

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

LOUD SD INC., a California Corporation; C21 PALM DESERT, a California Corporation; (Additional Parties Attachment form is attached.)

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DEMOND WILLIAMS, an individual, on behalf of himself, and on behalf of all persons similarly situated,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

03/21/2023 at 03:53:52 PM

Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice Courthouse
330 West Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2023-00011683-CU-OE-CTL

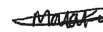
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 03/22/2023
(Fecha)

Clerk, by _____
(Secretario)


M. Manneh

_____, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

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

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



SHORT TITLE: Demond Williams v. Loud SD Inc., et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

C21 HEMET, a California corporation; C21 HEMET II, a California Corporation;
 MENDORICA LLC, a California limited liability company; and DOES 1-50, Inclusive,

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Attorneys for PLAINTIFF DEMOND WILLIAMS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEMOND WILLIAMS, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

LOUD SD INC., a California Corporation; C21
PALM DESERT, a California Corporation; C21
HEMET, a California corporation; C21
HEMET II, a California Corporation;
MENDORICA LLC, a California limited
liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00011683-CU-OE-CTL

CLASS 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, *et seq*;
- 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;

- 1 6) FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203;
4 7) FAILURE TO PROVIDE ACCURATE
5 ITEMIZED STATEMENTS IN
6 VIOLATION OF CAL. LAB. CODE § 226;
7 8) FAILURE TO REIMBURSE EMPLOYEES
8 FOR REQUIRED EXPENSES IN
9 VIOLATION OF CAL. LAB. CODE § 2802;
10 9) VIOLATION OF THE PRIVATE
11 ATTORNEYS GENERAL ACT [LABOR
12 CODE §§ 2698 ET SEQ.

13 **DEMAND FOR A JURY TRIAL**

14 PLAINTIFF DEMOND WILLIAMS (“PLAINTIFF”), an individual, on behalf of himself
15 and all other similarly situated current and former employees, allege on information and belief,
16 except for his own acts and knowledge which are based on personal knowledge, the following:

17 **PRELIMINARY ALLEGATIONS**

18 1. Defendant LOUD SD INC. (“Defendant LOUD SD”) is a California corporation
19 that at all relevant times mentioned herein conducted and continues to conduct substantial and
20 regular business throughout California.

21 2. Defendant C21 PALM DESERT (“Defendant C21 PALM DESERT”) is a
22 California limited liability company that at all relevant times mentioned herein conducted and
23 continues to conduct substantial and regular business throughout California

24 3. Defendant C21 HEMET (“Defendant C21 HEMET”) is a California limited
25 liability company that at all relevant times mentioned herein conducted and continues to conduct
26 substantial and regular business throughout California.

27 4. Defendant C21 HEMET II (“Defendant C21 HEMET II”) is a California limited
28 liability company that at all relevant times mentioned herein conducted and continues to conduct
substantial and regular business throughout California

5. Defendant MENDORICA LLC (“Defendant MENDORICA”) is a California
limited liability company that at all relevant times mentioned herein conducted and continues to
conduct substantial and regular business throughout California.

1 6. Defendant LOUD SD, Defendant C21 PALM DESERT, Defendant C21 HEMET,
2 Defendant C21 HEMET II and Defendant MENDORICA were the joint employers of
3 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed
4 work for respectively and are the therefore jointly responsible as employers for the conduct
5 alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

6 7. DEFENDANTS own and operate retail stores for the sale of cannabis products.

7 8. PLAINTIFF was employed by DEFENDANT in California from March of 2022
8 to June of 2022 as a non-exempt employee, paid on an hourly basis and entitled to the legally
9 required meal and rest periods and payment of minimum and overtime wages due for all time
10 worked.

11 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
12 defined as all persons who are or previously were employed by Defendant LOUD SD and/or
13 Defendant C21 PALM DESERT and/or Defendant C21 HEMET and/or Defendant C21 HEMET
14 II and/or Defendant MENDORICA in California and classified as non-exempt employees (the
15 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
16 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).
17 The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is
18 under five million dollars (\$5,000,000.00).

19 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
20 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
21 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to
22 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged
23 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
24 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
25 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
27 other members of the CALIFORNIA CLASS who have been economically injured by
28

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 11. The true names and capacities, whether individual, corporate, subsidiary,
4 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
5 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
6 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
7 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
8 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
9 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,
10 inclusive, are responsible in some manner for one or more of the events and happenings that
11 proximately caused the injuries and damages hereinafter alleged.

12 12. The agents, servants and/or employees of the Defendants and each of them acting
13 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
14 agent, servant and/or employee of the Defendants, and personally participated in the conduct
15 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
16 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
17 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
18 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
19 Defendants' agents, servants and/or employees.

20 13. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
21 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
22 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
24 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
25 at all relevant times.

26 14. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
27 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
28 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any

1 employee a wage less than the minimum fixed by California state law, and as such, are subject to
2 civil penalties for each underpaid employee.

3 15. DEFENDANT's uniform policies and practices alleged herein were unlawful,
4 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
5 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

6 16. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
7 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
8 other members of the CALIFORNIA CLASS who has been economically injured by
9 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
10 relief.

11 **JURISDICTION AND VENUE**

12 17. This Court has jurisdiction over this Action pursuant to California Code of Civil
13 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
14 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
15 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
18 the CALIFORNIA CLASS across California, including in this County, and committed the
19 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

20 **THE CONDUCT**

21 19. In violation of the applicable sections of the California Labor Code and the
22 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
23 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
24 failed to provide legally compliant meal and rest periods, failed to accurately compensate
25 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
26 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
27 time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS
28 for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA

1 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other
2 members of the CALIFORNIA CLASS meal rest premiums at the regular rate, failed to reimburse
3 PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and failed to issue
4 to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage
5 statements showing, among other things, all applicable hourly rates in effect during the pay
6 periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's
7 uniform policies and practices are intended to purposefully avoid the accurate and full payment
8 for all time worked as required by California law which allows DEFENDANT to illegally profit
9 and gain an unfair advantage over competitors who comply with the law. To the extent equitable
10 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CLASS
11 PERIOD should be adjusted accordingly.

12 **A. Meal Period Violations**

13 20. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. From time to time during the CLASS
17 PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work
18 without paying them for all the time they were under DEFENDANT's control. Specifically,
19 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be
20 PLAINTIFF'S off-duty meal break. Indeed, there were many days where PLAINTIFF did not
21 even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS
22 Members forfeited minimum wage and overtime compensation by regularly working without their
23 time being accurately recorded and without compensation at the applicable minimum wage and
24 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
25 CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business
26 records.

27 21. From time to time during the CLASS PERIOD, as a result of their rigorous work
28 schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other

1 CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty
2 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
3 CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for
4 more than five (5) hours during some shifts without receiving a meal break. Further,
5 DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second
6 off-duty meal period for some workdays in which these employees are required by DEFENDANT
7 to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other
8 CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed “on-
9 duty” meal period exception. When they were provided with meal periods, PLAINTIFF and other
10 CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call.
11 DEFENDANT’s failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with
12 legally required meal breaks is evidenced by DEFENDANT’s business records. PLAINTIFF and
13 other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional
14 compensation and in accordance with DEFENDANT’s strict corporate policy and practice.

15 **B. Rest Period Violations**

16 22. From time to time during the CLASS PERIOD, PLAINTIFF and other
17 CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without
18 being provided ten (10) minute rest periods as a result of their rigorous work requirements and
19 DEFENDANT’s inadequate staffing. Further, for the same reasons, these employees were denied
20 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
21 (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
22 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and
23 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
24 time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA
25 CLASS Members were, from time to time, required to remain on premises, on duty and/or on call.
26 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
27 wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT’s inadequate
28

1 staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied
2 their proper rest periods by DEFENDANT and DEFENDANT's managers.

3 **C. Wage Statement Violations**

4 23. California Labor Code Section 226 required an employer to furnish its employees
5 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
6 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
7 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
8 name of the employee and only the last four digits of the employee's social security number or an
9 employee identification number other than a social security number, (8) the name and address of
10 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee.

12 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
13 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
14 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
15 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
16 accurate wage statements which failed to show, among other things, all deductions, the total hours
17 worked and all applicable hourly rates in effect during the pay period, and the corresponding
18 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
19 meal and rest periods.

20 25. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
21 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
22 Cal. Lab. Code § 226.

23 26. As a result, DEFENDANT issued PLAINTIFF and other members of the
24 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
25 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
26 payroll error due to clerical or inadvertent mistake.

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28 ///

D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

27. During the CLASS PERIOD, from time-to-time DEFENDANT failed and continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS for all hours worked.

28. During the CLASS PERIOD, from time-to-time DEFENDANT required PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift work. This resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while off-the-clock.

29. DEFENDANT directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

30. DEFENDANT controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of PLAINTIFF and the other members of the CALIFORNIA CLASS.

31. DEFENDANT was able to track the amount of time PLAINTIFF and the other members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all wages earned and owed for all the work they performed.

32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-exempt employees, subject to the requirements of the California Labor Code.

33. DEFENDANT's policies and practices deprived PLAINTIFF and the other CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime pay.

34. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

1 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
2 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
3 benefit for the time spent working while off-the-clock. DEFENDANT's uniform policy and
4 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
5 hours worked in accordance with applicable law is evidenced by DEFENDANT's business
6 records.

7 **E. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
8 **and Redeemed Sick Pay**

9 36. From time to time during the CLASS PERIOD, DEFENDANT failed and
10 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
11 Members for their overtime and double time hours worked, meal and rest period premiums, and
12 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
13 forfeited wages due to them for working overtime without compensation at the correct overtime
14 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
15 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
16 the correct rate for all overtime and double time worked, meal and rest period premiums, and
17 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
18 records.

19 37. State law provides that employees must be paid overtime at one-and-one-half times
20 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
21 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
22 employee's performance.

23 38. The second component of PLAINTIFF's and other CALIFORNIA CLASS
24 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
25 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
26 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
27 basis with bonus compensation when the employees met the various performance goals set by
28 DEFENDANTS.

1 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay
2 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
3 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
4 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
5 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
6 rather than just all non-overtime hours worked. Management and supervisors described the
7 incentive/bonus program to potential and new employees as part of the compensation package.
8 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
9 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
10 in a systematic underpayment of overtime and double time compensation, meal and rest period
11 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
12 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
13 for non-employees shall be calculated in the same manner as the regular rate of pay for the
14 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
15 actually works overtime in that workweek. DEFENDANTS' conduct, as articulated herein, by
16 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
17 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
18 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

19 40. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
24 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
25 of the correct overtime and double time compensation, meal and rest period premiums, and sick
26 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
27 unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

F. Unreimbursed Business Expenses

41. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, 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."

42. In the course of their employment, DEFENDANT required PLAINTIFF and other CALIFORNIA CLASS Members to incur personal expenses for the use of their personal cell phones as a result of and in furtherance of their job duties. However, DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS Members for the personal expenses incurred for the use of their own personal cell phones. As a result, in the course of their employment with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred unreimbursed business expenses that included, but were not limited to, costs related to the use of their own personal cell phones, all on behalf of and for the benefit of DEFENDANT.

G. Unlawful Rounding Practices

43. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFF and CALIFORNIA CLASS Members being

1 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
2 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
3 system for PLAINTIFF and the members of the CALIFORNIA CLASS in order to avoid paying
4 these employees for all their time worked, including the applicable overtime compensation for
5 overtime worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members, from time
6 to time, forfeited compensation for their time worked by working without their time being
7 accurately recorded and without compensation at the applicable overtime rates.

8 44. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
9 rounding policy and practice resulted in PLAINTIFF and CALIFORNIA CLASS Members' time
10 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
11 policy and practice caused PLAINTIFF and CALIFORNIA CLASS Members to perform work
12 as ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an
13 off-duty meal break.

14 **H. Timekeeping Manipulation**

15 45. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
16 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
17 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
18 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
19 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
20 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
21 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
22 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
23 missed rest break.

24 46. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
25 time-to-time, forfeited time worked by working without their time being accurately recorded and
26 without compensation at the applicable pay rates.

27 47. The mutability of the timekeeping system also allowed DEFENDANTS to alter
28 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'

1 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
2 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
3 were not at all times provided an off-duty meal break. This practice is a direct result of
4 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
5 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

6 48. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
7 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
8 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
9 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
10 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
11 records.

12 **I. Violations for Untimely Payment of Wages**

13 49. Pursuant to California Labor Code section 204, PLAINTIFF and the
14 CALIFORNIA CLASS members were entitled to timely payment of wages during their
15 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
16 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
17 meal period premium wages, and rest period premium wages within permissible time period.

18 **J. Unlawful Deductions**

19 50. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
20 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
21 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
22 DEFENDANTS violated Labor Code § 221.

23 51. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
24 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
25 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
26 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
27 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
28 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF

1 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
2 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
3 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
4 without additional compensation and in accordance with DEFENDANT’S strict corporate policy
5 and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
6 comply with Cal. Lab. Code § 226. Further, DEFENDANT failed to reimburse PLAINTIFF for
7 required business expenses related to the use of his personal cell phone in violation of Cal. Lab.
8 Code § 2802. To date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and
9 double time compensation still owed to him or any penalty wages owed to him under Cal. Lab.
10 Code § 203. The amount in controversy for PLAINTIFF individually does not exceed the sum or
11 value of \$75,000.

12 **CLASS ACTION ALLEGATIONS**

13 52. PLAINTIFF bring this Class Action on behalf of himself, and a California class
14 defined as all persons who are or previously were employed by Defendant LOUD SD and/or
15 Defendant C21 PALM DESERT and/or Defendant C21 HEMET and/or Defendant C21 HEMET
16 II and/or Defendant MENDORICA in California and classified as non-exempt employees (the
17 “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing
18 of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”).

19 53. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
20 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
21 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
22 illegal meal and rest period policies, failed compensate for off-the-clock work, failure to provide
23 accurate itemized wage statements, failed to reimburse for business expenses, failure to maintain
24 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

25 54. The members of the class are so numerous that joinder of all class members is
26 impractical.

27 55. Common questions of law and fact regarding DEFENDANT’s conduct, including
28 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately

1 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
2 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
3 compliant meal and rest periods, failure to provide accurate itemized wage statements accurate,
4 failed to reimburse for business expenses, and failure to ensure they are paid at least minimum
5 wage and overtime, exist as to all members of the class and predominate over any questions
6 affecting solely any individual members of the class. Among the questions of law and fact
7 common to the class are:

- 8 a. Whether DEFENDANT maintained legally compliant meal period policies and
9 practices;
- 10 b. Whether DEFENDANT maintained legally compliant rest period policies and
11 practices;
- 12 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
13 Members accurate premium payments for missed meal and rest periods;
- 14 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
15 Members accurate overtime wages;
- 16 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
17 Members at least minimum wage for all hours worked;
- 18 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
19 CLASS Members for required business expenses;
- 20 g. Whether DEFENDANT issued legally compliant wage statements;
- 21 h. Whether DEFENDANT committed an act of unfair competition by systematically
22 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
23 CLASS for all time worked;
- 24 i. Whether DEFENDANT committed an act of unfair competition by systematically
25 failing to record all meal and rest breaks missed by PLAINTIFF and other
26 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
27 of this work, required employees to perform this work and permits or suffers to
28 permit this work;

1 j. Whether DEFENDANT committed an act of unfair competition in violation of the
2 UCL, by failing to provide the PLAINTIFF and the other members of the
3 CALIFORNIA CLASS with the legally required meal and rest periods.

4 56. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
5 a result of DEFENDANT's conduct and actions alleged herein.

6 57. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
7 PLAINTIFF have the same interests as the other members of the class.

8 58. PLAINTIFF will fairly and adequately represent and protect the interests of the
9 CALIFORNIA CLASS Members.

10 59. PLAINTIFF retained able class counsel with extensive experience in class action
11 litigation.

12 60. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
13 interest of the other CALIFORNIA CLASS Members.

14 61. There is a strong community of interest among PLAINTIFF and the members of
15 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
16 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
17 sustained.

18 62. The questions of law and fact common to the CALIFORNIA CLASS Members
19 predominate over any questions affecting only individual members, including legal and factual
20 issues relating to liability and damages.

21 63. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy because joinder of all class members is impractical. Moreover,
23 since the damages suffered by individual members of the class may be relatively small, the
24 expense and burden of individual litigation makes it practically impossible for the members of the
25 class individually to redress the wrongs done to them. Without class certification and
26 determination of declaratory, injunctive, statutory, and other legal questions within the class
27 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
28 create the risk of:

1 68. By the conduct alleged herein, DEFENDANT has engaged and continues to
2 engage in a business practice which violates California law, including but not limited to, the
3 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
4 including Sections 201, 202, 203, 204, 210, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
5 1198, and 2802 for which this Court should issue declaratory and other equitable relief pursuant
6 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held
7 to constitute unfair competition, including restitution of wages wrongfully withheld.

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

13 70. By the conduct alleged herein, DEFENDANT's practices were deceptive and
14 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
15 mandated meal and rest periods and the required amount of compensation for missed meal and
16 rest periods, and failed to pay minimum and overtime wages owed, due to a systematic business
17 practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare
18 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this
19 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,
20 including restitution of wages wrongfully withheld.

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

25 72. By the conduct alleged herein, DEFENDANT's practices were also unfair and
26 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
27 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
28 required by Cal. Lab. Code §§ 226.7 and 512.

1 73. Therefore, PLAINTIFF demands 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
4 each workday in which a second off-duty meal period was not timely provided for each ten (10)
5 hours of work.

6 74. PLAINTIFF further demands on behalf of himself and on behalf of each
7 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
8 not timely provided as required by law.

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

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

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

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

1 79. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
2 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
3 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a
4 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
5 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
6 and economic harm unless DEFENDANT is restrained from continuing to engage in these
7 unlawful and unfair business practices.

8 **SECOND CAUSE OF ACTION**

9 **Failure To Pay Minimum Wages**

10 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

11 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

12 80. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
13 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
14 Complaint.

15 81. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
16 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
17 Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay
18 minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

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

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

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

26 85. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
28 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and

1 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
2 CALIFORNIA CLASS.

3 86. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
4 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
5 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
6 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

7 87. In committing these violations of the California Labor Code, DEFENDANT
8 inaccurately calculated the correct time worked and consequently underpaid the actual time
9 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
10 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
11 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
12 laws and regulations.

13 88. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
15 minimum wage compensation for their time worked for DEFENDANT.

16 89. During the CLASS PERIOD, PLAINTIFF and the other members of the
17 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
18 failure to pay all earned wages.

19 90. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
21 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
22 suffered and will continue to suffer an economic injury in amounts which are presently unknown
23 to them, and which will be ascertained according to proof at trial.

24 91. DEFENDANT knew or should have known that PLAINTIFF and the other
25 members of the CALIFORNIA CLASS were under-compensated for their time worked.
26 DEFENDANT systematically elected, either through intentional malfeasance or gross
27 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
28 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay

1 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
2 for their time worked.

3 92. In performing the acts and practices herein alleged in violation of California labor
4 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
5 and provide them with the requisite compensation, DEFENDANT acted and continues to act
6 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
7 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
8 consequences to them, and with the despicable intent of depriving them of their property and legal
9 rights, and otherwise causing them injury in order to increase company profits at the expense of
10 these employees.

11 93. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
12 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
13 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
14 California Labor Code and/or other applicable statutes. To the extent minimum wage
15 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
16 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
17 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
18 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
19 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
20 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
21 recover statutory costs.

22 **THIRD CAUSE OF ACTION**

23 **Failure To Pay Overtime Compensation**

24 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

25 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

26 94. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
27 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
28 Complaint.

1 95. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for
2 DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial
3 Welfare Commission requirements for DEFENDANT's failure to pay these employees for all
4 overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or
5 twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

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

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

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

15 99. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
16 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
17 they worked, including overtime work.

18 100. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
19 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
20 implementing a uniform policy and practice that failed to accurately record overtime worked by
21 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
22 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
23 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
24 (12) hours in a workday, and/or forty (40) hours in any workweek.

25 101. In committing these violations of the California Labor Code, DEFENDANT
26 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
27 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
28 attempt to avoid the payment of all earned wages, and other benefits in violation of the California

1 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
2 regulations.

3 102. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
4 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
5 overtime compensation for their time worked for DEFENDANT.

6 103. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
7 from the overtime requirements of the law. None of these exemptions are applicable to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
9 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
10 agreement that would preclude the causes of action contained herein this Complaint. Rather,
11 PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on
12 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
13 California.

14 104. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
16 a failure to pay all earned wages.

17 105. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
18 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
19 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
20 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
21 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
22 failed to accurately record and pay as evidenced by DEFENDANT's business records and
23 witnessed by employees.

24 106. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
26 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
27 CLASS have suffered and will continue to suffer an economic injury in amounts which are
28 presently unknown to them, and which will be ascertained according to proof at trial.

1 107. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS were undercompensated for their time worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
5 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
6 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
7 overtime worked.

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

16 109. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
17 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
18 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
19 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
20 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
21 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
22 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
23 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,
24 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
25 entitled to seek and recover statutory costs.

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113. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA 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.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

114. PLAINTIFF, 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.

115. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

116. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

3 117. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code § 203)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 118. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 119. Cal. Lab. Code § 200 provides that:

14 As used in this article:

- 15 (d) "Wages" includes all amounts for labor performed by employees of every
16 description, whether the amount is fixed or ascertained by the standard of time,
17 task, piece, Commission basis, or other method of calculation.
18 (e) "Labor" includes labor, work, or service whether rendered or performed under
19 contract, subcontract, partnership, station plan, or other agreement if the to be
20 paid for is performed personally by the person demanding payment.

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

24 121. Cal. Lab. Code § 202 provides, in relevant part, that:

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

122. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS Members' employment contract.

123. Cal. Lab. Code § 203 provides:

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.

124. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who missed meal and rest breaks, as required by law.

125. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

SEVENTH CAUSE OF ACTION

Failure To Provide Accurate Itemized Statements

(Cal. Lab. Code § 226)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

126. PLAINTIFF, 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.

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

a. Gross wages earned,

b. (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,

- c. the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- d. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- e. net wages earned,
- f. the inclusive dates of the period for which the employee is paid,
- g. 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 of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

128. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

129. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

130. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct

1 wages for all missed meal and rest breaks and the amount of employment taxes which were not
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.
3 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover
4 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
6 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
7 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
8 of the CALIFORNIA CLASS herein).

9 **EIGHTH CAUSE OF ACTION**

10 **Failure To Reimburse Employees for Required Expenses**

11 **(Cal. Lab. Code §§ 2802)**

12 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

13 131. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
14 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
15 Complaint.

16 132. Cal. Lab. Code § 2802 provides, in relevant part, that:

17 An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 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.

20 133. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
21 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
22 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
23 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS
24 members for expenses which included, but were not limited to, the use of their personal cell
25 phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other
26 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cell
27 phones to execute their essential job duties on behalf of DEFENDANT. DEFENDANT's
28 uniform policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA

1 CLASS members for expenses resulting from the purchase of PPE for DEFENDANT within the
2 course and scope of their employment for DEFENDANT. These expenses were necessary to
3 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
4 assert any waiver of this expectation. Although these expenses were necessary expenses incurred
5 by PLAINTIFF and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify
6 and reimburse PLAINTIFF and the CALIFORNIA CLASS members for these expenses as an
7 employer is required to do under the laws and regulations of California.

8 134. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
9 by him and the CALIFORNIA CLASS members in the discharge of their job duties for
10 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the
11 statutory rate and costs under Cal. Lab. Code § 2802.

12 **NINTH CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

14 **(Cal. Lab. Code §§2698 et seq.)**

15 **(Alleged by PLAINTIFF against all Defendants)**

16 135. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
17 herein, the prior paragraphs of this Complaint.

18 136. PAGA is a mechanism by which the State of California itself can enforce state
19 labor laws through the employee suing under the PAGA who does so as the proxy or agent of the
20 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
21 fundamentally a law enforcement action designed to protect the public and not to benefit private
22 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
23 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
24 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
25 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
26 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

27 137. PLAINTIFF, and such persons that may be added from time to time who satisfy
28 the requirements and exhaust the administrative procedures under the Private Attorney General

1 Act, bring this Representative Action on behalf of the State of California with respect to himself
2 and all employees who worked for Defendant in California during the time period of January 6,
3 2022 until the present (the "AGGRIEVED EMPLOYEES").

4 138. On January 6, 2023, PLAINTIFF gave written notice by certified mail to the Labor
5 and Workforce Development Agency (the "Agency") and the employer of the specific
6 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
7 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting
8 period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant
9 to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA
10 pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
11 EMPLOYEES as herein defined.

12 139. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANTS (a) failed to pay AGGRIEVED EMPLOYEES
14 minimum wages and overtime wages, (b) failed to provide AGGRIEVED EMPLOYEES legally
15 required meal and rest breaks, (c) failed to pay AGGRIEVED EMPLOYEES at the correct
16 regular rate of pay, (d) failed to pay AGGRIEVED EMPLOYEES for all time worked, and (e)
17 failed to timely pay wages, all in violation of the applicable Labor Code sections listed in Labor
18 Code §2699.5, including but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5,
19 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1,
20 1197.14, 1198, 1198.5, 1199, 2802, 2804, and the applicable Industrial Wage Order(s), and
21 thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF hereby seeks
22 recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004
23 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
24 and the other AGGRIEVED EMPLOYEES.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
6 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
7 b. An order temporarily, preliminarily and permanently enjoining and restraining
8 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
9 c. An order requiring DEFENDANT to pay all overtime wages and all sums
10 unlawfully withheld from compensation due to PLAINTIFF and the other members
11 of the CALIFORNIA CLASS; and
12 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
13 for restitution of the sums incidental to DEFENDANT's violations due to
14 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

15 2. On behalf of the CALIFORNIA CLASS:

- 16 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
17 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant
18 to Cal. Code of Civ. Proc. § 382;
19 b. Compensatory damages, according to proof at trial, including compensatory
20 damages for overtime compensation due to PLAINTIFF and the other members of
21 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
22 thereon at the statutory rate;
23 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
24 the applicable IWC Wage Order;
25 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
26 which a violation occurs and one hundred dollars (\$100) per each member of the
27 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
28 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for

violation of Cal. Lab. Code § 226

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

f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA CLASS incurred in the course of their job duties, plus interest, and costs of suit.

3. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES: Recovery of civil penalties as prescribe by the Labor Code Private Attorneys General Act of 2004;

4. On all claims:

a. An award of interest, including prejudgment interest at the legal rate;

b. Such other and further relief as the Court deems just and equitable; and

c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.

DATED: March 21, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: March 21, 2023

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for PLAINTIFF