

FILED

Superior Court of California
County of Riverside

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Attorneys for Plaintiff,
Lawanda Lasha House Johnson on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
RIVERSIDE COUNTY**

Lawanda Lasha House Johnson, on behalf of
herself, all aggrieved employees, and the State
of CA as a Private Attorneys General,

Plaintiffs,

vs.

Quest Diagnostics, Incorporated, dba Quest
Diagnostics Incorporated of Nevada, a Nevada
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: **RIC2001976**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff Lawanda Lasha House Johnson brings this PAGA representative action
2 complaint on behalf of herself, all aggrieved employees, and the State of California as a Private
3 Attorneys General, and alleges as follows:

4 **NATURE OF THE ACTION**

5
6 1. Plaintiff Lawanda Lasha House Johnson worked for defendant Quest Diagnostics,
7 Incorporated, dba Quest Diagnostics Incorporated of Nevada, and Does 1-50 (collectively
8 "Defendants") until December of 2019. Plaintiff brings this action pursuant to the Private
9 Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative
10 basis. All current and former employees of Defendants within one year of serving notice on the
11 LWDA to the present are aggrieved employees.

12 2. Defendants failed to comply with California Labor Code requirements due to erroneous,
13 willful, and intentional employment practices and policies. Plaintiff brings this representative
14 action on behalf of herself, all others similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below. Plaintiff provided notice of her claims
16 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA"), as
17 illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following
18 the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now
19 brings this Complaint for civil penalties under the Private Attorneys General Act ("PAGA"), Labor
20 Code §2698 *et seq.*

21 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
22 worked, including overtime hours worked; (2) underpaying overtime due to failing to include
23 nondiscretionary bonuses into employees' regular rate of pay for purposes of calculating overtime
24 due; (3) failing to timely pay all wages owed; (4) failing to provide compliant off-duty meal breaks
25 ; and (5) failing to provide accurate wage statements and maintain accurate payroll records.
26 Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private
27 Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, as described more fully herein.

28 ///

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2 complaint on behalf of herself, all aggrieved employees, and the State of California as a Private
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THE PARTIES

7. Plaintiff Lawanda Lasha House Johnson is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants until May 6, 2019.

8. Defendant Quest Diagnostics, Incorporated, dba Quest Diagnostics Incorporated of Nevada, is a Nevada corporation doing business in California with the capacity to sue and to be sued and doing business, in Riverside County, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county, and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000).

1 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California, and Defendants are incorporated in and/or qualified to do business in
3 California and regularly conduct business in California. Further, there is no federal question at
4 issue as the claims herein are based solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 14. During the relevant period, Defendants committed various violations of the California
7 Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state
8 law, which is intended to increase profits to the detriment of aggrieved employees.

9 15. Plaintiff is an aggrieved employee of Defendants, having worked for Defendants as a
10 phlebotomist from 2011 until December of 2019.

11 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 17. Plaintiff and all current and former employees within one year of filing this action to
15 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
16 code §2699(c).)

17 18. Defendants, and each of them, have committed the following violations of the
18 California Labor Code:

19 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

20 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

21 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 20. Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an
24 employee is subject to the control of an employer, and including all the time the employee is
25 suffered or permitted to work, whether or not required to do so.” Plaintiff and aggrieved employees
26 were not paid for all hours worked, including overtime hours worked because of Defendants’
27 policy of shaving timecard entries due to rounding. Defendant also failed to include
28

1 nondiscretionary bonuses in the average rate of pay for purposes of calculating overtime and
2 penalty wages.

3 21. Defendants have been engaged in many unlawful employment practices which resulted
4 in underpayment for hours worked each pay period, including penalty pay and overtime hours
5 worked, as more fully set forth below:

6 22. Time Shaving and Rounding. Defendants round employee timecard entries to the
7 nearest 6 minutes, although Defendants use high-tech timeclocks that could easily capture the
8 exact minute employees present for work.

9 23. The California Supreme Court has rejected the *de minimis* argument frequently echoed
10 by employers, confirming that employees are entitled to payment for all hours (and minutes)
11 worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair
12 and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time,
13 in failure to compensate the employees properly for all the time they have actually worked.’”
14 (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210
15 Cal.App.4th at p. 907.) The policy utilized by Defendants was neither fair nor neutral, as it
16 consistently favored the employer, resulting in a failure to compensate Plaintiff and aggrieved
17 employees for all hours and overtime hours worked.

18 24. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay Plaintiff
19 and aggrieved employees for all hours worked as a result of Defendants’ timecard rounding and
20 time shaving practices. Plaintiffs further miscalculated the regular rate for purposes of calculating
21 overtime, as discussed below. Based on Defendants’ unlawful conduct described above, and
22 because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants’
23 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
24 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage
25 Order 4-2001 §4. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699
26 *et seq.*

27 25. Failure to Pay Overtime Wages. Defendants have required, as a result of the practices
28 alleged herein, Plaintiff and others to work hours in excess of eight hours in a day and forty in a

1 week, but has not paid these employees overtime compensation at one and one-half times the
2 regular rate of pay in violation of Labor Code §510. Further, Plaintiff and aggrieved employees
3 have been required to work more than 12 hours in one day without being compensated at a rate of
4 twice the regular rate of pay. §510. As a result, Plaintiff and aggrieved employees have been denied
5 “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor
6 Code. §1194. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et*
7 *seq.*

8 **Failure to Include Nondiscretionary Bonuses in Regular**
9 **Rate of Pay to Calculate Overtime**

10 (Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

11 26. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
12 employees of every description, whether the amount is fixed or ascertained by the standard of time,
13 task, piece, commission basis, or other method of calculation.”

14 27. Defendants have a policy and practice of issuing nondiscretionary bonuses to Plaintiff
15 and aggrieved employees but fail to include bonuses when calculating the regular rate of pay for
16 purposes of calculating overtime. It is well established that non-discretionary bonuses retroactively
17 increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code
18 §207) The “regular rate” is calculated by dividing the hours worked in a week by all the
19 compensation earned for that week. When an employee is later paid a bonus that is partly due to
20 work performed in that week, this additional pay must be added into the total compensation for
21 the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008)
22 169 CA4th 804, 807.)

23 28. Plaintiff and aggrieved employees received nondiscretionary bonuses, in addition to
24 payment in connection with a nondiscretionary annual bonus/incentive plan. Plaintiff and
25 aggrieved employees received earnings that must also be factored into the average rate of pay for
26 purposes of calculating overtime.

27 29. The image captured from Plaintiff’s December 2019 paycheck, below, shows that she
28 received payment for “Annual Incentive Plan” of \$1,000.14. She also received payment for a

“Non- Discretionary Bonus” of \$200, and “Other Earnings” of \$124.90. However, the overtime rate of pay she was receiving did not include any of these amounts, and instead was only 1.5x Plaintiff’s base rate of pay.

30. Regarding meal period penalty pay, the penalty pay reflected on the paystub similarly is listed at solely the base rate, excluding the nondiscretionary bonuses and extra pay from the calculation.

HOURS AND EARNINGS					
Prior Period		Current		YTD	
Description	Rate	Hours	Earnings	Hours	Earnings
Regular Hours Pay	20.8000	37.10	764.28	940.90	37,728.82
Over Time Hours Pay at Base Rate	20.8000	2.50	43.28	15.80	327.54
Over Time Hours Pay at Premium Rate	10.3000	2.10	21.64	15.80	163.78
TOB Paid					2,071.20
Holiday					982.40
Overtime Prior Balance					854.67
Year End Payout					221.58
Jury Duty Prior Balance					184.80
Meal Penalty					20.80
Annual Incentive Plan					1,000.14
Non Discretionary Bonus					200.00
Other Earnings			2.50		124.90
Total:			829.16	1,001.53	43,735.84
BEFORE-TAX DEDUCTIONS					

31. Defendant did not make any adjustments to overtime rates to incorporate the nondiscretionary bonuses, and this failure is reflected in Plaintiff and aggrieved employees’ paystubs, as in the sample above. Plaintiff and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code, §1194. Additionally, Defendants have violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Defendants are liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

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(Cal. Labor Code §§201, 202, 203, 256, 558, and 2698 *et seq.*)

32. Defendants knowingly and willfully failed to pay all compensation due and owing to Plaintiff and aggrieved employees at the time employment terminated. Defendants willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

33. Plaintiff believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA).

34. Pursuant to §§203, Plaintiff and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Defendants’ “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants violated §§201 – 203 and 256, Defendants are liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

35. Defendants were required to pay Plaintiff and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, aggrieved employees were underpaid for hours worked, including overtime wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

§558 Civil Penalty For Violation of §512 Meal Break Requirements

(Civil Penalties under Labor Code §§226, 226.7, 512, 558, 2698 *et seq.*)

36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

37. Defendants prohibited employees from taking uninterrupted 30-minute minimum meal breaks and required rest breaks during work hours. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day

1 without providing the employee with a meal period of not less than 30 minutes...” Labor Code
2 §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period
3 mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the
4 Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30
5 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as
6 time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee for
7 longer hours than those fixed by the wage order or under conditions of labor prohibited by the
8 order.

9 38. Plaintiff and aggrieved employees received shortened and interrupted meal periods,
10 and sometimes missed meal periods altogether. For example, on 7/2/19, 9/26/19 and 9/27/2019,
11 Plaintiff’s lunch was only 28 minutes. On 8/20/19, her meal period was 27 minutes, on 8/26/19
12 she received only 21 minutes, and on 8/1/19 she was able to take only 25 minutes. Meal period
13 premiums were not paid to Plaintiff and aggrieved employees on each occasion the labor code
14 was violated.

15 39. Moreover, as discussed above, when premiums were paid, Defendants failed to
16 properly calculate employees’ regular rates of pay because Defendants excluded
17 nondiscretionary bonuses and all sources of pay. Finally, even when meal periods were paid,
18 Defendants were required to pay the \$100 PAGA penalty under §2699, 75% of which goes to the
19 LWDA and 25% goes to the employee. However, the 25% never shows up on employee wage
20 statements. Where Defendants paid meal period premiums, although incorrectly calculated,
21 Defendants acknowledged a meal period violation and therefore owes the PAGA penalty, the
22 employee’s portion of which should be listed on the wage statement.

23 40. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-
24 duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in
25 violation of Labor Code §§226.7 and 512. As a derivative claim, Plaintiff and aggrieved
26 employees allege that pay statements were inaccurate, failing to include required meal period
27 penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations,
28 Defendants are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

41. Plaintiff alleges on information and belief that Defendants’ failure to pay aggrieved
employees the unpaid balance of these meal period wages upon the termination of their
employment, as alleged in this cause of action, was willful, and thus entitles aggrieved

employees to penalties under Labor Code § 203. Specifically, Labor Code § 203 provides that an employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the time they were due, whichever period is shorter.

42. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for each violation of Labor Code §226.7. Further, as a derivative claim of failing to pay the premium pay of one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided, Plaintiff will seek statutory penalties under Labor Code §226(a)(1) because the failure to pay such premium wages rendered gross pay calculations inaccurate in violation of Labor Code §226(e)(2)(B)(i).

Civil Penalties For Failure to Furnish and Maintain Accurate Payroll Records

(Civil Penalties under Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

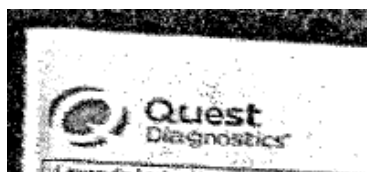
44. California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her social security number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

45. Labor Code § 1174 provides that “[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [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. These records shall be kept in

accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.”

46. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. Derivative of the claims alleged above, the statements provided to Plaintiff and aggrieved employees have not accurately reflected actual gross wages earned, including overtime, and total hour worked. Such failures caused injury to Plaintiff and aggrieved employees, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to.

47. Moreover, wage statements issued to Plaintiff and aggrieved employees have been defective because they failed to list the true name of the legal entity that is the employer and total hours worked, as reflected in the images, below. While the wage statements list Quest Diagnostics, searching for that name on the California Secretary of State website yields numerous options, causing confusion to employees.



Entity Number	Registration Date	Status	Entity Name	Jurisdiction	Agent for Service of Process
0763619	02/13/1976	ACTIVE	QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC.	DELAWARE	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)
2681228	10/29/2004	ACTIVE	QUEST DIAGNOSTICS INCORPORATED, WHICH WILL DO BUSINESS IN CALIFORNIA AS QUEST DIAGNOSTICS INCORPORATED OF NEVADA	NEVADA	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)
1630165	12/28/1988	ACTIVE	QUEST DIAGNOSTICS INFECTIOUS DISEASE, INC.	DELAWARE	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)

48. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

50. Plaintiff alleges on information and belief that Defendants knowingly and intentionally failed to furnish aggrieved employees with accurate itemized statements for each pay period that they worked and failed to maintain accurate payroll records of the aggrieved employees as mandated by Labor Code §§ 226.

52. Through this representative action, Plaintiff will advance the interests of hundreds of current and former employees, such that joinder is impracticable. These current and former employees can be readily be identified through a review of Defendants' payroll records and the records of the company that handles payroll for Defendants.

FIRST CAUSE OF ACTION

54. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

1 55. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants
2 during the applicable statutory period and suffered one or more of the Labor Code violations set
3 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
4 former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable
5 attorneys’ fees and costs.

6 56. Plaintiff seeks to recover the PAGA civil penalties through a representative action
7 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
8 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

9 57. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
10 Code provisions:

- 11 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
12 Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)
- 13 b. Failure to Include Nondiscretionary Bonuses in Regular Rate of Pay to Calculate
14 Overtime (Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1197.1, 1198,
15 2699 *et seq.*)
- 16 c. Failure to Provide Compliant, Uninterrupted Meal Breaks (Cal. Labor Code §§226,
17 226.7, 512, 558, 1198, 2699 *et seq.*)
- 18 d. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a),
19 256, 2698 *et seq.*);
- 20 e. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
21 Records (Cal. Labor Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

22 58. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
23 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
24 aggrieved employee for the first violation and one thousand dollars (\$1,000) per aggrieved
25 employee for each subsequent violation of Labor Code §226(a).

26 59. With respect to violations of Labor Code §510, Labor Code §558 imposes a civil
27 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
28 for each underpaid employee for each pay period for which the employee was underpaid, and one

1 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
2 for which the employee was underpaid. Plaintiff only seeks penalties under §558 and does not seek
3 underpaid wages under §558, which are not available in PAGA actions.

4 60. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
5 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
6 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
7 a civil penalty is not specifically provided.

8 61. Plaintiff and the other current and former employees of Defendants are aggrieved
9 employees. They were or are employed by Defendants, and each of them, and the violations alleged
10 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
11 current and former aggrieved employees.

12 62. At the time of each violation, Defendants employed one or more employees.

13 63. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
14 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
15 determined at trial, pre-judgment interest, costs, and attorneys' fees.

16 64. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
17 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
18 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
19 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
20 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice within
21 the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to
22 Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of
23 aggrieved employees and the State of California.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
26 judgement against Defendants as follows:

27 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
28 determined at trial, but at least the jurisdictional amount of this Court;

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: April 13, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff Lawanda Lasha House
Johnson, and all aggrieved employees

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EXHIBIT A



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February 7, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Quest Diagnostics, Inc.
10441 University Center Drive
Tampa, FL 33612

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: Lawanda Lasha House Johnson
Employer: Quest Diagnostics, Inc.

Dear Sir or Madam:

Lawanda Lasha House Johnson (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Quest Diagnostics, Inc. (hereafter “Employer” or “Quest.”)

Quest operates hundreds of clinical laboratories throughout California. Claimant worked for Quest as a phlebotomist from 2011 until December of 2019. Claimant’s proposed PAGA representative action would represent thousands of aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development

Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked

Including Overtime Hours Worked Due to Rounding

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Section 2(K) or Wage Order 4 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Rounding. Here, Claimant and aggrieved employees were not paid for all hours worked because of Employer’s policy of shaving electronic time entries due to rounding. Employer rounds employee time entries to 6 minute intervals, although Employer uses timeclocks that capture the exact minute employees present for work.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

When employees like Claimant and her coworkers earning near minimum wage do not receive payment for all hours worked, including as a result of Employer’s rounding practice, the result is that they are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 4-2001 §4. Employer has been engaged in many unlawful employment practices which resulted in failure to pay minimum wage for all hours worked each pay period.

**Failure to Include Nondiscretionary Bonuses in Regular
Rate of Pay to Calculate Overtime and Penalty Pay**

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194,
1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer has a policy and practice of issuing nondiscretionary bonuses to Claimant and aggrieved employees but fails to include bonuses when calculating the regular rate of pay for purposes of calculating overtime due. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Claimant and aggrieved employees received nondiscretionary bonuses, in addition at payment in connection with a nondiscretionary annual bonus plan. Additionally, there are other earnings that must be factored into the average rate of pay for purposes of calculating overtime.

The image captured from Claimant’s December 2019 paycheck shows that Claimant received payment for “Annual Incentive Plan” of \$1,000.14. She also received payment for a “Non- Discretionary Bonus” of \$200, and “Other Earnings” of \$124.90. However, the overtime rate of pay she was receiving did not include any of these amounts, and instead was only 1.5x Claimant’s base rate of pay.

Regarding meal period penalty pay, the penalty pay reflected on the paystub similarly is listed at solely the base rate, excluding the nondiscretionary bonuses and extra pay from the calculation.

HOURS AND EARNINGS					
Prior Period		Current		YTD	
Description	Rate	Hours	Earnings	Hours	Earnings
Regular Hours Pay	20.6000	37.10	764.26	940.80	37,728.82
Overtime Hours Pay at Basic Rate	20.6000	2.10	43.26	15.80	327.84
Overtime Hours Pay at Premium Rate	30.9000	2.10	64.89	15.80	163.78
TSP Paid					2,071.20
Holiday					982.40
Overtime Prior Balance					854.87
Year End Payout					221.54
Jury Duty Prior Balance					184.80
Meal Penalty					20.80
Annual Incentive Plan					1,000.14
Non-Discretionary Bonus					200.00
Other Earnings			2.50		124.30
Total:			829.16	1,001.57	43,735.84
BEFORE TAX DEDUCTIONS					

Employer did not make any adjustments to overtime rates or penalty pay rates to incorporate the nondiscretionary bonuses, and this failure is reflected in Claimant and aggrieved employees' paystubs, a sample appears above. Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all minimum, regular, overtime, and premium wages owed to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256, Claimant and similarly situated

individuals are now also entitled to recover up to thirty (30) days of unpaid minimum wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201-203 and 256, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of minimum wages in a timely manner as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and §256 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all minimum wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for all minimum wages owed, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Compliant, Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Claimant and aggrieved employees received shortened and interrupted meal periods, and sometimes missed meal periods altogether. For example, on 7/2/19, 9/26/19 and 9/27/2019, Claimants lunch was only 28 minutes. On 8/20/19, her meal period was 27 minutes, on 8/26/19 she received only 21 minutes, and on 8/1/19 she was able to take only 25 minutes. Meal period premiums were not paid to Claimant and aggrieved employees on each occasion the labor code was violated. Moreover, as discussed above, when premiums were paid, Quest failed to properly calculate employees' regular rates of pay because Quest excluded nondiscretionary bonuses and all sources of pay. Finally, even when meal periods premiums were paid, Quest was required to pay the corresponding \$100 and \$200 PAGA penalty under §2699, 75% of which goes to

the LWDA and 25% to the employee. However, the LWDA and the employee were never paid the PAGA penalties.

Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer’s failure to provide meal periods violates a Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements
(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked.



Moreover, wage statements issued to Claimant and aggrieved employees have been defective because they failed to list the true name of the legal entity that is the employer and total hours worked, as reflected in the images, above. While the wage statements list Quest Diagnostics, searching for that name on the California Secretary of State website yields numerous options, causing confusion to employees.

Entity Number	Registration Date	Status	Entity Name	Jurisdiction	Agent for Service of Process
0763619	02/13/1976	ACTIVE	<u>QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC.</u>	DELAWARE	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)
2681228	10/29/2004	ACTIVE	<u>QUEST DIAGNOSTICS INCORPORATED, WHICH WILL DO BUSINESS IN CALIFORNIA AS QUEST DIAGNOSTICS INCORPORATED OF NEVADA</u>	NEVADA	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)
1630165	12/28/1988	ACTIVE	<u>QUEST DIAGNOSTICS INFECTIOUS DISEASE, INC.</u>	DELAWARE	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE (C1592199)

Employer issued and maintained inaccurate wage statements and records.
Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

cc:

Sahag Majarian, Esq.

Law Offices of Sahag Majarian II

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Tarzana, CA 91356