

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

KIVA SALES & SERVICE, INC., a California Corporation, and DOES  
1 through 10, inclusive.

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

ADAM NAVA, on behalf of himself and all others similarly situated,  
and on behalf of the general public,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**  
Superior Court of California  
County of Alameda  
01/17/2023

Chad Finke, Executive Officer / Clerk of the Court

By: A. Linhares Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): **Rene C. Davidson Courthouse**  
1225 Fallon Street, Room 109  
Oakland, CA 94612

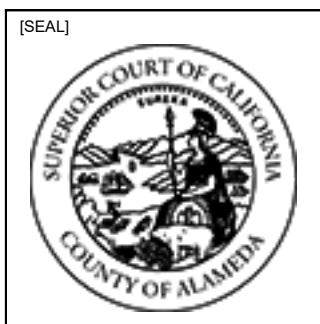
CASE NUMBER:  
(Número del Caso):

**23CV025771**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
**Roman Otkupman & Nidah Farishta: 5743 Corsa Ave, Suite 123, Westlake Village, CA 91362; (818)293-5623**

DATE: **01/17/2023** Chad Finke, Executive Officer / Clerk of the Court Clerk, by **A. Linhares**, Deputy  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



### NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
 

|                                                                  |                                                         |
|------------------------------------------------------------------|---------------------------------------------------------|
| under: <input type="checkbox"/> CCP 416.10 (corporation)         | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)        | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify):                        |                                                         |
4. ☐ by personal delivery on (date):

Roman Otkupman, CSBN 249423  
*Roman@OLFLA.com*  
Nidah Farishta, CSBN 312360  
*Nidah@OLFLA.com*  
OTKUPMAN LAW FIRM, A LAW CORPORATION  
5743 Corsa Ave., Suite 123  
Westlake Village, CA 91362  
Telephone: (818) 293-5623  
Facsimile: (888) 850-1310

Attorney for Plaintiff,  
Adam Nava, on behalf of himself and all others similarly situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

ADAM NAVA, on behalf of himself and all others similarly situated, and on behalf of the general public,

Plaintiff,

vs.

KIVA SALES & SERVICE, INC., a  
California Corporation, and DOES 1 through  
10, inclusive.

Defendants.

CASE NO. **23CV025771**

**REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- PENALTIES PURSUANT TO  
LABOR CODE SECTION 2699(f)  
FOR VIOLATIONS OF LABOR  
CODE §§ 226.7, 512, 558, 510, 1194,  
1194.2, 226(a),(e) 1174(d), 201-203,  
204(a)(b), 2802, 210, 218, 222, 6400,  
6401, 6403, 6404, 6407, 8 CCR 3202,  
17200**

**DEMAND FOR JURY TRIAL**

Plaintiff ADAM NAVA ("Plaintiff"), on behalf of himself and other "aggrieved employees" complains of Defendants as follows:

**I. INTRODUCTION**

1. This is a Representation Action, pursuant to Labor Code § 2698, 2699 et seq., on behalf of Plaintiff and certain individuals who are employed by, or were formerly employed by Kiva Sales & Service, Inc. and any subsidiaries or affiliated companies (hereinafter collectively referred to as "Defendants") within California.

2. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist

1 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to  
2 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one  
3 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees  
4 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,  
and IWC Order No. 5-2001, Section 12.

5 3. Plaintiff and Defendants' California employees were required to work off the clock  
6 for Defendants. Plaintiff and Defendant California employees were asked to take calls after  
7 clocking out without being compensated for it. It took Plaintiff on the average of 5 minutes to  
8 complete this task. Defendants did not compensate Plaintiff and Defendants' California employees  
9 if these tasks were completed outside of his regular work hours. These excess hours were not  
10 recorded on our client's and Defendants' California employees wage statements. Plaintiff and  
11 Defendant's California employees should have been compensated for that time, but he was not in  
12 violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's  
13 California employees were not paid for all hours worked including all straight time wages, and  
overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

14 4. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-  
15 exempt employees. As a result, employees are not properly compensated for work performance in  
16 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a  
17 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of  
18 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per  
19 week and do not receive overtime compensation at a rate of one and one half of their regular rate.  
20 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for  
21 all hours worked including all straight time wages, and overtime wages. These failures to pay all  
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

22 5. Defendants have required Plaintiff and Defendant's California employees to work  
23 hours in excess of eight hours in a day and forty in a week but had not paid these employees  
24 overtime compensation as required by their collective bargaining agreement in violation of Labor  
Code § 222.

25 6. Defendants failed to issue Plaintiff and Defendant's California employees accurately  
26 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California  
27 employees with all wages due, as detailed above, their wage statements failed to accurately state all  
28

gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item in violation of Labor Code § 226(a)(4), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

7. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

8. Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

9. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

10. Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[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." As such, Plaintiff and Defendant's California employees have

1 incurred reasonable and necessary expenses in the course of their job duties, which were not  
2 reimbursed by Defendant, in violation of Labor Code § 2802.

3 11. Defendants failed to continue to take precautions to ensure employee safety after the  
4 onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome  
5 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant’s California employees, directly after the  
6 onset of COVID, were required to partake in mandatory temperature and health checks, but these  
7 activities were not enforced or practiced quickly after the onset of COVID and when COVID was  
8 still a health risk to the employees. Plaintiff and Defendant’s California employees were also  
9 required to provide their own masks at the workplace. As a result of these practices, Defendants have  
10 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe  
and healthful environment for their Employees, as outlines above. Defendants are liable for civil  
penalties pursuant to Cal. Labor Code § 2699 *et seq.*

11 12. Defendants failed to pay all wages earned to Plaintiff and Defendant’s California  
12 employees as a result of the unlawful employment policies and practices herein. As a result of these  
13 practices, Plaintiff and Defendant’s California employees were underpaid for hours worked,  
14 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages  
15 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure  
to pay wages as required by law.

16 13. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*  
17 *Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and  
18 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant’s California employees.

19 14. Plaintiff, on behalf of himself and all other aggrieved employees, brings this action  
20 pursuant to Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a)(e), 1174(d), 201-203,  
21 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, and 17200.

22 15. Venue as to each Defendant is proper in this judicial district, pursuant to Code  
23 of Civil Procedure § 395. Defendants operate within the State of California. The unlawful acts  
alleged herein took place in Alameda, California.

## 24 II. PARTIES

### 25 A. PLAINTIFF

26 16. Plaintiff Adam Nava is a resident of San Leandro, California. At all times relevant  
27 herein, he was employed by Defendants in Alameda County, California. Plaintiff was employed by

Defendants as a non-exempt, hourly employee in California, including in and around the city of Alameda, County of Alameda. During Plaintiff's employment:

- A. Plaintiff did not receive final wages at the time of his termination.
- B. Plaintiff was required to work without meal and rest periods, nor compensation in lieu thereof, as required by the Labor Code and relevant Wage Orders.
- C. Plaintiff was required to work either in excess of eight hours per workday or in excess of forty hours per workweek without receiving compensation at a rate of one and one half the regular rate of pay.
- D. Plaintiff was forced to receive inaccurately itemized and deficient wage statements, in violation of Labor Code § 226(a).
- E. Plaintiff did not receive his compensation in accordance with Labor Code § 204 in that Defendants failed to issues wages to its employees within seven (7) calendar days after the pay period ended.
- F. Plaintiff was not paid in a timely manner pertaining to the waiting time penalties in accordance with Labor Code §§ 201-203.
- G. Defendant also failed to reimburse Plaintiff and Defendant's California employees for reasonable and necessary expenses in the course of their job duties, in violation of Labor Code § 2802.

**B. DEFENDANTS**

17. Defendant Kiva Sales & Service, Inc., is a California Corporation doing business in Alameda, California. It operates within the State of California. Defendant employed Plaintiff and similarly situated employees within California. The violations alleged herein arose in Alameda, California.

18. As used herein, the term "AGGRIEVED EMPLOYEES," and "DEFENDANTS' CALIFORNIA EMPLOYEES," shall mean Defendant KIVA SALES & SERVICE, INC.'S non-exempt employees.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the  
2 Defendants designated hereinafter as DOES when such identities become known.

3 20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
4 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
6 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the  
7 employer and/or joint employer of Plaintiff and all other aggrieved employees.

### 8 **FACTUAL ALLEGATIONS**

9 21. Plaintiff and Defendant's California employees were routinely unable, and not  
10 authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-  
11 minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California  
12 employees were forced to continue working through their meal and rest breaks in order to assist  
13 Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to  
14 take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one  
15 hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees  
16 who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558,  
17 and IWC Order No. 5-2001, Section 12.

18 22. Plaintiff and Defendants' California employees were required to work off the clock  
19 for Defendants. Plaintiff and Defendant California employees were asked to take calls after  
20 clocking out without being compensated for it. It took Plaintiff on the average of 5 minutes to  
21 complete this task. Defendants did not compensate Plaintiff and Defendants' California employees  
22 if these tasks were completed outside of his regular work hours. These excess hours were not  
23 recorded on our client's and Defendants' California employees wage statements. Plaintiff and  
24 Defendant's California employees should have been compensated for that time, but he was not in  
25 violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's  
26 California employees were not paid for all hours worked including all straight time wages, and  
27 overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

28 23. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-  
exempt employees. As a result, employees are not properly compensated for work performance in  
excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a  
workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of

1 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per  
2 week and do not receive overtime compensation at a rate of one and one half of their regular rate.  
3 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for  
4 all hours worked including all straight time wages, and overtime wages. These failures to pay all  
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

5 24. Defendants have required Plaintiff and Defendant's California employees to work  
6 hours in excess of eight hours in a day and forty in a week but had not paid these employees  
7 overtime compensation as required by their collective bargaining agreement in violation of Labor  
8 Code § 222.

9 25. Defendants failed to issue Plaintiff and Defendant's California employees accurately  
10 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California  
11 employees with all wages due, as detailed above, their wage statements failed to accurately state all  
12 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of  
13 Labor Code § 226(a)(2), all deductions, provided that all deductions made on written orders of the  
14 employee may be aggregated and shown as one item in violation of Labor Code § 226(a)(4), and  
15 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the  
16 pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9),  
as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor  
Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

17 26. Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's  
18 California employees timely, accurate, itemized wage statements in accordance with Labor Code §  
19 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and  
20 Defendant's California employees, and the records maintained by Defendants, have not accurately  
21 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest  
premiums, and total hour worked.

22 27. Our client further alleges that Defendants paid him and Defendant's  
23 California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and  
24 202. As they were not paid all wages due and owing throughout the course of their employment as a  
25 result of Defendants' failure to pay all premium wages as detailed above, at the time of their  
26 separation, they were not paid all final wages due and owing for the entirety of their employment.  
27 This violates Labor Code §§ 201-203.

1           28. Defendant pays Plaintiff and it's California employees on a bi-weekly basis and  
2 has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly  
3 basis must be paid no later than seven calendar days following the close of the payroll period.  
4 Due to the violations described above, Plaintiff and Defendant's California employees did not  
5 receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

6           29. Defendant failed to reimburse Plaintiff and Defendant's California employees for the  
7 equipment they purchased to perform work for Defendant such as face masks. Defendant further  
8 failed to reimburse its California employees for using their personal cell phones for the benefit of  
9 Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her  
10 employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
11 the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have  
12 incurred reasonable and necessary expenses in the course of their job duties, which were not  
13 reimbursed by Defendant, in violation of Labor Code § 2802.

14           30. Defendants failed to continue to take precautions to ensure employee safety after the  
15 onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome  
16 coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the  
17 onset of COVID, were required to partake in mandatory temperature and health checks, but these  
18 activities were not enforced or practiced quickly after the onset of COVID and when COVID was  
19 still a health risk to the employees. Plaintiff and Defendant's California employees were also  
20 required to provide their own masks at the workplace. As a result of these practices, Defendants have  
21 violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe  
22 and healthful environment for their Employees, as outlines above. Defendants are liable for civil  
23 penalties pursuant to Cal. Labor Code § 2699 *et seq.*

24           31. Defendants failed to pay all wages earned to Plaintiff and Defendant's California  
25 employees as a result of the unlawful employment policies and practices herein. As a result of these  
26 practices, Plaintiff and Defendant's California employees were underpaid for hours worked,  
27 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages  
28 owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure  
to pay wages as required by law.

          32. Plaintiff and all other aggrieved employees bring this claim pursuant to *Business &*

1 *Professions Code* § 17200, et seq. The conduct of all Defendants as alleged above has been and  
2 continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**  
6 **CODE §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 210,**  
7 **218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, 17200**

8 33. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set  
9 forth herein.

10 34. As a result of the acts alleged herein, Plaintiff seeks penalties under Labor Code §  
11 2698 *et seq.* because of Defendants' violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2,  
12 226(a), (e), 201-203, 204(a)(b), 1174(d), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407, 8 CCR  
13 3202, 17200.

14 35. For each such violation, Plaintiff and all aggrieved employees are entitled to penalties  
15 in an amount to be shown at the time of trial subject to the following formula:

- 16 a. With respect to the violation of Labor Code § 2699(f) for violations of  
17 Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), (e), 1174(d),  
18 201-203, 204(a)(b), 2802, 210, 218, 222, 6400, 6401, 6403, 6404, 6407,  
19 8 CCR 3202, 17200 \$100 for the initial violation per employee per pay  
20 period and \$200 for each subsequent violation per employee per pay  
21 period.

22 36. These penalties will be allocated 75% to the Labor Workforce Development Agency,  
23 and 25% to the affected employees.

24 37. On September 19, 2022, Plaintiff sent a letter, by certified mail, return receipt  
25 requested, to the LWDA and Defendants setting forth the facts and theories of the violations alleged  
26 against Defendants, as prescribed by Labor Code § 2698 *et seq.* (**Exhibit "A"**). Pursuant to Labor  
27 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)  
28 calendar days of September 19, 2022. Plaintiff may therefore commence this action to seek  
penalties pursuant to Labor Code § 2698 *et seq.*

38. Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief  
as described herein.

**ALLEGATIONS AS TO FAILURE TO PROVIDE MEAL AND REST PERIODS OR  
COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512, 558)**

39. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

40. Plaintiff and all other aggrieved employees are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal or rest periods as set forth in the IWC Wage Orders and Labor Code §§ 226.7, 512, and 558.

41. Defendants have failed to provide Plaintiff and all other aggrieved employees one or more meal or rest periods during their employment. Defendants have failed to compensate Plaintiff and all other aggrieved employees at the rate of one hour or pay at his or her regular rate of pay for each day on which one or more meal or rest periods were not provided.

42. Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

43. Additionally, Plaintiff is entitled to, and seeks, attorney's fees and costs, and prejudgment interest.

**ALLEGATIONS AS TO FAILURE TO PAY ALL WAGES  
IN VIOLATION OF (LABOR CODE §§ 510, 1194, 1194.2)**

44. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

45. Plaintiff and Defendants' California employees were required to work off the clock for Defendants. Plaintiff and Defendant California employees were asked to take calls after clocking out without being compensated for it. It took Plaintiff on the average of 5 minutes to complete this task. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not

1 recorded on our client's and Defendants' California employees wage statements. Plaintiff and  
2 Defendant's California employees should have been compensated for that time, but he was not in  
3 violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's  
4 California employees were not paid for all hours worked including all straight time wages, and  
overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

5 46. Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-  
6 exempt employees. As a result, employees are not properly compensated for work performance in  
7 excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a  
8 workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of  
9 Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per  
10 week and do not receive overtime compensation at a rate of one and one half of their regular rate.  
11 Plaintiff and Defendant's California employees were forced to work overtime and were not paid for  
12 all hours worked including all straight time wages, and overtime wages. These failures to pay all  
overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

13 47. As a result of the unlawful acts of Defendants in willfully failing to pay all alleges,  
14 Plaintiff and Defendant's California employees have been deprived of wages in amounts to be  
15 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,  
16 attorneys' fees, and costs pursuant to Labor Code § 1194 and liquidated damages pursuant to Labor  
Code § 1194.2.

17 **ALLEGATIONS AS TO KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH**  
18 **ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS**  
19 **(LABOR CODE § 226(a), (e)), 1174(d))**

20 48. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set  
21 forth herein.

22 49. Section 226(a) of the California Labor Code requires Defendants to provide wage  
23 statements to employees. In those wage statements, Defendants must accurately set forth, among  
24 other things, the total gross and net wages earned, the total hours worked, and the hourly rates in  
25 effect, for its employees. Defendants have knowingly and intentionally failed to comply with Labor  
Code § 226(a).

26 50. Defendants failed to issue Plaintiff and Defendant's California employees accurately  
27 itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California  
28

1 employees with all wages due, as detailed above, their wage statements failed to accurately state all  
2 gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of  
3 Labor Code § 226(a)(2), all deductions, provided that all deductions made on written orders of the  
4 employee may be aggregated and shown as one item in violation of Labor Code § 226(a)(4), and  
5 net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the  
6 pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9),  
7 as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor  
8 Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

9 51. Defendants knowingly and intentionally failed to provide timely, accurate, itemized  
10 wage statements to Plaintiff and Defendant's California employees in accordance with Labor Code §  
11 226 and keep accurate records as required by § 1174(d). The statements provided to Plaintiff and  
12 Defendant's California employees and the records maintained by Defendants, have not accurately  
13 reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest  
14 premiums, and total hour worked.

15 52. The wage statements provided to Plaintiff and all other aggrieved employees fail to  
16 accurately itemize in wage statements total gross and net wages earned, and the total hours worked,  
17 and all hourly rates in effect, for its employees. Defendants' violations of Labor Code § 226(a) are  
18 knowing and intentional, and Plaintiff has suffered injury as a result of the receipt of defective wage  
19 statements, thereby entitling him to penalties pursuant to Labor Code § 226(e).

20 **ALLEGATIONS AS TO FAILURE TO PAY WAGES DUE AT THE TIME OF**  
21 **DISCHARGE IN VIOLATION OF LABOR CODE §§ 201-202, RESULTING IN**  
22 **SECTION 203 WAGES AND PENALTIES (WAITING TIME PENALTIES)**

23 53. Plaintiff hereby incorporates all preceding paragraphs of this Complaint as  
24 though fully set forth herein.

25 54. At all times material herein, the California Labor Code Sections 201, 202, and  
26 203 were in effect and binding on Defendants.

27 55. California Labor Code § 202 requires employers to pay employees all wages due  
28 within seventy-two (72) hours of resignation. California Labor Code § 201 states in pertinent  
part that "if an employer discharges an employee, the wages earned and unpaid at the time of  
discharge are due and payable immediately." California Labor Code § 203 provides that if an  
employer willfully fails to timely pay such wages the employer must, as penalty, continue to

1 pay the subject employee's wages until the back wages are paid in full or an action is  
2 commenced. The penalty cannot exceed 30 days of wages.

3 56. Plaintiff was entitled to compensation for unpaid wages, but to date has not  
4 received such compensation. Specifically, Defendants failed to pay Plaintiff all wages due to  
5 Plaintiff at the time of his termination. Thus, since Defendants failed to promptly pay Plaintiff  
6 all wages due to Plaintiff at the time of his termination, Defendants violated Section 201 of the  
7 Labor Code and Plaintiff is therefore entitled to wages and penalties pursuant to Labor Code  
8 Section 203.

9 57. More than 30 days have passed since Plaintiff's employment ended with  
10 Defendants.

11 58. As a consequence of Defendants' willful conduct in not paying wages owed to  
12 Plaintiff, Plaintiff is entitled to 30 days of wages as a penalty pursuant to Labor Code § 203 for  
13 Defendants' failure to timely pay legal wages.

14 **ALLEGATIONS AS TO FAILURE TO TIMELY PAY EMPLOYEES**  
15 **IN VIOLATION OF LABOR CODE § 204(a)(b)**

16 59. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set  
17 forth herein.

18 60. At all times relevant herein, Labor Code § 204 was in full force and effect and  
19 binding on Defendants.

20 61. Wages must be paid according to a regularly set schedule. (Labor Code § 204). All  
21 earned wages must be paid at least twice a month, on days designated in advance by the employer.  
22 Work performed between the 1st and the 15th days, inclusive, of any calendar month must be paid  
23 between the 16th and 26th day of the same month. Work performed between the 16th and the last  
24 day of the month must be paid between the 1st and 10th day of the following month. (Labor Code §  
25 204). Weekly or bi-weekly (every two weeks) payroll must be paid within seven (7) days of the end  
26 of the pay period in which the wages were earned (Labor Code §§ 204(a), 204(b)).

27 62. Defendants pay Plaintiff and its California employees on a bi-weekly basis and have  
28 failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must  
be paid no later than seven calendar days following the close of the payroll period. Due to the  
violations described above, Plaintiff and Defendants' California employees did not receive all of  
their wages earned in a timely manner as required by Labor Code § 204(a)(b).

1           63.     Additionally, Defendant failed to pay Plaintiff and Defendant's California Employees  
2 earned wages when they became due, failed to pay wages on a bi-weekly basis, and have failed to  
3 comply with Labor Code § 204(a) which provides that wages earned on a bi-weekly basis must be  
4 paid no later than seven calendar days following the close of the payroll period. Due to the violations  
5 described above, Plaintiff and Defendant's California Employees did not receive all of their wages  
6 earned when due and in a timely manner as required by Labor Code § 204.

7           64.     Defendants have failed to comply with the above-section because they waited longer  
8 than seven days from the close of the pay period to pay its bi-weekly paid employees.

9           **ALLEGATIONS AS TO FAILURE TO REIMBURSE FOR BUSINESS EXPENSES IN**  
10           **VIOLATION OF CALIFORNIA LABOR CODE § 2802**

11           65.     Plaintiff hereby incorporates preceding paragraphs of this Complaint as though  
12 fully set forth herein.

13           66.     Labor Code § 2802 provides that "[a]n employer shall indemnify his or her  
14 employee for all necessary expenditures or losses incurred by the employee in direct  
15 consequence of the discharge of his or her duties."

16           67.     Defendant failed to reimburse Plaintiff and Defendant's California employees for the  
17 equipment they purchased to perform work for Defendant such as face masks. Defendant further  
18 failed to reimburse its California employees for using their personal cell phones for the benefit of  
19 Defendant. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her  
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
21 the discharge of his or her duties." As such, Plaintiff and Defendant's California employees have  
22 incurred reasonable and necessary expenses in the course of their job duties, which were not  
23 reimbursed by Defendant, in violation of Labor Code § 2802.

24           68.     Plaintiff is entitled to reimbursement for these necessary expenditures, plus  
25 interest and attorneys' fees and cost, under Labor Code § 2802.

26           69.     Plaintiff also requests relief as described below.

27     ///

28     ///

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**ALLEGATIONS AS TO FAILURE TO PAY FOR ALL HOURS WORKED,  
INCLUDING OVERTIME HOURS WORKED IN VIOLATION OF  
(LABOR CODES §§ 210, 218, 222)**

70. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

71. Section 2(K) or Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Labor Code §§ 1194 and 1197 required employers to compensate Plaintiff for all hours worked at least at a minimum wage established by the Wage Order. Defendants did not pay for all hours worked and frequently required Plaintiff to work off the clock. Defendants have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as more set forth below:

72. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay Plaintiff all wages earned twice during each calendar month pursuant to Labor Code § 204(a). Defendants failed to pay all wages earned to Plaintiff as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff was underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

73. Failure to Pay Overtime Wages. Defendants have required to work hours in excess of eight hours in a day and forty in a week but had not paid Plaintiff overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222. As a result, Plaintiff has been denied payment for all hours worked as required by Cal. Labor Code § 222, § 1194, § 1198. Defendants are liable for civil penalties pursuant to Labor Code §§ 558.

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**ALLEGATIONS AS TO FAILURE TO PROVIDE PLACE OF EMPLOYMENT  
THAT IS SAFE AND HEALTHFUL IN VIOLATION OF  
(LABOR CODE §§ 6400, 6401, 6402, 6403, 6404, 6407, 8 CCR 3202)**

74. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

75. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for Plaintiff therein. Cal. Labor Code § 6401 provides that “every employer shall furnish and use safety devices and safeguard, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer.

76. Pursuant to Cal. Labor Code § 6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code § 6403 states that no employer shall fail or neglect to provide and use safety devices and safeguard reasonably adequate to render the employment and place of employment safe, or adopt and use methods and processes reasonably necessary to protect the life, safety, and health of Plaintiff and Defendant’s California employees.

77. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct. Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to Plaintiff and Defendant’s California employees. Plaintiff and Defendant’s California employees was also required to provide their own masks at the workplace.

77. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for Plaintiff, as outlines above.

///

**ALLEGATIONS AS TO UNFAIR COMPETITION PURSUANT TO  
BUSINESS & PROFESSIONS CODE § 17200**

79. Plaintiff incorporates all preceding paragraphs of this Complaint as though fully set forth herein.

80. This is an Action for Unfair Business Practices. Plaintiff Adam Nava brings this claim pursuant to *Business & Professions Code* § 17200, et seq. The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees as a result of Defendant's failure to comply with the labor code sections as set out above including but not limited to Labor Code Sections 6400, 6401, 6402, 6403, 6404, 6407. Plaintiff and Defendant's California employees seek to enforce important rights affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5.

81. Plaintiff is a "person" within the meaning of *Business & Professions Code* § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

82. *Business & Profession Code* § 17200 et. seq. prohibits unlawful and unfair business practices.

83. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the *Labor Code*, and have engaged in other unlawful and unfair business practices in violation of *Business & Professions Code* § 17200, et seq., depriving Plaintiff, of rights, benefits, and privileges guaranteed to Plaintiff under law.

84. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of § 17200 et. seq. of the *Business & Professions Code*.

85. As a proximate result of the above mentioned acts of Defendants, Plaintiff has been damaged in a sum as may be proven.

86. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to *Business & Professions Code*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, their agents, or Plaintiff, of any unlawful or deceptive practice prohibited by the *Business & Professions Code*, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff to the money Defendants have unlawfully failed

1 to pay.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

4 1. For penalties pursuant to Labor Code § 203 for Plaintiff and all other aggrieved  
5 employees who are no longer employed by Defendants, equal to their daily wage multiplied by thirty  
(30) days;

6 2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and all other aggrieved  
7 employees;

8 3. For penalties pursuant to Labor Code § 226.7 for Plaintiff and all other aggrieved  
9 employees;

10 4. For penalties pursuant to Labor Code § 1194.2 for Plaintiff and all other aggrieved  
11 employees;

12 5. For penalties pursuant to Labor Code § 204(b) for Plaintiff and all other aggrieved  
13 employees;

14 6. For penalties pursuant to Labor Code § 2802 for Plaintiff and all other aggrieved  
15 employees;

16 7. For penalties pursuant to Labor Code § 1174(d) for Plaintiff and all other aggrieved  
17 employees;

18 8. For penalties pursuant to Labor Code § 210 for Plaintiff and all other aggrieved  
19 employees;

20 9. For penalties pursuant to Labor Code § 222 for Plaintiff and all other aggrieved  
21 employees;

22 10. For penalties pursuant to Labor Code § 6400 for Plaintiff and all other aggrieved  
23 employees;

24 11. For restitution for unfair competition pursuant to Business and Professions Code §  
25 17200 et seq., including disgorgement of profits, in an amount as may be proven;

26 12. For penalties and other relief pursuant to Labor Code § 2698 et seq. for Plaintiff and  
27 all other aggrieved employees;

28 13. An award providing for payment of costs of suit pursuant to Labor Code §  
2699(g)(1);

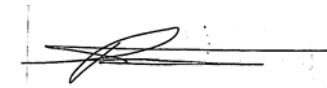
14. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1);

15. An award of prejudgment and post-judgment interest;  
16. An award providing for payment of costs of suit; and  
17. Such other and further relief as this Court may deem just and proper.

Dated: January 16, 2023

OTKUPMAN LAW FIRM,  
A Law Corporation

By:



ROMAN OTKUPMAN  
Attorneys for Plaintiff

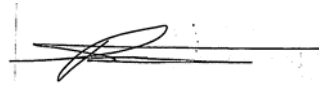
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: January 16, 2023

OTKUPMAN LAW FIRM,  
A Law Corporation

By:



ROMAN OTKUPMAN  
Attorneys for Plaintiff

# **EXHIBIT A**

**OTKUPMAN LAW FIRM, A LAW CORPORATION**

**5743 Corsa Ave, Suite 123  
Westlake Village, CA 91362  
Tel.: 818-293-5623  
Fax: 888-850-1310**

September 19, 2022

**VIA ELECTRONIC FILING**

Labor & Workforce Development Agency

**VIA CERTIFIED MAIL**

Kiva Sales & Service, Inc.  
2300 North Loop Road  
Alameda, CA 94502  
Defendant certified mail # 7021 2720 0002 8202 0492

**VIA CERTIFIED MAIL**

Agent for Service of Process  
CSC – Lawyers Incorporating Service  
2710 Gateway Oaks Dr Ste 150N  
Sacramento, CA 95833  
Agent certified mail # 7021 2720 0002 8202 0508

**VIA CERTIFIED MAIL**

Kiva Sales & Services Inc.  
1 Sansome St Ste 3500  
San Francisco, CA 94104  
Defendant certified mail # 7021 2720 0002 8202 0515

Re: ***Adam Nava v. Kiva Sales & Service, Inc. – Labor Code Violations of Kiva Sales & Service, Inc. – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Adam Nava (“Plaintiff”), a former California employee of Kiva Sales & Service, Inc. (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non – exempt employees.

Plaintiff began working for Defendants in or around February of 2021. While working for Defendant as a Sanitation Technician, Plaintiff was earning (\$18.80) dollars per hour.

Plaintiff and Defendant's California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and Defendant's California employees were forced to continue working through their meal and rest breaks in order to assist Defendant's needs. Because of this, Plaintiff and Defendant's California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour's pay for each missed meal and rest break to Plaintiff and Defendant's California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendants' California employees were required to work off the clock for Defendants. Plaintiff and Defendant California employees were asked to take calls after clocking out without being compensated for it. It took Plaintiff on the average of 5 minutes to complete this task. Defendants did not compensate Plaintiff and Defendants' California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client's and Defendants' California employees wage statements. Plaintiff and Defendant's California employees should have been compensated for that time, but he was not in violation of Labor Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Defendants have required Plaintiff and Defendant's California employees to work hours in excess of eight hours in a day and forty in a week but had not paid these employees overtime compensation as required by their collective bargaining agreement in violation of Labor Code § 222.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item in violation of Labor Code § 226(a)(4), and

net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid him and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

Defendant pays Plaintiff and it's California employees on a bi-weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a bi-weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b).

Defendant failed to reimburse Plaintiff and Defendant's California employees for the equipment they purchased to perform work for Defendant such as face masks. Defendant further failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[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." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

Defendants failed to continue to take precautions to ensure employee safety after the onset of COVID. Under LC §6409.6(a)(1). "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Plaintiff and Defendant's California employees, directly after the onset of COVID, were required to partake in mandatory temperature and health checks, but these activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the employees. Plaintiff and Defendant's California employees were also required to provide their own masks at the workplace. As a result of these practices, Defendants have violated Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide

Labor & Workforce Development Agency

***Kiva Sales & Service, Inc.***

September 19, 2022

Page 4

a safe and healthful environment for their Employees, as outlines above. Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2699 *et seq.*

Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

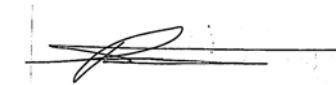
Plaintiff and all other aggrieved employees bring this claim pursuant to *Business & Professions Code* § 17200, *et seq.* The conduct of all Defendants as alleged above has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's California employees.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in dark ink, appearing to be 'Roman Otkupman', is written over a horizontal line.

ROMAN OTKUPMAN

|                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                                  |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Roman Otkupman, Esq. Bar No. 249423; Nidah Farishta, Esq. Bar No. 312360<br>Otkupman Law Firm, ALC<br>5743 Corsa Ave, Suite 123<br>Westlake Village, CA 91362<br>TELEPHONE NO.: (818) 293-5623 FAX NO.: (888) 850-1310<br>ATTORNEY FOR (Name): Plaintiff Adam Nava |  | <b>FOR COURT USE ONLY</b><br><br><b>ELECTRONICALLY FILED</b><br>Superior Court of California,<br>County of Alameda<br><b>01/17/2023 at 12:00:00 AM</b><br>By: Angela Unhars,<br>Deputy Clerk     |  |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda</b><br>STREET ADDRESS: 1225 Fallon Street, Room 109<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Oakland, CA 94612<br>BRANCH NAME: Rene C. Davidson Courthouse                                                                                                                                  |  |                                                                                                                                                                                                  |  |
| CASE NAME:<br>Adam Nava v. Kiva Sales & Service, Inc.                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                  |  |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)                                                                                                                                          |  | <b>Complex Case Designation</b><br><input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b><br>Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |  |
|                                                                                                                                                                                                                                                                                                                                                 |  | CASE NUMBER:<br><b>23CV025771</b>                                                                                                                                                                |  |
|                                                                                                                                                                                                                                                                                                                                                 |  | JUDGE:<br>DEPT:                                                                                                                                                                                  |  |

*Items 1–6 below must be completed (see instructions on page 2).*

1. Check **one** box below for the case type that best describes this case:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35)<br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input checked="" type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b><br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 16, 2023  
 Roman Otkupman

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: Adam Nava v. Kiva Sales & Service, Inc.

Case Number: 23CV025771

ELECTRONICALLY FILED

Superior Court of California  
County of Alameda

01/17/2023

Chad Finke, Executive Officer / Clerk of the Court

By: A. Linhares Deputy

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

[ ] Hayward Hall of Justice (447)

[ ] Oakland, Rene C. Davidson Alameda County Courthouse (446)

[ ] Pleasanton, Gale-Schenone Hall of Justice (448)

| Civil Case Cover Sheet Category | Civil Case Cover Sheet Case Type                                                                                                                                                                         | Alameda County Case Type (check only one)                                                                                                                                                                                                        |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Auto Tort                       | Auto tort (22)                                                                                                                                                                                           | [ ] 34 Auto tort (G)<br>Is this an uninsured motorist case? [ ] yes [ ] no                                                                                                                                                                       |
| Other PI /PD /<br>WD Tort       | Asbestos (04)<br>Product liability (24)<br>Medical malpractice (45)<br>Other PI/PD/WD tort (23)                                                                                                          | [ ] 75 Asbestos (D)<br>[ ] 89 Product liability (not asbestos or toxic tort/environmental) (G)<br>[ ] 97 Medical malpractice (G)<br>[ ] 33 Other PI/PD/WD tort (G)                                                                               |
| Non - PI /PD /<br>WD Tort       | Bus tort / unfair bus. practice (07)<br>Civil rights (08)<br>Defamation (13)<br>Fraud (16)<br>Intellectual property (19)<br>Professional negligence (25)<br>Other non-PI/PD/WD tort (35)                 | [ ] 79 Bus tort / unfair bus. practice (G)<br>[ ] 80 Civil rights (G)<br>[ ] 84 Defamation (G)<br>[ ] 24 Fraud (G)<br>[ ] 87 Intellectual property (G)<br>[ ] 59 Professional negligence - non-medical (G)<br>[ ] 03 Other non-PI/PD/WD tort (G) |
| Employment                      | Wrongful termination (36)<br>Other employment (15)                                                                                                                                                       | [ ] 38 Wrongful termination (G)<br>[X] 85 Other employment (G)<br>[ ] 53 Labor comm award confirmation<br>[ ] 54 Notice of appeal - L.C.A.                                                                                                       |
| Contract                        | Breach contract / Wrnty (06)<br>Collections (09)<br>Insurance coverage (18)<br>Other contract (37)                                                                                                       | [ ] 04 Breach contract / Wrnty (G)<br>[ ] 81 Collections (G)<br>[ ] 86 Ins. coverage - non-complex (G)<br>[ ] 98 Other contract (G)                                                                                                              |
| Real Property                   | Eminent domain / Inv Cdm (14)<br>Wrongful eviction (33)<br>Other real property (26)                                                                                                                      | [ ] 18 Eminent domain / Inv Cdm (G)<br>[ ] 17 Wrongful eviction (G)<br>[ ] 36 Other real property (G)                                                                                                                                            |
| Unlawful Detainer               | Commercial (31)<br>Residential (32)<br>Drugs (38)                                                                                                                                                        | [ ] 94 Unlawful Detainer - commercial<br>[ ] 47 Unlawful Detainer - residential<br>[ ] 21 Unlawful detainer - drugs<br>Is the deft. in possession of the property?<br>[ ] Yes [ ] No                                                             |
| Judicial Review                 | Asset forfeiture (05)<br>Petition re: arbitration award (11)<br>Writ of Mandate (02)<br>Other judicial review (39)                                                                                       | [ ] 41 Asset forfeiture<br>[ ] 62 Pet. re: arbitration award<br>[ ] 49 Writ of mandate<br>Is this a CEQA action (Publ.Res.Code section 21000 et seq) [ ] Yes [ ] No<br>[ ] 64 Other judicial review                                              |
| Provisionally<br>Complex        | Antitrust / Trade regulation (03)<br>Construction defect (10)<br>Claims involving mass tort (40)<br>Securities litigation (28)<br>Toxic tort / Environmental (30)<br>Ins covrg from cmplx case type (41) | [ ] 77 Antitrust / Trade regulation<br>[ ] 82 Construction defect<br>[ ] 78 Claims involving mass tort<br>[ ] 91 Securities litigation<br>[ ] 93 Toxic tort / Environmental<br>[ ] 95 Ins covrg from complex case type                           |
| Enforcement of<br>Judgment      | Enforcement of judgment (20)                                                                                                                                                                             | [ ] 19 Enforcement of judgment<br>[ ] 08 Confession of judgment                                                                                                                                                                                  |
| Misc Complaint                  | RICO (27)<br>Partnership / Corp. governance (21)<br>Other complaint (42)                                                                                                                                 | [ ] 90 RICO (G)<br>[ ] 88 Partnership / Corp. governance (G)<br>[ ] 68 All other complaints (G)                                                                                                                                                  |
| Misc. Civil Petition            | Other petition (43)                                                                                                                                                                                      | [ ] 06 Change of name<br>[ ] 69 Other petition                                                                                                                                                                                                   |

|                                                                                                                            |  |                                                                                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                                            |  | <p align="center">Reserved for Clerk's File Stamp</p>                                                                                                                                             |
| <p>COURTHOUSE ADDRESS:<br/>Rene C. Davidson Courthouse<br/>Administration Building, 1221 Oak Street, Oakland, CA 94612</p> |  | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>01/17/2023<br/>Clad Flake, Executive Officer / Clerk of the Court<br/>By: <u>A. Linhares</u> Deputy</p> |
| <p>PLAINTIFF(S):<br/>Adam Nava</p>                                                                                         |  |                                                                                                                                                                                                   |
| <p>DEFENDANT(S):<br/>Kiva Sales &amp; Service, Inc.</p>                                                                    |  |                                                                                                                                                                                                   |
| <p align="center"><b>NOTICE OF CASE ASSIGNMENT</b></p>                                                                     |  | <p>CASE NUMBER:<br/>23CV025771</p>                                                                                                                                                                |

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Rule 3.734 of the California Rules of Court and Title 3 Chapter 2 of the Local Rules of the Superior Court of California, County of Alameda, this action is hereby assigned by the Presiding Judge for all purposes to:

ASSIGNED JUDGE: Patrick McKinney  
DEPARTMENT: 15  
LOCATION: Rene C. Davidson Courthouse  
Administration Building, 1221 Oak Street, Oakland, CA 94612  
PHONE NUMBER: (510) 267-6931  
FAX NUMBER:  
EMAIL ADDRESS: Dept15@alameda.courts.ca.gov

Under direct calendaring, this case is assigned to a single judge for all purposes including trial.

Please note: In this case, any challenge pursuant to Code of Civil Procedures section 170.6 must be exercised within the time period by law. (See Code of Civ. Proc. §§ 170.6, subd. (a.)(2) and 101.3)

NOTICE OF NONAVAILABILITY OF COURT REPORTERS: Effective June 4, 2012, the court will not provide a court reporter for civil law and motion hearings, any other hearing or trial in civil departments, or any afternoon hearing in Department 201 (probate). Parties may arrange and pay for the attendance of a certified shorthand reporter. In limited jurisdiction cases, parties may request electronic recording. Amended Local Rule 3.95 states: "Except as otherwise required by law, in general civil case and probate departments, the services of an official court reporter are not normally available. For civil trials, each party must serve and file a statement before the trial date indicating whether the party requests the presence of an official court reporter."

**GENERAL PROCEDURES**

Following assignment of a civil case to a specific department, all pleadings, papers, forms, documents and writings can be submitted for filing at either Civil Clerk's Office, located at the Rene C. Davidson Courthouse, Room 109, 1225 Fallon Street, Oakland, California, 94612, and the Hayward Hall of Justice, 24405 Amador Street, Hayward, California, 94544 and through Civil e-filing. Information regarding Civil e-filing can be found on the courts website. All documents, with the exception of the original summons and the original civil complaint, shall have clearly typed on the face page of each document, under the case number, the following:

**NOTICE OF CASE ASSIGNMENT**

**ASSIGNED FOR ALL PURPOSES TO**  
**JUDGE Patrick McKinney**  
**DEPARTMENT 15**

---

All parties are expected to know and comply with the Local Rules of this Court, which are available on the court's website at [http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules\(1\)](http://www.alameda.courts.ca.gov/Pages.aspx/Local-Rules(1)) and with the California Rules of Court, which are available at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

Parties must meet and confer to discuss the effective use of mediation or other alternative dispute processed (ADR) prior to the Initial Case Management Conference. The court encourages parties to file a "Stipulation to Attend ADR and Delay Initial Case Management Conference for 90 Days." The court's website contains this form and other ADR information. If the parties do not stipulate to attend ADR, the parties must be prepared to discuss referral to ADR at the Initial Case Management Conference.

**COURT RESERVATIONS**

The use of the Court Reservation System (CRS) is now mandated in many civil courtrooms within the Alameda County Superior Court. Instead of calling or emailing the courtroom to make a reservation, parties with a case assigned to a courtroom using CRS are directed to utilize CRS to make and manage their own reservations, within parameters set by the courtrooms. CRS is available 24 hours a day, seven days a week and reservations can be made from a computer or smart phone. Please note, you are prohibited from reserving more than one hearing date for the same motion.

Prior to scheduling any motion on CRS, including any Applications for Orders for Appearance and Examination, or continuing any motion, please review the online information (if any) for the courtroom in which you are reserving. There may be specific and important conditions associated with certain motions and proceedings. Information is available on the court's eCourt Public Portal at [www.eportal.alameda.courts.ca.gov](http://www.eportal.alameda.courts.ca.gov).

Chad Finke, Executive Officer / Clerk of the Court

By A. Linhares, Deputy Clerk

|                                                                                                                   |  |                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b>                                                         |  | Reserved for Clerk's File Stamp<br><br><b>FILED</b><br>Superior Court of California<br>County of Alameda<br>01/17/2023<br>Clad Fluke, Executive Officer / Clerk of the Court<br>By: <u>A. Linhares</u> Deputy |
| COURTHOUSE ADDRESS:<br>Rene C. Davidson Courthouse<br>Administration Building, 1221 Oak Street, Oakland, CA 94612 |  |                                                                                                                                                                                                               |
| PLAINTIFF:<br>Adam Nava                                                                                           |  |                                                                                                                                                                                                               |
| DEFENDANT:<br>Kiva Sales & Service, Inc.                                                                          |  | CASE NUMBER:<br>23CV025771                                                                                                                                                                                    |
| <b>NOTICE OF CASE MANAGEMENT CONFERENCE</b>                                                                       |  |                                                                                                                                                                                                               |

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve all named defendants and file proofs of service on those defendants with the court within 60 days of the filing of the complaint (Cal. Rules of Court, 3.110(b)).

Give notice of this conference to all other parties and file proof of service.

Your Case Management Conference has been scheduled on:

|                                                                                                      |               |           |
|------------------------------------------------------------------------------------------------------|---------------|-----------|
| Date: 06/01/2023                                                                                     | Time: 1:30 PM | Dept.: 15 |
| Location: Rene C. Davidson Courthouse<br>Administration Building, 1221 Oak Street, Oakland, CA 94612 |               |           |

TO DEFENDANT(S)/ATTORNEY(S) FOR DEFENDANT(S) OF RECORD:

The setting of the Case Management Conference does not exempt the defendant from filing a responsive pleading as required by law, you must respond as stated on the summons.

TO ALL PARTIES who have appeared before the date of the conference must:

Pursuant to California Rules of Court, 3.725, a completed Case Management Statement (Judicial Council form CM-110) must be filed and served at least 15 calendar days before the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record.

**Meet and confer**, in person or by telephone as required by Cal. Rules of Court, rule 3.724.

**Post jury fees** as required by Code of Civil Procedure section 631.

If you do not follow the orders above, the court may issue an order to show cause why you should not be sanctioned under Cal. Rules of Court, rule 2.30. Sanctions may include monetary sanctions, striking pleadings or dismissal of the action.

The judge may place a Tentative Case Management Order in your case's on-line register of actions before the conference. This order may establish a discovery schedule, set a trial date or refer the case to Alternate Dispute Resolution, such as mediation or arbitration. Check the court's eCourt Public Portal for each assigned department's procedures regarding tentative case management orders at <https://eportal.alameda.courts.ca.gov>.

|                                                                                                      |                                                                                                            |
|------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>SUPERIOR COURT OF CALIFORNIA<br/>COUNTY OF ALAMEDA</b></p>                      | <p align="center">Reserved for Clerk's File Stamp</p>                                                      |
| <p>COURTHOUSE ADDRESS:<br/>Rene C. Davidson Courthouse<br/>1225 Fallon Street, Oakland, CA 94612</p> | <p align="center"><b>FILED</b><br/>Superior Court of California<br/>County of Alameda<br/>01/17/2023</p>   |
| <p>PLAINTIFF/PETITIONER:<br/>Adam Nava</p>                                                           | <p align="center">Chad Finke, Executive Officer / Clerk of the Court<br/>By: <u>A. Linhares</u> Deputy</p> |
| <p>DEFENDANT/RESPONDENT:<br/>Kiva Sales &amp; Service, Inc.</p>                                      |                                                                                                            |
| <p align="center"><b>CERTIFICATE OF MAILING</b></p>                                                  | <p>CASE NUMBER:<br/>23CV025771</p>                                                                         |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Roman Otkupman  
Otkupman Law Firm  
5743 Corsa Ave, Suite 123  
Westlake Village, CA 91362

Chad Finke, Executive Officer / Clerk of the Court

Dated: 01/18/2023

By:

A. Linhares, Deputy Clerk

**CERTIFICATE OF MAILING**