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County of Monterey
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Attorneys for Plaintiff Aurora Garcia Jimenez

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

AURORA GARCIA JIMENEZ,

Plaintiff,

vs.

KIND OP CORP.; ULTRA PERSONNEL,
LLC; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 22CV001723

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) FAILURE TO GIVE REST BREAKS;**
- 8) FAILURE TO GIVE MEAL BREAKS**
- 9) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 10) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, AURORA GARCIA JIMENEZ (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Monterey in this judicial district because Defendants KIND OP CORP., ULTRA PERSONNEL, LLC, and DOES 1 to 25, inclusive, do business in the County of Monterey and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Monterey is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Monterey, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant KIND OP CORP. is and was a California corporation, doing business in Monterey County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ULTRA PERSONNEL, LLC is and was a California limited liability company, doing business in Monterey County, California, and which employed Plaintiff.

5. Plaintiff is informed and believes that at all times herein mentioned, KIND OP CORP. and ULTRA PERSONNEL, LLC are “joint employers” in that they both controlled the wages, hours, and working conditions of Plaintiff. KIND OP CORP. and ULTRA PERSONNEL, LLC are hereinafter collectively referred to as “EMPLOYER” or Defendants.

6. The “aggrieved employees” are all current and former employees, including all hourly, non-exempt employees who worked for KIND OP CORP. and ULTRA PERSONNEL, LLC at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

7. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

8. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

9. Plaintiff started working for EMPLOYER on or around August 2021. Plaintiff's employment ended on or around January 31, 2022. During her employment tenure, Plaintiff was classified as an hourly, non-exempt employee. Her pay rate was \$16 per hour.

10. It is Plaintiff's position that EMPLOYER has violated numerous California Labor Code Sections against Plaintiff and other similarly situated aggrieved employees.

11. EMPLOYER did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and as such did not compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so for several reasons: first, EMPLOYER had a policy and practice of rounding down work hours and "time shaving", which resulted in employees such as Plaintiff not being paid for all hours worked, including the minimum wage. Second, the EMPLOYER, and specifically KIND OP CORP., had a policy and practice of requiring employees such as Plaintiff to put away their personal belongings, including jewelry and cell phones, in their lockers BEFORE clocking in for work. The latter was a policy that benefitted the EMPLOYER and was performed by employees while under the control of the EMPLOYER. Moreover, it took employees several minutes (up to 5 minutes or more) to comply in putting away their personal belongings in their lockers prior to clocking in for work. As such,

1 it is Plaintiff's position that Plaintiff and others should have been compensated for this "off the
2 clock" time and should have been paid at least the minimum wage for those work hours. In
3 addition, KIND OP CORP. also changed their policy relating to employee parking and
4 disallowed employees such as Plaintiff and others from parking in the facility's parking lot. As
5 such, Plaintiff and others would have to find parking at very far locations and were required to
6 walk to work, which would take an extremely long time, ranging from 6-8 minutes. Plaintiff and
7 others were similarly not compensated for this time. All the company did was provide employees
8 with a light/lamp to take on their way back to their vehicles when it was late at night.
9 Furthermore, the parking situation was also a reason why the employees' meal breaks would
10 have to be shorter than usual because if the employee left the workplace in their vehicle to get
11 lunch and return, they would once again have to park very far away and walk to the worksite.

12 12. Due to the above "off the clock" violations, EMPLOYER also violated Labor Code §510
13 and Industrial Welfare Commission Wage Order no. 4/14 (for employer with more than 25
14 employees) because it failed to pay Plaintiff and other similarly situated aggrieved employees
15 overtime, even though they worked more than 8.5 or 9 hours per day and/or 40/50 hours per
16 week throughout their employment. In addition, the company would give bonuses, however, they
17 would do so on "gift cards". Regardless, EMPLOYER did not factor in these weekly bonuses in
18 determining the regular rate of pay for employees and in further deciphering the accurate
19 overtime rate of pay for Plaintiff and others.

20 13. EMPLOYER violated Labor Code § 226.7 and the applicable Industrial Welfare
21 Commission Wage Order no. 4/14 because it failed to provide Plaintiff and other similarly
22 situated aggrieved employees 10-minute rest periods for every four hours of work, or majority
23 portion thereof, throughout their employment. EMPLOYER did not completely relieve Plaintiff
24 of all duty during said rest periods. EMPLOYER did not pay to Plaintiff one additional hour of
25 pay at our client' regular rate of compensation for each workday that one or more statutory rest
26 periods was not provided. It was not part of the company policy and culture for employees such
27 as Plaintiff and others to take timely, uninterrupted rest breaks. As such, the culture and
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1 environment at EMPLOYER did not lend itself to the employees receiving statutory breaks
2 wherein they were relieved of all work duties. It was the normal practice and custom of
3 EMPLOYER not to authorize, permit, and enforce timely, uninterrupted statutory rest periods.

4 14. EMPLOYER violated Labor Code §§ 512 and 226.7 and the applicable Industrial
5 Welfare Commission Wage Order no. 4/14 because it failed to provide Plaintiff and other
6 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
7 every five (5) hours of work (and before the fifth hour) throughout their employment, and
8 Plaintiff did not validly waive said meal periods. EMPLOYER did not completely relieve
9 Plaintiff of all duties during said meal periods. EMPLOYER did not pay to Plaintiff one
10 additional hour of pay at our client's regular rate of compensation for each workday that one or
11 more statutory meal periods was not provided. If Plaintiff were able to get a meal period, it would
12 have to be cut short based on the parking situation described above. Like the rest breaks,
13 receiving a timely, thirty-minute uninterrupted meal break was not part of the company culture
14 and was not enforced by EMPLOYER. It was the normal practice and custom of EMPLOYER
15 not to authorize, permit, and enforce timely statutory meal periods.

16 15. Furthermore, during the relevant time period, and due to the above labor code violations,
17 EMPLOYER failed to pay Plaintiff and other similarly situated aggrieved employees all wages
18 due to them and within any time period specified by California Labor Code section 204.
19 EMPLOYER was also in violation of California Labor Code section 226(a) by failing to include
20 pertinent information on the wage statements, including but not limited to, the correct hourly
21 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net
22 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and
23 end of the pay period, all employee identifying information, the correct name and address of the
24 legal employer, among others. As such, EMPLOYER did not provide Plaintiff and other
25 similarly situated aggrieved employees with complete, accurate itemized wage statements.

26 16. EMPLOYER violated Labor Code § 203 because it willfully failed to pay Plaintiff and
27 other similarly situated aggrieved employees earned and due wages upon separation of
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1 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
2 These earned but unpaid wages include the unpaid minimum wages/compensation for all hours
3 worked, overtime, and premium pay for missed meal and rest breaks, among others.

4 17. During the relevant time period, EMPLOYER also failed to keep accurate and complete
5 payroll records showing the correct wages paid to Plaintiff and other aggrieved employees
6 pursuant to California Labor Code sections 1174(d).

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

9 **(California Industrial Welfare Commission Order 4/14-2001, California Code of**
10 **Regulations Title 8 Section 11040/11140, and California Labor Code Section 1198)**

11 **(Plaintiff against all named Defendants and all DOE Defendants)**

12 18. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

14 19. At all times relevant herein, Defendants were required to compensate their employees
15 for all hours worked upon reporting for work at the appointed time stated by the employer
16 pursuant to Industrial Welfare Commission Order 4/14-2001, California Code of Regulations,
17 Title 8, Section 11040/11140.

18 20. For the three (3) years preceding filing of this action, Defendants failed to compensate
19 Plaintiff for all hours worked.

20 21. Under the aforementioned wage order and regulations, Plaintiff is to recover
21 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
22 the filing of this Complaint.

23 22. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
24 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
25 this Court.

26 23. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194,
27 and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
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1 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
2 reasonable attorney's fees and costs of suit.

3 24. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
5 amount known to Plaintiff once she has obtained all of her payroll records from Defendants.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(California Labor Code Sections 1194, 1194.2, 1197)**

9 **(Plaintiff against all named Defendants and all DOE Defendants)**

10 25. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

12 26. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an
13 employer to suffer or permit a California employee to work without paying wages at the
14 minimum wage rate for all hours worked as required by the applicable Industrial Welfare
15 Commission Wage Order No. 4/14-2001, codified at California Code of Regulations, Title 8,
16 Section 11040/11140, subdivision 4.

17 27. Pursuant to IWC Wage Order No. 4/14-2001, subdivision 2(K) and 2(G) respectively,
18 at all relevant times, "hours worked" included "the time during which an employee is subject
19 to the control of an employer, and includes all the time the employee is suffered or permitted to
20 work, whether or not required to do so, and in the case of an employee who is required to
21 reside on the employment premises, that time spent carrying out assigned duties shall be
22 counted as hours worked..."

23 28. During her employment, Plaintiff was regularly required as a matter of uniform
24 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
25 was paid less than the minimum wage rate by Defendants for hours worked in violation of
26 California Labor Code Section 1197 and the applicable California Industrial Wage Commission
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1 wage order(s).

2 29. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
3 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
4 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
5 to believe that their acts or omissions were not contrary to California law.

6 30. For all hours worked by Plaintiff for which she was paid less than the minimum wage
7 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
8 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
9 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
10 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

11 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(California Industrial Welfare Commission Order 4/14-2001, California Code of
17 Regulations Title 8 Section 11040/11140)**

18 **(Plaintiff against all named Defendants and all DOE Defendants)**

19 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

21 33. Pursuant to Industrial Welfare Commission 4/14-2001, California Code of Regulations,
22 Title 8, Section 11040/11140 for the period of Plaintiff's employment, Defendants were required
23 to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
24 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
25 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
26 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

27 34. Plaintiff was a non-exempt employee entitled to the protections of the California
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1 Industrial Welfare Commission Order No. 4/14-2001, California Code of Regulations, Title 8,
2 Section 11040/11140.

3 35. Plaintiff worked more than eight (8) hours or twelve (12) hours in a single workday or
4 forty (40) hours in a single workweek on numerous occasions.

5 36. Plaintiff was entitled to the above overtime premiums.

6 37. Defendants did not pay Plaintiff premium wages of at least one and one-half times
7 Plaintiff's regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiff's
8 regular rate of pay for hours worked past twelve (12) in a day.

9 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

11 39. Plaintiff worked at least one pay period in which she was not properly paid overtime
12 within the three (3) years prior to the initiation of this lawsuit.

13 40. Defendants know or should know the actual dates of overtime worked, the amount of
14 overtime worked, and the amount of unpaid overtime due.

15 41. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
16 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
17 Court.

18 42. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
19 Regulations, Title 8, Sections 11040/11140, Plaintiff is entitled to recover damages for the
20 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
21 reasonable attorney's fees and costs of suit.

22 43. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

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FOURTH CAUSE OF ACTION**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS****(California Labor Code Section 226)****(Plaintiff against all named Defendants and all DOE Defendants)**

44. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 43, inclusive, of this Complaint as though fully set forth herein.

45. Pursuant to California Labor Code Section 226, every employer must furnish each employee an itemized statement of wages and deductions at the time of payment of wages.

46. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, gross wages earned, including overtime, net wages earned, total hours worked by the employee, all deductions, and premium pay for missed meal breaks and rest breaks. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

47. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to the 3-year period immediately preceding the date this lawsuit was filed.

48. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's fees pursuant to statute.

49. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at

trial.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(Plaintiff against all named Defendants and all DOE Defendants)

50. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 49, inclusive, of this Complaint as though fully set forth herein.

51. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

52. At all times relevant during the liability period, Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by California Labor Code Section 204.

53. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed, believes, and thereon alleges, that all times relevant during the liability period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked, including overtime hours and premium pay for missed rest breaks and meal breaks.

54. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent she was not paid all wages each pay period. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records or indirectly based on information from Defendants' records.

55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named Defendants and all DOE Defendants)

56. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein.

2 57. Pursuant to California Labor Code Section 201(a), an employer who discharges an
3 employee must immediately pay for all compensation due and owing.

4 58. Pursuant to California Labor Code Section 202, when an employee resigns, the
5 employer must pay all compensation due and owing within 72 hours of resignation, or on the
6 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

7 59. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
8 without abatement or reduction, any wages of an employee whose employment ends, the wages
9 of the employee shall continue as a penalty from the due date at the same rate until paid or until
10 an action is commenced; however, the wages shall not continue for more than 30 days for
11 failure to pay an employee owed wages.

12 60. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
13 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

14 61. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
17 preceding the filing of this lawsuit.

18 62. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
19 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
20 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

21 63. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

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SEVENTH CAUSE OF ACTION**FAILURE TO GIVE REST BREAKS**

(Plaintiff against all named Defendants and all DOE Defendants)

64. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein.

65. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11040(12)(A) /11140(12), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040 (20)(A)/ /11140(18)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare

Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

66. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

67. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

68. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

69. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named Defendants and all DOE Defendants)

70. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

71. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any meal period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an
4 employee a meal period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided;
- 8 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
9 under Title 8 of the California Code of Regulations Section 11040, which states that
10 if an employer fails to provide an employee a meal period in accordance with the
11 applicable provisions of the Wage Order, the employer shall pay the employee one
12 (1) hour of pay at the employee's regular rate of compensation for each workday that
13 the meal period is not provided;
- 14 d. California Industrial Welfare Commission Wage Order Nos. 4/14 Section 7(A)(3), as
15 codified under Title 8 of the California Code of Regulations Section 11040/11140,
16 which requires an employer to maintain records documenting its employees' meal
17 periods;
- 18 e. California Industrial Welfare Commission wage order Nos. 4/14 Section
19 20(A)/Section (18)(A), as codified under California Code of Regulations Section
20 11040/11140, which penalizes the employer \$50.00 for each initial violation, per
21 employee, of any provision of the Wage Order, and \$100.00 for each additional
22 violation thereafter per employee; and
- 23 f. California Labor Code section 1171 and 1173, which have given the California Labor
24 Commission jurisdiction to enact Wage Orders (such as Wage Order Nos. 4/14) as
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enforceable law.

72. Plaintiff alleges that her meal breaks would often be late and after the 5th hour as evidenced by her time records. The latter was due to the fact that Plaintiff was asked on numerous occasions to amend assignments immediately, including changing the phrasing of certain words, etc. The latter resulted in Plaintiff having to take her meal break at a later time. Moreover, there were occasions wherein Plaintiff was so busy and inundated with work that she would completely skip her meal break and then perhaps take it during the last hour of the day. California Labor Code section 512(a) and California Industrial Welfare Commission Order Nos. 4/14, as codified under California Code of Regulations Section 11040/11140 *et. seq.* requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11140 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

73. Under this cause of action, Plaintiff prays for wages due to her under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

74. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

NINTH CAUSE OF ACTION**PRIVATE ATTORNEYS GENERAL ACT**

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, and the applicable Industrial Welfare

Commission Wage Order Nos. 4/14-2001

(Against All Named Defendants and all DOE Defendants)

76. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

77. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated March 9, 2022, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

78. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

79. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants’ violations of the Labor Code.

80. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

81. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged

1 violator and had one or more of the alleged violations committed against her, and therefore is
2 properly suited to represent the interests of other current and former hourly, non-exempt
3 employees who worked for EMPLOYER in the State of California during the Release Period.

4 82. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
5 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
6 of numerous provisions of the California Labor Code as alleged in this Complaint.

7 83. Plaintiff therefore has exhausted all administrative remedies required of her under
8 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
9 of action and pursue penalties in a representative action for Defendants' violations of the Labor
10 Code.

11 84. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
12 for violating the Labor Code.

13 85. California Labor Code section 558 establishes a civil penalty as follows: Any
14 employer or other person action on behalf of an employer who violates, or causes to be violated,
15 a section of this chapter or any provision regulating hours and days of work in any order of the
16 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage
17 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each
18 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each
19 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
20 period for which the employee was underpaid ...;

21 86. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
22 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
23 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

24 87. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
25 for the following:

26 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
27 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, via 2698 and 2699, and
28

1 any other Labor Codes and Wage Orders (including nos. 4/14) violated on the facts
2 alleged in this Complaint.

3 88. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
4 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
5 Employees as alleged herein in an amount to be shown according to proof at trial and within the
6 jurisdictional limits of this Court.

7 **TENTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

9 **(California Business and Professions Code Section 17200)**

10 **(Against All Named Defendants and all DOE Defendants)**

11 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

13 90. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
14 constitutes unfair and unlawful business practices under California Business and Professions
15 Code Section 17200, et seq.

16 91. Defendant's violations of California labor laws and the Labor Code constitutes a
17 business practice because it was done repeatedly over a significant period of time in a
18 systematic manner that was detrimental to Plaintiff and others.

19 92. California Business and Professions Code section 17200 et seq. prohibits unfair
20 business practices by employers including, but not limited to, widespread violations of
21 California laws.

22 93. Defendant's violations of California labor laws and the Labor Code constitutes a
23 business practice because it was done repeatedly over a significant period of time in a
24 systematic manner that was detrimental to Plaintiff and other Aggrieved Employees.

25 94. For the four years preceding the filing of this action, Plaintiff has suffered damages
26 and request damages and/or restitution of all monies and profits to be disgorged from
27 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
28 this Court.

1 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
2 follows:

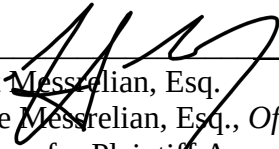
- 3 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
- 4 2. For special and consequential damages to the extent allowed by law;
- 5 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to
6 proof at trial;
- 7 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
8 subject to proof at trial;
- 9 5. For damages and penalties pursuant to Labor Code Section 203 in an amount
10 subject to proof at trial;
- 11 6. For restitution and disgorgement for all unfair business practices by Defendants
12 against Plaintiff in an amount subject to proof at trial;
- 13 7. For an order enjoining Defendants from further unfair and unlawful business
14 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 15 8. For one hour of wages due to Plaintiff for each work period of more than five (5)
16 hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 17 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or
18 major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 19 10. For maximum civil penalties available under the Labor Code and applicable Wage
20 Order against Defendants as described more particularly in the Complaint and representative
21 PAGA claim;
- 22 11. For all remedies available to Plaintiff under the applicable Wage Order and the
23 Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
24 damages, damages, penalties, and waiting time penalties according to proof to the extent
25 permitted by law;
- 26 12. For the imposition of civil penalties and/or statutory penalties;
- 27 13. For all interest as allowed by law;
- 28 14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to,

1 pursuant to Labor Code section 2698 et seq., and the California Labor Code and/or other
2 applicable laws; and

3 16. For such other and further relief as this Court may deem proper.

4 DATED: June 17, 2022

MESSRELIAN LAW INC.

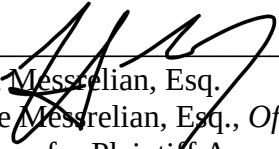
6 By 
7 Harout Messrelian, Esq.
8 Maralle Messrelian, Esq., *Of Counsel*
Attorneys for Plaintiff Aurora Garcia Jimenez

9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

12
13 DATED: June 17, 2022

MESSRELIAN LAW INC.

14
15 By 
16 Harout Messrelian, Esq.
17 Maralle Messrelian, Esq., *Of Counsel*
Attorneys for Plaintiff Aurora Garcia Jimenez