with a second meal period.
- 17 vi. Whether the remedy for an employer's failure to provide meal
18 period as required by law is a premium wage for hardship of
19 missing a lawful meal period.
- 20 vii. Whether Defendants violated California law, including the
21 applicable wage orders by failing to properly compensate
22 Plaintiff Class members for all hours worked, including
23 overtime hours as applicable.
- 24 viii. Whether Plaintiff Class members are entitled to waiting time
25 penalties under Labor Code § 203.
- 26 ix. Whether Defendants have violated Labor Code §2802 by failing
27 to reimburse Plaintiff and the Plaintiff Class for all business
28 expenses incurred by them in direct consequence of the

1 discharge of their duties.

2 x. Whether Defendants paid their employees accrued sick leave
3 and vacation pay as required pursuant to Labor Code §§ 246,
4 246(i), 246(h), 246.5, 233 and 227.3.

5 xi. Whether Defendants violated Business and Professions Code
6 §§ 17200 et. seq., Labor Code §§ 201, 202, 203, 204, 210, 226,
7 226.7, 510, 512, 1194, 1194.2, 1197, 2800, 2802 and applicable
8 Wage Orders which constitute violations of public policy under
9 California law.

10 xii. Whether the Plaintiff Class is entitled to an equitable relief in
11 accordance with Business and Professions Code §§ 17200 et.
12 seq.

13 xiii. Whether Defendants' affirmative defenses, if any, raise
14 common issues of law and fact as to the Plaintiff Class as a
15 whole and/or Subclasses in particular.

16 **FIRST CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL PERIODS OR**
18 **COMPENSATION IN LIEU THEREOF**
19 **(Labor Code §§ 226.7, 512 and IWO)**
20 **(By Plaintiff and the Meal Period Subclass against Defendants)**

21 28. Plaintiff incorporates paragraphs 1 through 27 of this First Amended
22 Complaint, fully alleged herein.

23 29. By their failure to provide legally compliant thirty-minute (30) meal periods
24 to Plaintiff and members of the Meal Period Subclass, Defendants willfully
25 violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC
26 Wage Orders.

27 30. As a result of Defendants' unlawful conduct, Plaintiff and members of the
28 Meal Period Subclass are entitled to recover wages, damages, losses,
statutory penalties and/or other remedy set forth in the Prayer for Relief

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below which is hereby incorporated to the extent applicable under California law.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST BREAKS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7 and IWO)
(By Plaintiff and the Rest Break Subclass against Defendants)

31. Plaintiff incorporates paragraphs 1 through 27 of this First Amended Complaint, fully alleged herein.

32. By their failure to provide legally compliant ten-minute rest breaks periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and the Rest Break Subclass, Defendants willfully violated Labor Code § 226.7 and applicable Wage Orders.

33. As a result of Defendants' unlawful conduct, Plaintiff and members of the Rest Break Subclass are entitled to recover wages, damages, losses, statutory penalties and/or other remedy set forth in the Prayer for Relief below which is hereby incorporated under California law.

THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES
(Labor Code §§ 204, 210, 510, 1182.12, 1194, 1194.2, 1197, 1198 and IWO)
(By Plaintiff and the Unpaid Wage Subclass against Defendants)

34. Plaintiff incorporates paragraphs 1 through 33, except for paragraphs 28 and 31, of this First Amended Complaint as if fully alleged herein.

35. At all times during the applicable statutory period, Plaintiff and members of the Unpaid Wage Class were employees of Defendants covered by Labor Code §§ 204, 210, 510, 1182.12, 1194, 1194.2, 1197, 1198 and applicable Wage Orders, and they were entitled to receive regular (including at least the minimum wage) and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

36. Defendants have violated California law and the specified provisions of the

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

1 Labor Code and applicable Wage Orders by their failure to pay all wages
2 due their employees, including payment of regular and overtime wages for
3 time worked off-the-clock and/or due to Defendants unfair and illegal
4 rounding practices which consistently worked to the advantage of
5 Defendants.

6 37. As a result of Defendants' unlawful conduct, Plaintiff and members of the
7 Unpaid Wage Subclass are entitled to recover wages, damages, losses,
8 statutory penalties and/or other remedy set forth in the Prayer for Relief
9 below which is hereby incorporated under California law.

10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PAY ACCRUED SICK LEAVE AND VACATION BENEFITS**
12 **(Labor Code §§ 227.3, 233, 246, 246(n), and 1198)**
13 **(By Plaintiff and the Sick Leave Subclass against Defendants)**

14 38. Plaintiff incorporates paragraphs 1 through 27 of this First Amended
15 Complaint, alleged herein.

16 39. At all times during the applicable statutory period, Plaintiff and members of
17 the Sick Leave Subclass were employees of Defendants covered by Labor
18 Code §§ 227.3, 233, 246, et seq. and 1198, and they were entitled to payment
19 of their accrued sick leave and vacation benefits as permitted under
20 California Law.

21 40. Defendants have violated California law and the specified provisions of the
22 Labor Code and applicable Wage Orders by their failure to pay employees
23 their accrued sick leave.

24 41. As a result of Defendants' unlawful conduct, Plaintiff and members of the
25 Sick Leave Subclass are entitled to recover wages, damages, losses,
26 statutory penalties and/or other remedy set forth in the Prayer for Relief
27 below which is hereby incorporated under California law.
28

FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE ALL BUSINESS EXPENSES
(Labor Code §§ 2800, 2802 and IWO)
(By Plaintiff and the Expense
Reimbursement Subclass against Defendants)

42. Plaintiff incorporates paragraphs 1 through 27 of this First Amended Complaint, alleged herein.
43. Labor Code § 2800 provides, in pertinent part, “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.” Labor Code § 2802 provides, in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...” Labor Code § 2802 additionally provides, in pertinent part: “(c)...the term ‘necessary expenditures or losses’ shall include all reasonable costs, including but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”
44. At all times during the applicable statutory period, Defendants required Plaintiff and Expense Reimbursement Subclass Members to use their personal cellphones but did not reimburse employees for the expenses related thereto.
45. As a direct and proximate result, Plaintiff and Expense Reimbursement Subclass Members are entitled to recover damages, losses, statutory penalties and/or other remedy set forth in the Prayer for Relief below which is hereby incorporated to the extent applicable under California law.

SIXTH CAUSE OF ACTION
FAILURE TO PAY WAGES DUE AT TERMINATION
(Labor Code §§ 201, 202, 203)
(By Plaintiff and the Waiting Time Subclass against Defendants)

46. Plaintiff incorporates paragraphs 1 through 45, except for paragraphs 28, 31, 34, 38, and 42, of this First Amended Complaint as if fully alleged

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

herein.

47. By their failure to timely pay Plaintiff and members of the Waiting Time Subclass the final wages they were due upon the employees' separation from employment (by termination, resignation, or other mode of separation), Defendants willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable Wage Orders.

48. In violation of Labor Code § 203, Defendants have also failed to pay Plaintiff and the putative subclass the continuing wages owed (up to a maximum of thirty days).

49. As a direct and proximate result, Plaintiff and Waiting Time Subclass members are entitled to recover wages, damages, losses, statutory penalties and/or other remedy set forth in the Prayer for Relief below which is hereby incorporated to the extent applicable under California law.

SEVENTH CAUSE OF ACTION
VIOLATION OF UNFAIR BUSINESS PRACTICES ACT
(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, the Plaintiff Class, and All Subclasses against Defendants)

50. Plaintiff incorporates paragraphs 1 through 49, except for paragraphs 28, 31, 34, 38, 42 and 46, of this First Amended Complaint as if fully alleged herein.

51. The alleged unlawful and/or unfair conduct of Defendants constitutes unfair competition pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for the time period starting four (4) years before the filing of the Complaint.

52. As a result, Plaintiff and members of the Plaintiff Class and Subclasses have suffered injury in fact and lost money or property. Plaintiff and said members have been deprived of their rights as set forth in this First Amended Complaint, including, but not limited to, payment of minimum

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and/or actual wages owed by Defendants for all hours worked.

53. Pursuant to Business and Professions Code § 17203, Plaintiff and members of the Plaintiff Class and Subclasses are entitled to restitution of all wages and out-of-pocket losses owed to them under the Labor Code, and interest thereon, in which they had a property interest, which Defendants failed to pay to them but withheld and retained for themselves. Restitution of the money owed to Plaintiff, the Plaintiff Class and Subclasses is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code provisions.

54. Plaintiff and members of the Plaintiff Class and Subclasses are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

55. Plaintiff requests the court to issue a preliminary and/or permanent injunction prohibiting Defendants from committing the Labor Code and applicable Wage Order violations set forth in this First Amended Complaint, and Plaintiff and members of the Plaintiff Class and Subclasses are entitled to recover wages, damages, losses, statutory penalties and/or other remedies set forth in the Prayer for Relief below which is hereby incorporated to the extent applicable under California law.

EIGHTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT
(LABOR CODE § 2699 *et seq.*)
(By Plaintiff and Aggrieved Employees Against Defendants)

56. Plaintiff incorporates paragraphs 1 through 55 of this First Amended Complaint as if fully alleged herein.

57. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"), private parties may recover civil penalties for violations of the California Labor

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Code. PAGA penalties are in addition to any other relief available under the Labor Code.

58. As set forth above, Defendants violated the California Labor Code by consistently failing to employ Plaintiff and other similarly situated employees in compliance with California law.

59. Plaintiff provided written notice by certified mail to Defendants on June 13, 2022, and electronic notice thereafter to the State Labor & Workforce Development Agency ("LWDA"), of the legal claims and theories of this case. To date, and after 65 days from the date of mailing of notice, the LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Plaintiff exhausted administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was assigned case number LWDA-CM-889076-22 by the LWDA. Appended hereto is a copy of the notice communicated by Plaintiff.

60. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendants for the violations of Labor Code alleged in this First Amended Complaint and the notice communicated by Plaintiff.

61. Plaintiff and all other aggrieved employees are also entitled to recover their attorneys' fees and costs under Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for relief and judgment against Defendants as follows:

- A. An order certifying that Plaintiff may pursue his claims as a class action under Section 382 of the Code of Civil Procedure; and it is further requested that the Plaintiff Class and each Plaintiff Subclass be certified.

CLASS AND REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

- B. An order appointing Plaintiff as Class representative.
- C. An order appointing Plaintiff's counsel as Class counsel.
- D. Unpaid/underpaid wages or other pay (including but not limited to regular wages, overtime wages, minimum wages, accrued sick and vacation time) owed under the Labor Code and/or applicable Industrial Wage Orders, according to proof.
- E. All premium pay/wages owed to under the Labor Code, applicable Industrial Wage Order(s) and/or local law/ordinance for legally non-compliant meal periods and/or rest breaks, according to proof.
- F. All liquidated damages permitted under California law for Defendants' violation(s) of the Labor Code, applicable Industrial Wage Order(s) and/or applicable local laws/ordinances, including but not limited to Labor Code § 1194.2, according to proof.
- G. All statutory penalties to the fullest extent permitted under California Law, including but not limited to Labor Code § 210 and § 226(e), according to proof.
- H. Damages for unpaid penalty wages as permitted under California Law, including but not limited to Labor Code § 203.
- I. Reimbursement of business expenses under Labor Code § 2802.
- J. Reasonable attorney's fees and costs as permitted under California law, including, but not limited to, Labor Code § 218.5 and Code of Civ. Proc. § 1021.5.
- K. Enjoinment of Defendants from further acts of unfair competition and continuous violations of the Labor Code and applicable Wage Orders.
- L. Disgorgement of Defendants' wrongfully obtained profits and restitution of unpaid wages under Business and Professions Code §§ 17203, 17204.
- M. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA

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and 25% payable to aggrieved employees);

N. Prejudgment interest to the fullest extent permitted by California law.

O. Post-judgment interest, as applicable, and to the fullest extent permitted under California law. And,

P. For such other relief that the Court may deem just and proper.

DATED: Dec. 14, 2022

MOORADIAN LAW, APC

By: Haik Hacopian

Zorik Mooradian,
Andrina G. Hanson,
Nanor C. Kamberian,
Haik Hacopian,
Attorneys for Plaintiff, OMAR RIOS ROMERO,
individually and persons similarly situated and
similarly aggrieved employees

DEMAND FOR A JURY TRIAL

Plaintiff OMAR RIOS ROMERO hereby demand a jury trial.

DATED: Dec. 14, 2022

MOORADIAN LAW, APC

By: Haik Hacopian

Zorik Mooradian,
Andrina G. Hanson,
Nanor C. Kamberian,
Haik Hacopian,
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June 13, 2022

VIA USPS CERTIFIED MAIL

**Partners Personnel - Management
Services, LLC**
Mark McComb
Paul Sorensen
3820 State St., Suite B
Santa Barbara, CA 93105

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development
Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Potential Industries, Inc.

Tony Fan
Jessica Chen
Henry Chen
720 East E. Street
Wilmington, CA 90744

Re: PAGA Notice Letter re California Wage & Hour Violations

To Whom It May Concern:

This office represents Omar Rios Romero (Mr. Rios) with respect to the claims he is seeking to bring under the Private Attorneys General Act (PAGA) for employment practices committed in violation of California law. This Notice under the Labor Code § 2699.3 is based on currently possessed information and the limited records produced by the Employers. Mr. Rios seeks to pursue PAGA claims on his own behalf and on the behalf of other exempt and non-exempt current and former employees of the Employers and are collectively hereinafter referred to as “Employees.” Employers have the contact names, addresses, and information of the remaining employees, who are in excess of 200 individuals for the applicable periods here.

The “Employers” as referenced in this Notice are Partners Personnel - Management Services, LLC, Potential Industries, Inc. and their respective parent companies, joint-enterprise companies, subsidiaries, predecessors, successors, owners, officers, directors, managing agents and supervisors, including Mark McComb and Paul Sorensen of Partners Personnel –

Management Services, LLC and Tony Fan, Jessica Chen, and Henry Chen of Potential Industries, Inc. All owners, directors, officers and managing agents of Employers are personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Mr. Rios will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

Employers are engaged in the business of staffing, recycling, and other lawful businesses in the state of California at all times relevant here. In summary, Employers violated series of California wage and hour provisions, including, but not limited to:

Overtime violations - Labor Code § 500, Labor Code § 510, Labor Code 1198, and the Applicable IWO -Employers violated and continue to violate Labor Code § 510 and the applicable IWO by failing to pay Employees overtime compensation as required under California law. Employers did not pay the Employees for the overtime off the clock work, rounded down the overtime hours and failed to pay the on-duty meal and rest breaks. On many instances, Employers cut down/rounded down Mr. Rios' overtime hours.

Failure to Pay Employees at Least the Minimum Wage for All Time Worked - Violations of Labor Code § 1182.12, Labor Code § 1194, Labor Code § 1197, Labor Code § 1198, and the Applicable IWO, the Applicable Local Law/Ordinance – When factoring in the unpaid overtime pay, Mr. Rios and the aggrieved employees were denied minimum wages as required by California law for each implicated pay period.

Failure to Provide Legally Mandated and Legally Compliant Meal Periods or, In Lieu Thereof, Premium Pay Wages - Labor Code § 226.7, Labor Code § 512, Labor Code § 516, Labor Code § 1198, and the Applicable IWO) -

Employers failed to provide legally compliant meal periods (first and second) and/or requisite premium wages. The first meal periods were cut short, untimely or on duty and the second meal periods were ignored and not provided at all. On many occasions, Mr. Rios and the aggrieved employees worked for more than ten hours per shift and did not receive any meal breaks. Employers also failed to track the meal periods as required by law and no such compliant tracking is shown on the few Labor Code Section 226 records which were produced by the Employers previously.

Failure to Provide Legally Mandated and Legally Compliant Rest Breaks or, In Lieu Thereof, Premium Pay Wages - Labor Code § 226.7, Labor Code § 512, Labor Code § 516, Labor Code § 1198, and the Applicable IWO – Employees were deprived of the California compliant rest breaks (first, second and/or third). Rest breaks were often short, interrupted or on duty. Also, restroom breaks were often accounted as rest breaks and Employees were discouraged from taking compliant rest breaks instead. On more than ten hour shifts no third rest breaks were given to the Employees at all.

Failure to Pay/Timely Pay Employees Accrued Sick Leave Pay - Labor Code § 233, Labor Code § 246(n), Labor Code § 1198 – Employers have adopted, and continue to adopt, a custom and practice of violating Labor Code § 233 and Labor Code § 246(n) by failing to pay Employees (including Mr. Rios) sick leave time that Employees have accrued and used for purposes permitted under California law. Mr. Rios brought to the attention of his supervisors regarding his concerns for not receiving payment for sick leave benefits when he was ill and none was provided regardless.

Failure to Provide Employees with Seating Accommodations - Labor Code 1198, and the Applicable IWO – Employers have adopted and continue to adopt a custom and practice of failing to provide their current and former Employees (including Mr. Rios) with: 1) Suitable seating when the nature of the Employees' work reasonably permits use of seats and 2) Suitable seating in reasonable proximity to Employee's work areas for use by Employees when a) they are not engaged in active duty, b) their work requires standing and c) such seats would not interfere with the performance of their duties. On average, Mr. Rios had longer than 10-hour shifts. He was in charge of sorting out recyclables (for example: metals, wood, rocks, plastic, etc.) on feet without any seating accommodations.

Failure to Pay/Timely Pay Employees All Wages Owed on Designated Paydays - Labor Code § 200, Labor Code §§ 204 – 204b) – Wages were not paid within the time frames set forth in Labor Code §§ 204-204b based on the records received and reviewed prior to this Notice. Moreover, even the wages that Employees were paid were not paid within 7 calendar days following the

close of the payroll period as required under Labor Code §§ 204-204b. Additionally, for a period of 6 months, Mr. Rios was paid in the form of a debit card for his earned wages without any wage statements (improper form of payment.)

Failure to Indemnify/Reimburse Employees for Necessary Business-Related Expenditures - Labor Code § 2802- Employers have violated and continue to violate Labor Code § 2802 by not indemnifying or reimbursing Employees for all necessary expenditures or losses incurred by the Employees in direct consequence of the discharge of his or her duties, or in obedience to the directions of Employers as follows. At times, Mr. Rios would receive communications from Employers on his cellular phone pertaining to his work and has not been compensated or reimbursed therefor.

Failure to Provide Employees with Accurate Itemized Wage Statements - Labor Code § 226 - Employers have adopted and continue to adopt, a custom and practice of providing wage statements to Employees that fail to comply with Labor Code § 226 for inaccurate reporting of premium pays, overtime wages, minimum wages, regular rate of pay, gross and net amounts of the wages, and employee benefits such as sick leave.

Failure to Pay/Timely Pay Employees All Wages Due at Time of Separation - Labor Code 201-202) - Employers have violated and continue to violate Labor Code §§ 201-202 by failing to pay Employees who have become separated from Employers the complete and correct amount of all wages owed to such Employees at the time of their separation within the timeframes mandated by Labor Code §§ 201-202. As to Mr. Rios, his last day based on the provided records was June 18, 2021, and his last paycheck is dated June 25, 2021. The last paycheck also fails to consider the accurate amount of the owed wages, including premium pays and benefits.

If the State of California intends to investigate the matters set forth herein, please inform our offices. In the absence of such notification, our offices will reserve the right to file an appropriate civil action pursuant to Labor Code § 2698 *et. seq.* (PAGA), seeking all available damages, penalties, and remedies as well as attorneys' fees, interest, and costs, under the law. If additional information is needed, please advise. Much appreciated.

Very truly yours,

MOORADIAN LAW, APC

 **Zorik Mooradian**

Zorik Mooradian, Esq.

Attorneys for Omar Rios Romero

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On **December 14, 2022**, I served on the parties of record in this action the foregoing document(s) described as:

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorneys for Defendant Partners Personnel
– Management Services, LLC

☒ **STATE** – I declare under penalty of perjury under the laws of the “State of California that the above is true and correct.

/s/Haik Hacobian

PROOF OF SERVICE