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Kern County Superior Court

By Vanesa Jackson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

ZACHARY JAMES LUTZ, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

VIRGIN GALACTIC, LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-21-102063

Assigned for All Purposes to:

Judge David R. Lampe

Dept. 11

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Reimburse Business Expenses;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Timely Pay Wages;
8. Failure to Pay All Wages Due Upon Separation of Employment;
9. Violation of Business and Professions Code §§ 17200, *et seq.*; and
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Zachary James Lutz, individually, and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Zachary James Lutz (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 *et seq.*, against defendants Virgin Galactic, LLC, and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on behalf of himself individually and on behalf of California
8 citizens who are and were employed by Defendants as non-exempt employees throughout
9 California.

10 2. Defendants are engaged in the aerospace business in the State of California.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) failing to pay all wages (including minimum wages and overtime
18 wages);
- 19 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (c) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (d) failing to reimburse business expenses;
- 23 (e) failing to provide accurate itemized wage statements; and
- 24 (f) failing to pay all wages timely during employment and due upon
25 separation of employment.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
27 others similarly situated in California to recover, among other things, unpaid wages and
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 227.3, 510, 511, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and Code of California Civil Procedure § 1021.5, and 2698, *et seq.*

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this

1 Complaint and serve such fictitiously named defendants once their names and capacities
2 become known.

3 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
4 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
5 at all relevant times.

6 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiff and the class members.

11 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 16. At all relevant times, Defendants, and each of them, acted within the scope of
17 such agency or employment, or ratified each and every act or omission complained of herein.
18 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
19 each and all the other Defendants in proximately causing the damages herein alleged.

20 17. Plaintiff is informed and believes, and thereon alleges, that each of said
21 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
22 omissions, occurrences, and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
25 himself and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

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

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

2 Class

3 All California citizens currently or formerly employed by Defendants as non-
4 exempt employees in the State of California at any time between May 4, 2020 and
5 the date of class certification ("Class").

6 21. Plaintiff also seeks to certify the following subclass of employees:

7 Waiting Time Subclass

8 All Class Members who separated their employment with Defendants at any time
9 between May 4, 2020 and the date of class certification ("Subclass" or "Waiting
10 Time Subclass").

11 22. Plaintiff reserves the right to establish other or additional subclasses, or modify
12 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
13 discovery, and specific theories of liability.

14 23. Members of the Class and the Subclass described above will be collectively
15 referred to as "Class Members."

16 24. There are common questions of law and fact as to the Class Members that
17 predominate over any questions affecting only individual members including, but not limited to,
18 the following:

19 (a) Whether Defendants paid Plaintiff and Class Members all wages
20 (including minimum wages and overtime wages) for all hours worked by
21 Plaintiff and Class Members.

22 (b) Whether Defendants required Plaintiff and Class Members to work over
23 8 hours per day, over twelve (12) hours per day, and/or over forty (40)
24 hours per week and failed to pay them overtime compensation at the
25 proper rate.

26 (c) Whether Defendants failed to implement and/or follow a proper
27 Alternative Workweek Schedule for Plaintiff and Class Members.

28 (d) Whether Defendants deprived Plaintiff and Class Members of timely

meal periods or required Plaintiff and Class Members to work through meal periods without compensation.

(e) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through rest breaks without compensation.

(f) Whether Defendants failed to reimburse Plaintiff and Class Members for necessary business-related costs expended for the benefit of Defendants.

(g) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized wage statements.

(h) Whether Defendants failed to timely pay Plaintiff and the Subclass all wages due upon termination or within seventy-two (72) hours of resignation.

(i) Whether Defendants' conduct was willful or reckless.

(j) Whether Defendants engaged in unfair business practices in violation of Business and Professions Code §§ 17200, *et seq.*

25. There is a well-defined community of interest in this litigation and the proposed Class and Subclass are readily ascertainable:

(a) Numerosity: The Class Members are so numerous that joinder of all members is impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this time, on information and belief, the class is estimated to be greater than one 100 individuals. The identities of the Class Members are readily ascertainable by inspection of Defendants' employment and payroll records.

(b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions of California's wage and hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class Members, because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

1 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
2 interests of all Class Members because it is in his best interest to prosecute the claims alleged
3 herein to obtain full compensation and penalties due to his and the Class Members. Plaintiff's
4 attorneys, as proposed class counsel, are competent and experienced in litigating large
5 employment class actions and versed in the rules governing class action discovery,
6 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
7 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
8 for the prosecution of this action for the substantial benefit of the Class Members.

9 (d) Superiority: The nature of this action makes use of class action
10 adjudication superior to other methods. A class action will achieve economies of time, effort,
11 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
12 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
13 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
14 manage this case as a class action.

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

22 **GENERAL ALLEGATIONS**

23 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
24 California residents as non-exempt employees at Defendants' California business location(s).

25 27. Defendants continue to employ non-exempt employees within California.

26 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
28 who were knowledgeable about California's wage and hour laws, employment and personnel

1 practices, and the requirements of California law.

2 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and Class Members were entitled to receive wages for all time
4 worked (including minimum wages and overtime wages) and that they were not receiving all
5 wages earned for work that was required to be performed. In violation of the Labor Code and
6 IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum
7 wages and overtime wages) for all hours worked and their overtime and double time was not
8 paid at the correct regular rate of pay because it did not include non-discretionary incentive
9 pay.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants
11 implemented an invalid alternative workweek schedule and/or failed to properly follow the
12 alternative workweek schedule. Consequently, in violation of the Labor Code and IWC Wage
13 Orders, Plaintiff and Class Members were not paid all overtime wages.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and Class Members were entitled to receive all required meal
16 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
17 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
18 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
19 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
20 rate of pay when they did not receive a timely, uninterrupted meal period. Additionally, even if
21 meal premiums were paid, there were not paid at the regular rate of pay because they did not
22 include non-discretionary incentive pay.

23 32. 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 all rest breaks or
25 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
26 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
27 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
28 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

1 Additionally, even if rest premiums were paid, there were not paid at the regular rate of pay
2 because they did not include non-discretionary incentive pay

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
5 indemnification for all necessary business expenditures or losses as a direct consequence of the
6 discharge of their duties, or of their obedience to the directions of Defendants. In violation of
7 the Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary
8 business expenses or losses, such as personal cell phones and vehicles, but were not reimbursed
9 nor indemnified of such expenses or losses that were incurred as a direct consequence of the
10 discharge of their duties, or of their obedience to the directions of Defendants.

11 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and Class Members were entitled to receive itemized wage
13 statements that accurately showed the gross and net wages earned, total hours worked, all
14 applicable hourly rates in effect, and the number of hours worked at each hourly rate in
15 accordance with California law. In violation of the Labor Code, Plaintiff and Class Members
16 were not provided with accurate itemized wage statements.

17 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and the Waiting Time Subclass were entitled to timely
19 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
20 and the Subclass did not receive payment of all wages within permissible time periods.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and Class Members were entitled to timely payment of wages
23 during employment. In violation of the Labor Code, Plaintiff and Class Members did not
24 receive payment of all wages within permissible time periods during their employment.

25 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known they had a duty to compensate Plaintiff and Class Members, and
27 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
28 intentionally failed to do so in order to increase Defendants' profits.

38. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief against Defendants on behalf of himself and all Class Members to recover, among other things, unpaid wages (including minimum wages and overtime wages), unpaid meal period premium payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and expenses.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197; Violation of IWC Wage Order §§3-4)

39. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

40. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

41. During the relevant time period, Defendants paid Plaintiff and Class Members less than the minimum wage when they failed to pay proper compensation for all hours worked, including time worked during missed and/or interrupted meal periods, and for off-the-clock work. To the extent these hours do not qualify for the payment of overtime, Plaintiff and Class Members were not being paid at least the minimum wage for their work.

42. During the relevant time period, Defendants regularly failed to pay at least the minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and 1197.

43. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

44. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

3 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

4 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 46. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
7 unlawful to employ persons without compensating them at a rate of pay either one and one-half
8 (1½) or two (2) times the person's regular rate of pay, depending on the number of hours
9 worked by the person on a daily or weekly basis.

10 47. Specifically, the applicable IWC Wage Orders provide that Defendants are and
11 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
12 and one-half times (1½) their regular rate of pay when working and for all hours worked in
13 excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first
14 eight (8) hours of work on the seventh day of work in a workweek.

15 48. The applicable IWC Wage Orders further provide that Defendants are and were
16 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
17 their regular rate of pay when working and for all hours worked in excess of twelve (12) hours
18 in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

19 49. California Labor Code § 510 codifies the right to overtime compensation at one
20 and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in
21 a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh
22 consecutive day of work, and overtime compensation at twice the regular hourly rate for hours
23 worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
24 seventh day of work in a workweek.

25 50. Labor Code § 510 and the applicable IWC Wage Orders provide that
26 employment of more than six days in a workweek is only permissible if the employer pays
27 proper overtime compensation as set forth herein.

28 51. Plaintiff and Class Members were non-exempt employees entitled to the

1 protections of California Labor Code §§ 510 and 1194.

2 52. During the relevant time period, Defendants required Plaintiff and Class
3 Members to work in excess of eight (8) hours in a day and/or forty (40) hours in a week or for
4 a seventh day in a workweek without paying Plaintiff and Class Members proper overtime
5 wages for their work.

6 53. During the relevant time period, Defendants required Plaintiff and Class
7 Members to work in excess of twelve (12) hours in a day and/or in excess of eight (8) hours on
8 the seventh day of work in a workweek without paying Plaintiff and Class Members double
9 time wages for their work.

10 54. During the relevant time period, Defendants failed to pay Plaintiff and Class
11 Members overtime wages for all overtime hours worked when Plaintiff and Class Members
12 worked in excess of eight (8) hours in a day and/or forty (40) hours in a week or for a seventh
13 day of work in a workweek, or when Plaintiff and Class Members worked in excess of twelve
14 (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a work
15 week. Further, Plaintiff and Class Members were required to work through meal periods and
16 perform work off-the-clock without being compensated for any overtime wages earned, which
17 caused Plaintiff and Class Members to not be paid overtime wages. To the extent these hours
18 qualify for the payment of overtime, Plaintiff and Class Members worked shifts of eight (8)
19 hours or more without being paid proper overtime wages.

20 55. In violation of state law, Defendants knowingly and willfully refused to perform
21 their obligations and compensate Plaintiff and Class Members for all wages earned and all
22 hours worked, including time worked during missed and/or interrupted meal periods as alleged
23 above.

24 56. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
25 overtime and double time compensation, as required by California law, violates the provisions
26 of Labor Code §§ 510 and 1198, and is therefore unlawful.

27 57. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to
28 recover their unpaid overtime and double time compensation as well as interest, costs, and

attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein

59. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

60. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

61. Labor Code § 512(a) provides that 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.

62. Labor Code § 512(a) also provides that an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, 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.

63. During the relevant time period, Plaintiff and Class Members did not receive compliant meal periods for working more than five (5) and/or ten (10) hours per day because their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

64. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of

1 compensation for each work day that a compliant meal period is not provided.

2 65. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
3 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
4 and section 11 of the applicable IWC Wage Order.

5 66. As a result of Defendants' failure to pay Plaintiff and Class Members an
6 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
7 Class Members suffered and continue to suffer a loss of wages and compensation.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PERMIT REST BREAKS**

10 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

11 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 68. Labor Code § 226.7(a) provides that no employer shall require an employee to
14 work during any rest period mandated by the IWC Wage Orders.

15 69. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
16 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
17 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
18 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
19 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

20 70. During the relevant time period, Plaintiff and Class Members did not receive a
21 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
22 they were required to work through their daily rest periods and/or were not authorized to take
23 their rest periods.

24 71. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
25 requires an employer to pay an employee one (1) additional hour of pay at the employee's
26 regular rate of compensation for each work day that a compliant rest period is not provided.

27 72. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
28 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §

226.7(b) and section 12 of the applicable IWC Wage Order.

73. As a result of Defendants' failure to pay Plaintiff and Class Members an additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members suffered and continue to suffer a loss of wages and compensation.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Violation of Labor Code §§ 2800, 2802)

74. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein

75. Labor Code § 2800 states that "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."

76. Labor Code § 2802(a) states that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer"

77. Labor Code § 2802(b) states that "[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss."

78. Labor Code § 2802(c) states that "[f]or purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

79. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants, including, but not limited to, personal cell phone and personal vehicle use required for work.

80. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and

1 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and
2 Class Members' work and job duties.

3 81. As a direct result, Plaintiff and Class Members have suffered and continue to
4 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
5 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
6 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 (Violation of Labor Code § 226)

10 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 83. Labor Code § 226(a) requires Defendants to provide each employee with an
13 accurate wage statement in writing showing nine pieces of information, including, the
14 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
15 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
16 basis, (4) all deductions, provided that all deductions made on written orders of the employee
17 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
18 period for which the employee is paid, (7) the name of the employee and the last four digits of
19 his or her social security number or an employee identification number other than a social
20 security number, (8) the name and address of the legal entity that is the employer, and (9) all
21 applicable hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee.

23 84. During the relevant time period, Defendants have knowingly and intentionally
24 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
25 and Class Members. The deficiencies include, among other things, the failure to correctly state
26 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
27 number of hours worked at each hourly rate by Plaintiff and Class Members.

28 85. As a result of Defendants' knowing and intentional failure to comply with Labor

1 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
2 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
3 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
4 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
5 their protected interest in receiving, accurate itemized wage statements under Labor Code
6 § 226(a). Plaintiff has had to file this lawsuit in order to analyze the extent of the
7 underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not
8 have had to engage in these efforts and incur these costs had Defendants provided the accurate
9 hours worked, wages earned, and rates of pay. This has also delayed Plaintiff's ability to
10 demand and recover the underpayment of wages from Defendants.

11 86. Plaintiff and Class Members are entitled to recover from Defendants the greater
12 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
13 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
14 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
15 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

16 87. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
17 and Class Members from knowing, understanding, and disputing the wages paid to them and
18 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
19 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
20 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
21 shown according to proof at trial.

22 88. Plaintiff and Class Members are also entitled to injunctive relief under
23 California Labor Code § 226(h), compelling Defendants to comply with California Labor Code
24 § 226. Accordingly, Plaintiff and Class Members seek the recovery of attorneys' fees and costs
25 incurred in obtaining this injunctive relief.

26 **SEVENTH CAUSE OF ACTION**

27 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

28 (Violation of Labor Code § 204 and 210)

89. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

90. Labor Code § 204 requires employers to pay wages regularly within seven days of the end of the pay period for employees paid on a biweekly basis.

91. During the relevant time period, Defendants willfully failed to timely pay Plaintiff and Class Members their wages within seven days of the close of the pay period.

92. Plaintiff and class members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff and class members are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

93. In addition, Plaintiff and class members are entitled to penalties pursuant to Labor Code § 210 as follows: (1) for Defendants' initial violation, \$100 for each failure to pay each Class Member; and (2) for each of Defendants' subsequent violations, or any willful or intentional violation, \$200 for each failure to pay each class member, plus 25 percent of the amount unlawfully held.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT

(Violation of Labor Code §§ 201, 202, 203, 227.3)

94. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

95. Labor Code §§ 201 and 202 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 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 an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

96. Labor Code § 227.3 requires employers to pay employees all vested vacation upon separation from employment.

97. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, vacation pay at the regular rate of pay, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

98. Defendants' failure to pay Plaintiff and the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

99. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

100. Pursuant to Labor Code § 203, Plaintiff and the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

101. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

102. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

103. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to

1 suffer injuries-in-fact.

2 104. Defendants' policies and practices violated state law in at least the following
3 respects:

- 4 (a) Failing to pay all wages earned (including minimum wage and overtime
5 wages) to Plaintiff and Class Members in violation of Labor Code §§
6 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- 7 (b) Failing to provide compliant meal periods without paying Plaintiff and
8 Class Members premium wages for every day said meal periods were not
9 provided in violation of Labor Code §§ 226.7 and 512.
- 10 (c) Failing to authorize or permit compliant rest breaks without paying
11 Plaintiff and Class Members premium wages for every day said rest
12 breaks were not authorized or permitted in violation of Labor Code §
13 226.7.
- 14 (d) Failing to provide Plaintiff and Class Members with accurate itemized
15 wage statements in violation of Labor Code § 226.
- 16 (e) Failing to timely pay wages to Plaintiff and Class Members during their
17 employment in violation of Labor Code § 204.
- 18 (f) Failing to timely pay all earned wages to the members of the Waiting
19 Time Subclass upon separation of employment in violation of Labor
20 Code §§ 201, 202, 203, and 227.3.

21 105. As alleged herein, Defendants systematically engaged in unlawful conduct in
22 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages
23 (minimum and overtime wages), failing to provide meal periods and rest breaks or
24 compensation in lieu thereof, failing to reimburse expenses, failing to furnish accurate wage
25 statements, and failing to pay all wages due and owing during and upon separation of
26 employment in a timely manner, all in order to decrease their costs of doing business and
27 increase their profits.

28 106. At all relevant times herein, Defendants held themselves out to Plaintiff and

1 Class Members as being knowledgeable concerning the labor and employment laws of
2 California.

3 107. At the time Plaintiff and Class Members were hired, Defendants knowingly,
4 intentionally, and wrongfully misrepresented to each of them their conformance with the
5 California Labor Code and IWC Wage Orders, including proper payments required by law.

6 108. At all times relevant herein, Plaintiff and Class Members relied on and believed
7 Defendants' representations concerning their conformance with California's wage and hour
8 laws all to their detriment.

9 109. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
10 and Class Members wages and monies, thereby creating for Defendants an artificially lower
11 cost of doing business in order to undercut their competitors and establish and/or gain a greater
12 foothold in the marketplace.

13 110. As a result of Defendants' intentional, willful, purposeful, and wrongful
14 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
15 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
16 according to proof at trial.

17 111. By violating the foregoing statutes and regulations as herein alleged,
18 Defendants' acts constitute unfair and unlawful business practices under California Business
19 and Professions Code §§ 17200, *et seq.*

20 112. As a result of the unfair and unlawful business practices of Defendants, as
21 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
22 restitution in an amount to be shown according to proof at trial.

23 113. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
25 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
26 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
27 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
28 Procedure § 1021.5.

1 **TENTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

3 114. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
4 though fully set forth herein.

5 115. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
8 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
9 an aggrieved employee on behalf of himself or herself and other current or former employees
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 116. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 117. Defendants' conduct violates numerous Wage Order and Labor Code sections,
17 including, but not limited to, the following:

- 18 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 246, 227.3, 510, 511,
19 1182.12, 1194, 1197, 1197.1, and 1198 for failure to timely pay all earned
20 wages (including minimum wage, sick pay, vacation pay, and overtime
21 wages) owed to Plaintiff and other aggrieved employees at the correct rate
22 during employment and upon separation of employment as herein alleged;
- 23 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
24 periods to Plaintiff and other aggrieved employees and failure to pay
25 premium wages for missed meal periods as herein alleged;
- 26 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
27 Plaintiff and other aggrieved employees and failure to pay premium wages
28 for missed rest periods as herein alleged;

- d. violation of Labor Code §§ 2800 and 2802 for failure to reimburse business expenses incurred by Plaintiff and other aggrieved employees as herein alleged;
- e. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and
- f. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and complete records showing, among other things, the hours worked daily by and the wages paid to aggrieved employees.

118. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

119. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

120. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

121. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

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

1. For certification under California Code of Civil Procedure § 382 of the proposed Class, Waiting Time Subclass, and any other appropriate subclasses;
2. For appointment of Zachary James Lutz as the class representative;
3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;
4. For compensatory damages in an amount according to proof at trial;

1 5. For an award of damages in the amount of unpaid compensation including, but
2 not limited to, unpaid wages, benefits, and penalties;

3 6. For economic and/or special damages in an amount according to proof at trial;

4 7. For liquidated damages pursuant to Labor Code § 1194.2, and 2698 *et seq.*;

5 8. For statutory penalties to the extent permitted by law, including those pursuant
6 to the Labor Code and IWC Wage Orders;

7 9. For injunctive relief as provided by the California Labor Code and California
8 Business and Professions Code §§ 17200, *et seq.*;

9 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

10 11. For an order requiring Defendants to restore and disgorge all funds to each
11 employee acquired by means of any act or practice declared by this Court to be unlawful,
12 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
13 Professions Code §§ 17200, *et seq.*;

14 12. For pre-judgment interest;

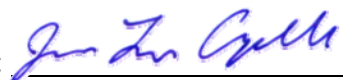
15 13. For civil penalties;

16 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
17 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
18 226(e) and 1194; and

19 15. For such other relief as the Court deems just and proper.

20
21 Dated: November 9, 2021

AEGIS LAW FIRM, PC

22
23 By: 
24 Jessica L. Campbell
25 Attorneys for Plaintiff Zachary James Lutz
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27
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