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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

MICHAEL MERCADO, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

VIRGIN ORBIT, LLC, a Delaware limited
liability company; VO HOLDINGS, INC., a
Delaware Corporation; VOX SPACE, LLC,
a Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: BCV-21-101743

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510, 511 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Michael Mercado, individually and on behalf of all other similarly situated
2 individuals, and as an aggrieved employee and on behalf of all other aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons in this
5 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
6 and occurrences related to this action occurred in this county.

7 THE PARTIES

8 4. Plaintiff Michael Mercado is a resident of Lancaster, in Los Angeles County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Propulsion
10 Technician from approximately March 2021 to July 2021. During his employment, Plaintiff
11 typically worked ten (10) hours per day and four (4) days per week. Plaintiff's primary job
12 duties included, without limitation, assisting engineers with rocket engine testing, performing
13 foreign object debris walks, and obtaining rocket fuel samples and preparing reports.

14 5. VIRGIN ORBIT, LLC was and is, upon information and belief, a Delaware
15 limited liability company, and at all times hereinafter mentioned, an employer whose
16 employees are engaged throughout this county, the State of California.

17 6. VO HOLDINGS, INC. was and is, upon information and belief, a Delaware
18 corporation, and at all times hereinafter mentioned, an employer whose employees are
19 engaged throughout this county, the State of California.

20 7. VOX SPACE, LLC was and is, upon information and belief, a Delaware
21 limited liability company, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county, the State of California.

23 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
24 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
25 amend the complaint and serve such fictitiously named Defendants once their names and
26 capacities become known.

27 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
28 were the partners, agents, owners, or managers VIRGIN ORBIT, LLC; VO HOLDINGS,

1 INC.; and VOX SPACE, LLC at all relevant times.

2 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, VIRGIN ORBIT,
4 LLC; VO HOLDINGS, INC.; VOX SPACE, LLC; and/or DOES 1 through 10 (collectively,
5 “Defendants” or “VIRGIN”), each acting as the agent, employee, alter ego, and/or joint
6 venturer of, or working in concert with, each of the other co-Defendants and was acting within
7 the course and scope of such agency, employment, joint venture, or concerted activity with
8 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
9 accordance with, and represent, the official policy of Defendants.

10 11. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

14 12. Plaintiff is informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
16 omissions, occurrences, and transactions alleged herein.

17 13. Under California law, Defendants are jointly and severally liable as employers
18 for the violations alleged herein because they have each exercised sufficient control over the
19 wages, hours, working conditions, and employment status of Plaintiff and class members.
20 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
21 controlled their work schedule and/or conditions of employment, determined their rate of pay,
22 and maintained their employment records. Defendants suffered or permitted Plaintiff and
23 class members to work and/or “engaged” Plaintiff and class members so as to create a
24 common-law employment relationship. As joint employers of Plaintiff and class members,
25 Defendants are jointly and severally liable for the civil penalties and all other relief available
26 to Plaintiff and class members under the law.

27 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class

1 members because Defendants have:

- 2 (a) jointly exercised meaningful control over the work performed by
- 3 Plaintiff and class members;
- 4 (b) jointly exercised meaningful control over Plaintiff's and class members'
- 5 wages, hours, and working conditions, including the quantity, quality
- 6 standards, speed, scheduling, and operative details of the tasks
- 7 performed by Plaintiff and class members;
- 8 (c) jointly required that Plaintiff and class members perform work which is
- 9 an integral part of Defendants' businesses; and
- 10 (d) jointly exercised control over Plaintiff and class members as a matter of
- 11 economic reality in that Plaintiff and class members were dependent on
- 12 Defendants, who shared the power to set the wages of Plaintiff and class
- 13 members and determined their working conditions, and who jointly
- 14 reaped the benefits from the underpayment of their wages and
- 15 noncompliance with other statutory provisions governing their
- 16 employment.

17 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
18 there has existed a unity of interest and ownership between Defendants such that any
19 individuality and separateness between the entities has ceased.

20 16. VIRGIN ORBIT, LLC; VO HOLDINGS, INC.; VOX SPACE, LLC; and
21 DOES 1 through 10 are therefore alter egos of each other.

22 17. Adherence to the fiction of the separate existence of Defendants would permit
23 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
24 from liability for the wrongful acts committed by them under the name VIRGIN.

25 18. Plaintiff further alleges, upon information and belief, that Defendants VIRGIN
26 ORBIT, LLC; VO HOLDINGS, INC.; and VOX SPACE, LLC are alter egos of each other for
27 the following reasons:

- 28 (a) On the California Secretary of State's website

(<https://businesssearch.sos.ca.gov/>) and the Massachusetts Secretary of State's website

(<https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearch.aspx>), VIRGIN ORBIT, LLC and VO HOLDINGS, INC. have the same entity address and/or mailing address, which is "4022. E. Conant St., Long Beach, California";

(b) According to the most recent "Statement of Information" form filed with the California Secretary of State, VO HOLDINGS, INC. is listed as a manager or member of VIRGIN ORBIT, LLC;

(c) According to VOX SPACE, LLC's website¹, VOX SPACE, LLC is a wholly-owned subsidiary of VIRGIN ORBIT, LLC; and

(d) On information and belief, VIRGIN ORBIT, LLC and VO HOLDINGS, INC. share the same agent for service of process, "CORPORATION SERVICE COMPANY".

GENERAL ALLEGATIONS

19. Defendants build and operate LauncherOne, a dedicated launch service for commercial and government-built small satellites bound for low earth orbit. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Long Beach, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

20. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon

¹ See "VOX SPACE," available at: <https://voxspace.com/> (last visited July 27, 2021).

1 information and belief, Defendants set forth uniform policies and procedures in several
2 documents provided at an employee's time of hire.

3 21. Upon information and belief, Defendants maintain a centralized Payroll
4 department at their company headquarters in Long Beach, California, which processes payroll
5 for all non-exempt, hourly paid employees working for Defendants at their various locations
6 and jobsites in California, including Plaintiff and class members. Based upon information and
7 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
8 employees in California, irrespective of their work locations. Upon information and belief,
9 Defendants process payroll for departing employees in the same manner throughout the State
10 of California, regardless of the manner in which each employee's employment ends.

11 22. Defendants continue to employ non-exempt or hourly paid employees in
12 California.

13 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
15 and advisors knowledgeable about California labor and wage law, employment and personnel
16 practices, and about the requirements of California law.

17 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
18 members were not paid for all hours worked because all hours worked were not recorded.

19 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive certain wages for
21 overtime compensation and that they were not receiving certain wages for overtime
22 compensation.

23 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive at least minimum
25 wages for compensation and that they were not receiving at least minimum wages for work
26 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
27 and class members were not paid at least minimum wages for work done off-the-clock.

28 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in
2 accordance with the California Labor Code and applicable IWC Wage Order or payment of
3 one (1) additional hour of pay at their regular rates of pay when they were not provided with
4 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
5 were not provided with all meal periods or payment of one (1) additional hour of pay at their
6 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
7 period.

8 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to rest periods in
10 accordance with the California Labor Code and applicable IWC Wage Order or payment of
11 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
12 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
13 and class members were not authorized and permitted to take compliant rest periods, nor did
14 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
15 pay at their regular rates of pay when they were not authorized and permitted to take a
16 compliant rest period.

17 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive complete and
19 accurate wage statements in accordance with California law. In violation of the California
20 Labor Code, Plaintiff and class members were not provided complete and accurate wage
21 statements.

22 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they had a duty to maintain accurate and complete payroll records in
24 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
25 knowingly, and intentionally failed to do so.

26 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of all
28 wages earned upon termination of employment. In violation of the California Labor Code,

1 Plaintiff and class members did not receive payment of all wages due, including, but not
2 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
3 time pay, within permissible time periods.

4 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to timely payment of wages
6 during their employment. In violation of the California Labor Code, Plaintiff and class
7 members did not receive payment of all wages, including, but not limited to, overtime wages,
8 minimum wages, meal and rest period premiums, and/or reporting time pay, within
9 permissible time periods.

10 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
12 expenses Plaintiff and class members incurred obtaining mandatory physical examinations
13 and/or drug tests, but failed to do so.

14 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that Plaintiff and/or class members were
16 entitled to receive sick leave benefits to be paid at a regular rate of pay, that included, as
17 eligible income, all income derived from incentive pay, nondiscretionary bonuses, differential
18 pay, and/or other forms of compensation, but failed to include all forms of remuneration in
19 calculating the regular rate of pay for sick leave pay.

20 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that Plaintiff and class members were
22 entitled to suitable seating and/or were entitled to sit when it did not interfere with the
23 performance of their duties and have seats nearby to use during a lull in tasks that do require
24 moving about or standing. In violation of the California Labor code and applicable IWC
25 Wage Order, Defendants failed to provide suitable seating to Plaintiff and class members.

26 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that Plaintiff and class members were
28 entitled to receive all reporting time pay when Defendants required Plaintiff and class

1 members to report to work but were put to work for less than half of their regular scheduled
2 shift. In violation of the California Labor Code and applicable IWC Wage Order, Plaintiff and
3 class members were not paid all reporting time pay.

4 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that Defendants had a duty to provide
11 Plaintiff and class members with written notice of the material terms of their employment with
12 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

13 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
15 and class members with safety devices and safeguards, such as personal protective equipment
16 to protect their life, safety, and health in the workplace, but failed to do so.

17 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that they had a duty to compensate
19 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
20 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
21 falsely represented to Plaintiff and class members that they were properly denied wages, all in
22 order to increase Defendants' profits.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 41. At all times herein set forth, PAGA provides that any provision of law under
25 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
26 assessed and collected by the LWDA for violations of the California Labor Code and
27 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
28 civil action brought on behalf of themselves and other current or former employees pursuant

1 to procedures outlined in California Labor Code section 2699.3.

2 42. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
3 person who was employed by the alleged violator and against whom one or more of the
4 alleged violations was committed.”

5 43. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
7 or former employees and one or more of the alleged violations were committed against them.

8 44. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
9 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
10 following requirements have been met:

- 11 (a) The aggrieved employee or representative shall give written notice by
12 online filing with the LWDA and by certified mail to the employer of
13 the specific provisions of the California Labor Code alleged to have
14 been violated, including the facts and theories to support the alleged
15 violation.
- 16 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
17 2699.3(a) and any employer response to that notice shall be
18 accompanied by a filing fee of seventy-five dollars (\$75).
- 19 (c) The LWDA shall notify the employer and the aggrieved employee or
20 representative by certified mail that it does not intend to investigate the
21 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
22 the postmark date of the aggrieved employee’s notice. Upon receipt of
23 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
24 (65) calendar days of the postmark date of the aggrieved employee’s
25 notice, the aggrieved employee may commence a civil action pursuant
26 to California Labor Code section 2699 to recover civil penalties.

27 45. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
28 through Plaintiff, may pursue a civil action arising under PAGA for violations of any

1 provision other than those listed in Section 2699.5 after the following requirements have been
2 met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing with the LWDA and by certified mail to the employer of
5 the specific provisions of the California Labor Code alleged to have
6 been violated (other than those listed in Section 2699.5), including the
7 facts and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice sent by the aggrieved
13 employee or representative. The employer shall give written notice
14 within that period of time by certified mail to the aggrieved employee or
15 representative and by online filing with the LWDA if the alleged
16 violation is cured, including a description of actions taken, and no civil
17 action pursuant to Section 2699 may commence. If the alleged violation
18 is not cured within the 33-day period, the aggrieved employee may
19 commence a civil action pursuant to Section 2699.

20 46. On August 11, 2021, Plaintiff provided written notice by online filing to the
21 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
22 Code alleged to have been violated, including facts and theories to support the alleged
23 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
24 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
25 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
26 Plaintiff PAGA Case Number LWDA-CM-841042-21. A true and correct copy of Plaintiff's
27 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1".

28 47. As of the filing date of this complaint, over 65 days have passed since Plaintiff

1 sent the notice described above to the LWDA, and the LWDA has not responded that it
2 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

3 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
4 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
5 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510,
6 511, 512(a), 246, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and
7 6403.

8 49. Labor Code section 558(a) provides "[a]ny employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare
11 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
12 dollars (\$50) for each underpaid employee for each pay period for which the employee was
13 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
15 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
16 to any other civil or criminal penalty provided by law."

17 50. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
19 rights by violating various sections of the California Labor Code as set forth above.

20 51. As set forth below, Defendants have violated numerous provisions of both the
21 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
22 Order.

23 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
25 private attorney general, seeks assessment and collection of civil penalties for himself, all
26 other aggrieved employees, and the State of California against Defendants for violations of
27 California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 511, 512(a), 246,
28 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

54. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

55. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

56. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

57. Members of the Class and Subclass are referred to herein as "class members."

58. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

59. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class

1 members to take rest periods;

- 2 (e) Whether Defendants provided Plaintiff and class members with
3 complete and accurate wage statements as required by California Labor
4 Code section 226(a);
- 5 (f) Whether Defendants maintained accurate payroll records as required by
6 California Labor Code section 1174(d);
- 7 (g) Whether Defendants failed to pay earned overtime wages, minimum
8 wages, meal and rest period premiums, and/or reporting time pay due to
9 Plaintiff and class members upon their discharge;
- 10 (h) Whether Defendants failed timely to pay overtime wages, minimum
11 wages, meal and rest period premiums, and/or reporting time pay due to
12 Plaintiff and class members during their employment;
- 13 (i) Whether Defendants failed to pay Plaintiff and class members for the
14 costs of mandatory physical examinations and/or drug testing;
- 15 (j) Whether Defendants failed to properly calculate the “regular rate” of
16 pay upon which Plaintiff’s and/or class members’ sick leave rate of pay
17 was based;
- 18 (k) Whether Defendants failed to provide suitable seating to Plaintiff and
19 class members;
- 20 (l) Whether Defendants failed to pay Plaintiff and class members for all
21 reporting time pay owed;
- 22 (m) Whether Defendants failed to reimburse Plaintiff and class members for
23 necessary and required business-related expenditures and/or losses
24 incurred by them in the scope of their employment;
- 25 (n) Whether Defendants failed to timely provide Plaintiff and class
26 members written notice of the material terms of their employment with
27 Defendants as required by the California Wage Theft Prevention Act
28 and California Labor Code section 2810.5;

- (o) Whether Defendants failed to provide Plaintiff and class members with safety devices and safeguards, such as personal protective equipment;
- (p) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (q) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

60. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

3 (d) Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve
5 economies of time, effort, and expense as compared with separate
6 lawsuits, and will avoid inconsistent outcomes because the same issues
7 can be adjudicated in the same manner and at the same time for the
8 entire class.

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers might damage their future
14 endeavors through negative references and/or other means. Class
15 actions provide the class members who are not named in the complaint
16 with a type of anonymity that allows for the vindication of their rights
17 while simultaneously protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 510, 511, and 1198—Unpaid Overtime** 20 **(Against all Defendants)**

21 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 62. Labor Code section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code
25 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
26 be the . . . standard conditions of labor for employees. The employment of any employee . . .
27 under conditions of labor prohibited by the order is unlawful.”

28 63. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the
3 number of hours worked by the person on a daily or weekly basis.

4 64. Specifically, the applicable IWC Wage Order provides that Defendants are and
5 were required to pay Plaintiff and class members working more than eight (8) hours in a day
6 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
7 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
8 workweek.

9 65. The applicable IWC Wage Order further provides that Defendants are and were
10 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
11 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
12 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
13 employee, including nondiscretionary bonuses and incentive pay.

14 66. California Labor Code section 510 codifies the right to overtime compensation
15 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
16 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
17 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
18 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
19 in a day on the seventh (7th) day of work.

20 67. California Labor Code section 511 allows the employer, with the employees'
21 approval, to offer an alternative workweek schedule that authorizes employees to work no
22 more than ten (10) hours per day and forty (40) hours per week without receiving overtime
23 compensation. An alternative workweek schedule must pay the employees overtime at one
24 and one-half times their regular hourly rate for work in excess of ten (10) hours per day or
25 forty (40) hours per week. Overtime must be paid at twice the employees' regular hourly rate
26 for work in excess of twelve (12) hours a day.

27 68. During the relevant time period, Defendants willfully failed to pay all overtime
28 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and

1 class members were not paid overtime premiums for all of the hours they worked in excess of
2 eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40)
3 hours in a week, because all hours worked were not recorded.

4 69. First, during the relevant time period, Defendants had a company-wide policy
5 and/or practice of discouraging and impeding Plaintiff and class members from recording
6 hours worked that were outside of their scheduled shifts in order to limit the amount of
7 overtime employees could accrue. This policy of limiting overtime, coupled with Defendants'
8 practices of understaffing and assigning heavy workloads and deadlines, led Plaintiff and class
9 members to work off-the-clock before their scheduled shift times in order to complete their
10 assigned tasks. For example, Plaintiff was pressured by his managers to arrive to work early,
11 about 30 minutes prior to the start of his scheduled shift, to begin performing his daily Foreign
12 Object Debris Walk or "FOD Walk," but was not permitted to clock in until his designated
13 shift start-time.

14 70. In addition, due to Defendants' practice of scheduling shifts outside of daytime
15 business hours, Plaintiff and class members were required to enter the Defendants' facilities
16 only during specific time periods when the facility doors would be temporarily opened. For
17 example, after reporting to work on time, Plaintiff was sometimes forced to wait or search for
18 another employee with building code access for ten (10) minutes before being able to enter the
19 Defendants' facilities and clock in because there was no one available to open the doors for
20 him. As a result, Plaintiff and class members were forced to work off-the-clock, but were not
21 provided a means by Defendants to account for this time. Thus, Defendants failed to track
22 this time spent working off-the-clock before their scheduled shifts, and Plaintiff and class
23 members received no compensation for this time they remained under Defendants' control.

24 71. Second, Defendants had, and continue to have, a company-wide policy of
25 understaffing, such that there were too few employees on duty to handle the heavy workload,
26 meet deadlines, and provide uninterrupted meal period coverage. As a result, Plaintiff and
27 class members were not provided adequate meal period coverage to allow them to be relieved
28 of their duties for compliant meal periods. In conjunction with understaffing their facilities,

1 Defendants had a company-wide practice or policy of failing to schedule meal periods, which
2 exacerbated the lack of meal period coverage. For example, at least 1-2 times per month,
3 Plaintiff would miss his meal period entirely to meet the demands of his workload due to
4 understaffing and lack of meal period coverage. For the same reasons, Plaintiff would have
5 his meal periods interrupted at least three (3) times per week, and/or shortened by 5-10
6 minutes to provide immediate assistance to Defendants' managers or engineering department
7 employees. Defendants did not compensate Plaintiff and class members for the time they
8 spent working off the clock during meal periods.

9 72. Third, Defendants had, and continue to have, a policy and/or practice of
10 requiring that Plaintiff and class members carry and respond to a company-issued radio
11 headset at all times. As a result, Defendants' management contacted Plaintiff and class
12 members on their company-issued radio headsets during unpaid meal periods to discuss work-
13 related matters. For example, at least three (3) times per week, Plaintiff was required to spend
14 3-5 minutes of his meal period answering calls and responding to management's requests.
15 Defendants knew or should have known that Plaintiff and class members were performing
16 work while off-the-clock in order to meet Defendants' expectations, but failed to compensate
17 them for this time.

18 73. Fourth, on information and belief, because Defendants frowned upon
19 employees accruing meal period penalties, when Plaintiff and class members were unable to
20 clock themselves out at designated meal period start times due to Defendants' timekeeping
21 system malfunctioning, they were subject to Defendants altering their time records and
22 deducting time for meal periods that were not taken. Alternatively, Defendants' supervisors
23 adjusted employee time records to show compliant meal periods, even if none were taken, in
24 order to limit meal penalties that VIRGIN would otherwise owe. Consequently, Plaintiff and
25 class members performed work during meal periods for which they were not paid.

26 74. Fifth, Defendants had, and continue to have, a company-wide policy and/or
27 practice of failing to pay proper overtime when it required Plaintiff and class members to
28 work outside of their regularly scheduled alternative workweek schedule and failed to pay all

1 applicable overtime and/or double-time compensation owed for such hours of work. In
2 addition, to the extent Defendants implemented an alternative workweek schedule, as to
3 Plaintiff and class members, Defendants failed to comply with all requirements for
4 implementing an alternative work week schedule, including but not limited, to holding proper
5 workweek elections for the employees working alternative workweeks. Accordingly,
6 Defendants owe Plaintiff and class members unpaid overtime wages.

7 75. Defendants knew or should have known that as a result of these company-wide
8 practices and/or policies, Plaintiff and class members were performing their assigned duties
9 off-the-clock and/or during meal periods, and were suffered or permitted to perform work for
10 which they were not paid. Because Plaintiff and class members worked shifts of eight (8)
11 hours or more a day and/or shifts of ten (10) hours or more a day, or forty (40) hours a week
12 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
13 Plaintiff and class members were not paid overtime wages for all of the overtime hours they
14 actually worked.

15 76. Defendants' failure to pay Plaintiff and class members the balance of overtime
16 compensation as required by California law, violates the provisions of California Labor Code
17 sections 510, 511, and 1198. Pursuant to California Labor Code section 1194, Plaintiff and
18 class members are entitled to recover their unpaid overtime compensation, as well as interest,
19 costs, and attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 22 **Minimum Wages** 23 **(Against all Defendants)**

24 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 78. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
28 minimum wage to be paid to employees, and the payment of a wage less than the minimum so

1 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as “the
2 time during which an employee is subject to the control of an employer, and includes all the
3 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
4 Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

5 79. As set forth above, due to Defendants’ restrictions on overtime accrual,
6 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
7 before scheduled shifts, such as performing FOD Walks or waiting for entry into Defendants’
8 buildings, because these hours were not accurately recorded.

9 80. Further, as also stated above, due to Defendants’ uniform practices of
10 understaffing while assigning heavy workloads, failure to schedule meal periods, lack of meal
11 period coverage, and requirement that employees to carry and use their company-issued radio
12 headset to communicate with supervisors during unpaid meal periods, Plaintiff and class
13 members were impeded from taking all uninterrupted meal periods to which they were entitled
14 and were required to work off-the-clock. Also, as stated, in order to prevent employees from
15 accruing meal period penalties, Defendants’ management adjusted employee time records to
16 reflect compliant meal periods, but required them to continue working, time for which they
17 were not paid.

18 81. Moreover, Defendants maintained and implemented a company-wide policy of
19 requiring all employees to travel to a medical facility on their own time and using their own
20 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
21 times, Defendants were in control of scheduling the date and time for the testing, selecting the
22 provider or facility where the testing and/or physical examinations were to take place, and
23 determining the scope of the testing and/or physical examinations. For example, Defendants
24 gave Plaintiff strict instructions to obtain drug testing and a physical examination, and
25 Plaintiff underwent the testing and examination for the sole benefit of Defendants. Plaintiff
26 followed Defendants’ instructions, traveled approximately 30 minutes roundtrip to and from
27 the medical facility designated by Defendants, ProActive Work Health Services, located at
28 44451 16th Street W. in Lancaster, California, and spent an additional 30 minutes waiting at

1 the medical facility and 30 minutes undergoing the requisite testing and physical examination.
2 However, Defendants did not compensate Plaintiff and class members for the time they spent
3 traveling to and undergoing the mandatory drug testing and/or physical examinations.

4 82. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
5 and class members. To the extent that these off-the-clock hours did not qualify for overtime
6 premium payment, Defendants did not pay at least minimum wages for those hours worked
7 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198.

9 83. Defendants' failure to pay Plaintiff and class members minimum wages violates
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
11 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
12 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

13 **THIRD CAUSE OF ACTION**

14 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

15 **Violations**

16 **(Against all Defendants)**

17 84. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
18 and every allegation set forth above.

19 85. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is
23 not more than six (6) hours, the meal period may be waived by mutual consent of both the
24 employer and the employee. Under California law, first meal periods must start after no more
25 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 86. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 87. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
2 and the applicable IWC Wage Order also require employers to provide a second meal period
3 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
4 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
5 total hours worked is no more than twelve (12) hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal period was not
7 waived.

8 88. During the relevant time period, as stated, Defendants had, and continue to
9 have, a company-wide policy and/or practice of understaffing their locations while assigning
10 heavy workloads, which created a lack of adequate meal period coverage and prevented
11 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
12 were entitled. In conjunction with understaffing their locations, Defendants had a company-
13 wide practice or policy of failing to schedule employees for meal periods, which exacerbated
14 the lack of meal period coverage. As a result of Defendants' policies and/or practices,
15 Plaintiff and class members worked through meal periods after clocking out, took meal
16 periods late, and/or had their meal periods interrupted or shortened. Further, Plaintiff's and
17 other technician employee's meal times were dictated by the demands or schedules of
18 different departments, who regularly started working a few hours after Plaintiff and other
19 technician employees began working. For example, when scheduled to begin work at 5:30
20 a.m., Plaintiff and technician employees would at times not be able to take their meal periods
21 until 11:30 a.m., their seventh hour of work, when the engineering department would take
22 their meal period.

23 89. Moreover, as stated, Defendants had, and continue to have, a company-wide
24 policy and/or practice of requiring that Plaintiff and class members carry a company-issued
25 radio headset to respond to requests at all times, including during meal periods. As a result,
26 Defendants' management and engineering department employees contacted Plaintiff and class
27 members on their company-issued radio headset during unpaid meal periods to discuss work-
28 related matters.

1 90. Second, as stated, because Defendants frowned upon employees accruing meal
2 period penalties, adjusted employee time records to reflect compliant meal periods, regardless
3 of whether they had received a compliant meal period or not, in order to strictly limit meal
4 penalties that would need to be paid by Defendants. For example, when Plaintiff was forced
5 to miss a meal period entirely, on information and belief, Defendants' management falsified
6 meal period entries in order to avoid paying him meal period premiums.

7 91. Additionally, Defendants did not provide Plaintiff and class members with
8 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
9 day. During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per
10 day every shift, but was never provided a second 30-minute meal period. Plaintiff and class
11 members did not sign valid meal period waivers on days that they were entitled to meal
12 periods and were not relieved of all duties.

13 92. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and class members were prevented from being relieved of
15 all duties and required to perform some of their assigned duties during meal periods.
16 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
17 members meal period premiums when meal periods were late, interrupted, shortened, or
18 missed.

19 93. Moreover, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiff and class members have not received premium
22 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to
23 provide Plaintiff and class members compliant meal periods in violation of California Labor
24 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

25 94. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
27 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
28 rate of compensation for each work day that the meal period was not provided.

1 **FOURTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
3 **(Against all Defendants)**

4 95. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 96. At all relevant times herein set forth, the applicable IWC Wage Order and
7 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
8 members' employment by Defendants.

9 97. At all relevant times, the applicable IWC Wage Order provides that "[e]very
10 employer shall authorize and permit all employees to take rest periods, which insofar as
11 practicable shall be in the middle of each work period" and that the "rest period time shall be
12 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
13 hours or major fraction thereof" unless the total daily work time is less than three and one-half
14 (3 ½) hours.

15 98. At all relevant times, California Labor Code section 226.7 provides that no
16 employer shall require an employee to work during any rest period mandated by an applicable
17 order of the California IWC. To comply with its obligation to authorize and permit rest
18 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
19 employer must "relinquish any control over how employees spend their break time, and
20 relieve their employees of all duties—including the obligation that an employee remain on
21 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
22 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
23 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
24 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
25 that a required rest period was not authorized and permitted.

26 99. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
28 period worked or major fraction thereof. As with meal periods, Defendants' company-wide

1 practices, including understaffing and implementing heavy workloads, prevented Plaintiff and
2 class members from being able to take rest periods. Defendants also wholly failed to schedule
3 compliant, timely rest periods, which, coupled with Defendants' failure to authorize rest
4 periods and provide adequate rest period coverage, further led to Plaintiff and class members
5 not being authorized and permitted to take compliant rest periods.

6 100. Moreover, as stated, Defendants had, and continue to have, a policy and/or
7 practice of requiring that Plaintiff and class members carry a company-issued radio headset to
8 respond to Defendants' management at all times, including during rest periods. For example,
9 Plaintiff had his rest periods interrupted and cut short three (3) times per week to respond to
10 requests from management or engineering department employees.

11 101. Furthermore, Defendants maintained and implemented a company-wide on-
12 premises rest period policy, which mandated that Plaintiff and class members remain on the
13 premises during their rest periods. Because Plaintiff and class members were restricted from
14 leaving Defendants' premises during rest periods, they were denied the ability to use their rest
15 periods freely for their own purposes, such as running personal errands. Thus, Defendants
16 effectively maintained control over Plaintiff and class members during rest periods.

17 102. As a result of Defendants' practices and policies, Plaintiff and class members
18 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
19 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
20 about four (4) times per week, Plaintiff had to forego rest periods altogether, due to
21 Defendants' policy of assigning heavy workloads and deadlines and failing to provide
22 sufficient rest period coverage.

23 103. Defendants have also engaged in a company-wide practice and/or policy of not
24 paying all rest period premiums owed when compliant rest periods are not authorized and
25 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
26 to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and
27 the applicable IWC Wage Order.

28 104. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
2 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
3 compensation for each work day that a compliant rest period was not authorized and
4 permitted.

5 **FIFTH CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 7 **Statements and Failure to Maintain Accurate Payroll Records** 8 **(Against all Defendants)**

9 105. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
10 and every allegation set forth above.

11 106. At all relevant times herein set forth, California Labor Code section 226(a)
12 provides that every employer shall furnish each of his or her employees an accurate and
13 complete itemized wage statement in writing, including, but not limited to, the name and
14 address of the legal entity that is the employer, the inclusive dates of the pay period, total
15 hours worked, and all applicable rates of pay.

16 107. At all relevant times, Defendants have knowingly and intentionally provided
17 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
18 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
19 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
20 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
21 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
22 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

23 108. Because Defendants did not record the time Plaintiff and Subclass members
24 spent working off-the-clock and deducted time from their records for meal periods that were
25 interrupted and/or missed (and therefore time for which they should have been paid),
26 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
27 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
28 respectively. For the same reason, Defendants failed to accurately list the total number of

1 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed
2 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
3 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

4 109. The wage statement deficiencies also include, among other things, failing to list
5 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
6 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
7 for which employees were paid; failing to list the name of the employee and only the last four
8 digits of his or her social security number or an employee identification number other than a
9 social security number; failing to list the address of the legal entity that is the employer;
10 and/or failing to state all hours worked as a result of not recording or stating the hours they
11 worked off-the-clock.

12 110. California Labor Code section 1174(d) provides that “[e]very person employing
13 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
14 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
17 applicable piece rate paid to, employees employed at the respective plants or
18 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
19 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
20 members showing the daily hours they worked and the wages paid thereto as a result of failing
21 to record the off-the-clock hours that they worked.

22 111. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
2 and meal period start and stop times for Plaintiff and Subclass members, in violation of
3 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy
4 of falsifying Plaintiff's and Subclass members' time records by recording that compliant meal
5 periods were taken regardless of if or when meal periods were actually taken, and thereby
6 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
7 Furthermore, in light of Defendants' failure to provide Plaintiff and Subclass members with
8 second 30-minute meal periods to which they were entitled, Defendants kept no records of
9 meal start and end times for second meal periods.

10 112. Plaintiff and Subclass members are entitled to recover from Defendants the
11 greater of their actual damages caused by Defendants' failure to comply with California Labor
12 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
13 employee.

14 **SIXTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 16 **Termination** 17 **(Against all Defendants)**

18 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 114. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
22 not timely paid to Plaintiff and those class members no longer employed by Defendants upon
23 their termination.

24 115. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
25 that if an employer discharges an employee, the wages earned and unpaid at the time of
26 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
27 her employment, his or her wages shall become due and payable not later than seventy-two
28 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of

1 his or her intention to quit, in which case the employee is entitled to his or her wages at the
2 time of quitting.

3 116. Defendants willfully failed to pay Plaintiff and class members who are no
4 longer employed by Defendants the earned and unpaid wages set forth above, including but
5 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
6 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
7 leaving Defendants' employ.

8 117. Defendants' failure to pay Plaintiff and class members who are no longer
9 employed by Defendants their wages earned and unpaid at the time of discharge, or within
10 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
11 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
12 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
13 thirty (30) day maximum pursuant to California Labor Code section 203.

14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 16 **Employment**

17 **(Against all Defendants)**

18 118. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 119. This cause of action is dependent upon, and wholly derivative of, the overtime
21 wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were
22 not timely paid to Plaintiff and those class members.

23 120. At all times relevant herein set forth, Labor Code section 204 provides that all
24 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
25 days, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
27 the month during which the labor was performed.

28 121. At all times relevant herein, Labor Code section 204 provides that all wages

1 earned by any person in any employment between the sixteenth (16th) and the last day,
2 inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
4 month.

5 122. At all times relevant herein, Labor Code section 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of
9 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
10 seven (7) calendar days following the close of the payroll period.

11 123. During the relevant time period, Defendants willfully failed to pay Plaintiff and
12 class members all wages due including, but not limited to, overtime wages, minimum wages,
13 meal and rest period premiums, and/or reporting time pay within the time periods specified by
14 California Labor Code section 204.

15 124. Defendants' failure to pay Plaintiff and class members all wages due violates
16 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
17 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

18 **EIGHTH CAUSE OF ACTION**

19 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section** 20 **11040 Subdivision 5(A)—Failure to Provide Reporting Time Pay** 21 **(Against all Defendants)**

22 125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 126. California Labor Code section 1198 dictates that no employer may employ an
25 employee under conditions of labor that are prohibited by the applicable IWC wage order.
26 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
27 fixed by the commission shall be the . . . standard conditions of labor for employees. The
28 employment of any employee . . . under conditions of labor prohibited by the order is

1 unlawful.”

2 127. The applicable IWC wage order, California Code of Regulations, Title 8,
3 section 11040(5)(A), provides that “[e]ach workday an employee is required to report for
4 work and does report, but is not put to work or is furnished less than half said employee’s
5 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled
6 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the
7 employee’s regular rate of pay, which shall not be less than the minimum wage.”

8 128. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because
10 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
11 work for their scheduled shift but were put to work for less than half of the regularly
12 scheduled day’s work.

13 129. Defendants had a company-wide practice of sending Plaintiff and class
14 members home early from their shifts, including before they had worked at least half of their
15 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
16 Although Plaintiff and class members would report to work based on the schedule that
17 Defendants provided to them, Defendants would send them home before they had worked at
18 least half of their scheduled shifts without giving them reporting time pay.

19 130. Accordingly, Plaintiff and class members were not properly compensated with
20 reporting time pay in violation of California Labor Code section 1198 and California Code of
21 Regulations, Title 8, section 11040(5)(A).

22 **NINTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 24 **(Against all Defendants)**

25 131. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 132. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen
5 tools or equipment are required by the employer or are necessary to the performance of a job,
6 such tools and equipment shall be provided and maintained by the employer, except that an
7 employee whose wages are at least two (2) times the minimum wage provided herein may be
8 required to provide and maintain hand tools and equipment customarily required by the trade
9 or craft.”

10 133. First, during the relevant time period, Plaintiff and class members were
11 required to use their personal cellular phones and/or cellular data to carry out their job duties,
12 but Defendants failed to reimburse them for the costs of their work-related cellular phone
13 expenses. For example, on a daily basis, Plaintiff used his personal cellular phone to take and
14 send photos of the work areas he cleared during his daily FOD Walks to his supervisor. As a
15 further example, Plaintiff used his personal cell phone, every shift, for at least five (5) minutes
16 per instance, to converse with his managers about work-related matters via calls and/or text
17 messages. Although Defendants required Plaintiff and class members to utilize their personal
18 cellular phones to carry out their work-related responsibilities, Defendants failed to reimburse
19 them for these costs.

20 134. Second, during the relevant time period, Defendants had a company-wide
21 policy of requiring Plaintiff and class members to utilize their own personal vehicles or obtain
22 alternate transportation to carry out company business, but failed to reimburse them for all
23 costs of travel, including mileage. For example, approximately twice per week, whenever
24 Defendants conducted rocket engine testing, Plaintiff was required to drive approximately a
25 five (5) minutes' drive to and from Defendants' regular work area to designated safe zones
26 within Defendants' larger airbase. Although Defendants required Plaintiff and class members
27 to use their own personal vehicles or obtain alternate transportation to complete their work-
28 related duties, Defendants never reimbursed them for their travel expenses.

1 135. Additionally, during the relevant time period, Defendants had a company-wide
2 policy and/or practice of requiring Plaintiff and class members to travel in their own personal
3 vehicles or alternate transportation to medical facilities to undergo mandatory drug testing
4 and/or physical examinations, but did not reimburse them for their travel expenses, including
5 mileage. Defendants maintained and implemented a company-wide policy of requiring
6 employees to travel to a medical facility on their own time and using their own personal
7 vehicles to undergo mandatory drug testing and/or physical examinations. At all times,
8 Defendants were in control of scheduling the date and time for the testing and/or physical
9 examinations, selecting the provider or facility where the testing and/or physical examinations
10 were to take place, and determining the scope of the testing and/or physical examinations. For
11 example, as stated, Defendants gave Plaintiff strict instructions to obtain drug testing and a
12 physical examination, and Plaintiff underwent the testing for the sole benefit of Defendants.
13 Plaintiff followed Defendants' instructions, traveled five (5) miles roundtrip using his
14 personal vehicle to and from the medical facility designated by Defendants, ProActive Work
15 Health Services, located at 44451 16th Street W. in Lancaster, California, and underwent the
16 drug test and physical examination. Although Defendants required Plaintiff and class
17 members to undergo drug testing and/or physical examinations, Defendants failed to
18 reimburse them for their travel expenses.

19 136. Third, during the relevant time period, Defendants, on a company-wide basis,
20 required Plaintiff and class members to purchase special safety shoes, such as steel-toed boots,
21 which they were required to wear while at work and necessary for the completion of their
22 work-related duties. For example, Plaintiff spent approximately \$150 out-of-pocket to
23 purchase required steel-toed boots in order to perform his work duties, but was not reimbursed
24 for his costs. Thus, Plaintiff and class members purchased steel-toed boots to wear at
25 Defendants' facilities, but were not reimbursed for these costs.

26 137. Defendants could have provided Plaintiff and class members with the actual
27 tools for use on the job, such company phones, company vehicles, and steel-toed boots to be
28 used for fulfilling work-related tasks. Or, Defendants could have reimbursed employees for

1 their cellular phone usage, mileage, travel, and boot expenses. Instead, Defendants passed
2 these operating costs off onto Plaintiff and class members.

3 138. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
5 have intentionally and willfully failed to reimburse Plaintiff and other class members for
6 necessary business-related expenses and costs.

7 139. Plaintiff and class members are entitled to recover from Defendants their
8 business-related expenses incurred during the course and scope of their employment, plus
9 interest.

10 **TENTH CAUSE OF ACTION**

11 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

12 **(Against all Defendants)**

13 140. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 141. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
16 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
17 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a),
18 226.7, 510, 511, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
19 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
20 violations of those Labor Code sections not found in section 2699.5, including sections 246,
21 516, 1182.12, 2810.5, 6401, and 6403.

22 142. Defendants' conduct, as alleged herein, violates numerous sections of the
23 California Labor Code, including, but not limited to, the following:

- 24 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
25 Wage Order for Defendants' failure to compensate Plaintiff and other
26 aggrieved employees with all required overtime pay and failure to
27 properly calculate the overtime rates paid to other aggrieved employees,
28 as alleged herein;

- 1 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
2 1198, and the applicable IWC Wage Order for Defendants' failure to
3 compensate Plaintiff and other aggrieved employees with at least
4 minimum wages for all hours worked, as alleged herein;
- 5 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
7 and other aggrieved employees with meal periods, as alleged herein;
- 8 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
9 applicable IWC Wage Order for Defendants' failure to authorize and
10 permit Plaintiff and other aggrieved employees to take rest periods, as
11 alleged herein;
- 12 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
13 IWC Wage Order for failure to provide accurate and complete wage
14 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 15 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
16 IWC Wage Order for failure to maintain payroll records, as alleged
17 herein;
- 18 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
19 earned wages upon termination, as alleged herein;
- 20 (h) Violation of Labor Code section 204 for failure to pay all earned wages
21 during employment, as alleged herein;
- 22 (i) Violation of Labor Code section 222.5 for failure to pay for costs of
23 mandatory physical examinations and/or drug testing, as set forth
24 below;
- 25 (j) Violation of Labor Code section 246 for failure to pay for all sick leave
26 pay owed, as set forth below;
- 27 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
28 Order for failure to provide suitable seating, as set forth below;

- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay, as alleged herein;
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein;
- (n) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below; and
- (o) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, as set for the below.

143. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any medical or physical examination taken pursuant to any law or regulation.

144. During the relevant time period, Defendants implemented, on a company-wide basis, an employer- imposed requirement that Plaintiff and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. For example, as stated, Defendants gave Plaintiff strict instructions to obtain drug testing and a physical examination, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff followed Defendants' instructions, traveled approximately five (5) miles roundtrip (for 30 minutes) to and from the medical facility designated by Defendants, ProActive Work Health Services, located at 44451 16th Street W. in Lancaster, California, and spent an additional 30 minutes waiting at the medical facility and 30 minutes undergoing the requisite testing and physical examination.

1 145. However, Defendants did not compensate Plaintiff and other aggrieved
2 employees for the time they spent traveling to and from the medical facilities, for the time
3 they spent undergoing the drug testing and/or physical examinations, or reimburse them for
4 the travel expenses they incurred getting to and from the medical facilities. Defendants'
5 policy and/or practice of not paying for all costs Plaintiff and other aggrieved employees
6 incurred obtaining mandatory drug testing and/or physical examinations is in violation of
7 California Labor Code section 222.5. Plaintiff and other aggrieved employees are entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 146. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
10 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
11 days from the commencement of employment with paid sick days, to be accrued at least one
12 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
13 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
14 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
15 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
16 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
17 the same manner as the regular rate of pay for the workweek in which the employee uses paid
18 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
19 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
20 total wages, not including overtime premium pay, by the employee's total hours worked in the
21 full pay periods of the prior 90 days of employment."

22 147. During the relevant time period, Defendants did not pay Plaintiff and/or other
23 aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly
24 wage, Defendants paid Plaintiff and/or other aggrieved employees incentive pay,
25 nondiscretionary bonuses, differential pay, and/or other forms of remuneration. However, in
26 violation of the California Labor Code, Defendants failed to incorporate all remunerations,
27 including incentive pay, nondiscretionary bonuses, and/or differential pay into the calculation
28 of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during

1 times when Plaintiff and/or other aggrieved employees took sick leave and received these
2 other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick
3 leave rate than required. Specifically, Defendants paid Plaintiff and/or other aggrieved
4 employees sick leave based on their hourly rate of pay instead of their regular rate of pay.
5 Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration
6 paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or other aggrieved
7 employees on a company-wide basis in violation of Labor Code 246(l). Plaintiff and/or other
8 aggrieved employees are entitled to recover civil penalties, pursuant to Labor Code sections
9 248.5 and/or 2699(a), (f), and (g).

10 148. At all relevant times herein, California Labor Code section 1198 makes it
11 illegal to employ an employee under conditions of labor that are prohibited by the applicable
12 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
13 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
14 The employment of any employee . . . under conditions of labor prohibited by the order is
15 unlawful." California Code of Regulations, Title 8, section 11040 subdivision 14(B) provides
16 that "[w]hen employees are not engaged in the active duties of their employment and the
17 nature of the work requires standing, an adequate number of suitable seats shall be placed in
18 reasonable proximity to the work area and employees shall be permitted to use such seats
19 when it does not interfere with the performance of their duties."

20 149. Plaintiff alleges that, at all relevant times, Defendants' California facilities had,
21 and continue to have, space near work areas (with reasonable or no modification to these work
22 areas) to allow for the presence and use of a seat or stool by Plaintiff and other aggrieved
23 employees during lulls in operation. Defendants could provide Plaintiff and other aggrieved
24 employees with a seat or stool in its work areas, but instead denies employees seating and
25 forces Plaintiff and other aggrieved employees to stand throughout the day. Defendants did
26 not provide Plaintiff and other aggrieved employees with seats or stools in reasonable
27 proximity to their work areas to allow them to use seats when it would not interfere with the
28 performance of their duties for times when they were not engaged in active duties that require

1 standing. In other words, to the extent Plaintiff and other aggrieved employees engaged in
2 duties in which the nature of the work required standing, Defendants denied them the use of
3 seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff
4 and other aggrieved employees of their rights to a seat or stool under California law.

5 150. As a result of Defendants' company-wide policy and/or practice of prohibiting
6 employees from sitting at any time, even when they were not engaged in active duties
7 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
8 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and
9 denied seats. Defendants' failure to provide suitable seating to other aggrieved employees
10 violates California Labor Code section 1198 and IWC Wage Order No. 4-2001, subdivision
11 14(B). Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant
12 to Labor Code section 2699(a), (f), and (g).

13 151. At all relevant times herein, California Labor Code section 2810.5 provides that
14 at the time of hiring, an employer must provide written notice to employees containing basic
15 and material payroll information, including, among other things, the rate(s) of pay and basis
16 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
17 including any rates for overtime, the regular payday designated by the employer, and any
18 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
19 Code § 2810.5(a)(1)(A)-(C).

20 152. During the relevant time period, Defendants failed to provide Plaintiff and
21 other aggrieved employees with written notice that lists all the requisite information set forth
22 in Labor Code section 2810.5(a)(1)(A)-(C). Instead, the wage theft form Defendants provided
23 to Plaintiff is blank where the aforementioned wage information should be filled in.
24 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
25 basic information regarding their employment with Defendants is in violation of Labor Code
26 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
27 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

28 153. At all relevant times herein, California Labor Code section 6401 provides that

1 employers must furnish and use safety devices and safeguards, and adopt and use practices,
2 means, methods, operations, and processes which are reasonably adequate to render the
3 employment and place of employment safe and healthy. California Labor Code Section 6401
4 further provides that an employer must do everything reasonably necessary to protect the life,
5 safety and health of its employees.

6 154. Defendants, on a company-wide basis, failed to provide Plaintiff and other
7 aggrieved employees with personal protective equipment, such as steel-toed boots, to keep
8 them safe in the workplace. Despite the fact that Defendants required employees to wear
9 certain protective equipment, including steel-toed boots, Defendants failed to provide such
10 reasonably necessary equipment to Plaintiff and other aggrieved employees to keep them safe.
11 Thus, Defendants' failure to provide Plaintiff and other aggrieved employees with safety
12 devices and safeguards violates Labor Code sections 6401 and 6403. Plaintiff and other
13 aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections
14 2699(a), (f)-(g).

15 **ELEVENTH CAUSE OF ACTION**

16 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

17 **Unlawful Business Practices**

18 **(Against all Defendants)**

19 155. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 156. Defendants are "persons" as defined by California Business & Professions
22 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
23 and/or associations.

24 157. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
25 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
26 suffered injury in fact and has lost money as a result of Defendants' unlawful business
27 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
28 meaning of Code of Civil Procedure section 1021.5.

1 158. Defendants' activities, as alleged herein, are violations of California law, and
2 constitute unlawful business acts and practices in violation of California Business &
3 Professions Code sections 17200, *et seq.*

4 159. A violation of California Business & Professions Code sections 17200, *et seq.*
5 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
6 policies and practices have violated state law in at least the following respects:

- 7 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
8 class members, to work overtime without paying them proper
9 compensation in violation of California Labor Code sections 510, 511,
10 and 1198 and the applicable IWC Wage Order, as alleged herein;
- 11 (b) Failing to pay at least minimum wage to Plaintiff and class members in
12 violation of California Labor Code sections 1182.12, 1194, 1197,
13 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
14 herein;
- 15 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
16 members in violation of California Labor Code sections 226.7, 512(a),
17 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 18 (d) Failing to authorize and permit Plaintiff and class members to take
19 uninterrupted rest periods in violation of California Labor Code sections
20 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
21 herein;
- 22 (e) Failing to provide Plaintiff and class members with accurate wage
23 statements and failing to maintain accurate payroll records in violation
24 of California Labor Code sections 226(a), 1174(d), and 1198, and the
25 applicable IWC Wage Order, as alleged herein;
- 26 (f) Failing timely to pay all earned wages to Plaintiff and class members in
27 violation of California Labor Code section 204, as alleged herein;
- 28 (g) Failing to pay the costs of mandatory physical examinations and/or drug

1 testing in violation of California Labor Code section 222.5, as set forth
2 below;

3 (h) Failing to pay reporting time pay in violation of California Labor Code
4 section 1198 and the applicable Industrial Welfare Commission Order,
5 as alleged herein;

6 (i) Failing to reimburse Plaintiff and class members for all business
7 expenses necessarily incurred in violation of California Labor Code
8 sections 2802, as alleged herein;

9 (j) Failing to provide written notice of information material to Plaintiff's
10 and class members' employment with Defendants in violation of
11 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below;
12 and

13 (k) Failing to provide Plaintiff and class members with safety devices and
14 safeguards, such as personal protective equipment, in violation of
15 California Labor Code sections 6401 and 6403, as set forth below.

16 160. At all relevant times herein, California Labor Code section 222.5 requires
17 employers to pay for the costs an employee incurs for obtaining any medical or physical
18 examination taken pursuant to any law or regulation.

19 161. During the relevant time period, Defendants implemented, on a company-wide
20 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
21 drug testing and/or physical examinations, but required them to do so at their own expense.
22 As stated, Defendants had a company-wide policy requiring that all employees, including
23 Plaintiff and class members, travel to a specified medical facility on their own time and use
24 their own means of transportation to undergo drug testing and/or physical examinations. At
25 all times, Defendants were in control of scheduling the date and time for the drug testing
26 and/or physical examinations, selecting the provider or facility where the drug testing and/or
27 physical examinations were to take place, and determining the scope of the drug testing and/or
28 physical examinations.

1 162. During the relevant time period, as stated, Plaintiff was instructed by
2 Defendants to travel to a specific medical facility and obtain a drug test and physical
3 examination. Plaintiff followed Defendants' instructions, traveled approximately five (5)
4 miles roundtrip (for 30 minutes) to and from the medical facility designated by Defendants,
5 ProActive Work Health Services, located at 44451 16th Street W. in Lancaster, California,
6 and spent an additional 30 minutes waiting at the medical facility and 30 minutes undergoing
7 the requisite drug testing and physical examination.

8 163. However, Defendants did not compensate Plaintiff and class members for the
9 time they spent traveling to and from their drug testing and/or physical examinations, or for
10 the time they spent undergoing the drug testing and/or physical examinations, or reimburse
11 them for the travel expenses they incurred getting to and from the medical facilities.
12 Defendants' policy and/or practice of not paying for all costs Plaintiff and class members
13 incurred obtaining mandatory drug tests and/or physical examinations violates California
14 Labor Code section 222.5.

15 164. At all relevant times herein, California's Wage Theft Prevention Act was
16 enacted to ensure that employers provide employees with basic information material to their
17 employment relationship at the time of hiring, and to ensure that employees are given written
18 and timely notice of any changes to basic information material to their employment. Codified
19 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
20 time of hiring, an employer must provide written notice to employees containing basic and
21 material payroll information, including, among other things, the rate(s) of pay and basis
22 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
23 including any rates for overtime, the regular payday designated by the employer, and any
24 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
25 Code § 2810.5(a)(1)(A)-(C).

26 165. At all relevant times, on information and belief, Defendants failed, on a
27 company-wide basis, to provide written notice to Plaintiff and class members that lists the
28 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure

1 to provide Plaintiff and class members with written notice of basic information regarding their
2 employment with Defendants is in violation of Labor Code sections 2810.5(a)(1)(A)-(C).

3 166. At all relevant times herein, California Labor Code section 6401 provides that
4 employers must furnish and use safety devices and safeguards, and adopt and use practices,
5 means, methods, operations, and processes which are reasonably adequate to render the
6 employment and place of employment safe and healthy. California Labor Code Section 6401
7 further provides that an employer must do everything reasonably necessary to protect the life,
8 safety and health of its employees.

9 167. Defendants, on a company-wide basis, failed to provide Plaintiff and class
10 members with personal protective equipment, such as steel-toed boots, to keep them safe in
11 the workplace. Despite the fact that Defendants required employees to wear certain protective
12 equipment, including steel-toed boots, Defendants failed to provide such reasonably necessary
13 equipment to Plaintiff and class members to keep them safe. Thus, Defendants' failure to
14 provide Plaintiff and class members with safety devices and safeguards violates Labor Code
15 sections 6401 and 6403.

16 168. As a result of the violations of California law herein described, Defendants
17 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
18 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
19 herein.

20 169. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
21 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
22 Defendants during a period that commences four years prior to the filing of this complaint; a
23 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
24 class members; and an award of attorneys' fees pursuant to California Code of Civil
25 Procedure section 1021.5 and other applicable laws; and an award of costs.

26 **TWELFTH CAUSE OF ACTION**

27 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

28 **Unfair Business Practices**

(Against all Defendants)

170. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

171. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

172. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

173. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff and class members meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

174. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest period laws and constitute acts against the public policy behind these laws.

175. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory

benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;

3. That Plaintiff be appointed as the representative of the Class and Subclass;

4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510, 511, and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

9. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Second Cause of Action**

3 10. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
5 Order by willfully failing to pay minimum wages to Plaintiff and class members;

6 11. For general unpaid wages and such general and special damages as may be
7 appropriate;

8 12. For pre-judgment interest on any unpaid compensation from the date such
9 amounts were due, or as otherwise provided by law;

10 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
11 California Labor Code section 1194(a);

12 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

13 15. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Third Cause of Action**

16 16. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
18 willfully failing to provide all meal periods to Plaintiff and class members;

19 17. That the Court make an award to the Plaintiff and class members of one (1)
20 hour of pay at each employee's regular rate of pay for each workday that a meal period was
21 not provided;

22 18. For all actual, consequential, and incidental losses and damages, according to
23 proof;

24 19. For premiums pursuant to California Labor Code section 226.7(c);

25 20. For pre-judgment interest on any unpaid meal period premiums from the date
26 such amounts were due, or as otherwise provided by law;

27 21. For attorneys' fees pursuant to California Code of Civil Procedure section
28 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section

1 226(e)(1); and

2 35. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Sixth Cause of Action**

5 36. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
7 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
8 the employment of Plaintiff and other terminated class members;

9 37. For all actual, consequential and incidental losses and damages, according to
10 proof;

11 38. For waiting time penalties according to proof pursuant to California Labor
12 Code section 203 for all employees who have left Defendants' employ;

13 39. For pre-judgment interest on any unpaid wages from the date such amounts
14 were due, or as otherwise provided by law;

15 40. For attorneys' fees pursuant to California Code of Civil Procedure section
16 1021.5, or as otherwise provided by law; and

17 41. For such other and further relief as the Court may deem equitable and
18 appropriate.

19 **As to the Seventh Cause of Action**

20 42. That the Court declare, adjudge and decree that Defendants violated California
21 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
22 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
23 during their employment;

24 43. For all actual, consequential and incidental losses and damages, according to
25 proof;

26 44. For statutory penalties according to proof pursuant to California Labor Code
27 section 210;

28 45. For pre-judgment interest on any unpaid wages from the date such amounts

1 were due, or as otherwise provided by law;

2 46. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 47. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Eighth Cause of Action**

7 48. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A) by
9 failing to provide Plaintiff and class members with reporting time pay;

10 49. For all actual, consequential and incidental losses and damages, according to
11 proof;

12 50. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due, or as otherwise provided by law; and

14 51. For such other and further relief as the Court may deem equitable and
15 appropriate;

16 **As to the Ninth Cause of Action**

17 52. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
19 related expenses and costs incurred by Plaintiff and class members;

20 53. For unpaid business-related expenses and such general and special damages as
21 may be appropriate;

22 54. For pre-judgment interest on any unpaid business-related expenses from the
23 date such amounts were due, or as otherwise provided by law;

24 55. For all actual, consequential, and incidental losses and damages, according to
25 proof;

26 56. For attorneys' fees and costs pursuant to California Labor Code section
27 2802(c), or as otherwise provided by law; and

28 57. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug testing); 246 (by failing to pay for all sick leave pay owed); 1198 (by failing to provide suitable seating); 1198 (by failing to pay all reporting time pay owed); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide notice of material terms of employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

59. For civil penalties pursuant to the California Labor Code, including sections 248.5, 256, 226.3, 558, 1174.5, 1197.1, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 246, 510, 511, 512(a), 246, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 511, 512(a), 246, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

61. For pre-judgment and post-judgment interest as provided by law; and

62. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing

1 to provide Plaintiff and class members all overtime wages due to them, failing to provide
2 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
3 class members all meal periods, failing to authorize and permit Plaintiff and class members to
4 take all rest periods, failing to provide Plaintiff and class members accurate and complete
5 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
6 failing timely to pay Plaintiff and class members all earned wages during employment, failing
7 to pay the costs of mandatory physical examinations and/or drug testing, failing to provide
8 reporting time pay, failing to reimburse Plaintiff and class members for business-related
9 expenses, failing to provide written notice of material terms of employment, and failing to
10 provide Plaintiff and class members with safety devices and safeguards, constitutes an
11 unlawful business practice in violation of California Business and Professions Code sections
12 17200, *et seq.*;

13 64. For restitution of unpaid wages to Plaintiff and all class members and
14 prejudgment interest from the day such amounts were due and payable;

15 65. For the appointment of a receiver to receive, manage, and distribute any and all
16 funds disgorged from Defendants and determined to have been wrongfully acquired by
17 Defendants as a result of violations of California Business & Professions Code sections
18 17200, *et seq.*;

19 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
20 California Code of Civil Procedure section 1021.5; and

21 67. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Twelfth Cause of Action**

24 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
25 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
26 an unfair business practice in violation of California Business and Professions Code sections
27 17200, *et seq.*;

28 69. For restitution of the statutory benefits under section 226.7 unfairly withheld

1 from Plaintiff and class members and prejudgment interest from the day such amounts were
2 due and payable;

3 70. For the appointment of a receiver to receive, manage, and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violations of California Business & Professions Code sections
6 17200, *et seq.*;

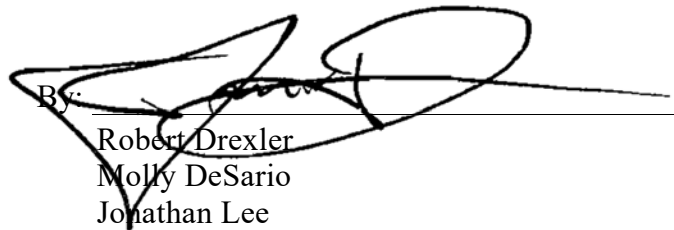
7 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5;

9 72. For pre-judgment and post-judgment interest as provided by law; and
10 For such other and further relief as the Court may deem equitable and appropriate.
11

12 Dated: January 25, 2022

Respectfully submitted,

13 Capstone Law APC

14
15  By: _____
16 Robert Drexler
17 Molly DeSario
18 Jonathan Lee

19 Attorneys for Plaintiff Michael Mercado
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Exhibit 1



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8142 Direct
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August 11, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Michael Mercado v. Virgin Orbit, LLC., et al.*

Dear PAGA Administrator:

This office represents Michael Mercado in connection with his claims under the California Labor Code. Mr. Mercado was an employee of VIRGIN ORBIT, LLC; VO HOLDINGS, INC.; and/or VOX SPACE, LLC. For the purpose of this letter, Mr. Mercado collectively refers to these entities as "VIRGIN."

The employers may be contacted directly at the addresses below:

VIRGIN ORBIT, LLC
4022 E CONANT STREET
LONG BEACH CA 90808

VO HOLDINGS, INC.
4022 E CONANT STREET
LONG BEACH CA 90808

VOX SPACE, LLC
849 E APOLLO STREET
EL SEGUNDO CA 90245

Mr. Mercado intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Mercado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by VIRGIN as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

VIRGIN employed Mr. Mercado as an hourly paid, non-exempt Propulsion Technician from approximately March 2021 to July 2021. During his employment, Mr. Mercado typically worked ten (10) hours per day and four (4) days per week. His job duties included, without limitation, assisting engineers with rocket engine testing, performing foreign object debris walks, and obtaining rocket fuel samples and preparing reports.

VIRGIN committed one or more of the following Labor Code violations against Mr. Mercado, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

VIRGIN’S Company-Wide and Uniform Payroll and HR Practices

VIRGIN ORBIT, LLC and VOX SPACE, LLC are Delaware limited liability companies, and VO HOLDINGS, INC. is a Delaware corporation. Together, VIRGIN builds and operates LauncherOne, a dedicated launch service for commercial and government-built small satellites bound for low earth orbit. Upon information and belief, VIRGIN maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Long Beach, California, for all non-exempt, hourly paid employees working for VIRGIN in California, including Mr. Mercado and other aggrieved employees. At all relevant times, VIRGIN issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mercado and other aggrieved employees, regardless of its location or position.

Upon information and belief, VIRGIN maintains a centralized Payroll department at its corporate headquarters in Long Beach, California, which processes payroll for all non-exempt, hourly paid employees working for VIRGIN in California, including Mr. Mercado and other aggrieved employees. Further, VIRGIN issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Mercado and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, VIRGIN utilized the same methods and formulas when calculating wages due to Mr. Mercado and other aggrieved employees in California.

Violation of California Labor Code §§ 510, 511, and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

California Labor Code section 511 and the applicable IWC Wage Order allow employers, with the employees’ approval, to offer an alternative workweek schedule that authorizes employees to work no more than ten (10) hours per day and forty (40) hours per week without receiving overtime compensation. An alternative workweek schedule must pay the employees overtime at one and one-

¹ These facts, theories, and claims are based on Mr. Mercado’s experience and counsel’s review of those records currently available relating to Mr. Mercado’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Mercado reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

half times their regular hourly rate for work in excess of ten (10) hours per day or forty (40) hours per week. Overtime must be paid at twice the employees' regular hourly rate for work in excess of twelve (12) hours a day. Labor Code 511 and the applicable IWC Wager order further provide that an employer may not implement an alternative workweek schedule unless at least two-thirds of the affected employees approve the schedule through a secret ballot election, and the results must be reported to the California Division of Labor Standards Enforcement within 30 days after the results are final.

VIRGIN willfully failed to pay all overtime wages owed to Mr. Mercado and other aggrieved employees. During the relevant time period, Mr. Mercado and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, VIRGIN had a company-wide policy and/or practice of discouraging and impeding Mr. Mercado other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with VIRGIN's practices of understaffing and assigning heavy workloads and deadlines, led Mr. Mercado and other aggrieved employees to work off-the-clock before their scheduled shift times in order to complete their assigned tasks. For example, Mr. Mercado was pressured by his managers to arrive to work early, about 30 minutes prior to the start of his scheduled shifts, to begin performing his daily Foreign Object Debris Walk or "FOD Walk," but was not permitted to clock in until his designated shift start time.

In addition, due to VIRGIN's practice of scheduling shifts outside of daytime business hours, Mr. Mercado and other aggrieved employees were required to enter VIRGIN's facilities only during specific time periods when the facility doors would be temporarily opened. For example, after reporting to work on time, Mr. Mercado was sometimes forced to wait or search for another employee with building code access for ten (10) minutes before being able to enter VIRGIN's facilities and clock in because there was no one available to open the doors for him. As a result, Mr. Mercado and other aggrieved employees were forced to work off-the-clock, but were not provided a means by VIRGIN to account for this time. Thus, VIRGIN failed to track this time spent working off-the-clock before their scheduled shifts, and Mr. Mercado and other aggrieved employees received no compensation for this time they remained under VIRGIN's control.

Second, VIRGIN had, and continues to have, a company-wide policy of understaffing, such that there were too few employees on duty to handle the heavy workload, meet deadlines, and provide uninterrupted meal period coverage. As a result, Mr. Mercado and other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. In conjunction with understaffing its facilities, VIRGIN had a company-wide practice and/or policy of failing to schedule meal periods, which exacerbated the lack of meal period coverage. For example, at least 1-2 times per month, Mr. Mercado would miss his meal period entirely to meet the demands of his workload due to understaffing and lack of meal period coverage. For the same reasons, Mr. Mercado would have his meal periods interrupted at least three (3) times per week, and/or shortened by 5-10 minutes to provide immediate assistance to VIRGIN's managers or engineering department employees. VIRGIN did not compensate Mr. Mercado and other aggrieved employees for the time they spent working off the clock during meal periods.

Third, VIRGIN had, and continues to have, a policy and/or practice of requiring that Mr. Mercado and other aggrieved employees carry and respond to a company-issued radio headset at all times. As a result, VIRGIN's management contacted Mr. Mercado and other aggrieved employees on their company-issued radio headsets during unpaid meal periods to discuss work-related matters. For example, at least three (3) times per week, Mr. Mercado was required to spend 3-5 minutes of his meal period answering calls and responding to management's requests. VIRGIN knew or should have known that Mr. Mercado and other aggrieved employees were performing work while off-the-clock in order to meet VIRGIN's expectations, but failed to compensate them for this time.

Fourth, on information and belief, because VIRGIN frowned upon employees accruing meal period penalties, when Mr. Mercado and other aggrieved employees were unable to clock themselves out at designated meal period start times due to VIRGIN's timekeeping system malfunctioning, they were subject to VIRGIN altering their time records and deducting time for meal periods that were not taken. Alternatively, VIRGIN's supervisors adjusted employee time records to show compliant meal periods, even if none were taken, in order to limit meal penalties that VIRGIN would otherwise owe. Consequently, Mr. Mercado and other aggrieved employees performed work during meal periods for which they were not paid.

Fifth, VIRGIN had, and continues to have, a company-wide policy and/or practice of failing to pay proper overtime when it required Mr. Mercado and other aggrieved employees to work outside of their regularly scheduled alternative workweek schedule and failed to pay all applicable overtime and/or double-time compensation owed for such hours of work. In addition, to the extent VIRGIN implemented an alternative workweek schedule, as to Mr. Mercado and other aggrieved employees, VIRGIN failed to comply with all requirements for implementing an alternative work week schedule, including but not limited, to holding proper workweek elections for the employees working alternative workweeks. Accordingly, VIRGIN owes Mr. Mercado and other aggrieved employees unpaid overtime wages.

VIRGIN knew or should have known that as a result of these company-wide practices and/or policies, Mr. Mercado and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mercado and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Mercado and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, VIRGIN did not pay Mr. Mercado and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, VIRGIN paid Mr. Mercado and/or other aggrieved employees incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration. However, in violation of the California Labor Code, VIRGIN failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Mercado and/or other aggrieved employees worked overtime and received these other forms of pay, VIRGIN failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, VIRGIN paid Mr. Mercado and/or other aggrieved employees were eligible for and earned incentive pay and/or differential pay, which, on information and belief, were listed on Mr.

Mercado's and/or other aggrieved employees' wage statements as "Geographic Diff." During pay periods that Mr. Mercado and/or other aggrieved employees were paid overtime wages, VIRGIN did not incorporate the incentive pay and/or differential pay into Mr. Mercado's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, VIRGIN paid Mr. Mercado and/or other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. VIRGIN's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Mercado and/or other aggrieved employees on a company-wide basis.

VIRGIN's failure to pay Mr. Mercado and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510, 511, and 1198. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As set forth above, due to VIRGIN's restrictions on overtime accrual, VIRGIN systematically failed to pay Mr. Mercado and other aggrieved employees for actual hours worked before scheduled shifts, such as performing FOD Walks or waiting for entry into VIRGIN's buildings, because these hours were not accurately recorded. Further, as also stated above, due to VIRGIN's uniform practices of understaffing while assigning heavy workloads, failure to schedule meal periods, lack of meal period coverage, and requirement that employees carry and use their company-issued radio headset to communicate with supervisors during unpaid meal periods, Mr. Mercado and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Also, as stated, in order to prevent employees from accruing meal period penalties, VIRGIN's management adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Moreover, VIRGIN maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, VIRGIN was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, VIRGIN gave Mr. Mercado strict instructions to obtain drug testing and a physical examination, and Mr. Mercado underwent the testing and examination for the sole benefit of VIRGIN. Mr. Mercado followed VIRGIN's instructions, traveled approximately 30 minutes roundtrip to and from the medical facility designated by VIRGIN, ProActive Work Health Services, located at 44451 16th Street W. in Lancaster, California, and spent an additional 30 minutes waiting at the medical facility and 30 minutes undergoing the requisite testing and physical examination.

However, VIRGIN did not compensate Mr. Mercado and other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, VIRGIN did not pay at least minimum wages for all hours worked by Mr. Mercado and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, VIRGIN did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, VIRGIN regularly failed to pay at least minimum wages to Mr. Mercado and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, VIRGIN had, and continues to have, a company-wide policy and/or practice of understaffing its locations while assigning heavy workloads, which created a lack of adequate meal period coverage and prevented Mr. Mercado and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing, VIRGIN had a company-wide practice or policy of failing to schedule employees for meal periods, which exacerbated the lack of meal period coverage. As a result of VIRGIN's policies and/or practices, Mr. Mercado and other aggrieved employees worked through meal periods after clocking out, took meal periods late, and/or had their meal periods interrupted or shortened. Further, Mr. Mercado's and other technician employee's meal times were dictated by the demands or schedules of different departments, who regularly started working a few hours after Mr. Mercado and other technician employees began working. For example, when scheduled to begin work at 5:30 a.m., Mr. Mercado and technician employees would at times not be able to take their meal periods until 11:30 a.m., their seventh hour of work, when the engineering department would take their meal period.

Moreover, as stated, VIRGIN had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Mercado and other aggrieved employees carry a company-issued radio headset to respond to requests at all times, including during meal periods. As a result, VIRGIN's management and engineering department employees contacted Mr. Mercado and other aggrieved employees on their company-issued radio headset during unpaid meal periods to discuss work-related matters.

Second, as stated, because VIRGIN frowned upon employees accruing meal period penalties, adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by VIRGIN. For example, when Mr. Mercado was forced to miss a meal period entirely, on information and belief, VIRGIN's management falsified meal period entries in order to avoid paying him meal period premiums.

Additionally, VIRGIN did not provide Mr. Mercado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Mercado worked shifts in excess of ten (10) or more hours per day every shift, but was never provided a second 30-minute meal period. Mr. Mercado and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, VIRGIN knew or should have known that, as a result of these policies, Mr. Mercado and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. VIRGIN further knew or should have known that VIRGIN did not pay Mr. Mercado and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, VIRGIN engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Mercado and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that VIRGIN did pay Mr. Mercado and/or other aggrieved employees premium pay for missed, late, and interrupted meal periods, VIRGIN did not pay Mr. Mercado and/or other aggrieved employees at the correct rate of pay for premiums because VIRGIN systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, VIRGIN failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mercado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order

provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, VIRGIN regularly failed to authorize and permit Mr. Mercado and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, VIRGIN’s company-wide practices, including understaffing and implementing heavy workloads, prevented Mr. Mercado and other aggrieved employees from being able to take rest periods. VIRGIN also wholly failed to schedule compliant, timely rest periods, which, coupled with VIRGIN’s failure to authorize rest periods and provide adequate rest period coverage, further led to Mr. Mercado and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Moreover, as stated, VIRGIN had, and continues to have, a policy and/or practice of requiring that Mr. Mercado and other aggrieved employees carry a company-issued radio headset to respond to VIRGIN’s management at all times, including during rest periods. For example, Mr. Mercado had his rest periods interrupted and cut short three (3) times per week to respond to requests from management or engineering department employees.

Furthermore, VIRGIN maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Mercado and other aggrieved employees remain on the premises during their rest periods. Because Mr. Mercado and other aggrieved employees were restricted from leaving VIRGIN’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, VIRGIN effectively maintained control over Mr. Mercado and other aggrieved employees during rest periods.

As a result of VIRGIN’s practices and policies, Mr. Mercado and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, about four (4) times per week, Mr. Mercado had to forego rest periods altogether, due to VIRGIN’s policy of assigning heavy workloads and deadlines and failing to provide sufficient rest period coverage.

VIRGIN also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Mercado and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that VIRGIN did pay Mr. Mercado and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, VIRGIN did not pay Mr. Mercado and/or other aggrieved employees at the correct rate of pay for premiums because VIRGIN failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, VIRGIN failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mercado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. VIRGIN has not provided Mr. Mercado and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

During the relevant time period, VIRGIN has knowingly and intentionally provided Mr. Mercado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, VIRGIN issued uniform wage statements to Mr. Mercado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, paid sick leave, and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, VIRGIN violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because VIRGIN did not record the time Mr. Mercado and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), VIRGIN did not list the correct amount of gross wages and net wages earned by Mr. Mercado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, VIRGIN failed to accurately list the total number of hours worked by Mr. Mercado and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

In addition, because VIRGIN did not calculate Mr. Mercado's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, paid sick leave, and/or meal and rest period premiums, VIRGIN did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, VIRGIN also failed to list the correct amount of net wages in violation of section 226(a)(5). VIRGIN also failed to correctly list all applicable hourly rates in

effect during the pay period, namely, correct rates of pay for overtime wages, paid sick leave, and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), VIRGIN willfully failed to maintain accurate payroll records for Mr. Mercado and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, VIRGIN failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Mercado and other aggrieved employees, in violation of section 1198. Also, as stated, VIRGIN engaged in a company-wide practice and/or policy of falsifying Mr. Mercado’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Mercado and other aggrieved employees. Furthermore, in light of VIRGIN’s failure to provide Mr. Mercado and other aggrieved employees with second 30-minute meal periods to which they were entitled, VIRGIN kept no records of meal start and end times for second meal periods.

Because VIRGIN failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mercado and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Mercado and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, VIRGIN willfully failed to pay Mr. Mercado and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, sick leave pay, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

VIRGIN willfully failed to pay Mr. Mercado and other aggrieved employees who are no longer employed by VIRGIN all their earned wages, including, but not limited to, overtime wages, minimum wages, sick leave pay, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving VIRGIN's employ.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, VIRGIN implemented, on a company-wide basis, an employer-imposed requirement that Mr. Mercado and other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated,

VIRGIN had a company-wide policy requiring that Mr. Mercado and other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, VIRGIN was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. For example, as stated, VIRGIN gave Mr. Mercado strict instructions to obtain drug testing and a physical examination, and Mr. Mercado underwent the testing for the sole benefit of VIRGIN. Mr. Mercado followed VIRGIN's instructions, traveled approximately five (5) miles roundtrip (for 30 minutes) to and from the medical facility designated by VIRGIN, ProActive Work Health Services, located at 44451 16th Street W. in Lancaster, California, and spent an additional 30 minutes waiting at the medical facility and 30 minutes undergoing the requisite testing and physical examination.

However, VIRGIN did not compensate Mr. Mercado and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. VIRGIN's policy and/or practice of not paying for all costs Mr. Mercado and other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, VIRGIN did not pay Mr. Mercado and/or other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, VIRGIN paid Mr. Mercado and/or other aggrieved employees incentive pay, nondiscretionary bonuses, differential pay, and/or other forms of remuneration. However, in violation of the California Labor Code, VIRGIN failed to incorporate all remunerations, including incentive pay, nondiscretionary bonuses, and/or differential pay into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when Mr. Mercado and/or other aggrieved employees took sick leave and received these other forms of pay, VIRGIN failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, VIRGIN paid Mr. Mercado and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

VIRGIN's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Mercado and/or other aggrieved employees on a company-wide basis in violation of Labor Code 246(l). Mr. Mercado and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11040 subdivision (14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11040 subdivision 14(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

At all relevant times, VIRGIN's California facilities had, and continue to have, space near work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Mercado and other aggrieved employees during lulls in operation. VIRGIN could provide Mr. Mercado and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. Mercado and other aggrieved employees to stand throughout the day.

VIRGIN did not provide Mr. Mercado and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Mercado and other aggrieved employees engaged in duties in which the nature of the work required standing, VIRGIN denied them the use of seats nearby during lulls in their work duties. Moreover, VIRGIN did not inform Mr. Mercado and other aggrieved employees of their rights to a seat or stool under California law.

As a result of VIRGIN's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Mercado and other aggrieved employees were forced to stand during shifts and denied seats. VIRGIN's failure to provide suitable

seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 4-2001, subdivision 14(B).

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring VIRGIN into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11040(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, VIRGIN violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5), because VIRGIN failed to pay Mr. Mercado and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

VIRGIN had a company-wide practice of sending Mr. Mercado and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Mercado and other aggrieved employees for half of their scheduled shift. Although Mr. Mercado and other aggrieved employees would report to work based on the schedule that VIRGIN provided to them, VIRGIN would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. When this occurred, VIRGIN did not pay Mr. Mercado for at least half of his scheduled day's work or the required minimum reporting time pay. Accordingly, Mr. Mercado and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5).

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code

section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, Mr. Mercado and other aggrieved employees were required to use their personal cellular phones and/or cellular data to carry out their job duties, but VIRGIN failed to reimburse them for the costs of their work-related cellular phone expenses. For example, on a daily basis, Mr. Mercado used his personal cellular phone to take and send photos of the work areas he cleared during his daily FOD Walks to his supervisor. As a further example, Mr. Mercado used his personal cell phone, every shift, for at least five (5) minutes per instance, to converse with his managers about work-related matters via calls and/or text messages. Although VIRGIN required Mr. Mercado and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, VIRGIN failed to reimburse them for these costs.

Second, during the relevant time period, VIRGIN had a company-wide policy of requiring Mr. Mercado and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, approximately twice per week, whenever VIRGIN conducted rocket engine testing, Mr. Mercado was required to drive approximately a five (5) minutes' drive to and from VIRGIN's regular work area to designated safe zones within VIRGIN's larger airbase. Although VIRGIN required Mr. Mercado and other aggrieved employees to use their own personal vehicles or obtain alternate transportation to complete their work-related duties, VIRGIN never reimbursed them for their travel expenses.

Additionally, during the relevant time period, VIRGIN had a company-wide policy and/or practice of requiring Mr. Mercado and other aggrieved employees to travel in their own personal vehicles or alternate transportation to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. VIRGIN maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, VIRGIN was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, as stated, VIRGIN gave Mr. Mercado strict instructions to obtain drug testing and a physical examination, and Mr. Mercado underwent the testing for the sole benefit of VIRGIN. Mr. Mercado followed VIRGIN's instructions, traveled five (5) miles roundtrip using his personal vehicle to and from the medical facility designated by VIRGIN, ProActive Work Health Services, located at 44451 16th Street W. in Lancaster, California, and underwent the drug test and physical examination. Although VIRGIN required Mr. Mercado and other aggrieved employees to undergo drug testing and/or physical examinations, VIRGIN failed to reimburse them for their travel expenses.

Third, during the relevant time period, VIRGIN, on a company-wide basis, required Mr. Mercado and other aggrieved employees to purchase special safety shoes, such as steel-toed boots, which they were required to wear while at work and necessary for the completion of their work-related duties.

For example, Mr. Mercado spent approximately \$150 out-of-pocket to purchase required steel-toed boots in order to perform his work duties, but was not reimbursed for his costs. Thus, Mr. Mercado and other aggrieved employees purchased steel-toed boots to wear at VIRGIN's facilities, but were not reimbursed for these costs.

VIRGIN could have provided Mr. Mercado and other aggrieved employees with the actual tools for use on the job, such company phones, company vehicles, and steel-toed boots to be used for fulfilling work-related tasks. Or, VIRGIN could have reimbursed employees for their cellular phone usage, mileage, travel, and boot expenses. Instead, VIRGIN passed these operating costs off onto Mr. Mercado and other aggrieved employees.

Thus, VIRGIN had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

VIRGIN failed to provide Mr. Mercado and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). VIRGIN's failure to provide Mr. Mercado and other aggrieved employees with written notice of basic information regarding their employment with VIRGIN is in violation of Labor Code section 2810.5.

Mr. Mercado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires

that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated, VIRGIN failed to provide Mr. Mercado and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that VIRGIN required Mr. Mercado and other aggrieved employees to wear certain personal protective equipment, including steel-toed boots, while engaged in their work-related duties, VIRGIN failed to fully provide such reasonably necessary equipment to Mr. Mercado and other aggrieved employees to keep them safe.

VIRGIN's failure to provide Mr. Mercado and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Mercado and other aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." VIRGIN, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mercado's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mercado seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mercado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against VIRGIN for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 511, 512(a), 246, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Mercado seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: VIRGIN ORBIT, LLC (via U.S. Certified Mail); VO HOLDINGS, INC. (via U.S. Certified Mail); VOX SPACE, LLC (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

VIRGIN ORBIT, LLC
4022 E CONANT STREET
LONG BEACH CA 90808



9590 9402 1512 5362 2496 35

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2279

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

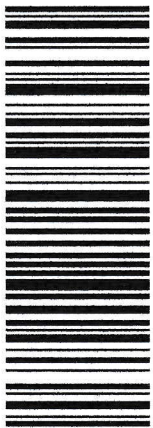
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

CERTIFIED MAIL®



7020 1290 0001 8879 2279

VIRGIN ORBIT, LLC
4022 E CONANT STREET
LONG BEACH CA 90808

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- | | |
|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.85 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

VIRGIN ORBIT, LLC

Street and Apt. No. 4022 E CONANT STREET

City, State, ZIP+4® LONG BEACH CA 90808

Postmark
HereMercado v. Virgin
Orbit, LLC

PS Form 3800, April 2015 PSN 7530-02-000-9047

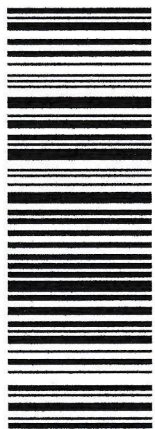
See Reverse for Instructions

tone

LAW APC

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CERTIFIED MAIL®



7020 1290 0001 8879 2262

tone
LAW APC
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S, CA 90067

VO HOLDINGS, INC.
4022 E CONANT STREET
LONG BEACH CA 90808



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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

VO HOLDINGS, INC.
4022 E CONANT STREET
LONG BEACH CA 90808



9590 9402 1512 5362 2496 28

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2262

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

- ☐ Yes
- ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.85
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

VO HOLDINGS, INC.
4022 E CONANT STREET
LONG BEACH CA 90808

Postmark

Here
Mercedo v. VO Holdings
Inc.

7020 1290 0001 8879 2262



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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

VOX SPACE, LLC
849 E APOLLO STREET
EL SEGUNDO CA 90245



9590 9402 1512 5362 2496 11

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2255

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

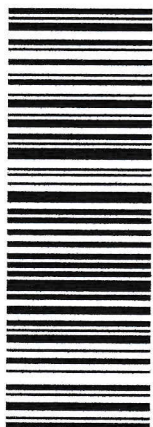
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted
Delivery☐ Return Receipt for
Merchandise☐ Signature Confirmation™☐ Signature Confirmation
Restricted Delivery

Domestic Return Receipt

CERTIFIED MAIL



7020 1290 0001 8879 2255

VOX SPACE, LLC
849 E APOLLO STREET
EL SEGUNDO CA 90245

one

LAW APC

1000
Park East, Ste 1000
El Segundo, CA 90067

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail OnlyFor delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.60

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$ 2.85☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 8.08

Sent To

VOX SPACE, LLC

Street and Apt. 849 E APOLLO STREET

City, State, ZIP+4 EL SEGUNDO CA 90245

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
HereMercado v. Vox
Space, LLC

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

VIRGIN ORBIT, LLC
4022 E CONANT STREET
LONG BEACH CA 90808



9590 9402 1512 5362 2496 35

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2279

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X C-19

☐ Agent☐ Addressee

B. Received by (Printed Name)

MG

C. Date of Delivery

8/13

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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849 E APOLLO STREET
EL SEGUNDO CA 90245



9590 9402 1512 5362 2496 11

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2255

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X VOX

☐ Agent☐ Addressee

B. Received by (Printed Name)

VOX

C. Date of Delivery

8/13/14

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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1. Article Addressed to:

VO HOLDINGS, INC.
4022 E CONANT STREET
LONG BEACH CA 90808



9590 9402 1512 5362 2496 28

2. Article Number (Transfer from service label)

7020 1290 0001 8879 2262

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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☐ Agent☐ Addressee

B. Received by (Printed Name)

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C. Date of Delivery

8/13

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

- ☐ Adult Signature
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- ☒ Certified Mail®
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION
UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, *ET SEQ.***

Philip I. Person
Tayanah C. Miller
GREENBERG TRAURIG, LLP
Four Embarcadero Center, Suite 3000
San Francisco, California 94111
personp@qtlaw.com
millerta@qtlaw.com

- EXECUTED** this document on January 25, 2022, at Los Angeles, California.

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27
28