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Superior Court of California
County of Los Angeles

APR 20 2020

Sherril K. Carter, Executive Officer/Clerk of Court

By [Signature], Deputy

Attorneys for Plaintiff JOSE BERMEJO, as an individual and on behalf of all similarly situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT
STANLEY MOSK COURTHOUSE**

JOSE BERMEJO,

Plaintiff,

v.

LABORATORY CORPORATION OF
AMERICA, DBA LABCORP; and DOES 1
through 50, inclusive,

Defendant.

Case No.:

20STCV15175

**CLASS ACTION COMPLAINT FOR
DAMAGES INJUNCTIVE RELIEF AND
RESTITUTION**

1. Failure to Pay All Wages;
2. Failure to Keep Accurate Payroll Records;
3. Failure to Pay Wages Upon Ending Employment;
4. Unfair Competition (Business and Professions Code § 17200 et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff JOSE BERMEJO (hereinafter “Bermejo” or “Plaintiff”) on behalf of himself and
2 all others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff JOSE BERMEJO and the class
5 he seeks to represent (hereinafter “Plaintiff Class”), as defined herein, as all non-exempt
6 employees, employed by or formerly employed by, Defendant LABORATORY CORPORATION
7 OF AMERICA, (hereinafter “LABCORP” or “Defendant”) in the positions of “Service Rep-
8 Carrier, and related positions in the state of California from February 25, 2016, until judgment in
9 this matter.

10 2. Plaintiff individually and on behalf the class he seeks to represent, seek relief
11 against LABCORP for the failure to pay all wages due in violation of Labor Code sections 510
12 and 1194, including, both regular and overtime wages; the failure to pay wages of terminated or
13 resigned employees pursuant to Labor Code sections 201, 202, 203; the failure to provide accurate
14 itemized wage statements upon payment of wages pursuant to Labor Code sections 226,
15 subdivision (a), 1174, 1175, and applicable IWC Wage Orders. Plaintiff further seeks equitable
16 remedies in the form of declaratory relief and injunctive relief, and relief under the Business and
17 Professions Code section 17200 et seq. for unfair business practices.

18 3. The “Class Period” is defined as the four (4) years prior to the filing of the
19 complaint through the date final judgment is entered. Plaintiff reserves the right to amend this
20 complaint to reflect a different “Class Period” as further discovery is conducted.

21 4. At all relevant times herein, LABCORP and each Defendant, have consistently
22 maintained and enforced against Plaintiff and Plaintiff Class the following unlawful practices and
23 policies: a) willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked, including,
24 both regular and overtime; b) willfully refusing to compensate Plaintiff and certain members of
25 the Plaintiff Class wages due and owing at the time Plaintiff’s and Plaintiff Class’ employment
26 with Defendants ended; and c) willfully refusing to furnish to Plaintiff and Plaintiff Class accurate
27 itemized wage statements upon payment of wages.

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6. Venue is proper in Superior Court of California.

The Plaintiff

The Defendant

9. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50, and, but on information and belief allege that said Defendant is legally responsible for the payment of overtime compensation, rest and meal period compensation, and/or Labor Code

1 section 203 penalties to the Plaintiff Class members by virtue of their unlawful practices, and
2 therefore sue these Defendants by such fictitious names. Plaintiff will amend this complaint to
3 allege the true names and capacities of the DOE Defendants when ascertained.

4 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
7 legally attributable to the other Defendant.

8 **GENERAL ALLEGATIONS**

9 11. Labor Code section 1194 provides that notwithstanding any agreement to work for
10 a lesser wage, an employee receiving less than the legal overtime compensation is entitled to
11 recover in a civil action the unpaid balance of their overtime compensation, including, interest
12 thereon, reasonable attorneys' fees, and costs of suit.

13 12. Further, Business and Professions Code section 17203 provides that any person
14 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
15 Business and Professions Code section 17204 provides that any person who has suffered actual
16 injury and has lost money or property as a result of the unfair competition may bring an action in
17 a court of competent jurisdiction.

18 13. During all, or a portion of the Class Period, Plaintiff and each member of the
19 Plaintiff Class was employed by the Defendant and each of them, in the State of California.
20 Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under one
21 or more Industrial Welfare Commission (IWC) Wage Orders, and Labor Code section 510, and/or
22 other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not
23 subject to an exemption for executive, administrative and professional employees, which imposed
24 obligations on the part of the Defendant to pay Plaintiff and Plaintiff Class members lawful
25 overtime compensation.

26 14. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff
27 Class members for all hours worked.

28 15. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff

1 Class members overtime compensation for all hours worked over eight (8) hours of work in one
2 (1) day or forty (40) hours in one (1) week, and double-time for hours worked in excess of twelve
3 (12) hours in one day.

4 16. Plaintiff and each Plaintiff Class member primarily performed non-exempt work in
5 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
6 regulations or statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime
7 compensation at time and a half rate, and when applicable, double time rates as set forth by the
8 applicable Wage Orders, regulations and/or statutes.

9 17. Plaintiff Class members who ended their employment during the Class Period, but
10 were not paid the above due compensation for all hours worked, overtime compensation timely
11 upon the termination of their employment as required by Labor Code sections 201-203, and is
12 entitled to penalties as provided by Labor Code section 203.

13 18. During the Class Period, the Defendant and each of them, required the Plaintiff and
14 Plaintiff Class members to work off the clock as well as overtime without lawful compensation,
15 in violation of the various applicable Wage Orders, regulations and statutes, and the Defendant:
16 (1) willfully failed and refused, and continue to fail and refuse to pay compensation for all hours
17 worked, lawful overtime compensation to the Plaintiff Class members; and (2) willfully failed and
18 refused, and continue to fail and refuse to pay due and owing wages promptly upon termination of
19 employment to Plaintiff and certain Plaintiff Class members.

20 **CLASS ALLEGATIONS**

21 19. Plaintiff brings claims on behalf of the California Class. Plaintiff and the California
22 Class are similarly situated because they have substantially similar job requirements and pay
23 provisions, and are subject to Defendant's common practice, policy and/or plan of willfully and
24 intentionally refusing to pay minimum wage and overtime.

25 20. The California Class is so numerous that joinder of all members is impracticable.

26 21. The Plaintiff Class is composed of and defined as follows: all non-exempt
27 employees, employed by or formerly employed by, Defendant in the position of service rep-carrier,
28 and related positions in the state of California, from February 27, 2016, until judgment in this

1 matter:

- 2 a. All persons who were employed by Defendant in the State of California who,
3 for the three (3) years prior to the filing of this class action to the present have
4 worked as non-exempt employees and have been terminated or resigned, and
5 were entitled to be paid wages pursuant to Labor Code section 203;
- 6 b. All persons who were employed by Defendant in the State of California who,
7 for the four (4) years prior to the filing of this class action to the present have
8 worked as non-exempt employees and were entitled to be paid all wages owed,
9 including but not limited to overtime;
- 10 c. All persons who were employed by Defendant in the State of California who,
11 for the four (4) years prior to the filing of this class action to the present have
12 worked as non-exempt employees and were to be provided accurate payroll
13 record as required under Labor Code sections 226 and 1174;
- 14 d. All current and former California hourly non-exempt employees who work or
15 worked for Defendant during the liability period to be determined and who
16 suffered injury, including lost money, as a result of Defendant's unfair
17 competition.

18 22. Based on paragraphs 1-22, there is a community of interest in obtaining both (1)
19 appropriate legal and equitable relief for the common law and statutory violations and other
20 improprieties, and (2) adequate compensation for the damages and injuries that Defendant's
21 actions have inflicted upon Plaintiff and Class members.

22 23. Plaintiff will fairly and adequately represent and protect the interests of all the
23 various subclass members because they do not have a disabling conflict(s) of interest that would
24 be antagonistic to those of the other class members. Plaintiff has retained counsel who is
25 competent and experienced in state and federal class action wage-and-hour litigation.

26 24. This Court should permit this action to be maintained as a Class Action because:

- 27 a. The questions of law and fact common to the Plaintiff Class predominate over
28 any question affecting only individual members;

- 1 b. A class action is superior to any other available method for the fair and efficient
2 adjudication of the claims of the members of the Plaintiff Class;
- 3 c. The Plaintiff Class is so numerous that it is impractical to bring all member of
4 the Plaintiff Class before the Court;
- 5 d. Plaintiff and the other members of the Plaintiff Class will not be able to obtain
6 effective and economic legal redress unless the action is maintained as a class
7 action;
- 8 e. There is a community of interest in obtaining appropriate legal and equitable
9 relief for the common law and statutory violations and other improprieties, and
10 in obtaining adequate compensation for the damages and injuries which
11 Defendant's actions have inflicted upon the Plaintiff Class;
- 12 f. There is a community of interest in ensuring that the combined assets and
13 available insurance of the Defendant is sufficient to adequately compensate
14 members of the Plaintiff Class for the injuries sustained;
- 15 g. There is a community of interest in ensuring that the combine assets and
16 available insurance of the Defendant is sufficient to adequately compensate
17 members of the Class for the injuries sustained;
- 18 h. Without class certification, the prosecution of separate actions by individual
19 members of the Plaintiff Class would create a risk of:
- 20 (1) Inconsistent or varying adjudications with respect to individual
21 members of the Plaintiff Class which would establish incompatible
22 standard of conduct for the Defendant; and/or
- 23 (2) Adjudications with respect to the individual members which would,
24 as a practical matter, be dispositive of the interests of other members
25 not parties to the adjudications, or would substantially impair or
26 impede their ability to protect their interests, including but not
27 limited to the potential for exhausting the funds available from those
28 parties who is, or may be, responsible Defendant(s); and

- i. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES

(Plaintiff and Plaintiff Class Members against Defendant)

25. Plaintiff and Plaintiff Class reallege and incorporates by reference, as though fully set forth herein, the above paragraphs as if fully alleged herein.

26. Plaintiff and Plaintiff Class members regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff and Plaintiff Class members overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to compensate Plaintiff and Plaintiff Class for all hours worked, which caused Defendant to not compensate Plaintiff and Plaintiff Class all wages owed, including, minimum wage and overtime. Specifically, Defendant had a policy and practice of not compensating Plaintiff and Plaintiff Class for time spent driving until they reached their first location for the day. Similarly, Defendant had a policy and practice of not compensating Plaintiff and Plaintiff Class for time spent driving at the end of their scheduled shift, as Defendant required them to clock out once finished at their last location. Plaintiff and Plaintiff Class seek overtime in an amount according to proof. Pursuant to Labor Code section 510, Plaintiff seeks payment of all minimum wage compensation owed, as well as under Labor Code section 1194, the Plaintiff Class members seek the payment of all overtime compensation which they earned and accrued four (4) years prior to filing this complaint, according to proof.

27. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees, costs, pursuant to Labor Code section 1194 and prejudgment interest.

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1 and time spent driving after leaving their last location, as well as times where Plaintiff and Plaintiff
2 Class worked during their meal and/or rest breaks due to Defendant's failure to schedule Plaintiff
3 and Plaintiff Class in an overlapping manner so as to provide them with a meal and/or rest period.

4 32. Plaintiff is informed, and believes that Defendant's failure to keep accurate payroll
5 records, as described above, violated Labor Code section 1174, subdivision (d), and the applicable
6 wage order. Plaintiff and the Plaintiff Class are entitled to penalties of one hundred dollars
7 (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each subsequent violation
8 for every pay period during which these records and information was not kept by Defendant.

9 33. An employee suffering injury as a result of a knowing and intentional failure by an
10 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or
11 fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars
12 (\$100.00) per employee for each violation in a subsequent pay period, not to exceed an aggregate
13 penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable
14 attorneys' fees.

15 34. Plaintiff is informed and believes that Defendant's failure to keep and maintain
16 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff Class
17 are entitled to a statutory penalty of five hundred (\$500.00) for Plaintiff and each member of
18 Plaintiff Class pursuant to Labor Code section 1174.5.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

21 **(Plaintiff and Plaintiff Class against Defendant)**

22 35. Plaintiff and Plaintiff Class reallege and incorporates by reference, as though fully
23 set forth herein, the above paragraphs as if fully alleged herein.

24 36. Plaintiff and certain members of the Plaintiff Class who ended their employment
25 with Defendant during the Class Period, were entitled to be promptly paid lawful overtime
26 compensation and other premiums, as required by Labor Code sections 201-203. Defendant
27 refused and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result
28 of their failure to provide meal and/or rest periods as well as pay overtime compensation. Pursuant

1 to Labor Code section 203, such Plaintiff and Plaintiff Class seek the payment of penalties pursuant
2 to Labor Code section 203, according to proof.

3 37. Accordingly, Plaintiff and Plaintiff Class are entitled to attorneys' fees and costs
4 pursuant to Labor Code section 1194 for the underlying claims related to this claim, including but
5 not limited to the recovery of unpaid overtime.

6 **FOURTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION LAW**

8 **(Plaintiff and Plaintiff Class against Defendant)**

9 38. Plaintiff and Plaintiff Class reallege and incorporates by reference, as though fully
10 set forth herein, the above paragraphs as if fully alleged herein.

11 39. Business and Professions Code section 17200 et. seq. (also referred to herein as the
12 "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in the
13 form of any unlawful, unfair or fraudulent business act or practice.

14 40. Business and Professions Code section 17204 allows "any person who has suffered
15 injury in fact and has lost money or property as a result of such unfair competition" to prosecute a
16 civil action for violation of the Unfair Competition Law ("UCL.")

17 41. Labor Code section 90.5, subdivision (a), states that it is the public policy of
18 California to vigorously enforce minimum labor standards in order to ensure employees are not
19 required to work under substandard and unlawful conditions, and to protect employers who comply
20 with the law from those who attempt to gain competitive advantage at the expense of their workers
21 by failing to comply with minimum labor standards.

22 42. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
23 filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the Unfair
24 Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and
25 acts described in this Complaint including but not limited to violations of Labor Code sections
26 204, 1197, 1198 of the 226.7, and 512, as well as other statutes.

27 43. The violations of these laws and regulations, as well as of the fundamental
28 California public policies protecting workers, serve as unlawful predicate acts and practices for

1 purposes of Business and Professions Code section 17200 et. seq.

2 44. The acts and practices described above constitute unfair, unlawful and fraudulent
3 Business Practices, and unfair competition, within the meaning of Business and Professions Code
4 section 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
5 similarly situated employees to labor for many hours without receiving the meal and rest periods
6 and overtime compensation, to which they are entitled by law, while enabling Defendant to gain
7 an unfair competitive advantage over law-abiding employers and competitors.

8 45. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury in
9 fact in being denied their statutorily entitled meal and rest periods and full compensation for hours
10 of labor. As a result of Defendant's unlawful acts of unfair competition, Plaintiff and Plaintiff
11 Class have lost money and property in the form of a loss of wages in an amount to be proven at
12 trial.

13 46. As a direct and proximate result of the aforementioned acts and practices, Plaintiff
14 and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

15 47. Business and Professions Code section 17203 provides that a court may make such
16 orders or judgments as may be necessary to prevent the use or employment by any person of any
17 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
18 prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and business
19 practices alleged above.

20 48. Business and Professions Code section 17203 provides that the Court may restore
21 to any person in interest any money or property that may have been acquired by means of such
22 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and
23 Professions Code section 17203 for all wages and payments unlawfully withheld from employees,
24 including the fair value of the meal and rest periods taken away from them, during the four-year
25 period prior to the filing of this complaint.

26 49. Business and Professions Code section 17202 provides, "Notwithstanding section
27 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
28 forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to

1 enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions
2 Code section 17202.

3 50. Plaintiff's success in this action will enforce important rights affecting public
4 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
5 other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution,
6 civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

7 51. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
8 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
9 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
10 pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to
11 Code of Civil Procedure section 1021.5 and otherwise.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 14 1. For nominal damages;
- 15 2. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits
16 from the unlawful business practices of Defendant;
- 17 3. For waiting time penalties pursuant to Labor Code section 203, on behalf of the
18 terminated or resigned employees;
- 19 4. For penalties pursuant to Labor Code sections 226, 226, subdivision (e), 226.7, 512 and
20 1194;
- 21 5. For interest accrued to date;
- 22 6. Injunctive relief, enjoining Defendant from engaging in the unlawful and unfair
23 business practices complained herein;
- 24 7. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair
25 business practices within the meaning of Business and Professions Code section 17200,
26 et seq., and declaring Defendant has unlawfully treated Plaintiff and Plaintiff Class,
27 failed to pay all wages and overtime compensation in violation of California law, failed
28 to pay wages to former employees, Plaintiff Bermejo, and other certain members of

- 1 Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized wage
2 statements upon payment of wages, and declaring the amounts of damages, penalties,
3 equitable relief, costs, and attorneys' fees Plaintiff and Plaintiff Class are entitled to;
- 4 8. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and
5 1194;
- 6 9. For reasonable attorneys' fees pursuant to Labor Code sections 226 and 1194; and
7 10. For all such other and further relief as the Court may deem just and proper.

8
9 Dated: April 20, 2020

MAHONEY LAW GROUP, APC

10
11 By:


Kevin Mahoney, Esq.

12 Attorney for Plaintiff Jose Bermejo as an individual
13 and on behalf of all similarly situated employees
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Dated: April 20, 2020

By:

Attorney for Plaintiff Jose Bermejo as an individual
and on behalf of all similarly situated employees