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1 **DAILY ALJIAN LLP**

Justin E. D. Daily (State Bar No. 209772)

2 *jd@dallp.com*

Reed Aljian (State Bar No. 211010)

3 *ra@dallp.com*

Shelly D. Song (State Bar No. 312036)

4 *ss@dallp.com*

100 Bayview Circle, Suite 5500

5 Newport Beach, CA 92660

Telephone: 949.861.2524

6 Facsimile: 949.269.6364

7 Attorneys for Plaintiffs Nicholas Siano and Jayms Henson,
8 individually and on behalf of all others similarly situated

9 *Additional Counsel Listed on Following Page*

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

11 **CIVIL COMPLEX CENTER**

12 NICHOLAS SIANO and JAYMS
13 HENSON, individually and on behalf of
all others similarly situated,

14 Plaintiffs,

15 v.

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

20 Defendant(s).

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

**SECOND AMENDED CLASS AND
REPRESENTATIVE 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);**
8. **Violations of the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.); and**
9. **Enforcement of the Private Attorneys General Act of 2004 (Lab. Code § 2698 et seq.).**

JURY TRIAL DEMANDED

cx-104

FERRARO EMPLOYMENT LAW, INC.

Nicholas J. Ferraro (State Bar No. 306528)

nick@ferraroemploymentlaw.com

2305 Historic Decatur Road, Suite 100

San Diego, CA 92106

Telephone: 619.693.7727

Facsimile: 619.930.5401

Attorneys for Plaintiffs Nicholas Siano and Jayms Henson,
individually and on behalf of all others similarly situated

DAILY ALJIAN LLP
Newport Beach, California

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1 Plaintiffs NICHOLAS SIANO and JAYMS HENSON (“Plaintiffs”), on behalf of
2 themselves and all others similarly situated, hereby bring this Second Amended Class and
3 Representative Action Complaint against Defendants PUFFY DELIVERY, INC., a California
4 corporation; PUFFY INC., a California corporation; MONEX PLACE WELLNESS, INC., a
5 California corporation; and DOES 1 through 50, inclusive (all defendants, including Does,
6 collectively referred to hereinafter as “Defendants”) and allege as follows:

7 **INTRODUCTION**

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

11 2. This proposed class action seeks, *inter alia*, unpaid wages (including minimum,
12 regular and overtime wages), and interest thereon; compensation for missed meal periods and rest
13 breaks; waiting time penalties; itemized wage statement penalties; business expense
14 reimbursements; and reasonable attorneys’ fees and costs. Plaintiffs’ action is brought under,
15 *inter alia*, the Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of
16 the California Code of Regulations, Business & Professions Code sections 17200 *et seq.*, Civil
17 Code section 3289, and Labor Code sections 201-204, 218.5, 218.6, 221, 226, 226.7, 510, 512,
18 1194, 1197, 1198, 2800 and 2802.

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

26 4. Plaintiff Nicholas Siano submitted written notice of the claims in this Complaint to
27 Defendants and to the California Labor and Workforce Development Agency (“LWDA”) on July
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DAILY ALJIAN LLP
Newport Beach, California

1 15, 2019, and Plaintiff Jayms Henson submitted written notice on July 22, 2019. As the LWDA
2 did not respond within 65 days of either notice, Plaintiffs assert in this amended Complaint claims
3 for civil penalties, wages and all other recoverable amounts as representative “aggrieved
4 employees” for and on behalf of all other aggrieved employees and the State of California in a
5 representative capacity under the California Private Attorneys General Act of 2004 (“PAGA”).¹

6 **JURISDICTION AND VENUE**

7 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
8 California Constitution, Article VI, section 10, which grants the Superior Court original
9 jurisdiction in all cases except those given to other trial courts. Plaintiffs seek damages in this
10 case in an amount exceeding the jurisdictional minimum of this Court. The Court also has
11 jurisdiction over certain causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and
12 17204, which provide for exclusive jurisdiction for enforcement of this statute in any court of
13 competent jurisdiction.

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

21 7. Venue in Orange County is proper under Cal. Bus. & Prof. Code section 17203
22 and California Code of Civil Procedure section 395.5 because a substantial part of Defendants’
23 unlawful conduct occurred in this County, Defendants had and have ongoing projects in this
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25 ¹ Plaintiffs amend the original complaint without leave of court pursuant to Labor Code §
26 2699.3(a)(2)(C), which states “[n]otwithstanding any other provision of law [including C.C.P. § 472], a
27 plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this
28 part [Labor Code § 2698 et seq.] at any time within 60 days of the time periods specified in this part [i.e.,
after the 65-day notice period has expired].”

1 County, Defendants conduct substantial business in this County, and Defendants' liability arose
2 in this County. The relief requested is within the jurisdiction of this Court.

3 **PARTIES**

4 8. Plaintiff Nicholas Siano is an individual who resides in Orange County, California
5 and was formerly employed by Defendants in California as a non-exempt employee.

6 9. Plaintiff Jayms Henson is an individual who resides in San Diego County,
7 California and was formerly employed by Defendants in California as a non-exempt employee.

8 10. Plaintiffs are informed and believe that defendant PUFFY DELIVERY, INC. is a
9 California corporation that employed Plaintiffs and presently employs other putative class
10 members throughout California, including Orange County.

11 11. Plaintiffs are informed and believe that defendant PUFFY INC. is a California
12 corporation that employed Plaintiffs and presently employs other putative class members
13 throughout California, including Orange County. Plaintiffs are informed and believe that
14 defendants PUFFY DELIVERY, INC. and PUFFY, INC. operate as a single employer enterprise
15 with respect to the employment of Plaintiffs and other putative class members.

16 12. Plaintiffs are informed and believe that defendants PUFFY DELIVERY, INC. and
17 PUFFY INC. commonly employed and employ putative class members in conjunction with
18 defendant MONEX PLACE WELLNESS, INC. and pursuant to MONEX PLACE WELLNESS,
19 INC.'s cannabis license issued by the California Bureau of Cannabis Control.

20 13. Plaintiffs are informed and believe that Defendants share common management,
21 ownership and common employment policies and practices (written and unwritten) with respect
22 to the employment of Plaintiffs and other putative class members. Plaintiffs specifically allege
23 that Defendants are liable as employers, joint employers, alter egos and as a common integrated
24 employer enterprise, as Defendants are commonly managed and operated.

25 14. Plaintiffs are informed and believe that Defendants are, in whole or in part,
26 commonly owned by individuals Michael Ng and Patrick Martin.

27 15. Defendants provide cannabis delivery services and maintain a principal business
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1 office in the State of California, including Orange County. Defendants regularly conduct
2 business within the State of California and derive substantial revenues from services performed in
3 California. Defendants are, and at all relevant times were, employers subject to California state
4 wage and hour laws. Plaintiffs are informed, believe, and thereon allege that the practices and
5 policies of Defendants that are complained of by way of this Second Amended Class and
6 Representative Action Complaint were implemented during the relevant statutory limitations
7 periods for each claim set forth herein.

8 16. Defendants continue to employ non-exempt employees within California.

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

19 18. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 50
20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at
21 all relevant times.

22 19. Plaintiffs are informed and believe, and thereon allege, that each Defendant acted
23 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
24 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
25 are legally attributable to the other Defendants. Furthermore, each Defendant in all respects acted
26 as the employer and/or joint employer of Plaintiffs and the Class Members.

1 20. Plaintiffs are informed and believe, and thereon allege, that each Defendant
2 directly or indirectly, through agents or other persons or entities, employed or otherwise exercised
3 control over the wages, hours, and working conditions of Plaintiffs. Plaintiffs further allege that
4 each Defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint
5 employer, joint venturer, co-conspirator, partner, within a common enterprise, or other liable
6 affiliate of all other Defendants, such that the acts and omissions of each Defendant are legally
7 attributable to all others.

8 21. Plaintiffs are informed, believes and thereon alleges, that there exists a unity of
9 interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any
10 individuality and separateness between the individual and the corporation does not exist, as
11 Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at
12 all times mentioned herein were mere shells, instrumentalities and conduits through which DOES
13 1 through 50, inclusive, carried out their business in the business name, exercising complete
14 control and dominance over such business; (2) that Defendants were conceived, intended and
15 used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of
16 Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and
17 responsibility required by law; and (3) that all of the assets of the Defendants have been
18 transferred to DOES 1 through 50, inclusive, or some other individual or entity which he or he
19 owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving
20 Defendants with no assets. Further, Plaintiffs are informed, believe and thereon allege, that there
21 exists a principal-agency relationship between and among Defendants.

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

24 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

25 23. Plaintiffs bring this action individually and as a class action on behalf of a
26 proposed Class defined as follows:

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

3 24. The Class is also comprised of the following Subclass:

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

7 25. Plaintiffs reserve the right pursuant to California Rules of Court Rule 3.764 and
8 3.765, to amend or modify the respective definitions of the Class and/or Subclasses to provide
9 greater specificity and/or further division into subclasses or limitation to particular issues.

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

15 27. Plaintiffs are former non-exempt employees of Defendants.

16 28. Through this action, Plaintiffs allege Defendants have consistently maintained and
17 enforced against Plaintiffs and Class Members unlawful employment practices and policies which
18 violate the Labor Code and IWC Wage Orders.

19 29. Plaintiffs are informed, believe, and thereon allege that during the relevant time
20 period, Defendants failed to pay Plaintiffs and Class Members all minimum, regular and overtime
21 wages for all hours worked by rounding Plaintiffs' and Class Members' time worked to
22 Defendants' advantage, and paying only straight time wages for all hours worked in excess of
23 eight in a workday and/or 40 in a workweek, in violation of the Labor Code and IWC Wage
24 Orders. Defendants also made illegal deductions from Plaintiffs and Class Members' wages by
25 rounding amounts paid in cash by Defendants' customers to the nearest dollar, and collecting the
26 difference from Defendants' employees, in violation of the Labor Code and IWC Wage Orders.
27 Defendants also paid Plaintiff Henson and Class Members commissions, but failed to include
28 these commissions in their regular rate of pay for purposes of calculating overtime wages.

1 30. Plaintiffs are informed, believe, and thereon allege that during the relevant time
2 period, Defendants deprived Plaintiffs and Class Members of the opportunity to take all of their
3 statutorily entitled meal periods by requiring them to work in excess of five and/or ten hours a
4 day without being afforded a timely, off-duty 30-minute meal period and failing to adopt and
5 implement a meal period policy, and failed to provide one additional hour of pay at their regular
6 rate of pay for each day that Plaintiffs and Class Members missed a meal period, in violation of
7 the Labor Code and IWC Wage Orders.

8 31. Plaintiffs are informed, believe, and thereon allege that during the relevant time
9 period, Defendants failed to permit Plaintiffs and Class Members to take all of their statutorily
10 entitled rest periods by requiring them to work over a four-hour period (or major fraction thereof)
11 without taking off-duty, ten-minute rest periods during the appropriate time intervals and failing
12 to adopt and implement a rest break policy, and failed to provide one additional hour of pay at
13 their regular rate of pay for each day that Plaintiffs and Class Members missed a rest period, in
14 violation of the Labor Code and IWC Wage Orders.

15 32. Plaintiffs are informed, believe, and thereon allege that during the relevant time
16 period, Defendants willfully failed to pay all wages due to the Waiting Time Subclass upon
17 separation of employment. Plaintiffs and Waiting Time Subclass Members were not paid all meal
18 period premiums, rest period premiums, and/or wages (including minimum, regular and overtime
19 wages) within the required time period, in violation of the Labor Code and IWC Wage Orders.

20 33. Plaintiffs are informed, believe, and thereon allege that during the relevant time
21 period, Defendants failed to furnish Plaintiffs and Class Members with accurate and complete
22 wage statements. Plaintiffs and Class Members either did not receive wage statements, or
23 received wage statements which did not accurately reflect the gross and net wages earned, total
24 hours worked, and all applicable rates of pay and the corresponding number of hours worked at
25 each pay rate, in violation of the Labor Code and IWC Wage Orders.

26 34. Plaintiffs are informed, believe, and thereon alleges that during the relevant time
27 period, Defendants failed to reimburse Plaintiffs and Class Members for necessary business
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1 expenses incurred in the performance of their duties. Plaintiffs and Class Members were required
2 to drive their personal vehicles to make deliveries, but were not reimbursed for mileage and wear
3 and tear on their vehicles, and were required to use their personal cellular phones to communicate
4 with Defendants' supervisors, employees and customers, and clock in and out for their shifts
5 using a cellular phone app, but were not reimbursed for a reasonable percentage of their cellular
6 phone bills, in violation of the Labor Code and IWC Wage Orders.

7 35. Plaintiffs are informed, believe, and thereon alleges that Defendants' actions as
8 described throughout this Complaint were willful.

9 36. Plaintiffs, on behalf of themselves and all other Class Members, bring this action
10 pursuant to, *inter alia*, Labor Code sections 201-203, 221, 226, 226.7, 510, 512, 1194, 1197,
11 1198, 2800 and 2802, and the applicable provisions of the IWC Wage Orders, seeking unpaid
12 minimum, regular and overtime wages, compensation for missed meal periods and rest breaks,
13 penalties, reimbursements, injunctive and other equitable relief, and reasonable attorneys' fees
14 and costs.

15 37. Plaintiffs, on behalf of themselves and all Class Members, pursuant to Cal. Bus. &
16 Prof. Code sections 17200 *et seq.*, also seek injunctive relief and restitution for the unfair,
17 unlawful, or fraudulent practices alleged in this Complaint.

18 **NUMEROSITY**

19 38. The Class is so numerous that joinder of all of its members is impracticable.
20 While the exact number and identities of Class Members are unknown to Plaintiffs at this time
21 and can only be ascertained through appropriate discovery, Plaintiffs are informed, believe and
22 thereon allege that the Class consists of more than 50 persons.

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

COMMONALITY

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

5 (a) Whether Defendants rounded Plaintiffs' and Class Members' time worked
6 to Defendants' advantage;

7 (b) Whether Defendants failed to pay Plaintiffs and Class Members all
8 minimum, regular and overtime wages for all hours worked by Plaintiffs and Class Members;

9 (c) Whether Defendants failed to include commissions earned by employees in
10 the calculation of their regular rate of pay for purposes of calculating overtime wages;

11 (d) Whether Defendants made illegal deductions from Plaintiffs' and Class
12 Members' wages;

13 (e) Whether Defendants failed to provide timely, uninterrupted, off-duty meal
14 periods to Plaintiffs and Class Members, or required Plaintiffs and Class Members to work
15 through their meal periods without compensation in lieu thereof;

16 (f) Whether Defendants failed to permit timely, uninterrupted, off-duty rest
17 breaks for every four hours or major fraction thereof worked by Plaintiffs and Class Members, or
18 required Plaintiffs and Class Members to work through their rest breaks without compensation in
19 lieu thereof;

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

22 (h) Whether Defendants' conduct was willful;

23 (i) Whether Defendants systematically failed to maintain accurate records of
24 all hours worked by Plaintiffs and Class Members;

25 (j) Whether Defendants failed to issue accurate itemized wage statements to
26 Plaintiffs and Class Members;

27 (k) Whether Defendants required Plaintiffs and Class Members to use their
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1 personal cellular phones to communicate with Defendants' supervisors, employees and
2 customers, to clock in and out for their shifts, and for other work-related purposes, and failed to
3 reimburse them for a reasonable portion of their cellular phone bills;

4 (l) Whether Defendants required Plaintiffs and Class Members to drive their
5 personal vehicles for work-related purposes, and failed to reimburse them for mileage and wear
6 and tear on their vehicles (including depreciation, insurance and other sums attributable to
7 Plaintiffs' work-related use of their personal vehicles);

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

10 (n) Additional common questions of law and fact that may develop as the
11 litigation progresses.

12 **TYPICALITY**

13 41. Plaintiffs are informed, believes, and thereon alleges that Plaintiffs' claims are
14 typical of the claims of the Class because: Plaintiffs and the Class sustained injuries and damages
15 arising out of and caused by Defendants' unlawful policies and practices; the claims arise out of
16 the same course of conduct by Defendants; Plaintiffs' claims are based upon the same legal
17 theories as the claims of the Class; and the legal issues raised under California state law as a
18 result of Defendants' conduct apply equally to Plaintiffs and the Class Members.

19 **ADEQUACY OF REPRESENTATION**

20 42. Plaintiffs are adequate representatives of the Class, in that their claims (and
21 defenses, if any) are typical of those of the Class. Plaintiffs have no conflicts of interest with
22 their fellow Class Members and will be able to fairly and adequately protect the interests of the
23 Class. Plaintiffs have the same interests in the litigation of this case as the Class Members; and
24 are committed to vigorous prosecution of this case and has retained competent counsel
25 experienced in class action and wage and hour litigation of this nature.

26 **PREDOMINANCE**

27 43. Defendants have engaged in a common course of wage and hour abuse toward
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1 Plaintiffs and Class Members. The common issues arising from this conduct that affect
2 Plaintiffs and Class Members predominate over any individual issues. Adjudication of these
3 common issues in a single action has important and desirable advantages of judicial economy.

4 **SUPERIORITY OF CLASS ACTION**

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

16 45. Defendants have acted or refused to act in respects generally applicable to the
17 Class, thereby making appropriate relief with regard to the members of the Class as a whole, as
18 requested herein.

19 **FIRST CAUSE OF ACTION**

20 **(FAILURE TO PAY WAGES)**

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

22 **(Against All Defendants)**

23 46. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
24 though fully set forth herein.

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

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

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

12 50. Plaintiffs are informed, believe, and thereon allege that during the relevant time
13 period, Defendants failed to pay Plaintiffs and Class Members all wages for hours worked
14 (including minimum and overtime wages), due to Defendants' practices of rounding Plaintiffs'
15 and Class Members' time worked to Defendants' advantage, paying only straight time wages for
16 all hours worked in excess of eight in a workday and/or 40 in a workweek, and failing to include
17 commissions in the regular rate of pay for purposes of calculating overtime wages.

18 51. Plaintiffs are informed, believe, and thereon allege that during the relevant time
19 period, Plaintiffs and Class Members were frequently required to work over eight hours per
20 workday and/or 40 hours in a workweek. Defendants failed to compensate Plaintiffs and Class
21 Members at one and one-half times their regular rate of pay for all overtime hours worked.

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

26 53. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
27 relief as described herein and below.

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SECOND CAUSE OF ACTION
(ILLEGAL DEDUCTIONS FROM WAGES)
(Labor Code section 221)
(Against All Defendants)

54. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as though fully set forth herein.

55. Labor Code section 221 provides that it is unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

56. Throughout the relevant time period, Defendants rounded amounts paid by their customers in cash to the nearest dollar, and collected the difference from Plaintiffs and Class Members, unlawfully deducting said amounts from Plaintiffs' and Class Members' earned wages.

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

58. WHEREFORE, Plaintiffs and the Class Members they seek to represent request relief as described herein and below.

THIRD CAUSE OF ACTION
(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF)
(Labor Code sections 226.7, 512)
(Against All Defendants)

59. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as though fully set forth herein.

60. Labor Code section 226.7 states, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission," and requires payment of one (1) hour of pay in lieu of meal periods not provided by the employer. (Lab. Code § 226.7(a)-(c).)

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

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

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

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

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

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

66. Plaintiffs are informed, believe, and thereon allege that Class Members did not voluntarily waive their meal periods.

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

1 statute.

2 68. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
3 relief as described herein and below.

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

7 **(Labor Code section 226.7)**

8 **(Against All Defendants)**

9 69. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
10 though fully set forth herein.

11 70. 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 71. 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
time is less than three and one-half (3 1/2) hours. Authorized rest
period time shall be counted as hours worked for which there shall
be no deduction from wages.

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

24 72. Plaintiffs are informed, believe, and thereon allege that Defendants required
25 Plaintiffs and Class Members to regularly work shifts in excess of three and one-half hours
26 without being permitted the opportunity to take a paid, uninterrupted, off-duty rest period of at
27 least ten (10) minutes for every four hours worked or major fraction thereof, and failed to pay

1 Plaintiffs and Class Members rest period premiums for each workday that a rest period was not
2 permitted.

3 73. Plaintiffs are informed, believe, and thereon allege that Plaintiffs and Class
4 Members did not voluntarily waive rest periods.

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

9 75. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
10 relief as described herein and below.

11 **FIFTH CAUSE OF ACTION**

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

13 **(Labor Code section 226)**

14 **(Against All Defendants)**

15 76. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
16 though fully set forth herein.

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

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

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

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

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

16 82. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
17 relief as described herein and below.

18 **SIXTH CAUSE OF ACTION**
19 **(WAITING TIME PENALTIES)**
20 **(Labor Code sections 201-203)**
21 **(Against All Defendants)**

22 83. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
23 though fully set forth herein.

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

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

6 86. Defendants failed to pay Plaintiff Henson all wages owed upon the termination of
7 his employment from Defendants.

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

11 88. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
12 relief as described herein and below.

13 **SEVENTH CAUSE OF ACTION**

14 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

15 **(Labor Code sections 2800 and 2802)**

16 **(Against All Defendants)**

17 89. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
18 though fully set forth herein.

19 90. Labor Code § 2802(a) provides that an employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them
23 to be unlawful.

24 91. During the relevant time period, Defendants required Plaintiffs and Class Members
25 drive their personal vehicles to make deliveries, but failed to reimburse them for mileage and
26 wear and tear on their vehicles (including depreciation, insurance and other sums attributable to
27 Plaintiffs' work-related use of their personal vehicles), and required Plaintiffs and Class Members
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1 to use their personal cellular phones to communicate with Defendants' supervisors, employees
2 and customers, and clock in and out for their shifts using a cellular phone app, but failed to
3 reimburse them for a reasonable percentage of their cellular phone bills.

4 92. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and
5 2802, and the applicable Wage Order by failing to reimburse Plaintiffs and Class Members for all
6 of their out-of-pocket business expenses incurred in the discharge of their job duties.

7 93. As a consequence of Defendants' willful conduct, Plaintiffs and Class Members
8 have sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to
9 be established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

10 94. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
11 relief as described herein and below.

12 **EIGHTH CAUSE OF ACTION**

13 **(UNFAIR BUSINESS PRACTICES)**

14 **(Bus. & Prof. Code sections 17200 *et seq.*)**

15 **(Against All Defendants)**

16 95. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
17 though fully set forth herein.

18 96. Cal. Bus. & Prof. Code Section 17200, *et seq.* ("UCL") prohibits unfair
19 competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

20 97. Plaintiffs bring this action on behalf of themselves and all members of the general
21 public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below
22 constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of
23 the UCL. Defendants engaged in unfair competition as follows:

24 (i) Violations of Labor Code sections 510, 1194, 1197 and 1198 for failure to
25 pay minimum and overtime wages;

26 (ii) Violations of Labor Code sections 512 and 226.7 for failure to provide
27 timely, uninterrupted meal periods;

1 (iii) Violations of Labor Code section 226.7 for failure to permit uninterrupted
2 rest breaks for every four hours worked or major fraction thereof;

3 (iv) Violations of Labor Code section 226 for failure to provide accurate
4 itemized wage statements;

5 (v) Violations of Labor Code sections 201, 202 and 203 for failure to pay
6 accrued wages upon separation of employment;

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

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

10 98. Defendants' course of conduct, acts, and practices in violation of California law
11 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
12 conduct described herein violates the policy or spirit of such laws or otherwise significantly
13 threatens or harms competition. The harm to Plaintiffs and Class Members in being wrongfully
14 denied earned wages and reimbursements outweighs the utility, if any, of Defendants' policies or
15 practices and, therefore, Defendants' actions described herein constitute an unfair business
16 practices or acts within the meaning of the UCL.

17 99. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
18 forth in the UCL. Specifically, Defendants conduct business activities while failing to comply
19 with California wage and hour laws and the California common law and statutory law as
20 described herein.

21 100. Plaintiffs further bring this cause of action on behalf of the proposed Class,
22 seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to
23 compel restitution and disgorgement of all profits obtained by Defendants through the unfair and
24 unlawful business practices described herein.

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

2 102. Defendants' unlawful and unfair business practices as herein alleged has damaged
3 Plaintiffs and Class Members by wrongfully denying them earned minimum, regular and
4 overtime wages, meal periods, rest breaks, premium compensation, and business expense
5 reimbursements and therefore was substantially injurious to Plaintiffs and the Class.

6 103. Under the circumstances alleged, it would be inequitable and result in a
7 miscarriage of justice for Defendants to continue to retain the property of Plaintiffs and Class
8 Members, entitling them to restitution of the unfair benefits obtained and disgorgement of
9 Defendants' ill-gotten gains.

10 104. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate
11 result of the unfair business practices of Defendants, Plaintiffs, individually, and on behalf of all
12 employees similarly situated, are entitled to equitable and injunctive relief, against such unlawful
13 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
14 avoid a multiplicity of lawsuits. Plaintiffs and the Class Members' remedy includes full
15 restitution of all wages and reimbursements which have been unlawfully withheld from Plaintiffs
16 and the Class Members as a result of the business acts and practices described herein, and an
17 order enjoining Defendants to cease and desist from engaging in the practices described herein.

18 105. Plaintiffs, on behalf of themselves and the Class Members, seek restitution in the
19 amount of the respective unpaid wages (including minimum, regular and overtime wages) earned
20 and due for all hours worked by Plaintiffs and Class Members.

21 106. Plaintiffs and Class Members also request any other such legal and equitable relief
22 from Defendants' unlawful and willful conduct as the Court deems just and proper, including an
23 injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent
24 practices alleged in this Complaint.

25 107. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and
26 Class Members are entitled to and seek restitution and disgorgement, and other appropriate relief
27 available under Cal. Bus. & Prof. Code sections 17200 *et seq.* Plaintiffs, on behalf of themselves
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1 and the Class, also seeks recovery of attorneys' fees and costs of this action to be paid by
2 Defendants as provided by Code of Civil Procedure section 1021.5.

3 108. WHEREFORE, Plaintiffs and the Class Members they seek to represent request
4 relief as described herein and below.

5 **NINTH CAUSE OF ACTION**
6 **(ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**
7 **(Labor Code sections 2698 *et seq.*)**
8 **(Against All Defendants)**

9 109. Plaintiffs incorporate by reference all previous paragraphs of this Complaint as
10 though fully set forth herein. Specifically, Plaintiffs incorporate all Labor Code violations and
11 pleads all associated civil penalties recoverable for each violation set forth in this Complaint.

12 110. Plaintiffs have satisfied Labor Code section 2699.3's pre-filing requirements by
13 notifying the LWDA via online filing and Defendants via certified mail of the specific Labor
14 Code provisions violated by Defendants, including the facts and theories to support the alleged
15 violations. Plaintiffs have paid the associated filing fee. Sixty-five days have passed from
16 Plaintiff Siano's and Plaintiff Henson's separate notices to the LWDA and Defendants, and the
17 LWDA has not responded to either notice. As such, Plaintiffs have exhausted their administrative
18 requirements for bringing a civil action under the PAGA.

19 111. Plaintiffs are each an "aggrieved employee" within the meaning of Labor Code
20 section 2699(a) and (c) because they are persons who are or were employed by Defendants and
21 against whom one or more of the alleged violations was committed.

22 112. For all provisions of the Labor Code except those for which a civil penalty is
23 specifically provided, Labor Code section 2699(f) imposes upon Defendants a civil penalty of
24 \$100 for each aggrieved employee per pay period for each initial Labor Code violation and
25 \$200 for each aggrieved employee per pay period for each subsequent Labor Code violation.

26 113. Defendants' conduct with respect to Plaintiffs and the other aggrieved employees
27 violates numerous sections of the Labor Code including, but not limited to, the following:
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1 114. ***Unpaid Wage Violations.*** Defendants have violated and are liable pursuant to
2 Labor Code sections 201 to 204, 204b, 210, 223, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1
3 and 1198 for failing to timely pay all earned wages, including overtime wages owed for all hours
4 worked at the lawful rate of pay to Plaintiffs and the aggrieved employees.

5 115. ***Unlawful Deductions.*** Defendants have violated and are liable pursuant to Labor
6 Code section 221 for their unlawful deductions from the wages of Plaintiffs and aggrieved
7 employees based on Defendants' practice of rounding amounts paid by customers in cash to the
8 nearest dollar and deducting the difference from the aggrieved employees' wages.

9 116. ***Meal and Rest Period Violations.*** Defendants have violated and are liable
10 pursuant to Labor Code sections 226.7, 512 and 558 for failing to provide and permit meal
11 periods and rest breaks, and failing to pay all premium wages owed in lieu of such breaks to
12 Plaintiffs and other aggrieved employees.

13 117. ***Wage Statement Violations.*** Defendants have violated and are liable pursuant to
14 Labor Code sections 226 and 226.3 for failing to provide accurate and complete itemized wage
15 statements to Plaintiffs and other aggrieved employees.

16 118. ***Recordkeeping Violations.*** Defendants have violated and are liable pursuant to
17 Labor Code sections 1174 and 1174.5 for failing to maintain accurate payroll records showing all
18 wages and hours worked by Plaintiffs and other aggrieved employees.

19 119. ***Failure to Provide Written Commission Statement.*** Defendants purportedly
20 provided per-delivery commissions to Plaintiff Henson and other aggrieved employees but failed
21 to include the written commission agreement or plan in writing setting forth the method by which
22 the commissions shall be computed and paid. Defendants have thus violated Labor Code section
23 2751.

24 120. ***Reimbursement Violations.*** Defendants have violated and are liable pursuant to
25 Labor Code sections 2800 and 2802 for failing to reimburse all necessary business expenses to
26 Plaintiffs and other aggrieved employees.

1 121. Plaintiffs were compelled to retain the services of counsel to file this enforcement
2 claim under the PAGA. Plaintiffs have thereby incurred attorneys' fees and costs, which
3 Plaintiffs are entitled to recover pursuant to Labor Code section 2699(g).

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiffs, on behalf of themselves, the proposed Class, and the
6 aggrieved employees, pray for judgment and the following specific relief against Defendants,
7 jointly and severally, as follows:

8 1. That the Court certify the proposed Class and Subclasses, and any other class or
9 subclasses as appropriate under California Code of Civil Procedure section 382;

10 2. That Plaintiffs be appointed as the Class Representatives;

11 3. That Daily Aljian LLP and Ferraro Employment Law be appointed as Class
12 Counsel;

13 4. For compensatory damages, including unpaid minimum and overtime wages, in an
14 amount according to proof with interest thereon;

15 5. For such general and special damages as may be appropriate;

16 6. For pre-judgment interest;

17 7. For the amounts provided for in Labor Code section 226.7;

18 8. For attorney's fees, costs of suit, including expert fees, and interest pursuant to
19 Labor Code sections 218.5, 218.6, 226(e), 1194, 1194.3, 2802(c) and California Code of Civil
20 Procedure section 1021.5;

21 9. For restitution and disgorgement as described in the UCL cause of action above;

22 10. For permanent injunctive relief described in the UCL cause of action;

23 11. A declaratory judgment that the practices complained of herein are unlawful under
24 California law;

25 12. Such other injunctive and equitable relief as the Court may deem proper;

26 13. An award of damages in the amount of unpaid compensation (including
27 compensation pursuant to Labor Code section 226.7), reimbursements and penalties subject to
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1 proof at trial;

2 14. For an award of civil penalties and all recoverable wages, damages, waiting time
3 penalties, and other sums for each Labor Code violation as provided under the PAGA; and

4 15. An award of such other and further relief as this Court may deem appropriate.

5 Dated: January 6, 2020

DAILY ALJIAN LLP

6

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By: /s/ Justin E. D. Daily
Justin E. D. Daily
Shelly D. Song
Attorneys for Plaintiffs Nicholas Siano and
Jayms Henson, individually and on behalf
of all others similarly situated

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DAILY ALJIAN LLP
Newport Beach, California

DEMAND FOR JURY TRIAL

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2 Plaintiffs, on behalf of themselves and all others similarly situated, hereby request a jury
3 trial on all claims so triable.

4 Dated: January 6, 2020

DAILY ALJIAN LLP

6 By: /s/ Justin E. D. Daily

Justin E. D. Daily

Shelly D. Song

Attorneys for Plaintiff Nicholas Siano and
Jayms Henson, individually and on behalf
of all others similarly situated

DAILY ALJIAN LLP
Newport Beach, California

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