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and on behalf of all others similarly situated

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
CIVIL COMPLEX CENTER

NICHOLAS SIANO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

PUFFY DELIVERY, INC., a California
corporation; PUFFY INC., a California
corporation; MONEX PLACE
WELLNESS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendant(s).

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
07/15/2019 at 04:22:31 PM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

CASE NO.: 30-2019-01083260-CU-OE-CXC

CLASS ACTION COMPLAINT

- 1. Failure to Pay Wages (Lab. Code §§ 510, 1194, 1197, 1198);**
- 2. Illegal Deductions from Wages (Lab. Code § 221);**
- 3. Failure to Provide Meal Periods or Compensation in Lieu thereof (Lab. Code §§ 226.7, 512);**
- 4. Failure to Permit Rest Periods or Provide Compensation in Lieu thereof (Lab. Code § 226.7);**
- 5. Knowing and Intentional Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);**
- 6. Failure to Pay Wages at Termination (Lab. Code §§ 201-203);**
- 7. Failure to Reimburse Business Expenses (Lab. Code §§ 2800 and 2802); and**
- 8. Violations of the Unfair Competition Law (Bus. & Prof. Code §§ 17200 *et seq.*).**

JURY TRIAL DEMANDED

Assigned: Judge William Claster

Dept: CX104

1 Plaintiff NICHOLAS SIANO (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Class Action Complaint against Defendants PUFFY DELIVERY, INC.,
3 a California corporation; PUFFY INC., a California corporation; MONEX PLACE WELLNESS,
4 INC., a California corporation (“Puffy”); and DOES 1 through 50, inclusive (collectively referred
5 to herein as “Defendants”) and alleges as follows:

6 **INTRODUCTION**

7 1. This proposed class action, pursuant to California Code of Civil Procedure section
8 382, is brought by Plaintiff on behalf of all current and former non-exempt employees of
9 Defendants in California.

10 2. This proposed class action seeks, *inter alia*, unpaid wages (including minimum,
11 regular and overtime wages), and interest thereon; compensation for missed meal periods and rest
12 breaks; waiting time penalties; itemized wage statement penalties; business expense
13 reimbursements; and reasonable attorneys’ fees and costs. Plaintiff’s action is brought under, *inter*
14 *alia*, the Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the
15 California Code of Regulations, Business & Professions Code sections 17200 *et seq.*, Civil Code
16 section 3289, and Labor Code sections 201-204, 218.5, 218.6, 221, 226, 226.7, 510, 512, 1194,
17 1197, 1198, 2800 and 2802.

18 3. Under the California Unfair Competition Law, Business and Professions Code
19 (“Cal. Bus. & Prof. Code”) sections 17200 *et seq.* (“UCL”), and pursuant to the class action
20 procedures provided for in this statute, Plaintiff, on behalf of himself and the proposed Class, seeks
21 restitution of all benefits Defendants have received from their employees due to their unlawful
22 business practices, including but not limited to, failure to provide minimum wage, regular and
23 overtime compensation due for all hours worked, failure to maintain proper records of hours
24 worked, and failure to provide compliant meal periods and rest breaks to their employees.

25 **JURISDICTION AND VENUE**

26 4. This Court has jurisdiction over all causes of action asserted herein pursuant to the
27 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
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1 in all cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount
2 exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over certain
3 causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and 17204, which provide for
4 exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

5 5. This Court has jurisdiction over Defendants because each Defendant is a citizen of
6 California, a corporation or association organized under the laws of the State of California, an
7 association authorized to do business in California and registered with the California Secretary of
8 State, or does sufficient business in California, has sufficient minimum contacts with California or
9 otherwise intentionally avails itself of the laws and markets of California, through the promotion,
10 sale, marketing and distribution of its products in California, to render the exercise of jurisdiction
11 by the California courts permissible.

12 6. Venue in Orange County is proper under Cal. Bus. & Prof. Code section 17203 and
13 California Code of Civil Procedure section 395.5 because a substantial part of Defendants' unlawful
14 conduct occurred in this County, Defendants had and have ongoing projects in this County,
15 Defendants conduct substantial business in this County, and Defendants' liability arose in this
16 County. The relief requested is within the jurisdiction of this Court.

17 **PARTIES**

18 7. Plaintiff Nicholas Siano is an individual who resides in Orange County, California
19 and is currently employed by Defendants in California as a non-exempt employee.

20 8. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Puffy
21 was and is a California corporation with its principal executive office located in Orange County.
22 Puffy provides cannabis delivery services and maintains a principal business office in the State of
23 California. Puffy regularly conducts business within the State of California and derives substantial
24 revenues from services performed in California. Puffy is, and at all relevant times was, an employer
25 subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges
26 that the practices and policies of Puffy that are complained of by way of this Class Action
27 Complaint were implemented during the relevant time period.

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9. Defendants continue to employ non-exempt employees within California.

10. Plaintiff is unaware of the true names and capacities of those Defendants identified as DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent, sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and each related entity, and was acting with the knowledge and authorization of each of the other Defendants. Plaintiff will seek to amend this complaint to allege the true names and capacities of each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed, believes and thereon alleges that each of the Defendants sued as DOES 1 through 50 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful acts and omissions and some portion of the damages alleged herein.

11. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of them, at all times material hereto, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants. Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein alleged.

12. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;

1 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
2 inclusive, or some other individual or entity which he or he owns or controls, with the intent to
3 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
4 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
5 between and among Defendants.

6 13. At all relevant times herein, Defendants were agents of each other and acting within
7 the course and scope of their agency.

8 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

9 14. Plaintiff brings this action individually and as a class action on behalf of a proposed
10 Class defined as follows:

11 All current and former non-exempt employees employed by
12 Defendants in the State of California within four years prior to the
13 commencement of this action to the date of class certification.

14 15. The Class is also comprised of the following Subclass:

15 (a) Waiting Time Sub-Class: Those members of the Class who separated from
16 their employment with Defendants within three years prior to the filing of this Complaint to the
17 date of class certification.

18 16. Plaintiff reserves the right pursuant to California Rules of Court Rule 3.764 and
19 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
20 greater specificity and/or further division into subclasses or limitation to particular issues.

21 17. This action is brought, and may properly be maintained, as a class action pursuant
22 to California Code of Civil Procedure section 382 because there is a well-defined community of
23 interest in the litigation, and the proposed class is easily ascertainable. This action presents
24 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
25 predominance, and superiority requirements of this provision.

26 18. Plaintiff is currently employed by Defendants as a non-exempt employee.

27 19. Through this action, Plaintiff alleges Defendants have consistently maintained and
28 enforced against Plaintiff and Class Members unlawful employment practices and policies which

1 violate the Labor Code and IWC Wage Orders.

2 20. Plaintiff is informed, believes, and thereon alleges that during the relevant time
3 period, Defendants failed to pay Plaintiff and Class Members all minimum, regular and overtime
4 wages for all hours worked by rounding Plaintiff and Class Members' time worked to Defendants'
5 advantage, and paying only straight time wages for all hours worked in excess of eight in a workday
6 and/or 40 in a workweek, in violation of the Labor Code and IWC Wage Orders. Defendants also
7 made illegal deductions from Plaintiff and Class Members' wages by rounding amounts paid in
8 cash by Defendants' customers to the nearest dollar, and collecting the difference from Defendants'
9 employees, in violation of the Labor Code and IWC Wage Orders.

10 21. Plaintiff is informed, believes, and thereon alleges that during the relevant time
11 period, Defendants deprived Plaintiff and Class Members of the opportunity to take all of their
12 statutorily entitled meal periods by requiring them to work in excess of five and/or ten hours a day
13 without being afforded a timely, off-duty 30-minute meal period and failing to adopt and implement
14 a meal period policy, and failed to provide one additional hour of pay at their regular rate of pay
15 for each day that Plaintiff and Class Members missed a meal period, in violation of the Labor Code
16 and IWC Wage Orders.

17 22. Plaintiff is informed, believes, and thereon alleges that during the relevant time
18 period, Defendants failed to permit Plaintiff and Class Members to take all of their statutorily
19 entitled rest periods by requiring them to work over a four-hour period (or major fraction thereof)
20 without taking off-duty, ten-minute rest periods during the appropriate time intervals and failing to
21 adopt and implement a rest break policy, and failed to provide one additional hour of pay at their
22 regular rate of pay for each day that Plaintiff and Class Members missed a rest period, in violation
23 of the Labor Code and IWC Wage Orders.

24 23. Plaintiff is informed, believes, and thereon alleges that during the relevant time
25 period, Defendants willfully failed to pay all wages due to the Waiting Time Subclass upon
26 separation of employment. Plaintiff and Waiting Time Subclass Members were not paid all meal
27 period premiums, rest period premiums, and/or wages (including minimum, regular and overtime
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1 wages) within the required time period, in violation of the Labor Code and IWC Wage Orders.

2 24. Plaintiff is informed, believes, and thereon alleges that during the relevant time
3 period, Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
4 statements. Plaintiff and Class Members either did not receive wage statements, or received wage
5 statements which did not accurately reflect the gross and net wages earned, total hours worked, and
6 all applicable rates of pay and the corresponding number of hours worked at each pay rate, in
7 violation of the Labor Code and IWC Wage Orders.

8 25. Plaintiff is informed, believes, and thereon alleges that during the relevant time
9 period, Defendants failed to reimburse Plaintiff and Class Members for necessary business
10 expenses incurred in the performance of their duties. Plaintiff and Class Members were required to
11 drive their personal vehicles to make deliveries, but were not reimbursed for mileage and wear and
12 tear on their vehicles, and were required to use their personal cellular phones to communicate with
13 Defendants' supervisors, employees and customers, and clock in and out for their shifts using a
14 cellular phone app, but were not reimbursed for a reasonable percentage of their cellular phone
15 bills, in violation of the Labor Code and IWC Wage Orders.

16 26. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
17 described throughout this Complaint were willful.

18 27. Plaintiff, on behalf of himself and all other Class Members, brings this action
19 pursuant to, *inter alia*, Labor Code sections 201-203, 221, 226, 226.7, 510, 512, 1194, 1197, 1198,
20 2800 and 2802, and the applicable provisions of the IWC Wage Orders, seeking unpaid minimum,
21 regular and overtime wages, compensation for missed meal periods and rest breaks, penalties,
22 reimbursements, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

23 28. Plaintiff, on behalf of himself and all Class Members, pursuant to Cal. Bus. & Prof.
24 Code sections 17200 *et seq.*, also seeks injunctive relief and restitution for the unfair, unlawful, or
25 fraudulent practices alleged in this Complaint.

26 **NUMEROSITY**

27 29. The Class is so numerous that joinder of all of its members is impracticable. While
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1 the exact number and identities of Class Members are unknown to Plaintiff at this time and can
2 only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon
3 alleges that the Class consists of more than 50 persons.

4 30. A class action is the only available method for the fair and efficient adjudication of
5 this controversy. The members of the Class are so numerous that joinder of all members is
6 impractical, if not impossible. The identity of Class Members can be ascertained by analysis of
7 Defendants' employee and payroll records.

8 **COMMONALITY**

9 31. Common questions of fact and law exist as to all members of the Class that
10 predominate over any questions affecting only individual Class Members. These common legal
11 and factual questions include, but are not limited to, the following:

12 (a) Whether Defendants rounded Plaintiff and Class Members' time worked to
13 Defendants' advantage;

14 (b) Whether Defendants failed to pay Plaintiff and Class Members all minimum,
15 regular and overtime wages for all hours worked by Plaintiff and Class Members;

16 (c) Whether Defendants made illegal deductions from Plaintiff and Class
17 Members' wages;

18 (d) Whether Defendants failed to provide timely, uninterrupted, off-duty meal
19 periods to Plaintiff and Class Members, or required Plaintiff and Class Members to work through
20 their meal periods without compensation in lieu thereof;

21 (e) Whether Defendants failed to permit timely, uninterrupted, off-duty rest
22 breaks for every four hours or major fraction thereof worked by Plaintiff and Class Members, or
23 required Plaintiff and Class Members to work through their rest breaks without compensation in
24 lieu thereof;

25 (f) Whether Defendants failed to timely pay Waiting Time Subclass Members
26 all wages due either immediately upon termination or within 72 hours after resignation;

27 (g) Whether Defendants' conduct was willful;

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1 (h) Whether Defendants systematically failed to maintain accurate records of all
2 hours worked by Plaintiff and Class Members;

3 (i) Whether Defendants failed to issue accurate itemized wage statements to
4 Plaintiff and Class Members;

5 (j) Whether Defendants required Plaintiff and Class Members to use their
6 personal cellular phones to communicate with Defendants' supervisors, employees and customers,
7 and to clock in and out for their shifts, and failed to reimburse them for a reasonable portion of their
8 cellular phone bills;

9 (k) Whether Defendants required Plaintiff and Class Members to drive their
10 personal vehicles for work-related purposes, and failed to reimburse them for mileage and wear
11 and tear on their vehicles;

12 (l) Whether Defendants engaged in unfair business practices in violation of Cal.
13 Bus. & Prof. Code sections 17200 *et seq.*; and

14 (m) Additional common questions of law and fact that may develop as the
15 litigation progresses.

16 **TYPICALITY**

17 32. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
18 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising
19 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
20 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the
21 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
22 conduct apply equally to Plaintiff and the Class Members.

23 **ADEQUACY OF REPRESENTATION**

24 33. Plaintiff is an adequate representative of the Class, in that his claims (and defenses,
25 if any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class
26 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has
27 the same interests in the litigation of this case as the Class Members; and is committed to vigorous
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1 prosecution of this case and has retained competent counsel experienced in class action and wage
2 and hour litigation of this nature.

3 **PREDOMINANCE**

4 34. Defendants have engaged in a common course of wage and hour abuse toward
5 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
6 and Class Members predominate over any individual issues. Adjudication of these common issues
7 in a single action has important and desirable advantages of judicial economy.

8 **SUPERIORITY OF CLASS ACTION**

9 35. A class action is superior to other available methods for the fair and efficient
10 adjudication of this controversy because individual litigation of the claims of all Class Members is
11 impracticable. Even if every Class Member could afford individual litigation, the court system
12 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
13 cases would proceed. Individualized litigation would also present the potential for varying,
14 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
15 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
16 individual actions by Class Members may establish inconsistent standards of conduct for
17 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
18 the issues presented herein, presents fewer management difficulties, conserves the resources of the
19 parties and the court system, and protects the rights of each Class Member.

20 36. Defendants have acted or refused to act in respects generally applicable to the Class,
21 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
22 herein.

23 **FIRST CAUSE OF ACTION**

24 **(FAILURE TO PAY WAGES)**

25 **(Labor Code sections 510, 1194, 1197 and 1198)**

26 **(Against All Defendants)**

27 37. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
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1 though fully set forth herein.

2 38. At all times relevant, Labor Code section 510, and applicable sections of the
3 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
4 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
5 section 510 and applicable provisions of the California Code of Regulations and Wage Orders state
6 that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek must
7 be paid at one and one-half times the employee's regular rate of pay. Any work performed in excess
8 of 12 hours in a workday must be compensated at the rate of no less than twice the regular rate of
9 pay for an employee.

10 39. Labor Code section 1197 provides that the payment of a lower wage than the
11 minimum wage fixed by the commission or by any applicable state or local law is unlawful.

12 40. Labor Code section 1194 provides that any employee receiving less than the legal
13 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
14 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
15 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

16 41. Plaintiff is informed, believes, and thereon alleges that during the relevant time
17 period, Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including
18 minimum and overtime wages), due to Defendants' practice of rounding Plaintiff and Class
19 Members' time worked to Defendants' advantage.

20 42. Plaintiff is informed, believes, and thereon alleges that during the relevant time
21 period, Plaintiff and Class Members were frequently required to work over eight hours per workday
22 and/or 40 hours in a workweek. Defendants failed to compensate Plaintiff and Class Members at
23 one and one-half times their regular rate of pay for all overtime hours worked.

24 43. As a direct and proximate result of Defendants' unlawful conduct, as set forth
25 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
26 of earnings from minimum wage and overtime compensation due, in an amount to be established
27 at trial, plus prejudgment interest pursuant to statute.

1 the employer. (Lab. Code § 226.7(a)-(c).)

2 52. Section 11 of the applicable IWC Wage Order provides as follows:

- 3 A. No employer shall employ any person for a work period of
4 more than five (5) hours without a meal period of not less than
5 30 minutes . . .
- 6 B. An employer may not employ an employee for a work period
7 of more than ten (10) hours per day without providing the
8 employee with a second meal period of not less than 30
9 minutes . . .
- 10 C. If an employer fails to provide an employee a meal period in
11 accordance with the applicable provisions of this Order, the
12 employer shall pay the employee one (1) hour of pay at the
13 employee's regular rate of compensation for each work day
14 that the meal period is not provided.

15 53. Throughout the relevant time period, Plaintiff and Class Members regularly worked
16 over five hours in a workday and did not receive a timely, off-duty meal period. Instead,
17 Defendants failed to adopt and implement a meal period policy, and Plaintiff and Class Members
18 were frequently required and/or pressured by Defendants to shorten or miss their meal periods, or
19 to take a meal period after the first five hours of work.

20 54. In addition, Plaintiff and Class Members regularly worked more than 10 hours in a
21 workday and were not authorized to take a second off-duty 30-minute meal period.

22 55. At all times relevant herein, Labor Code section 226.7, and applicable provisions of
23 the California Code of Regulations and Wage Orders have applied and continue to apply to Plaintiff
24 and Class Members' employment with Defendants.

25 56. Throughout the relevant time period, Defendants failed to permit Plaintiff and Class
26 Members to take timely, uninterrupted, off-duty meal periods as required by law, and failed to pay
27 Plaintiff and Class Members meal period premiums for each workday that a meal period was not
28 provided.

57. Plaintiff is informed, believes, and thereon alleges that Class Members did not
voluntarily waive their meal periods.

58. As a direct and proximate result of Defendants' unlawful conduct, as set forth
herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss

1 of earnings, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

2 59. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
3 as described herein and below.

4 **FOURTH CAUSE OF ACTION**
5 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**
6 **THEREOF)**

7 **(Labor Code section 226.7)**

8 **(Against All Defendants)**

9 60. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
10 though fully set forth herein.

11 61. Labor Code section 226.7 states “No employer shall require any employee to work
12 during any meal or rest period mandated by an applicable order of the Industrial Welfare
13 Commission.” (Lab. Code § 226.7(a).)

14 62. Section 12 of the applicable Wage Order provides in relevant part that:

15 (A) Every employer shall authorize and permit all employees to
16 take rest periods, which insofar as practicable shall be in the middle
17 of each work period. The authorized rest period time shall be based
18 on the total hours worked daily at the rate of ten (10) minutes net rest
19 time per four (4) hours or major fraction thereof. However, a rest
20 period need not be authorized for employees whose total daily work
21 time is less than three and one-half (3 1/2) hours. Authorized rest
22 period time shall be counted as hours worked for which there shall be
23 no deduction from wages.

24 (B) If an employer fails to provide an employee a rest period in
25 accordance with the applicable provisions of this order, the employer
26 shall pay the employee one (1) hour of pay at the employee’s regular
27 rate of compensation for each work day that the rest period is not
28 provided.

29 63. Plaintiff is informed, believes, and thereon alleges that Defendants required Plaintiff
30 and Class Members to regularly work shifts in excess of three and one-half hours without being
31 permitted the opportunity to take a paid, uninterrupted, off-duty rest period of at least ten (10)
32 minutes for every four hours worked or major fraction thereof, and failed to pay Plaintiff and Class

1 Members rest period premiums for each workday that a rest period was not permitted.

2 64. Plaintiff is informed, believes, and thereon alleges that Plaintiff and Class Members
3 did not voluntarily waive rest periods.

4 65. As a direct and proximate result of Defendants' unlawful conduct, as set forth
5 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
6 of earnings, in an amount to be established at trial, plus prejudgment interest pursuant to statute.

7 66. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
8 as described herein and below.

9 **FIFTH CAUSE OF ACTION**

10 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

11 **(Labor Code section 226)**

12 **(Against All Defendants)**

13 67. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
14 though fully set forth herein.

15 68. Labor Code section 226(a) provides that, at the time of each payment of wages, an
16 employer shall provide each employee with a wage statement itemizing, among other things, the
17 gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect and
18 the corresponding number of hours worked at each rate by the employee during the pay period.

19 69. Labor Code section 226(e) provides that an employee suffering injury as a result of
20 a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is
21 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
22 period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
23 period (up to a maximum of \$4,000), in addition to attorneys' fees and costs. An employee is
24 deemed to suffer injury if the employer fails to provide a wage statement.

25 70. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
26 showing, among other things, when the employee begins and ends each work period, meal periods
27 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
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1 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
2 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
3 knowingly and intentionally failed to comply with the IWC Wage Orders.

4 71. Throughout the relevant time period, Defendants either did not provide any wage
5 statements, or provided wage statements that did not accurately reflect the total number of hours
6 worked by Plaintiff and Class Members at each corresponding pay rate, and the gross and net wages
7 earned, making it difficult for Plaintiff and Class Members to determine whether they were paid
8 correctly for all hours worked, which deductions were made, and the extent of any underpayment.

9 72. Defendants knowingly and intentionally failed to provide accurate, itemized wage
10 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
11 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class are
12 therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

13 73. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
14 as described herein and below.

15 **SIXTH CAUSE OF ACTION**
16 **(WAITING TIME PENALTIES)**
17 **(Labor Code sections 201-203)**
18 **(Against All Defendants)**

19 74. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
20 though fully set forth herein.

21 75. Labor Code sections 201 and 202 require Defendants to pay their employees all
22 wages due at the time the employee is discharged, or within 72 hours of quitting. Section 203 of
23 the Labor Code provides that if an employer willfully fails to timely pay such wages, the employer
24 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
25 full or an action is commenced. The penalty cannot exceed 30 days of wages.

26 76. The Waiting Time Subclass is entitled to compensation for unpaid wages earned,
27 including, but not limited to, minimum, regular and overtime wages and compensation for missed
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1 meal periods and rest periods, but to date have not received such compensation, therefore entitling
2 them to penalties pursuant to Labor Code section 203.

3 77. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
4 Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty for Defendants'
5 failure to timely pay wages upon separation of employment.

6 78. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
7 as described herein and below.

8 **SEVENTH CAUSE OF ACTION**
9 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**
10 **(Labor Code sections 2800 and 2802)**
11 **(Against All Defendants)**

12 79. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
13 though fully set forth herein.

14 80. Labor Code § 2802(a) provides that an employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence
16 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
17 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
18 be unlawful.

19 81. During the relevant time period, Defendants required Plaintiff and Class Members
20 drive their personal vehicles to make deliveries, but failed to reimburse them for mileage and wear
21 and tear on their vehicles, and required Plaintiff and Class Members to use their personal cellular
22 phones to communicate with Defendants' supervisors, employees and customers, and clock in and
23 out for their shifts using a cellular phone app, but failed to reimburse them for a reasonable
24 percentage of their cellular phone bills.

25 82. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and
26 2802, and the applicable Wage Order by failing to reimburse Plaintiff and Class Members for all
27 of their out-of-pocket business expenses incurred in the discharge of their job duties.

1 (vi) Violations of Labor Code sections 2800 and 2802 for failure to reimburse
2 business expenses; and

3 (vii) Violations of the IWC Wage Orders for the same conduct above.

4 88. Defendants' course of conduct, acts, and practices in violation of California law
5 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
6 conduct described herein violates the policy or spirit of such laws or otherwise significantly
7 threatens or harms competition. The harm to Plaintiff and Class Members in being wrongfully
8 denied earned wages and reimbursements outweighs the utility, if any, of Defendants' policies or
9 practices and, therefore, Defendants' actions described herein constitute an unfair business
10 practices or acts within the meaning of the UCL.

11 89. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
12 forth in the UCL. Specifically, Defendants conduct business activities while failing to comply with
13 California wage and hour laws and the California common law and statutory law as described
14 herein.

15 90. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
16 statutory relief to stop the misconduct of Defendants, as complained herein, and to compel
17 restitution and disgorgement of all profits obtained by Defendants through the unfair and unlawful
18 business practices described herein.

19 91. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
20 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
21 competitive advantage for Defendants in the cannabis delivery industry, thereby constituting an
22 unfair business practice, as set forth in the UCL.

23 92. Defendants' unlawful and unfair business practices as herein alleged has damaged
24 Plaintiff and Class Members by wrongfully denying them earned minimum, regular and overtime
25 wages, meal periods, rest breaks, premium compensation, and business expense reimbursements
26 and therefore was substantially injurious to Plaintiff and the Class.

27 93. Under the circumstances alleged, it would be inequitable and result in a miscarriage
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1 of justice for Defendants to continue to retain the property of Plaintiff and Class Members, entitling
2 them to restitution of the unfair benefits obtained and disgorgement of Defendants' ill-gotten gains.

3 94. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate result
4 of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all
5 employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful
6 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
7 avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full restitution
8 of all wages and reimbursements which have been unlawfully withheld from Plaintiff and the Class
9 Members as a result of the business acts and practices described herein, and an order enjoining
10 Defendants to cease and desist from engaging in the practices described herein.

11 95. Plaintiff, on behalf of himself and the Class Members, seeks restitution in the
12 amount of the respective unpaid wages (including minimum, regular and overtime wages) earned
13 and due for all hours worked by Plaintiff and Class Members.

14 96. Plaintiff and Class Members also request any other such legal and equitable relief
15 from Defendants' unlawful and willful conduct as the Court deems just and proper, including an
16 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
17 practices alleged in this Complaint.

18 97. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class
19 Members are entitled to and seek restitution and disgorgement, and other appropriate relief
20 available under Cal. Bus. & Prof. Code sections 17200 *et seq.* Plaintiff, on behalf of himself and
21 the Class, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants
22 as provided by Code of Civil Procedure section 1021.5.

23 98. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
24 as described herein and below.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff, on behalf of himself and the proposed Class, prays for judgment
27 and the following specific relief against Defendants as follows:


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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a jury trial on all claims so triable.

Dated: July 15, 2019

DAILY ALJIAN LLP

By: 
Justin E. D. Daily
Shelly D. Song
Attorneys for Plaintiff Nicholas Siano,
individually and on behalf of all others
similarly situated

DAILY ALJIAN LLP
Newport Beach, California