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Assigned for all purposes:
Judge Randall J. Sherman
Dept. CX105

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

LUIS PAREDES MEDINA, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

KINDNESS GENERAL CONTRACTORS, LLC, a California limited liability company; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 30-2023-01300740-CU-OE-CXC

FIRST AMENDED CLASS AND REPRESENTATIVE CLASS ACTION COMPLAINT FOR:

(1) FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);

(2) FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF COMPENSATION (LABOR CODE §§ 226.7, 1198)

(3) WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);

(4) WAITING TIME PENALTIES (LABOR CODE §§ 201-203);

(5) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);

(6) UNFAIR COMPETITION (BUS. & PROF. CODE § 17200, *et seq.*).

(7) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, *et seq.)*

DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE

Plaintiff Luis Paredes Medina ("Plaintiff"), on behalf of himself and all others similarly situated, hereby brings this Class and Representative Action Complaint against Kindness General Contractors, LLC, a California limited liability company; and Does 1 through 100, inclusive (collectively, "Defendants"), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this class and representative action for recovery of unpaid wages and penalties under California Business and Professions Code section 17200, *et. seq*.; Labor Code sections 201-204, 226, 510, 558, 1194, 1198, 2802, 2804, and 2698 *et seq*; and Industrial Welfare Commission Wage Order No. 16 ("Wage Order 16"), in addition to seeking declaratory relief and restitution. This class action is brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in Orange County. Defendants own, maintain offices, transact business, have an agent or agents within Orange County, and/or otherwise are found within Orange County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was, and currently is, a California resident. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 510, 558, 1194, 1198, 2802, 2804, 2698 *et seq*; Business & Professions Code § 17200, *et seq*., and Wage Order 16, which sets employment standards for the construction industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a full service general contracting company, and that they employed Plaintiff and other similarly situated non-exempt employees within Orange County and the state of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 19).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt carpenter from approximately November 2021 until approximately May 2022.

10. During Plaintiff's employment with Defendants, Plaintiff often worked overtime hours (including working over 8 hours in a day and/or over 40 hours in workweek), but he did not always receive overtime compensation equal to one and one-half times his "regular rate" of pay. Specifically, Defendants paid Plaintiff a base rate of pay but also paid him at higher rates for prevailing wage projects and/or other specific projects during the same workweek. However, in workweeks where he worked both prevailing wage and non-prevailing wage projects, and worked overtime on non-prevailing wage projects, Defendants paid Plaintiff overtime at 1.5 times his *base* rate of pay and failed to incorporate Plaintiff's other rates of pay during the workweek into his "regular rate" when calculating overtime, and therefore failed to properly calculate Plaintiff's regular rate of pay for overtime purposes. For example, Plaintiff's payroll records for the paycheck dated March 18, 2022, reflect that in the relevant pay period, Plaintiff worked 16.00 regular hours ("Reg") at $22.00 per hour, as well as 22.68 regular hours on a prevailing wage project ("PW Carp - Reg") at a rate of $67.6614 per hour. Plaintiff also worked 0.66 hours of overtime ("OT") but was paid for those overtime hours at $33.00 per hour, which was 1.5 times his *base* rate of pay and did not incorporate the higher rates of pay at which he was paid for the majority of the workweek. As another example, in the workweek paid for on May 13, 2022, Plaintiff's payroll records reflect that he worked 25 "Reg" hours at $22.00 per hour and also worked 8 "PWSCCP – Reg" hours at $67.6475 per hour. Plaintiff also worked 0.58 hours of overtime, but he was paid for that overtime at $33.00/hour, which is 1.5 times his *base* rate of pay and did not incorporate the higher rate of pay at which he was paid for a prevailing wage project in the same workweek.

11. The above practice violates California law. Specifically, where an employee works multiple rates of pay in a workweek and also works overtime hours, the employee must be paid overtime at 1.5 times the weighted average of those rates. *See* DLSE Enforcement Manual at § 49.2.5: "**Weighted Average Method**. When two rates of pay are paid during a workweek, the California method for determining the regular rate of pay for calculating overtime in the workweek mirrors the federal method, based upon the weighted average of all hourly rates paid.…*The rate will be established by adding all hours worked in the week and dividing that*

number into the total compensation for the week." (Italics added); *see also Alvarado v. Dart Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) ("Not all employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a *weighted average* reflecting work done at varying times, under varying circumstances, and at varying rates.") (emphasis in original) (citing to DLSE Enforcement Manual § 49.2.5). Thus, in workweeks where Plaintiff worked both prevailing wage projects and non-prevailing wage projects, and worked overtime during non-prevailing wage projects, his compensation for those overtime hours should have been 1.5 times the *weighted average* of his rates of pay. Defendants failed to calculate overtime based on the weighted average, and this practice has resulted in Plaintiff and other non-exempt employees being underpaid for their overtime compensation.

12. The only exception to this general rule is where an employee works on both a prevailing wage and non-prevailing wage project and works overtime <u>while on the prevailing wage project</u>. In that case, the employer must pay the employee at 1.5 times the *higher of* either the weighted average or the prevailing wage rate. *See* DLSE Manual § 49.2.6 ("**Exception to Weighted Average.** In the situation where an employee is paid two rates during the course of the day and one of those rates is a statutorily-mandated rate (i.e., prevailing wage) the regular rate for calculating the overtime rate for work performed on the public works project must be based on the higher of either the weighted average or the prevailing wage rate in effect at the time the worked is performed.") However, in workweeks where Plaintiff worked on both prevailing wage and non-prevailing wage projects and worked overtime on the prevailing wage project, Defendants paid Plaintiff at less than 1.5 times the prevailing wage for those overtime hours. For example, in the March 18, 2022, workweek/pay period cited in paragraph 10 above, Plaintiff also worked 0.18 hours of overtime on a prevailing wage project (denoted as "PW Carp – OT"), but rather than paying Plaintiff for those overtime hours at 1.5 times the prevailing wage rate (which would have been approximately $101.49), Defendants paid Plaintiff for those overtime hours at approximately $90/hour. This practice has resulted in Plaintiff and other non-exempt employees being underpaid for overtime wages when working prevailing wage projects.

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13. In addition to failing to calculate the "regular rate" of pay when employees work both prevailing wage and non-prevailing wage projects, Defendants have also failed to incorporate per diem payments, "EX0101" payments, "EX0104" payments, and/or other payments that cannot be excluded from the regular rate when calculating overtime (collectively, these forms of pay are referred to herein as "Incentive Pay"). For example, in the workweek/pay period that was paid for on May 13, 2022 (mentioned in paragraph 12 above), Plaintiff received a per diem payment of $100 during that workweek, but the per diem payment was not incorporated into the regular rate of pay when calculating Plaintiff's overtime pay. Similarly, in the pay period/workweek that was paid for on January 18, 2022, Plaintiff was paid $250 in per diem payments, but those payments were not incorporated into the regular rate, and instead Plaintiff was paid for his 1.6 overtime hours at 1.5 times his *base* rate of pay. As another example, in the pay period/workweek that was paid for on April 15, 2022, Plaintiff received payments totaling $87.40 for "EX0101" ($31.40) and "EX0104" payments ($56.00), but was paid for 8.5 overtime hours during that workweek at 1.5 times his *base* rate of pay, and for 0.95 double-time hours at two times his *base* rate of pay. As a result of this practice, Plaintiff and other non-exempt employees were paid less than one and one-half times (or two times in the case of double-time hours) their "regular rate" of pay for overtime hours worked when they earned Incentive Pay.

14. As a further result of Defendants' failure to properly calculate the "regular rate," Defendants paid meal period premium payments at the improper rate. Specifically, rather than paying meal period premiums at the "regular rate of compensation" as required by Labor Code § 226.7, Defendants paid meal period premiums at employees' *base* rate of pay. The California Supreme Court has held that the terms "regular rate of pay" as used in Labor Code § 510 and "regular rate of compensation" as used in Labor Code § 226.7 are synonymous, and therefore, just as all remuneration must be incorporated into the "regular rate of pay" when calculating overtime pay, it must also be incorporated into the "regular rate of compensation" when calculating meal and rest period premiums under Labor Code § 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 862 (2021) (holding "that the terms are synonymous: 'regular rate of compensation' under section 226.7(c), like 'regular rate of pay' under section

510(a), encompasses all nondiscretionary payments, not just hourly wages.") But as noted above, Defendants consistently paid meal period premiums at the *base* rate of pay rather than at the "regular rate." For example, in the pay period/workweek paid for on April 15, 2022 (mentioned in paragraph 14 above), Defendants paid Plaintiff a meal period premium at $22.00, which was his *base* rate of pay, and failed to incorporate the Incentive Pay earned by Plaintiff in the same workweek as noted above. This practice has resulted in Plaintiff and other non-exempt employees being paid meal period premiums at a rate lower than the "regular rate of compensation" required under Labor Code § 226.7.

15. Defendants also failed to reimburse Plaintiff and other employees for expenses they incurred in the course of their employment. Specifically, Defendants required Plaintiff and other employees to use a cell phone app called ExakTime clock in and out for their shifts and for their meal periods. Defendants did not provide Plaintiff and other employees with an alternative method for clocking in and out and in doing so, forced Plaintiff and other non-exempt employees to use their personal cellphones to track their working hours. Plaintiff was also required to use his personal cellular phone to send emails to his managers/supervisors of pictures of the locations where he worked. Despite requiring Plaintiff to use his personal cellular phone for work-related purposes, Defendants failed to reimburse Plaintiff for any portion of his personal cellular phone bill, in violation of Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

16. In addition to requiring Plaintiff and other non-exempt employees to utilize their personal cellphones for work related purposes, Plaintiff and other employees have been required to furnish his own tools to complete his work duties each day. Defendants' application for employment requires potential applicants to indicate whether or not they own all of the tools necessary for their job. Specifically, the application for employment requests applicants answer, "Do you have all of the tools on the attached Tool List, for the classification you are applying for?" thus making the provision of personal tools a requirement for employment. Despite requiring Plaintiff to furnish his own tools, Defendants failed to compensate Plaintiff for any portion of the out-of-pocket costs associated with the purchase and maintenance of his personal

tools. Defendants also required Plaintiff to drive his personal vehicle to multiple job sites in a single day. Defendants failed to reimburse Plaintiff for any portion of his milage expenses. As a result of the foregoing, Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802.

17. As a result of Defendants' failure to pay all overtime wages and failure to pay meal period premiums at the regular rate, Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

18. As a further result of Defendants' failure to pay all overtime wages and meal period premium wages, Defendants have maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

CLASS ACTION ALLEGATIONS

19. Class Definitions: Plaintiff bring this action on behalf of himself and the following Classes pursuant to Section 382 of the Code of Civil Procedure:

a. The Overtime Class consists of all of the Defendants' current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek, and (i) worked prevailing wage jobs and were not paid for overtime or double-time at 1.5 times or 2 times, respectively, their prevailing wage rate; (ii) worked both prevailing wage and non-prevailing wage jobs in the same workweek, worked overtime or double-time in the same workweek, and were paid for that overtime or double-time at 1.5 times or 2 times, respectively, their base rate of pay; and/or (iii) earned Incentive Pay in the same pay period as they worked overtime or double-time, at any time from four years immediately preceding the filing of this action through the present.

b. The Meal Period Premium Underpayment Class consists of all of Defendants' non-exempt employees in California who were paid a meal period premium and who (i) were paid Incentive Pay in the same period; and/or (ii) worked prevailing wage job(s) in the same pay period, at any time from four years immediately preceding the filing of this action through the present.

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c. The Wage Statement Class consists of all members of the Overtime Class and/or the Meal Period Premium Underpayment Class who received a wage statement at any time from one year immediately preceding the filing of this lawsuit through the present;

d. The Waiting Time Class consists of all members of the Overtime Class and/or the Meal Period Premium Underpayment Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years immediately preceding the filing of this lawsuit through the present.

e. The Expense Reimbursement Class consists of all of Defendants' employees who were required to use their personal cellular phones, personal tools, and/or personal vehicles for work-related purposes, at any time from four years prior to the filing of this action through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;

ii. Whether Defendants has paid meal period premiums at the "regular rate of compensation" pursuant to Labor Code § 226.7;

iii. Whether Defendants have furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;

iv. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment;

v. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

22. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period premium, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

23. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime wages, was not paid meal period premiums at the regular rate of compensation, was furnished with inaccurate wage statements, was deprived of all final wages upon his separation of employment from Defendants, and was not reimbursed for all expenses he incurred in carrying out his job duties for Defendants.

24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to represent fully and adequately the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

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25. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class member to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual Class members would create substantial risk of inconsistent or varying adjudications with respect to the individual Class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the Class members' individual claims are not sufficiently large to warrant vigorous prosecution considering the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

26. Plaintiff re-alleges and incorporated by reference all previous paragraphs.

27. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

28. At all times relevant herein, Defendants were required to properly compensate Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 16. Wage Order 16, § 3 requires an employer to pay an employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on the seventh consecutive workday in a workweek. Wage Order 16, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants have caused Plaintiff and Overtime Class members to work overtime hours but did not compensate them at one and one-half times (or two times) their regular rate of pay for such hours.

29. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY MEAL PERIOD PREMIUMS AT REGULAR RATE OF COMPENSATION

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. At all relevant times, Defendants have been required to pay meal period premiums at employees' "regular rate of compensation" pursuant to Labor Code § 226.7. "Regular rate of compensation" is synonymous with "regular of pay" as used in Labor Code § 510. Thus, meal period premiums must be calculated in the same manner as the "regular rate of pay" is calculated for overtime purposes, and must incorporate the value of Incentive Pay.

32. As alleged herein, Defendants failed to incorporate the value of Incentive Pay, and otherwise failed to accurately calculate the regular rate of compensation, when calculating meal

period premiums for Plaintiff and members of the Meal Period Premium Underpayment Class, and thus underpaid Plaintiff and members of the Meal Period Premium Underpayment Class for their meal period premium wages due under Labor Code § 226.7.

33. As a result of the foregoing, Plaintiff and members of the Meal Period Premium Underpayment Class are entitled to the amount of underpayment of meal period premium wages, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

THIRD CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, accurate amount of meal period premium wages earned, and total hours worked, in violation of Labor Code § 226.

36. Defendants’ failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime wages and meal period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data.

37. Defendants’ failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys’ fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

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FOURTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

39. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants have failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including (but not limited to) unpaid overtime wages, and unpaid meal period premium wages.

41. Further, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.

42. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. At all relevant times, Defendants have been subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

45. At all relevant times, Defendants have been subject to Labor Code § 2804, which states, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

46. Due to Defendants' unlawful policy and practice of requiring employees to use their personal cellular phones for work purposes without reimbursement, and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class for the use of personal tools and/or personal vehicles for work purposes, Defendants have violated Labor Code § 2802.

47. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

48. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

49. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay

Plaintiff and the Classes all overtime wages due, failing to provide pay meal period premium wages at the regular rate of compensation, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

52. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

54. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

55. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

57. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq*. Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other

aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation of Labor Code § 226 and $1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;

b. Failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 558, and 1198;

c. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;

d. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203; and

e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198.

58. On or about January 9, 2023, Plaintiff notified Defendant Kindness General Contractors, LLC, via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq*.

with respect to the violations of the California Labor Code identified in paragraph 57 (a)-(e) above. Now that sixty-five (65) days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

59. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;

2. For an order appointing Plaintiff as representative of the Classes;

3. For an order appointing counsel for Plaintiff as counsel for the Classes;

4. Upon the First Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 1198;

6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;

7. Upon the Fourth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;

8. Upon the Fifth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

9. Upon the Sixth Cause of Action, for restitution to Plaintiff and Class members of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code § 17200, *et seq.*;

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10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) $100.00 for each initial violation for each failure to pay each employee and $200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) $50.00 for each initial violation and $100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) $100.00 for each initial violation and $250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) $250.00 for each initial violation of Labor Code § 226 and $1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) $100.00 for each initial violation and $200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

11. Prejudgment interest on all due and unpaid wages and other damages pursuant to California Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the California Constitution;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226(e), 1194 *et seq.*, 2802(c), 2699(g), and Code of Civil Procedure § 1021.5; and

13. For such other and further relief the Court may deem just and proper.

Date: March 16, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: ______________________

Tuvia Korobkin
Attorney for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Dated: March 16, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By: ______________________

Tuvia Korobkin
Attorney for Plaintiff