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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF MONTEREY**

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

Plaintiffs,

vs.

ULTRA PERSONNEL, LLC, a Limited Liability  
Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV001723

**FIRST AMENDED CONSOLIDATED CLASS  
ACTION AND REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF  
CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;  
2. FAILURE TO PAY MINIMUM WAGES IN  
VIOLATION OF CAL. LAB. CODE §§ 1194, 1197  
& 1197.1;  
3. FAILURE TO PAY OVERTIME WAGES IN  
VIOLATION OF CAL. LAB. CODE § 510;  
4. FAILURE TO PROVIDE REQUIRED MEAL  
PERIODS IN VIOLATION OF CAL. LAB. CODE  
§§ 226.7 & 512 AND THE APPLICABLE IWC  
WAGE ORDER;  
5. FAILURE TO PROVIDE REQUIRED REST  
PERIODS IN VIOLATION OF CAL. LAB. CODE  
§§ 226.7 & 512 AND THE APPLICABLE IWC  
WAGE ORDER;  
6. FAILURE TO PROVIDE ACCURATE  
ITEMIZED STATEMENTS IN VIOLATION OF  
CAL. LAB. CODE § 226;  
7. FAILURE TO REIMBURSE EMPLOYEES  
FOR REQUIRED EXPENSES IN VIOLATION OF  
CAL. LAB. CODE § 2802;  
8. FAILURE TO PROVIDE WAGES WHEN DUE  
IN VIOLATION OF CAL. LAB. CODE §§ 201,  
202 AND 203; and,  
9. FAILURE TO PAY SICK WAGES IN  
VIOLATION OF CAL. LAB CODE §§201-204,  
233, 246;  
10. Civil Penalties Pursuant to Labor Code §  
2699, *et seq.* for violations of Labor Code §§  
201, 202, 203, 204 *et seq.*, 210, 221, 226(a),  
226.7, 227.3, 510, 512, 558(a)(1)(2), 1194,  
1197, 1197.1, 1198, 2802, California Code of  
Regulations, Title 8, Section 11040, Subdivision  
5(A)-(B), and the applicable Wage Order(s).

**DEMAND FOR A JURY TRIAL**

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1 Plaintiffs Edward Anguiano II, Aurora Garcia Jimenez, Evelyn Serrato (collectively  
2 “PLAINTIFFS”), individuals, on behalf of themselves and all other similarly situated current and former  
3 employees allege on information and belief, except for their own acts and knowledge which are based  
4 on personal knowledge, the following:

5  
6 **THE PARTIES**

7 1. Defendant Ultra Personnel, LLC is a Corporation that at all relevant times mentioned  
8 herein conducted and continues to conduct substantial business in the state of California.

9 2. Defendant Ultra Personnel, LLC operates a staffing agency.

10 3. PLAINTIFFS are informed and believe that at all times mentioned, Defendant Kind Op  
11 Corp. Is and was a California corporation, doing business in Monterey County, California, and which  
12 was employed PLAINTIFFS.

13 4. PLAINTIFFS are informed and believe that at all times herein mentioned, Defendant  
14 Kind Op Corp. and Defendant Ultra Personnel, LLC are "joint employers" in that they both controlled  
15 the wages, hours, and working conditions of Plaintiffs. Defendant Kind Op Corp. and Defendant Ultra  
16 Personnel, LLC are hereinafter collectively referred to as "Employer" or “DEFENDANTS”.

17 5. Plaintiff Edward Anguiano II was employed by DEFENDANTS in California from  
18 January of 2021 to December of 2021 and was at all times classified by DEFENDANTS as a non-  
19 exempt employee entitled to the legally required meal and rest periods and payment of minimum and  
20 overtime wages due for all time worked.

21 6. Plaintiff Aurora Garcia Jimenez was employed by DEFENDANTS in California from  
22 August of 2021 to January 31, 2022 and was at all times classified by DEFENDANTS as a non-exempt  
23 employee entitled to the legally required meal and rest periods and payment of minimum and overtime  
24 wages due for all time worked.

25 7. Plaintiff Evelyn Serrato was employed by DEFENDANTS in California on or about  
26 November of 2022 to March of 2023 and was at all times classified by DEFENDANTS as a non-  
27 exempt employee entitled to the legally required meal and rest periods and payment of minimum and  
28 overtime wages due for all time worked.

1           8.       PLAINTIFFS bring this Class Action on behalf of himself and a California class, defined  
2 as all individuals who are or previously were employed by DEFENDANTS. Ultra Personnel, LLC in  
3 California and all individuals who are or previously were employed by Defendant Ultra Personnel, LLC  
4 and who were staffed to work at Kind Op Corp. in California (the "CALIFORNIA CLASS") at any  
5 time during the period August 12, 2018 to April 17, 2023 (the "CALIFORNIA CLASS PERIOD"). The  
6 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million  
7 dollars (\$5,000,000.00).

8           9.       PLAINTIFFS bring this Class Action on behalf of himself and a CALIFORNIA CLASS  
9 in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the  
10 CALIFORNIA CLASS PERIOD caused by DEFENDANTS' policy and practice which failed to  
11 lawfully compensate these employees. DEFENDANTS' policy and practice alleged herein was an  
12 unlawful, unfair and deceptive business practice whereby DEFENDANTS retained and continues to  
13 retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS  
14 and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
15 DEFENDANTS in the future, relief for the named PLAINTIFFS and the other members of the  
16 CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current  
17 unlawful conduct, and all other appropriate legal and equitable relief.

18          10.       The true names and capacities, whether individual, corporate, subsidiary, partnership,  
19 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to  
20 PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc.  
21 Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and  
22 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and  
23 believe, and based upon that information and belief alleges, that the Defendants named in this  
24 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more  
25 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

26          11.       The agents, servants and/or employees of the Defendants and each of them acting on  
27 behalf of the Defendants acted within the course and scope of his, her or its authority as the agent,  
28 servant and/or employee of the Defendants, and personally participated in the conduct alleged herein

1 on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each  
2 Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally  
3 liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as  
4 a proximate result of the conduct of the Defendants' agents, servants and/or employees.

## 5 6 THE CONDUCT

7 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were  
8 required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning  
9 the time during which an employee is subject to the control of an employer, including all the time the  
10 employee is suffered or permitted to work. DEFENDANTS requires PLAINTIFFS and CALIFORNIA  
11 CLASS Members to work without paying them for all the time they are under DEFENDANTS' control.  
12 Among other things, DEFENDANTS require PLAINTIFFS to work while clocked out during what is  
13 supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS are from time to time interrupted by  
14 work assignments while clocked out for what should be PLAINTIFFS' off-duty meal break.  
15 PLAINTIFFS and CALIFORNIA CLASS Members worked off the clock with respect to time spent  
16 undergoing mandatory drug testing or any other testing and/or examination required as a condition of  
17 employment. DEFENDANTS, as a matter of established company policy and procedure, administers  
18 a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and  
19 CALIFORNIA CLASS Members, always to the benefit of DEFENDANTS, so that during the course  
20 of their employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they would  
21 have been paid had they been paid for actual recorded time rather than "rounded" time. As a result,  
22 PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage  
23 compensation, and off-duty meal breaks by working without their time being correctly recorded and  
24 without compensation at the applicable rates. DEFENDANTS' policy and practice not to pay  
25 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by  
26 DEFENDANTS' business records.

27 13. State and federal law provides that employees must be paid overtime and meal and rest  
28 break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other

1 CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to  
2 specific elements of an employee's performance.

3 14. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members'  
4 compensation is DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS and  
5 other CALIFORNIA CLASS Members incentive wages based on their performance for  
6 DEFENDANTS. The non-discretionary incentive program provided all employees paid on an hourly  
7 basis with incentive compensation when the employees met the various performance goals set by  
8 DEFENDANTS. However, when calculating the regular rate of pay in order to pay overtime and meal  
9 and rest break premiums to PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANTS  
10 failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes  
11 of calculating overtime pay and meal and rest break premium pay. Management and supervisors  
12 described the incentive program to potential and new employees as part of the compensation package.  
13 As a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA  
14 CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted in a  
15 underpayment of overtime compensation and meal and rest break premiums to PLAINTIFFS and other  
16 CALIFORNIA CLASS Members by DEFENDANTS.

17 15. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA  
18 CLASS Members were from time to time unable to take thirty (30) minute off duty meal breaks and  
19 were not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS  
20 Members were required from time to time to perform work as ordered by DEFENDANTS for more than  
21 five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS from time  
22 to time failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty  
23 meal period for some workdays in which these employees were required by DEFENDANTS to work  
24 ten (10) hours of work. DEFENDANTS also engaged in the practice of rounding the meal period times  
25 to avoid paying penalties to PLAINTIFFS and other CALIFORNIA CLASS Members. PLAINTIFFS  
26 and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional  
27 compensation and in accordance with DEFENDANTS' corporate policy and practice.  
28

1           16.     During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA  
2 CLASS Members were also required from time to time to work in excess of four (4) hours without  
3 being provided ten (10) minute rest periods. Further, these employees were denied their first rest  
4 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time  
5 to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six  
6 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)  
7 minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other  
8 CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof.  
9 Additionally, the applicable California Wage Order requires employers to provide employees with off-  
10 duty rest periods, which the California Supreme Court defined as time during which an employee is  
11 relieved from all work related duties and free from employer control. In so doing, the Court held that  
12 the requirement under California law that employers authorize and permit all employees to take rest  
13 period means that employers must relieve employees of all duties and relinquish control over how  
14 employees spend their time which includes control over the locations where employees may take their  
15 rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five  
16 minutes out, five minutes back. Here, DEFENDANTS' policy restricted PLAINTIFFS and other  
17 CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANTS'  
18 rule which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work  
19 premises during their rest period.

20           17.     During the CALIFORNIA CLASS PERIOD, DEFENDANTS failed to accurately record  
21 and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these  
22 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS  
23 were required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked,  
24 meaning the time during which an employee was subject to the control of an employer, including all  
25 the time the employee was permitted or suffered to permit this work. DEFENDANTS required these  
26 employees to work off the clock without paying them for all the time they were under DEFENDANTS'  
27 control. As such, DEFENDANTS knew or should have known that PLAINTIFFS and the other  
28 members of the CALIFORNIA CLASS were under compensated for all time worked. As a result,

1 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited time worked by working without  
2 their time being accurately recorded and without compensation at the applicable minimum wage and  
3 overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime  
4 premium payment, DEFENDANTS fail to pay minimum wages for the time worked off-the-clock in  
5 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

6 18. From time to time, DEFENDANTS also failed to provide PLAINTIFFS and the other  
7 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to  
8 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that  
9 every employer shall furnish each of his or her employees with an accurate itemized wage statement in  
10 writing showing, among other things, gross wages earned and all applicable hourly rates in effect during  
11 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from the  
12 violations listed above in this paragraph, DEFENDANTS failed to issue to PLAINTIFFS itemized wage  
13 statements that lists all the requirements under California Labor Code 226 *et seq.* As a result,  
14 DEFENDANTS from time to time provided PLAINTIFFS and the other members of the CALIFORNIA  
15 CLASS with wage statements which violated Cal. Lab. Code § 226.

16 19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed  
17 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid  
18 not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210  
19 provides:

20 [I]n addition to, and entirely independent and apart from, any other penalty provided in this  
21 article, every person who fails to pay the wages of each employee as provided in Sections. . .  
22 .204. . . shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred  
dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any  
willful or intentional violation, two hundred dollars (\$200) for each failure to pay each  
employee, plus 25 percent of the amount unlawfully withheld.

23 20. DEFENDANTS from time to time failed to pay PLAINTIFFS and members of the  
24 CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the payroll period  
25 in accordance with Cal. Lab. Code § 204(d).

26 21. DEFENDANTS underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA  
27 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code  
28 Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-discretionary

1 remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANTS underpaid sick pay  
2 to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates of pay.

3 22. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt  
4 employees be calculated by dividing the employee's total wages, not including overtime premium pay,  
5 by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

6 23. DEFENDANTS violated Cal. Lab. Code Section 246 by failing to pay sick pay at the  
7 regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-  
8 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was  
9 paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA CLASS,  
10 as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

11 24. As a pattern and practice, DEFENDANTS regularly failed to pay PLAINTIFFS and other  
12 members of the CALIFORNIA CLASS their correct wages and accordingly owe waiting time penalties  
13 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and based  
14 thereon alleges that such failure to pay sick pay at regular rate was willful, such that PLAINTIFFS and  
15 members of the CALIFORNIA CLASS whose employment has separated are entitled to waiting time  
16 penalties pursuant to Cal. Lab. Code Sections 201-203.

17 25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect  
18 or receive from an employee any part of wages theretofore paid by said employer to said employee."  
19 DEFENDANTS failed to pay all compensation due to PLAINTIFFS and other CALIFORNIA LABOR  
20 SUB-CLASS Members, made unlawful deductions from compensation payable to PLAINTIFFS and  
21 CALIFORNIA LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from  
22 compensation payable to PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members, and  
23 thereby failed to pay these employees all wages due at each applicable pay period and upon termination.  
24 PLAINTIFFS and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal  
25 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

26 26. DEFENDANTS intentionally and knowingly failed to reimburse and indemnify  
27 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses incurred  
28 by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of discharging

1 their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are  
2 required to indemnify employees for all expenses incurred in the course and scope of their employment.  
3 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all  
4 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his  
5 or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless  
6 the employee, at the time of obeying the directions, believed them to be unlawful."

7 27. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS  
8 Members as a business expense, were required by DEFENDANTS to use their own personal cellular  
9 phones as a result of and in furtherance of their job duties as employees for DEFENDANTS but are not  
10 reimbursed or indemnified by DEFENDANTS for the cost associated with the use of their personal  
11 cellular phones and personal home offices for DEFENDANTS' benefit. Specifically, PLAINTIFFS and  
12 other CALIFORNIA CLASS Members were required by DEFENDANTS to use their personal cellular  
13 phones and personal home offices. As a result, in the course of their employment with DEFENDANTS,  
14 PLAINTIFFS and other members of the CALIFORNIA CLASS incurred unreimbursed business  
15 expenses which included, but were not limited to, costs related to the use of their personal cellular  
16 phones all on behalf of and for the benefit of DEFENDANTS.

17 28. Specifically as to PLAINTIFFS, DEFENDANTS failed to provide all the legally required  
18 off-duty meal and rest breaks to PLAINTIFFS as required by the applicable Wage Order and Labor  
19 Code and failed to pay PLAINTIFFS all minimum and overtime wages due to PLAINTIFFS.  
20 DEFENDANTS did not have a policy or practice which provided timely off-duty meal and rest breaks  
21 to PLAINTIFFS and also failed to compensate PLAINTIFFS for PLAINTIFFS' missed meal and rest  
22 breaks. The nature of the work performed by the PLAINTIFFS did not prevent PLAINTIFFS from being  
23 relieved of all of PLAINTIFFS' duties for the legally required off-duty meal periods. As a result,  
24 DEFENDANTS' failure to provide PLAINTIFFS with the legally required meal periods is evidenced  
25 by DEFENDANTS' business records. The amount in controversy for PLAINTIFFS individually does  
26 not exceed the sum or value of \$75,000.

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1 CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed the benefit of this work,  
2 required employees to perform this work and permits or suffers to permit this work.

3 34. DEFENDANTS have the legal burden to establish that each and every CALIFORNIA  
4 CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws.  
5 The DEFENDANTS, however, as a matter of policy and procedure failed to have in place during the  
6 CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each  
7 and every CALIFORNIA CLASS Member is paid as required by law. This common business practice  
8 is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide  
9 basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*  
10 (the "UCL") as causation, damages, and reliance are not elements of this claim.

11 35. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS  
12 Members is impracticable.

13 36. DEFENDANTS violated the rights of the CALIFORNIA CLASS under California law  
14 by:

- 15 (a) Committing an act of unfair competition in violation of, Cal. Bus. & Prof. Code  
16 §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having  
17 in place company policies, practices and procedures that failed to record and pay  
18 PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time  
19 worked, including minimum wages owed and overtime wages owed for work  
20 performed by these employees; and,  
21 (b) Committing an act of unfair competition in violation of the UCL, by failing to  
22 provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS  
23 with the legally required meal and rest periods.

24 37. This Class Action meets the statutory prerequisites for the maintenance of a Class  
25 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 26 (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the  
27 joinder of all such persons is impracticable and the disposition of their claims  
28 as a class will benefit the parties and the Court;

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
2 are raised in this Complaint are common to the CALIFORNIA CLASS will  
3 apply to every member of the CALIFORNIA CLASS;
- 4 (c) The claims of the representative PLAINTIFFS are typical of the claims of each  
5 member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members  
6 of the CALIFORNIA CLASS, were classified as a non-exempt employee paid  
7 on an hourly basis who was subjected to the DEFENDANTS' deceptive practice  
8 and policy which failed to provide the legally required meal and rest periods to  
9 the CALIFORNIA CLASS and thereby underpaid compensation to  
10 PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic  
11 injury as a result of DEFENDANTS' employment practices. PLAINTIFFS and  
12 the members of the CALIFORNIA CLASS were and are similarly or identically  
13 harmed by the same unlawful, deceptive and unfair misconduct engaged in by  
14 DEFENDANT; and,
- 15 (d) The representative PLAINTIFFS will fairly and adequately represent and protect  
16 the interest of the CALIFORNIA CLASS, and has retained counsel who are  
17 competent and experienced in Class Action litigation. There are no material  
18 conflicts between the claims of the representative PLAINTIFFS and the  
19 members of the CALIFORNIA CLASS that would make class certification  
20 inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the  
21 claims of all CALIFORNIA CLASS Members.

22 38. In addition to meeting the statutory prerequisites to a Class Action, this action is properly  
23 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 24 (a) Without class certification and determination of declaratory, injunctive, statutory  
25 and other legal questions within the class format, prosecution of separate actions  
26 by individual members of the CALIFORNIA CLASS will create the risk of:
- 27 1) Inconsistent or varying adjudications with respect to individual members  
28 of the CALIFORNIA CLASS which would establish incompatible

standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANTS failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANTS' policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the

1 individual CALIFORNIA CLASS Members when compared to the  
2 substantial expense and burden of individual prosecution of this  
3 litigation;

4 2) Class certification will obviate the need for unduly duplicative litigation  
5 that would create the risk of:

6 A. Inconsistent or varying adjudications with respect to individual  
7 members of the CALIFORNIA CLASS, which would establish  
8 incompatible standards of conduct for the DEFENDANT;  
9 and/or,

10 B. Adjudications with respect to individual members of the  
11 CALIFORNIA CLASS would as a practical matter be  
12 dispositive of the interests of the other members not parties to  
13 the adjudication or substantially impair or impede their ability to  
14 protect their interests;

15 3) In the context of wage litigation because a substantial number of  
16 individual CALIFORNIA CLASS Members will avoid asserting their  
17 legal rights out of fear of retaliation by DEFENDANTS, which may  
18 adversely affect an individual's job with DEFENDANTS or with a  
19 subsequent employer, the Class Action is the only means to assert their  
20 claims through a representative; and,

21 4) A class action is superior to other available methods for the fair and  
22 efficient adjudication of this litigation because class treatment will  
23 obviate the need for unduly and unnecessary duplicative litigation that  
24 is likely to result in the absence of certification of this action pursuant  
25 to Cal. Code of Civ. Proc. § 382.

26 39. This Court should permit this action to be maintained as a Class Action pursuant to Cal.  
27 Code of Civ. Proc. § 382 because:  
28

- 1 (a) The questions of law and fact common to the CALIFORNIA CLASS  
2 predominate over any question affecting only individual CALIFORNIA CLASS  
3 Members because the DEFENDANTS' employment practices are applied with  
4 respect to the CALIFORNIA CLASS;
- 5 (b) A Class Action is superior to any other available method for the fair and  
6 efficient adjudication of the claims of the members of the CALIFORNIA  
7 CLASS because in the context of employment litigation a substantial number  
8 of individual CALIFORNIA CLASS Members will avoid asserting their rights  
9 individually out of fear of retaliation or adverse impact on their employment;
- 10 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
11 impractical to bring all members of the CALIFORNIA CLASS before the Court;
- 12 (d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able  
13 to obtain effective and economic legal redress unless the action is maintained as  
14 a Class Action;
- 15 (e) There is a community of interest in obtaining appropriate legal and equitable  
16 relief for the acts of unfair competition, statutory violations and other  
17 improprieties, and in obtaining adequate compensation for the damages and  
18 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA  
19 CLASS;
- 20 (f) There is a community of interest in ensuring that the combined assets of  
21 DEFENDANTS are sufficient to adequately compensate the members of the  
22 CALIFORNIA CLASS for the injuries sustained;
- 23 (g) DEFENDANTS have acted or refused to act on grounds generally applicable to  
24 the CALIFORNIA CLASS, thereby making final class-wide relief appropriate  
25 with respect to the CALIFORNIA CLASS as a whole;
- 26 (h) The members of the CALIFORNIA CLASS are readily ascertainable from the  
27 business records of DEFENDANT; and,  
28

1 (I) Class treatment provides manageable judicial treatment calculated to bring a  
2 efficient and rapid conclusion to all litigation of all wage and hour related claims  
3 arising out of the conduct of DEFENDANTS as to the members of the  
4 CALIFORNIA CLASS.

5 40. DEFENDANTS maintain records from which the Court can ascertain and identify by  
6 job title each of DEFENDANTS' employees who have been intentionally subjected to DEFENDANTS'  
7 company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend  
8 the Complaint to include any additional job titles of similarly situated employees when they have been  
9 identified.

10  
11 **THE CALIFORNIA LABOR SUB-CLASS**

12 41. PLAINTIFFS further brings the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and  
13 Ninth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA  
14 CLASS who are or previously were employed by Defendant Ultra Personnel, LLC in California and all  
15 individuals who are or previously were employed by Defendant Ultra Personnel, LLC and who were  
16 staffed to work at Kind Op Corp. in California (the "CALIFORNIA LABOR SUB-CLASS") at any  
17 time during the period August 12, 2018 to April 17, 2023 (the "CALIFORNIA LABOR SUB-CLASS  
18 PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate  
19 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars (\$5,000,000.00).

20 42. DEFENDANTS, in violation of the applicable Labor Code, Industrial Welfare  
21 Commission ("IWC") Wage Order requirements, and the applicable provisions of California law,  
22 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANTS failed to  
23 correctly calculate compensation for the time worked by PLAINTIFFS and the other members of the  
24 CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though  
25 DEFENDANTS enjoyed the benefit of this work, required employees to perform this work and  
26 permitted or suffered to permit this work. DEFENDANTS have denied these CALIFORNIA LABOR  
27 SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the  
28 competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the

1 CALIFORNIA LABOR SUB-CLASS against DEFENDANTS, the CALIFORNIA LABOR SUB-  
2 CLASS PERIOD should be adjusted accordingly.

3 43. DEFENDANTS maintain records from which the Court can ascertain and identify by  
4 name and job title, each of DEFENDANTS' employees who have been intentionally subjected to  
5 DEFENDANTS' company policy, practices and procedures as herein alleged. PLAINTIFFS will seek  
6 leave to amend the complaint to include any additional job titles of similarly situated employees when  
7 they have been identified.

8 44. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
9 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

10 45. Common questions of law and fact exist as to members of the CALIFORNIA LABOR  
11 SUB-CLASS, including, but not limited, to the following:

- 12 (a) Whether DEFENDANTS unlawfully failed to correctly calculate and pay  
13 compensation due to members of the CALIFORNIA LABOR SUB-CLASS for  
14 missed meal and rest breaks in violation of the California Labor Code and  
15 California regulations and the applicable California Wage Order;
- 16 (b) Whether DEFENDANTS failed to provide the PLAINTIFFS and the other  
17 members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized  
18 wage statements;
- 19 (c) Whether DEFENDANTS have engaged in unfair competition by the  
20 above-listed conduct;
- 21 (d) The proper measure of damages and penalties owed to the members of the  
22 CALIFORNIA LABOR SUB-CLASS; and,
- 23 (e) Whether DEFENDANTS' conduct was willful.

24 46. DEFENDANTS violated the rights of the CALIFORNIA LABOR SUB-CLASS under  
25 California law by:

- 26 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and  
27 the members of the CALIFORNIA LABOR SUB-CLASS all wages due for  
28

overtime worked, for which DEFENDANTS are liable pursuant to Cal. Lab. Code § 1194;

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANTS are liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

(d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

(e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,

(f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

47. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members

1 is impracticable and the disposition of their claims as a class will benefit the  
2 parties and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that  
4 are raised in this Complaint are common to the CALIFORNIA LABOR SUB-  
5 CLASS and will apply to every member of the CALIFORNIA LABOR SUB-  
6 CLASS;

7 (c) The claims of the representative PLAINTIFFS are typical of the claims of each  
8 member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the  
9 other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt  
10 employee paid on an hourly basis who was subjected to the DEFENDANTS'  
11 practice and policy which failed to pay the correct amount of wages due to the  
12 CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury  
13 as a result of DEFENDANTS' employment practices. PLAINTIFFS and the  
14 members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or  
15 identically harmed by the same unlawful, deceptive, and unfair misconduct  
16 engaged in by DEFENDANT; and,

17 (d) The representative PLAINTIFFS will fairly and adequately represent and protect  
18 the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained  
19 counsel who are competent and experienced in Class Action litigation. There  
20 are no material conflicts between the claims of the representative PLAINTIFFS  
21 and the members of the CALIFORNIA LABOR SUB-CLASS that would make  
22 class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-  
23 CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-  
24 CLASS Members.

25 48. In addition to meeting the statutory prerequisites to a Class Action, this action is properly  
26 maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

27 (a) Without class certification and determination of declaratory, injunctive, statutory  
28 and other legal questions within the class format, prosecution of separate actions

1 by individual members of the CALIFORNIA LABOR SUB-CLASS will create  
2 the risk of:

3 1) Inconsistent or varying adjudications with respect to individual members  
4 of the CALIFORNIA LABOR SUB-CLASS which would establish  
5 incompatible standards of conduct for the parties opposing the  
6 CALIFORNIA LABOR SUB-CLASS; or,

7 2) Adjudication with respect to individual members of the CALIFORNIA  
8 LABOR SUB-CLASS which would as a practical matter be dispositive  
9 of interests of the other members not party to the adjudication or  
10 substantially impair or impede their ability to protect their interests.

11 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or  
12 refused to act on grounds generally applicable to the CALIFORNIA LABOR  
13 SUB-CLASS, making appropriate class-wide relief with respect to the  
14 CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANTS fail to  
15 pay all wages due. Including the correct wages for all time worked by the  
16 members of the CALIFORNIA LABOR SUB-CLASS as required by law;

17 (c) Common questions of law and fact predominate as to the members of the  
18 CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
19 violations of California Law as listed above, and predominate over any question  
20 affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and  
21 a Class Action is superior to other available methods for the fair and efficient  
22 adjudication of the controversy, including consideration of:

23 1) The interests of the members of the CALIFORNIA LABOR SUB-  
24 CLASS in individually controlling the prosecution or defense of separate  
25 actions in that the substantial expense of individual actions will be  
26 avoided to recover the relatively small amount of economic losses  
27 sustained by the individual CALIFORNIA LABOR SUB-CLASS  
28

Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANTS, which may adversely affect an individual's job with DEFENDANTS or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

49. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- 1 (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-  
2 CLASS predominate over any question affecting only individual CALIFORNIA  
3 LABOR SUB-CLASS Members;
- 4 (b) A Class Action is superior to any other available method for the fair and  
5 efficient adjudication of the claims of the members of the CALIFORNIA  
6 LABOR SUB-CLASS because in the context of employment litigation a  
7 substantial number of individual CALIFORNIA LABOR SUB-CLASS  
8 Members will avoid asserting their rights individually out of fear of retaliation  
9 or adverse impact on their employment;
- 10 © The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that  
11 it is impractical to bring all members of the CALIFORNIA LABOR SUB-  
12 CLASS before the Court;
- 13 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members,  
14 will not be able to obtain effective and economic legal redress unless the action  
15 is maintained as a Class Action;
- 16 (e) There is a community of interest in obtaining appropriate legal and equitable  
17 relief for the acts of unfair competition, statutory violations and other  
18 improprieties, and in obtaining adequate compensation for the damages and  
19 injuries which DEFENDANTS' actions have inflicted upon the CALIFORNIA  
20 LABOR SUB-CLASS;
- 21 (f) There is a community of interest in ensuring that the combined assets of  
22 DEFENDANTS are sufficient to adequately compensate the members of the  
23 CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 24 (g) DEFENDANTS have acted or refused to act on grounds generally applicable to  
25 the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief  
26 appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- 27 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
28 ascertainable from the business records of DEFENDANTS. The CALIFORNIA

LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANTS in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

- (I) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANTS as to the members of the CALIFORNIA LABOR SUB-CLASS.

### **FIRST CAUSE OF ACTION**

#### **For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

**(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

50. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

51. DEFENDANTS are “persons” as that term is defined under Cal. Bus. and Prof. Code § 17021.

52. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

53. By the conduct alleged herein, DEFENDANTS have engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including

1 Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor  
2 Standards Act and federal regulations promulgated thereunder, for which this Court should issue  
3 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary  
4 to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages  
5 wrongfully withheld.

6 54. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair in  
7 that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or  
8 substantially injurious to employees, and were without valid justification or utility for which this Court  
9 should issue equitable and injunctive relief pursuant to Section 17203 of the California Business &  
10 Professions Code, including restitution of wages wrongfully withheld.

11 55. By the conduct alleged herein, DEFENDANTS' practices were deceptive and fraudulent  
12 in that DEFENDANTS' policy and practice failed to provide the legally mandated meal and rest  
13 periods, the required amount of compensation for missed meal and rest periods and overtime and  
14 minimum wages owed, failed to timely pay wages, and failed to reimburse all necessary business  
15 expenses incurred, and failed to provide Fair Labor Standards Act overtime wages due for overtime  
16 worked as a result of failing to include non-discretionary incentive compensation into their regular rates  
17 of pay for purposes of computing the proper overtime pay due to a business practice that cannot be  
18 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements  
19 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and  
20 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully  
21 withheld.

22 56. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and  
23 deceptive in that DEFENDANTS' employment practices caused PLAINTIFFS and the other members  
24 of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANTS.

25 57. By the conduct alleged herein, DEFENDANTS' practices were also unlawful, unfair and  
26 deceptive in that DEFENDANTS' policies, practices and procedures failed to provide all legally  
27 required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required  
28 by Cal. Lab. Code §§ 226.7 and 512.

1           58.     Therefore, PLAINTIFFS demand on behalf of himself and on behalf of each  
2 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal  
3 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each  
4 workday in which a second off-duty meal period was not timely provided for each ten (10) hours of  
5 work.

6           59.     PLAINTIFFS further demand on behalf of himself and each member of the  
7 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid  
8 rest period was not timely provided as required by law.

9           60.     By and through the unlawful and unfair business practices described herein,  
10 DEFENDANTS have obtained valuable property, money and services from PLAINTIFFS and the other  
11 members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived  
12 them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these  
13 employees and to the benefit of DEFENDANTS so as to allow DEFENDANTS to unfairly compete  
14 against competitors who comply with the law.

15           61.     All the acts described herein as violations of, among other things, the Industrial Welfare  
16 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were  
17 unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were  
18 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.  
19 Bus. & Prof. Code §§ 17200, *et seq.*

20           62.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and  
21 do, seek such relief as may be necessary to restore to them the money and property which  
22 DEFENDANTS have acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA  
23 CLASS have been deprived, by means of the above described unlawful and unfair business practices,  
24 including earned but unpaid wages for all time worked.

25           63.     PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled  
26 to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive,  
27 and that injunctive relief should be issued restraining DEFENDANTS from engaging in any unlawful  
28 and unfair business practices in the future.

64. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANTS are restrained from continuing to engage in these unlawful and unfair business practices.

## SECOND CAUSE OF ACTION

### For Failure To Pay Minimum Wages

**[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

**and Against All Defendants)**

65. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB- CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

66. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

67. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

68. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

69. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

1           70.     DEFENDANTS maintained a wage practice of paying PLAINTIFFS and the other  
2 members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they  
3 work. As set forth herein, DEFENDANTS' policy and practice was to unlawfully and intentionally  
4 deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA  
5 LABOR SUB-CLASS.

6           71.     DEFENDANTS' unlawful wage and hour practices manifested, without limitation,  
7 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy  
8 and practice that denies accurate compensation to PLAINTIFFS and the other members of the  
9 CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

10          72.     In committing these violations of the California Labor Code, DEFENDANTS  
11 inaccurately calculated the correct time worked and consequently underpaid the actual time worked by  
12 PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANTS acted  
13 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the  
14 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
15 regulations.

16          73.     As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,  
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the  
18 correct minimum wage compensation for their time worked for DEFENDANTS.

19          74.     During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANTS required,  
20 permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work  
21 without paying them for all the time they were under DEFENDANTS' control. During the  
22 CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the  
23 CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to,  
24 constituting a failure to pay all earned wages.

25          75.     By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation  
26 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time  
27 they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have  
28

1 suffered and will continue to suffer an economic injury in amounts which are presently unknown to  
2 them and which will be ascertained according to proof at trial.

3 76. DEFENDANTS knew or should have known that PLAINTIFFS and the other  
4 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked.  
5 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay  
6 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANTS  
7 perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA  
8 LABOR SUB-CLASS the correct minimum wages for their time worked.

9 77. In performing the acts and practices herein alleged in violation of California labor laws,  
10 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time  
11 worked and provide them with the requisite compensation, DEFENDANTS acted and continues to act  
12 intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the  
13 CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the  
14 consequences to them, and with the despicable intent of depriving them of their property and legal  
15 rights, and otherwise causing them injury in order to increase company profits at the expense of these  
16 employees.

17 78. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
18 therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as  
19 the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the  
20 California Labor Code and/or other applicable statutes. To the extent minimum wage compensation  
21 is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated  
22 their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore  
23 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which  
24 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.  
25 DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further,  
26 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover  
27 statutory costs.  
28

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

5 79. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
6 reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this  
7 Complaint.

8 80. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring  
9 a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the  
10 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees for  
11 all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or  
12 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

13 81. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
14 public policy, an employer must timely pay its employees for all hours worked.

15 82. Cal. Lab. Code § 510 further provides that employees in California shall not be  
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless  
17 they receive additional compensation beyond their regular wages in amounts specified by law.

18 83. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
19 including minimum wage and overtime compensation and interest thereon, together with the costs of  
20 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than  
21 those fixed by the Industrial Welfare Commission is unlawful.

22 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and  
23 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by  
24 DEFENDANTS to work for DEFENDANTS and were not paid for all the time they worked, including  
25 overtime work.

26 85. DEFENDANTS' unlawful wage and hour practices manifested, without limitation,  
27 applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy  
28 and practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA

1 LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFFS and the other  
2 members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime  
3 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,  
4 and/or forty (40) hours in any workweek.

5 86. In committing these violations of the California Labor Code, DEFENDANTS  
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by  
7 PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANTS acted in an  
8 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California  
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and  
10 regulations.

11 87. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein, the  
12 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full  
13 compensation for overtime worked.

14 88. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
15 from the overtime requirements of the law. None of these exemptions are applicable to the  
16 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,  
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to  
18 a valid collective bargaining agreement that would preclude the causes of action contained herein this  
19 Complaint. Rather, PLAINTIFFS bring this Action on behalf of himself and the CALIFORNIA  
20 LABOR SUB-CLASS based on DEFENDANTS' violations of non-negotiable, non-waiveable rights  
21 provided by the State of California.

22 89. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other  
23 members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that  
24 they are entitled to, constituting a failure to pay all earned wages..

25 90. DEFENDANTS failed to accurately pay the PLAINTIFFS and the other members of the  
26 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess  
27 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even  
28 though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were required

1 to work, and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay  
2 as evidenced by DEFENDANTS' business records and witnessed by employees.

3 91. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned compensation  
4 to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true  
5 amount of time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-  
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are presently  
7 unknown to them and which will be ascertained according to proof at trial.

8 92. DEFENDANTS knew or should have known that PLAINTIFFS and the other members  
9 of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked.  
10 DEFENDANTS elected, either through intentional malfeasance or gross nonfeasance, to not pay  
11 employees for their labor as a matter of company policy, practice and procedure, and DEFENDANTS  
12 perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA  
13 LABOR SUB-CLASS for overtime worked.

14 93. In performing the acts and practices herein alleged in violation of California labor laws,  
15 and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime  
16 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and  
17 continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other  
18 members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their  
19 legal rights, or the consequences to them, and with the despicable intent of depriving them of their  
20 property and legal rights, and otherwise causing them injury in order to increase company profits at the  
21 expense of these employees.

22 94. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
23 therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well  
24 as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the  
25 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime  
26 compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who  
27 have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or  
28 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code

1 § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS  
2 Members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith.  
3 Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek  
4 and recover statutory costs.

5  
6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7 & 512 ]**

9 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

10 95. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
11 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
12 Complaint.

13 96. During the CALIFORNIA CLASS PERIOD, DEFENDANTS from time to time failed  
14 to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA  
15 LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature  
16 of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not  
17 prevent these employees from being relieved of all of their duties for the legally required off-duty meal  
18 periods. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR  
19 SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANTS for their  
20 meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA  
21 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work  
22 is evidenced by DEFENDANTS' business records from time to time. Further, DEFENDANTS failed  
23 to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in  
24 some workdays in which these employees were required by DEFENDANTS to work ten (10) hours of  
25 work from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR  
26 SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with  
27 DEFENDANTS' strict corporate policy and practice.  
28

1           97.     DEFENDANTS further violate California Labor Code §§ 226.7 and the applicable IWC  
2 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS  
3 Members who were not provided a meal period, in accordance with the applicable Wage Order, one  
4 additional hour of compensation at each employee's regular rate of pay for each workday that a meal  
5 period was not provided.

6           98.     As a proximate result of the aforementioned violations, PLAINTIFFS and  
7 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof  
8 at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

9  
10                                   **FIFTH CAUSE OF ACTION**

11                                   **For Failure to Provide Required Rest Periods**

12                                   **[Cal. Lab. Code §§ 226.7 & 512 ]**

13                   **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

14           99.     PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
15 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
16 Complaint.

17           100.    PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time  
18 to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods.  
19 Further, these employees from time to time were denied their first rest periods of at least ten (10)  
20 minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at  
21 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second  
22 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from  
23 time to time. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not  
24 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,  
25 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their  
26 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

27           101.    DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC  
28 Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS

Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

102. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

### **SIXTH CAUSE OF ACTION**

#### **For Failure to Provide Accurate Itemized Statements**

**[Cal. Lab. Code § 226]**

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

103. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

104. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

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

105. From time to time, DEFENDANTS also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an

1 accurate itemized wage statement in writing showing, among other things, gross wages earned and  
2 all applicable hourly rates in effect during the pay period and the corresponding amount of time  
3 worked at each hourly rate. Aside, from the violations listed above in this paragraph,  
4 DEFENDANTS failed to issue to PLAINTIFFS an itemized wage statement that lists all the  
5 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANTS from time to  
6 time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS  
7 with wage statements which violated Cal. Lab. Code § 226.

8 106. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code §  
9 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA  
10 LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating  
11 the correct wages for all missed meal and rest breaks and the amount of employment taxes which  
12 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.  
13 Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS may  
14 elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the  
15 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period  
16 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no  
17 event more than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of  
18 the CALIFORNIA LABOR SUB-CLASS herein).

19  
20 **SEVENTH CAUSE OF ACTION**

21 **For Failure to Reimburse Employees for Required Expenses**

22 **[Cal. Lab. Code § 2802]**

23 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

24 107. PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS members reallege  
25 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this  
26 Complaint.

27 108. Cal. Lab. Code § 2802 provides, in relevant part, that:  
28

1 An employer shall indemnify his or her employee for all necessary expenditures or  
2 losses incurred by the employee in direct consequence of the discharge of his or her  
3 duties, or of his or her obedience to the directions of the employer, even though  
unlawful, unless the employee, at the time of obeying the directions, believed them  
to be unlawful.

4 109. At all relevant times herein, DEFENDANTS violated Cal. Lab. Code § 2802, by  
5 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
6 members for required expenses incurred in the discharge of their job duties for DEFENDANTS'  
7 benefit. DEFENDANTS failed to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-  
8 CLASS members for expenses which included, but were not limited to, costs related to using their  
9 personal cellular phones on behalf of and for the benefit of DEFENDANTS. Specifically,  
10 PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were required by  
11 DEFENDANTS to use their personal cellular phones and personal home offices in order to perform  
12 work related job tasks. DEFENDANTS' policy and practice was to not reimburse PLAINTIFFS  
13 and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their  
14 personal cellular phones for DEFENDANTS within the course and scope of their employment for  
15 DEFENDANTS. These expenses were necessary to complete their principal job duties.  
16 DEFENDANTS is estopped by DEFENDANTS' conduct to assert any waiver of this expectation.  
17 Although these expenses were necessary expenses incurred by PLAINTIFFS and the CALIFORNIA  
18 LABOR SUB-CLASS members, DEFENDANTS failed to indemnify and reimburse PLAINTIFFS  
19 and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is  
20 required to do under the laws and regulations of California.

21 110. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred  
22 by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job  
23 duties for DEFENDANTS, or their obedience to the directions of DEFENDANTS, with interest at  
24 the statutory rate and costs under Cal. Lab. Code § 2802.

25 ///

1 **EIGHTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[ Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 111. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS,  
7 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this  
8 Complaint.

9 112. Cal. Lab. Code § 200 provides, in relevant part, that:

10 As used in this article:

11 (a) "Wages" includes all amounts for labor performed by employees of every  
12 description, whether the amount is fixed or ascertained by the standard of time,  
13 task, piece, Commission basis, or other method of calculation.

14 (b) "Labor" includes labor, work, or service whether rendered or performed  
15 under contract, subcontract, partnership, station plan, or other agreement if the  
16 labor to be paid for is performed personally by the person demanding payment.

17 113. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an  
18 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

19 114. Cal. Lab. Code § 202 provides, in relevant part, that:

20 If an employee not having a written contract for a definite period quits his or her  
21 employment, his or her wages shall become due and payable not later than 72  
22 hours thereafter, unless the employee has given 72 hours previous notice of his  
23 or her intention to quit, in which case the employee is entitled to his or her  
24 wages at the time of quitting. Notwithstanding any other provision of law, an  
25 employee who quits without providing a 72-hour notice shall be entitled to  
26 receive payment by mail if he or she so requests and designates a mailing  
27 address. The date of the mailing shall constitute the date of payment for  
28 purposes of the requirement to provide payment within 72 hours of the notice of  
quitting.

115. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-  
CLASS Members' employment contract.

116. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in  
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee  
who is discharged or who quits, the wages of the employee shall continue as a  
penalty from the due date thereof at the same rate until paid or until an action  
therefor is commenced; but the wages shall not continue for more than 30 days.

117. The employment of PLAINTIFFS and many CALIFORNIA LABOR SUB-CLASS Members has terminated and DEFENDANTS have not tendered payment of all wages owed as required by law.

118. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated and who have not been fully paid their wages due to them, PLAINTIFFS demand thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

#### **NINTH CAUSE OF ACTION**

##### **For Failure to Pay Sick Pay Wages**

**[ Cal. Lab. Code §§ 201-204, 210, 233, 246]**

**(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS  
and Against All Defendants)**

119. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

120. Cal Lab. Code § 233 provides that an employer must permit an employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (I) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked

1 in the full pay periods of the prior 90 days of employment.” Under Cal Lab. Code §§ 218 and 233,  
2 employees may sue to recover underpaid sick pay wages as damages.

3 121. As a matter of policy and practice, DEFENDANTS pays sick pay wages to  
4 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS at the incorrect  
5 rate of pay. PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-CLASS  
6 regularly use accrued sick leave in the workweeks in which they also earn non-hourly remuneration.  
7 As a matter of policy and practice, DEFENDANTS pay sick pay wages to PLAINTIFFS and the  
8 other members of the CALIFORNIA LABOR-SUB-CLASS at the base hourly pay, as opposed to  
9 the regular rate of pay, which would consider all non-hourly remuneration in addition to base hourly  
10 wages, or the rate resulting from dividing the employee’s total wages, not including overtime  
11 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of  
12 employment. As a result, DEFENDANTS underpaid sick pay wages to PLAINTIFFS and the other  
13 members of the CALIFORNIA LABOR-SUB-CLASS.

14 122. Cal. Lab. Code § 204 provides that wages generally are due and payable twice  
15 during each calendar month and are to be paid no later than the payday for the next regular payroll  
16 period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires that, upon  
17 use of accrued sick leave, vested sick pay wages are due and to be paid no later than the payday for  
18 the next regular payroll period after accrued sick leave is used as paid sick time. Similarly, Cal.  
19 Lab. Code § 201 provides that if an employer discharges an employee, wages earned and unpaid at  
20 the time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides that an  
21 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his  
22 or her employment, unless the employee has given 72-hour notice of his or her intention to quit, in  
23 which case the employee is entitled to his or her wages at the time of quitting. The Labor Code  
24 penalizes untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer  
25 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the wages of  
26 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the  
27 wages shall not continue for more than thirty (30) days. Likewise, Cal. Lab. Code § 210 provides  
28

1 penalties for violations of Cal. Lab. Code § 204 and untimely payments during employment. Under  
2 Cal. Lab. Code §§ 203, 210 and 218, employees may sue to recover applicable penalties.

3 123. As alleged herein and as a matter of policy and practice, DEFENDANTS  
4 routinely underpay sick pay wages and thus did not timely pay PLAINTIFFS and the other members  
5 of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay wages. As a result,  
6 DEFENDANTS violate Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code  
7 provisions. PLAINTIFFS are informed and believe that DEFENDANTS were advised by skilled  
8 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to  
9 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that  
10 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled  
11 as a part of his or her compensation, including money, room, board, clothing, vacation pay, *and sick*  
12 *pay.*" *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4<sup>th</sup> 1094, 1103 (2007)(emphasis added).  
13 Because DEFENDANTS willfully fail to timely pay PLAINTIFFS and the other members of the  
14 CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANTS are subject to  
15 applicable penalties.

16 124. Such a pattern, practice, and uniform administration of corporate policy is  
17 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA LABOR-SUB-  
18 CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's  
19 fees, and costs of suit.

20  
21 **TENTH CAUSE OF ACTION**

22 **For Violation of the Private Attorneys General Act**

23 **[Cal. Lab. Code §§ 2698, *et seq.*]**

24 **(By PLAINTIFFS ANGUIANO and JIMENEZ and Against All Defendants)**

25 125. Plaintiffs Edward Anguiano II and Aurora Garcia Jimenez reallege and incorporates by  
26 this reference, as though fully set forth herein, the prior paragraphs of this Complaint.  
27  
28

1           126.   PAGA is a mechanism by which the State of California itself can enforce state labor  
2 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's  
3 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally  
4 a law enforcement action designed to protect the public and not to benefit private parties. The  
5 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"  
6 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California  
7 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as  
8 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.  
9 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

10           127.   Plaintiffs Edward Anguiano II and Aurora Garcia Jimenez , and such persons that  
11 may be added from time to time who satisfy the requirements and exhaust the administrative  
12 procedures under the Private Attorney General Act, brings this Representative Action on behalf of  
13 the State of California with respect to himself and all individuals who are or previously were  
14 employed by Defendant Ultra Personnel, LLC in California and all individuals who are or  
15 previously were employed by Defendant Ultra Personnel, LLC and who were staffed to work at  
16 Kind Op Corp. in California (the "AGGRIEVED EMPLOYEES") at any time during the period  
17 August 12, 2021 to April 17, 2023 until a date as determined by the Court (the "PAGA PERIOD").

18           128.   On March 9, 2022, Plaintiffs Aurora Garcia Jimenez gave written notice by  
19 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified  
20 mail to the employer of the specific provisions of this code alleged to have been violated as required  
21 by Labor Code § 2699.3. The statutory waiting period for Plaintiffs Aurora Garcia Jimenez to add  
22 these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiffs  
23 Aurora Garcia Jimenez may commence a representative civil action under PAGA pursuant to  
24 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES  
25 as herein defined.

26           129.   On May 5, 2022, Plaintiff Edward Anguiano II gave written notice by electronic mail  
27 to the Agency and by certified mail to the employer of the specific provisions of this code alleged  
28 to have been violated as required by Labor Code § 2699.3. The statutory waiting period for Plaintiff

Edward Anguiano II to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff Edward Anguiano II may commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

130. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANTS (a) failed to provide Plaintiffs Edward Anguiano II and Aurora Garcia Jimenez and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, © failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on Plaintiffs Edward Anguiano II and Aurora Garcia Jimenez and the AGGRIEVED EMPLOYEES.

#### **PRAYER FOR RELIEF**

WHEREFORE, PLAINTIFFS prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

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<sup>1</sup>PLAINTIFFS specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

- 1 B) An order temporarily, preliminarily and permanently enjoining and restraining  
2 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;  
3 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld  
4 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA  
5 CLASS; and,  
6 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for  
7 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFFS  
8 and to the other members of the CALIFORNIA CLASS.

9 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 10 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth  
11 Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action  
12 pursuant to Cal. Code of Civ. Proc. § 382;  
13 B) Compensatory damages, according to proof at trial, including compensatory damages  
14 for minimum and overtime compensation due PLAINTIFFS and the other members of  
15 the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR  
16 SUB-CLASS PERIOD plus interest thereon at the statutory rate;  
17 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which  
18 a violation occurs and one hundred dollars (\$100) per each member of the  
19 CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not  
20 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs  
21 for violation of Cal. Lab. Code § 226;  
22 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the  
23 applicable IWC Wage Order;  
24 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197;  
25 F) The amount of the expenses PLAINTIFFS and each member of the CALIFORNIA  
26 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and costs  
27 of suit.; and,  
28

1 G) The wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as  
2 a penalty from the due date thereof at the same rate until paid or until an action therefore  
3 is commenced, in accordance with Cal. Lab. Code § 203.

4 3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

5 A) Recovery of civil penalties as prescribed by the Labor Code Private  
6 Attorneys General Act of 2004; and,

7 B) An award of attorneys' fees and cost of suit, as allowable under the  
8 law, including, but not limited to, pursuant to Labor Code §2699.

9 4. On all claims:

10 A) An award of interest, including prejudgment interest at the legal rate;

11 B) Such other and further relief as the Court deems just and equitable; and,

12 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,  
13 including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

14 Dated: June 16, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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16 By: /s/ Nicholas J. De Blouw  
17 Nicholas J. De Blouw  
18 Attorneys for Plaintiffs  
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**DEMAND FOR A JURY TRIAL**

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: June 16, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas J. De Blouw  
Nicholas J. De Blouw  
Attorneys for Plaintiffs