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22 SUPERIOR COURT OF THE STATE OF CALIFORNIA

23 COUNTY OF MONTEREY

24 AURORA GARCIA JIMENEZ, EDWARD  
25 ANGUIANO II, and EVELYN SERRATO on  
26 behalf of themselves and on behalf of all  
27 persons similarly situated,

28 Plaintiff,

vs.

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

Defendants.

**CASE NO.: 22CV001723**

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

Hearing Date: September 6, 2024  
Hearing Time: 8:30 a.m.

Judge: Hon. Carrie M, Panetta  
Dept: 14

Date Filed: June 17, 2022  
Trial Date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiffs Aurora Garcia Jimenez, Edward Anguiano II, and  
2 Evelyn Serrato (“Plaintiffs”) for an order finally approving the Class Action and PAGA  
3 Settlement Agreement (“Agreement”) with Defendants Ultra Personnel, LLC and Kind Op Corp  
4 (“Defendants”), attorneys’ fees and costs, service payments, and the expenses of the Administrator  
5 duly came on for hearing on September 6, 2024 before the Honorable Carrie M. Panetta.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the  
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before  
12 the Superior Court for the State of California, in and for the County of Monterey, and over all  
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiffs and a review of the  
15 applicable law, the Court finds that the Gross Settlement Amount of Five Hundred Thousand  
16 Dollars (\$500,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length  
18 negotiations conducted after Class Counsel had adequately investigated the claims and became  
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the  
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other  
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On February 15, 2024, the Court granted preliminary approval of the Settlement.  
24 At this same time, the Court approved conditional certification of the Class for settlement  
25 purposes only.

26 **Notice to the Class**

- 27 6. In compliance with the Preliminary Approval Order, the Court-approved Class  
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1 Notice was mailed by first class mail to members of the Class at their last-known addresses on or  
2 about June 17, 2024. Mailing of the Class Notice to their last-known addresses was the best notice  
3 practicable under the circumstances and was reasonably calculated to communicate actual notice  
4 of the litigation and the proposed settlement to the Class. The Class Notice given to the Class  
5 Members fully and accurately informed the Class Members of all material elements of the  
6 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion  
7 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied  
8 fully with the laws of the State of California, the United States Constitution, due process and other  
9 applicable law. The Class Notice fairly and adequately described the Settlement and provided  
10 Class Members adequate instructions and a variety of means to obtain additional information.

11 7. The Response Deadline for opting out or submitting written objections to the  
12 Settlement was August 16, 2024, which for re-mailings was extended by fourteen (14) days. There  
13 was an adequate interval between notice and the deadline to permit Class Members to choose what  
14 to do and to act on their decision. A full and fair opportunity has been afforded to the Class  
15 Members to participate in this hearing, and all Class Members and other persons wishing to be  
16 heard have had a full and fair opportunity to be heard. Class Members also have had a full and  
17 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the  
18 Court determines that all Class Members who did not timely and properly submit a request for  
19 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

20 **Fairness of the Settlement**

21 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*  
22 48 Cal.App.4th 1794, 1801 (1996).

23 a. The settlement was reached through arm's-length bargaining between the  
24 Parties during an all-day mediation before Louis Marlin, an experienced mediator of wage and  
25 hour class actions. There has been no collusion between the Parties in reaching the Settlement.

26 b. Plaintiffs' and Class Counsel's investigation and discovery have been  
27 sufficient to allow the Court and counsel to act intelligently.

1 c. Counsel for all Parties are experienced in similar employment class action  
2 and PAGA litigation. Class Counsel recommended approval of the Agreement.

3 d. The percentage of objectors and requests for exclusion is small. No  
4 objections were received. No requests for exclusion were received.

5 e. The participation rate was high. 415 Participating Class Members will be  
6 mailed a settlement payment, representing 100% of the overall Class.

7 9. The consideration to be given to the Class Members under the terms of the  
8 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims  
9 asserted in this action and is fair, reasonable and adequate compensation for the release of Class  
10 Members' claims, given the uncertainties and significant risks of the litigation and the delays  
11 which would ensue from continued prosecution of the action.

12 10. The Agreement is approved as fair, adequate and reasonable and in the best  
13 interests of the Class Members.

14 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

15 11. An award of \$166,666 for attorneys' fees, representing one-third of the Gross  
16 Settlement Amount, and \$27,000 for litigation costs and expenses, is reasonable, in light of the  
17 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results  
18 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar  
19 and billing statement.

20 **Class Representative Service Payments**

21 12. The Agreement provides for Class Representative Service Payments of not more  
22 than \$10,000 to each of the Plaintiffs, subject to the Court's approval. The Court finds that Class  
23 Representative Service Payments in the amount of \$10,000 each to the Plaintiffs are reasonable in  
24 light of the risks and burdens undertaken by the Plaintiffs in this litigation and for his time and  
25 effort in bringing and prosecuting this matter on behalf of the Class.

26 **Administration Expenses Payment**

27 13. The Administrator shall calculate and administer the payment to be made to the  
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1 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the  
2 Class Representative Service Payments to the Plaintiffs, issue all required tax reporting forms,  
3 calculate withholdings and perform the other remaining duties set forth in the Agreement. The  
4 Administrator has documented \$11,500 in fees and expenses, and this amount is reasonable in  
5 light of the work performed by the Administrator.

6 **PAGA Penalties**

7 14. The Agreement provides for PAGA Penalties out of the Gross Settlement Amount  
8 of \$20,000, which shall be allocated \$15,000 to the Labor & Workforce Development Agency  
9 ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this  
10 Agreement pursuant to the PAGA and \$5,000 to be distributed to the Aggrieved Employees and  
11 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties  
12 (\$5,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during  
13 the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay  
14 Periods. "Aggrieved Employees" are all individuals who are or previously were employed by  
15 Defendant Ultra Personnel, LLC and who were staffed to work at Kind Op Corp. in California at  
16 any time during the PAGA Period (August 12, 2021 through April 17, 2023). Pursuant to Labor  
17 Code section 2699, subdivision (l)(2), the LWDA was provided notice of the Agreement and these  
18 settlement terms and has not indicated any objection thereto. The Court finds the PAGA Penalties  
19 to be reasonable.

20 **II.**

21 **ORDERS**

22 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

23 15. The Class is certified for the purposes of settlement only. The Class is defined as  
24 follows:

25 All individuals who are or previously were employed by Defendant Ultra  
26 Personnel, LLC and who were staffed to work at Kind Op Corp. in California at  
27 any time during the Class Period (August 12, 2018 through April 17, 2023).  
28

1           16. All persons who meet the foregoing definition are members of the Class, except for  
2 those individuals who filed a valid request for exclusion (“opt out”) from the Class. There were  
3 no individual who requested exclusion.

4           17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the  
5 best interest of the Class.

6           18. Class Counsel are awarded attorneys’ fees in the amount of \$166,666 and costs in  
7 the amount of \$27,000 Class Counsel shall not seek or obtain any other compensation or  
8 reimbursement from Defendants, Plaintiffs or members of the Class.

9           19. The payment of Class Representative Service Payments in the amount of \$10,000  
10 each to the Plaintiffs is approved.

11           20. The payment of \$11,500 to the Administrator for its fees and expenses is approved.

12           21. The PAGA Penalties amount of \$20,000 is approved and is to be distributed in  
13 accordance with the Agreement.

14           22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall  
15 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its  
16 entry.

17           23. Neither the Agreement nor this Settlement is an admission by Defendants, nor is  
18 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of  
19 any wrongdoing by Defendants or that this Action is appropriate for class or representative  
20 treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment,  
21 the Agreement, nor any document referred to herein, nor any action taken to carry out the  
22 Agreement is, may be construed as, or may be used as an admission by or against Defendants of  
23 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,  
24 and any negotiations or proceedings related thereto, shall not in any event be construed as, or  
25 deemed to be evidence of, an admission or concession with regard to the denials or defenses by  
26 Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other  
27 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and  
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1 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,  
2 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the  
3 Released Class Claims and/or Released PAGA Claims.

4       24. Notice of entry of this Final Approval Order and Judgment shall be given to all  
5 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order  
6 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the  
7 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment  
8 to individual Class Members.

9       25. If the Agreement does not become final and effective in accordance with the terms  
10 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in  
11 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall  
12 revert to their respective positions as of before entering into the Agreement, and expressly reserve  
13 their respective rights regarding the prosecution and defense of this Action, including all available  
14 defenses and affirmative defenses, and arguments that any claim in the Action could not be  
15 certified as a class action and/or managed as a representative action.

16 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

17       26. Except as set forth in the Agreement and this Final Approval Order and Judgment,  
18 Plaintiffs, and all members of the Class, shall take nothing in the Action.

19       27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the  
20 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to  
21 supervise and adjudicate any dispute arising from or in connection with the distribution of  
22 settlement benefits.

23       28. All Parties shall bear their own attorneys' fees and costs, except as otherwise  
24 provided in the Agreement and in this Final Approval Order and Judgment.

25       29. Effective on the date when Defendants fully fund the entire Gross Settlement  
26 Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class  
27  
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1 Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will  
2 release claims against all Released Parties as follows:

3 (a) All Participating Class Members, on behalf of themselves and their  
4 respective former and present representatives, agents, attorneys, heirs, administrators, successors,  
5 and assigns, release Released Parties from the Released Class Claims. The “Released Class  
6 Claims” are all claims that were alleged, or reasonably could have been alleged, based facts stated  
7 in the Operative Complaint which occurred during the Class Period. Except as expressly set forth  
8 in this Agreement, Participating Class Members do not release any other claims, including claims  
9 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
10 unemployment insurance, disability, social security, workers’ compensation, or claims based on  
11 facts occurring outside the Class Period.

12 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf  
13 of themselves and their respective former and present representatives, agents, attorneys, heirs,  
14 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.  
15 The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably  
16 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA  
17 Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include  
18 other PAGA claims, underlying wage and hour claims, claims for wrongful termination,  
19 discrimination, unemployment insurance, disability and worker’s compensation, and claims  
20 outside of the PAGA Period.

21 (c) Plaintiffs and their respective former and present spouses, representatives,  
22 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge  
23 Released Parties from all claims, transactions, or occurrences that occurred during the Class  
24 Period, as fully set forth in the Agreement.

25 30. For any Class Member or Aggrieved Employee whose Individual Class Payment  
26 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the  
27 Administrator shall transmit the funds represented by such checks to the California Controller's  
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1 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"  
2 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

3 31. The Court hereby enters judgment in the entire Action as of the filing date of this  
4 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the  
5 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction  
6 over the interpretation, implementation, and enforcement of the Settlement and all orders entered  
7 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

8 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

9  
10 Dated: \_\_\_\_\_

11 \_\_\_\_\_  
12 HON. CARRIE M. PANETTA  
13 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA  
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