

WHITEHEAD EMPLOYMENT LAW

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Assigned for all Purposes

Judge Kirk Nakamura

CX-103

Attorneys for Plaintiff LAURA BECKER, an individual on her own behalf,
and on behalf of all similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

LAURA BECKER, an individual on her
own behalf, and on behalf of all others
similarly situated,

Plaintiff,

v.

LABORATORY CORPORATION OF
AMERICA HOLDINGS, a Delaware
corporation; and
DOES 1 through 25, inclusive,

Defendant.

CASE NO. 30-2021-01206025-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT FOR PAGA PENALTIES
PURSUANT TO LABOR CODE 2698-2699
et. seq.**

Plaintiff, LAURA BECKER, an individual on her own behalf, on behalf of the people
of the State of California and as an “aggrieved employee” acting as private attorney general
under the Labor Code Private Attorneys General Act of 2004 §2699, et sea. (the “PAGA”)
only, alleges on information and belief, except upon her own personal knowledge, the
following:

I. INTRODUCTION

1. Plaintiff brings this action against Defendant, Laboratory Corporation of
America Holdings, a Delaware corporation (hereinafter “Defendant”), and any subsidiaries

1 or affiliated companies on behalf of herself and on behalf of all current and former similarly
2 situated aggrieved employees who work or worked for Defendant. Plaintiff does not seek to
3 recover anything other than penalties as permitted by California Labor Code §2699.

4 2. California has enacted the PAGA to permit individuals to bring an action
5 on behalf of themselves and on behalf of others similarly situated “(Aggrieved Employees”)
6 for PAGA penalties only, which is the precise and sole nature of this action.

7 3. Accordingly, Plaintiff seeks to obtain all applicable relief for Defendant’s
8 violations under the PAGA and solely for relief as permitted by PAGA – that is penalties
9 and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
10 complaint should be construed as attempting to obtain any relief that would not be available
11 in a PAGA only action.

12 **II. JURISDICTION AND VENUE**

13 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure
14 sections 395 and 410.10 Plaintiff is a resident of California and worked for Defendant in the
15 state of California, in the County of Orange. Defendant conduct business in the State of
16 California including in Orange County, CA and the unlawful acts alleged herein have a direct
17 effect on Plaintiff and similarly situated Aggrieved. Employees Aggrieved Employees within
18 the State of California and within the County of Orange.

19 **III. THE PARTIES**

20 5. Plaintiff, Laura Becker, is a resident of Tustin, California and at all relevant
21 times worked for Defendant in Rancho Santa Margarita, California in the County of Orange.
22 During the relevant statutory period, she was employed by Defendant as a non-exempt
23 phlebotomist from on or about August 5, 2019 to on or about August of 2020.

24 6. At all times relevant to this Complaint, Defendant LABORATORY
25 CORPORATION OF AMERICA HOLDINGS is and was a Delaware, duly registered with
26 the California Secretary of State and conducting regular business throughout California,
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1 providing clinical laboratory and drug development services where it employed Plaintiff and
2 the Aggrieved Employees.

3 7. Plaintiff is currently unaware of the true names or capacities of all the
4 Defendants sued herein under the fictitious names DOES 1–25, inclusive, but prays for leave
5 to amend and serve such fictitiously-named Defendant pursuant to California Code of Civil
6 Procedure section 474 once their names and capacities become known.

7 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1–25,
8 inclusive, are the partners, agents, owners, shareholders, managers, principals or employees
9 of Defendant and/or and were acting on behalf of Defendant.

10 **IV. FACTUAL SUMMARY BACKGROUND**

11 9. Upon information and belief, Defendant employs and have employed
12 Plaintiff and similarly situated individuals who worked as hourly compensated, non-exempt
13 phlebotomists, specimen handlers, patient intake representatives, couriers, clinical laboratory
14 scientists, technologies or other similar positions (the “Aggrieved Employees”) at their
15 clinical laboratories throughout the State of California.

16 10. The Plaintiff and the Aggrieved Employees were not or have not been
17 properly compensated for all hours worked and all wages earned during the relevant liability
18 period pursuant to the California Labor Code and applicable Industrial Welfare Commission
19 Wage Order No. 4 (“IWC No. 4”).

20 11. Throughout the term of Plaintiff’s employment, she and the Aggrieved
21 Employees worked time while off the clock that was never recorded nor compensated. At
22 the beginning of each eight hour shift, Plaintiff and those similarly situated worked for
23 approximately 15 minutes prior to be able to clock in at the beginning of each shift without
24 pay.

25 12. Moreover, during the statutory period, Plaintiff further alleges that due to
26 chronic understaffing, she and the Aggrieved Employees were actively impeded and
27 prohibited by Defendant from taking their proper rest and meal break periods. Because they
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1 were routinely understaffed, Defendant demanded that Plaintiff and the Aggrieved remain
2 on call and thus during their breaks, supervisors would either call or text them to either
3 come back from their breaks early or to answer work-related questions. Thus, rest and
4 meal breaks were often cut short and were never duty free and uninterrupted. Seldom was
5 the occasion when Plaintiff received an actual full 30-minute meal break.

6 13. Accordingly, during the relevant statutory period, the Plaintiff and
7 Aggrieved Employees were not provided with one hour's wages in lieu of missed meal
8 breaks in one or more of the following manners:

9 a) They were not provided timely, uninterrupted, full thirty-minute meal
10 periods after every five hours of labor performed and were not compensated one hour's wages
11 in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and applicable
12 IWC Wage Order No. 4-2001; and/or

13 b) They were required to work through their daily meal period(s), or to
14 work an unlawful "on-duty meal period;" and/or

15 c) They were impeded in their ability to take a meal period.

16 14. In addition, during the relevant statutory period, Plaintiff and the Aggrieved
17 Employees were not provided lawful rest periods, and were not provided with one hour's
18 wages in lieu thereof, in one or more of the following manners:

19 a) They were required to work without being provided a minimum ten-
20 minute, uninterrupted, duty free rest period for every four hours or major fraction thereof
21 worked and were not being compensated one hour of pay at their regular rate of
22 compensation for each workday that a rest period was not provided; and/or

23 b) They were either impeded or prevented from taking or unable to take
24 lawful rest break periods.

25 15. At no time did Plaintiff ever validly waive her meal breaks.

26 16. Upon information and belief, and thereon, Plaintiff also alleges that the
27 Aggrieved Employees did not validly waive their meal breaks.
28

1 17. The time during these short and non-duty free rest and meal breaks when
2 Plaintiff and the Aggrieved Employees were working while “off the clock” was also not
3 recorded or compensated by Defendant as part of the actual hours worked by Plaintiff and
4 the Aggrieved Employees. Thus, Defendant has failed to maintain accurate records of
5 hours worked and wages earned in violation of California Labor Code Section 1174(d).

6 18. Due to Defendant’s many interruptions of the Plaintiff and Aggrieved
7 Employees’ rest and meal break periods, plus the unrecorded and uncompensated ten to
8 fifteen (10-15) minutes of labor performed prior to clocking in each day, caused their shifts
9 to exceed more than eight hours in a single day and more than forty hours in a workweek
10 and constituted overtime hours for which they were not properly compensated in violation
11 of California Labor Code Section 510.

12 19. Because of the foregoing alleged practices, the Plaintiff and Aggrieved
13 Employees did not receive accurately itemized wage statements during the relevant
14 statutory period.

15 20. During the relevant statutory period, the non-exempt Plaintiff and Aggrieved
16 Employees were not paid wages for all hours worked, whether regular time or overtime,
17 and/or were required to work without compensation during the workday and workweek
18 while performing compensable tasks and duties while off the clock.

19 21. Further on information and belief, in addition to Defendant’ willful failure
20 to pay overtime and failure to pay all wages for every hour of labor worked, and failure to
21 pay premium pay wages for missed and non-compliant rest breaks and meal breaks,
22 Defendant also willfully failed to pay all such legally due wages when Plaintiff and
23 formerly employed Aggrieved Employees ceased their employment with Defendant in
24 violation of California Labor Code §§ 201-202. Further, during the relevant statutory
25 period as a matter of routine and daily practice, Plaintiff and the Aggrieved Employees
26 are/were required to use their personal cell phones in conducting their job duties.
27 Utilization of their personal cell phones was an essential part of the job. Plaintiff and the
28 Aggrieved Employees were required by Defendant to use their personal cell phones to call or

1 text supervisors and co-workers or to receive calls or texts from supervisors or co-workers.
2 Plaintiff and the Aggrieved Employees were provided a landline, but Plaintiff and the
3 Aggrieved Employees were rarely close enough to the landline to pick up if someone called.
4 Due to the high workload and demands by Defendant, and the nature of Plaintiff and the
5 Aggrieved Employees job duties, they were unable to stop what they were doing to pick up the
6 phone. Defendant instead would call and text Plaintiff and the Aggrieved Employees personal
7 phones to convey any important messages or information during the workday. Defendant also
8 called and sent text messages to Plaintiff and the Aggrieved Employees while they were off the
9 clock, regarding scheduling changes, updated assignments, and regarding shift coverage
10 requests.

11 22. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved
12 Employees for the expenses they incurred when using their personal cell phones for these
13 daily work-related communications in violation of California Labor Code Section 2802.

14 23. Defendant engaged in, ratified and enforced the following unlawful practices
15 and policies against Plaintiff and the Aggrieved Employees she seeks to represent:

- 16 a.) Failing to pay former employee Aggrieved Employees who were
17 discharged, laid off, or resigned in accordance with the requirements of Labor
18 Code §§ 201, 202, and 203.
- 19 b.) Failing to pay non-exempt employees overtime for all hours worked in
20 excess of an eight-hour day or in excess of a forty-hour workweek in violation
21 of Labor Code Section 510, 1194 and IWC Wage Order No. 4-2001.
- 22 c.) Failing to maintain accurate records of all hours worked and earned wages
23 in violation of Labor Code §§ 226 and 1174(d) and IWC Wage Order No. 4-
24 2001.
- 25 d.) Failing to provide non-exempt employees, timely, duty free, uninterrupted
26 full 30-minute meal periods under Labor Code Section 226.7 and IWC Wage
27 Order No. 4-2001 after every five hours of labor performed;
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- e.) Failing to provide timely, duty free, uninterrupted full ten-minutes rest periods after every fourth hour of labor performed or major fraction thereof, in violation of Labor Code Section 226.7 and IWC Wage Order No. 4-2001, Section 12 (A&B).
- f.) Failing to pay premium pay penalties for each missed rest and meal break violation in violation of Labor Code § 226.7 (b) and IWC Wage Order No. 4-2001;
- g.) Failing to furnish accurately itemized wage statements in violation of Labor Code Section 226(a);
- h.) Failing to pay employees all wages due, each and every pay period under Labor Code Section 204.
- i.) Failing to reimburse employees for personal cell phone expenses necessarily incurred in the discharge of their duties in violation of Labor Code Section 2802;

24. On information and belief, Plaintiff alleges that Defendant's actions as described throughout this Complaint were willful and occurred during the PAGA period. To the extent equitable tolling operate to toll claims by Aggrieved Employees against Defendant, the PAGA Period should be adjusted accordingly. To the extent that any of the alleged conduct and violations did not affect Plaintiff during the PAGA period, Plaintiff seeks penalties for those violations that affected other Aggrieved Employees pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for publication 12/19/18).

25. Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the Private Attorneys General Act ("PAGA") to the extent permitted by law, and as aggrieved employee who held the position identified herein and who was subject to Defendant's violations of the Labor Code as alleged herein. A true and correct copy of the March 19, 2020 written notice showing compliance with Labor Code § 2699.3 is attached hereto as **Exhibit A** and demonstrates that the Plaintiff is an aggrieved employee who has standing to bring a representative action on

1 behalf of the State of California and Labor and Workforce Development Agency (the
2 “LWDA”) as a private attorney general.

3 26. No notice of cure by Defendant was provided and no notice of investigation
4 was received from the LWDA in the statutorily proscribed 65-day period since the March 19,
5 2021 written notice. Accordingly, Plaintiff files this as representative action as specifically
6 permitted and authorized by Labor Code § 2699.3(a)(2)(A).

7
8 **FIRST CAUSE OF ACTION**
9 **For Violation of the Private Attorneys General Act of 2004**
10 **California Labor Code §2698, et seq.**
11 **(Against Defendant and Does 1-25, Inclusive)**

12 27. Plaintiff re-alleges and incorporates by reference all of the foregoing
13 paragraphs, as though fully set forth herein.

14 28. The PAGA expressly establishes that any provision of the California Labor
15 Code which provides for a civil penalty to be assessed and collected by the Labor and
16 Workforce Development Agency (the “LWDA”), or any of its departments, divisions,
17 commissions, boards, agencies or employees for a violation of the California Labor Code
18 may be recovered through a civil action brought by an aggrieved employee on behalf of
19 himself or herself, and other current or former employees.

20 29. Plaintiff, by her employment with Defendant and Defendant’s violations of
21 the Labor Code as alleged herein, is an aggrieved employee with standing to bring an action
22 under the PAGA.

23 30. Plaintiff, by virtue of **Exhibit A** has satisfied all prerequisites to serve as a
24 representative of the general public to enforce California’s labor laws including, without
25 limitation, the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took
26 no steps within the time period required to intervene and because Defendant took no
27 corrective action to remedy the allegations set forth above, Plaintiff, as a representative of
28 the people of the State of California, will seek any and all penalties otherwise capable of

1 being collected by the Labor Commission and/or the DLSE. This includes each of the
2 following, as is set forth in Labor Code § 2699.5, which states:

3 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged
4 violation of the following provisions: subdivision (k) of Section 96, Sections
5 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1,
6 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section
7 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226,
8 Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and
9 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections
10 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2,
11 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750,
12 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5,
13 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section
14 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of
15 Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294,
16 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5,
17 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section
18 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
19 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47,
20 paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section
21 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12,
22 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a)
23 of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810,
24 subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and
25 6399.7.”

26 31. Plaintiff is informed and believes that Defendant has violated and continues
27 to violate the provisions of the Labor Code and applicable Wage Order No. 4-2001.

28 32. Pursuant to Labor Code section 2699, any provision of the Labor Code that
already provides a civil penalty to be assessed and collected by the Labor and Workforce
Development Agency, or any of its departments, divisions, commissions, boards, agencies or
employees for violation of the code or does not provide a civil penalty may be recovered
through a civil action brought by an aggrieved employee on behalf of himself or herself, and
other current or former employees pursuant to the procedures set forth in Labor Code, section
2699.3.

33. Plaintiff, on her own behalf, and on behalf of the other similarly situated
Aggrieved Employees is an “aggrieved employees” because she was employed by the

1 violators (the named Defendant herein and its related Doe affiliates and subsidiaries), during
2 the one-year statutory time period and during such time period, was subjected to one or more
3 violations, including Labor Code sections 201-203, 204, 226(a), 226.7, 510, 512, 1174,
4 1194(a), 2802 and IWC No. 4, and are therefore properly suited to represent the interests of
5 a PAGA person.

6 34. Plaintiff is informed and believes that Defendant have violated and continue
7 to violate provisions of the Labor Code and applicable Wage Order No. 7. Despite mailing
8 of **Exhibit A** at least 65-days prior to the filing of the filing of this First Amended Complaint,
9 the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code
10 violations identified in **Exhibit A**, such that, by operation of law Plaintiff are entitled to
11 commence this cause of action as a representative action under the PAGA. *See Lab. Code*
12 *2699.3(a)(2)(A)*.

13 **Failure to Pay Wages**

14 35. Labor Code §200(a) defines “wages” as “all amounts for labor performed by
15 employees of every description, whether the amount is fixed or ascertained by the standard
16 of time, task, piece, commission basis or other method of calculation.”

17 36. Plaintiff and the Aggrieved Employees were at all times subject to California’s
18 laws and regulations protecting employees’ entitlement to be paid and presumption to be paid
19 all wages earned for labor performed, including an hourly wage for each and every hour
20 worked.

21 37. Labor Code § 1194 provides that employees are entitled to wages and
22 compensation for work performed, at the legal rate, including straight time, overtime, and
23 double time.

24 38. Furthermore, under Labor Code §1194, employees must be separately paid an
25 hourly wage for each and every hour worked.

26 39. At all relevant times herein, Defendant was required to compensate Plaintiff
27 and the Aggrieved Employees wages for all hours worked pursuant to Labor Code §1194.
28

1 40. By uniformly and systemically failing to track and record all of the hours
2 worked by Plaintiff and the Aggrieved Employees, including time for labor performed prior
3 to logging in at the beginning of each shift and work performed while off the clock during
4 the non-duty free rest and meal break periods, Defendant was able to skim wages from the
5 Plaintiff and the Aggrieved Employees by not paying them a separate hourly wage for each
6 and every hour worked.

7 41. Through their unlawful and illegal policies and practices, Defendant failed to
8 pay Plaintiff and the Aggrieved Employees all wages owed to them at the proper
9 corresponding legal rates during the relevant time period.

10 **Failure to Pay Overtime Wages**

11 42. At all times relevant herein, Defendant were required to compensate their
12 non-exempt employees minimum wages for all hours worked and overtime wages for all
13 hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek,
14 pursuant to the mandates of Labor Code §§ 510, 1194, and 1198.

15 43. As a pattern and practice, Defendant routinely failed to pay Plaintiff and the
16 Aggrieved Employees for hours worked off the clock, including the 10-15 minutes of labor
17 performed each workday prior to clocking in and for labor performed during rest and meal
18 break periods. Such off-the-clock work performed caused Plaintiff and the Aggrieved
19 Employees to work overtime hours for which they were not paid by Defendant.

20 44. Thus during the relevant statutory period, Defendant failed to compensate
21 Plaintiff and the Aggrieved Employees for all hours worked, resulting in a failure to pay all
22 overtime wages they were due in amounts to be proven at trial.

23 **Failure to Provide Keep Accurate Records**

24 45. At all times relevant herein, Defendant were required to keep accurate records
25 showing the names and addresses of all employees employed and showing the hours worked
26 daily and wages earned and paid, pursuant to the mandates of Labor Code § 1174.
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1 46. As a result of and in addition to Defendant' various Labor Code violations,
2 including Defendant's failure to records all hours worked, including hours for pre-clock in
3 hours worked and time worked during rest and meal break periods, Defendant failed in their
4 affirmative obligation to maintain accurate records regarding Plaintiff and the Aggrieved
5 Employees including accurate records of all hours actually worked and wages paid at their
6 applicable respective corresponding rates of pay in violation of Labor Code §1174.

7 **Failure to Provide Meal Periods and Rest Periods**

8 47. In accordance with the mandates of Labor Code §226.7 and 512, Defendant
9 was required to authorize and relinquish control to permit their non-exempt employees to
10 take a ten-minute, uninterrupted, duty free rest break for every four (4) hours worked or a
11 major fraction thereof and were further required to provide their non-exempt employees
12 with a full, uninterrupted 30-minute meal period for every five (5) hours of labor
13 performed.

14 48. As alleged, as a pattern and practice, Defendant failed to provide Plaintiff
15 and the Aggrieved Employees with legally mandated rest break period and meal break
16 periods and failed to pay proper premium pay compensation for such failures in violation of
17 Labor Code §§ 226.7, 512 and IWC No. 4.

18 **Failure to Provide Complete and Accurate Wage Statements**

19 49. Pursuant to Labor Code §§ 226 "every employer shall, semimonthly or at the
20 time of each payment of wages, furnish each of his or her employees, either as a detachable
21 part of the check, draft, or voucher paying the employees' wages or separately when wages
22 are paid by personal check or cash, an accurate itemized statement in writing showing (1)
23 gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the
24 inclusive dates of the period for which the employee is paid..., and (9) all applicable hourly
25 rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate by the employee..."
27
28

1 50. As a result of the alleged and various Labor Code violations, Defendant
2 failed to keep maintain accurate records of all hours actually worked/wages earned and
3 thus, consequently failed in their affirmative obligation to provide Plaintiff and the
4 Aggrieved employees with accurately itemized wage statements regarding the true total
5 number of hours each of them actually worked during each and every pay period, their
6 gross wages earned, all deductions, and net wages earned, along with their applicable
7 corresponding hourly rates, including premium pay for missed rest and/or meal breaks and
8 including overtime rates for each respective hourly rate of overtime worked. The
9 inaccurate wage statements were not caused by inadvertent and occasional clerical
10 mistakes, but rather were the result of a pre-determined, deliberate and uniform deliberate
11 operational policies and practices of Defendant.

12 **Failure to Timely Pay Wages**

13 51. Pursuant to Labor Code §204, all wages earned by Plaintiff and the Aggrieved
14 Employees were and/or are “due and payable twice during each calendar month, on days
15 designated in advance by the employer as regular paydays.” For [l]abor performed between
16 the 1st and 15th days, inclusive of any calendar month” payment is due no later than the 26th
17 day of the month. “... for labor performed between the 16th and the last day, inclusive, of any
18 calendar month, payment is due no later than the 10th day of the following month...” By
19 failing to pay Plaintiff and the Aggrieved Employees properly for all hours worked at the
20 proper corresponding rates of pay, including overtime hour and overtime rates of pay,
21 Defendant deprived them of timely payment of all wages earned, when due and owing at
22 these regularly scheduled intervals throughout the relevant time period in violation of Labor
23 Code §204.

24 **Failure to Pay Wages Due Upon Termination or Separation of Employment**

25 52. Labor Code §§ 201 and 202 require employers such as Defendant to pay their
26 employees all wages due within the strict time frames set forth therein. California Labor Code
27 § 203 provides that if any employer willfully fails to timely pay such wages, the employer
28

1 must continue to pay the employee's subject wages until the back wages are paid in full or
2 an action is commenced, up to a maximum of 30 calendar days of wages.

3 53. As alleged supra, Plaintiff and certain of the Aggrieved Employees ceased
4 employment with Defendant during the statutory PAGA period. At the time of separation,
5 each of these individuals was entitled to be paid all wages each was due for all the hours each
6 of them respectively worked, but to date, the Plaintiff, nor the formerly employed Aggrieved
7 Employees have received such compensation.

8 54. Defendant violated Labor Code § 201-203 by failing to pay all accrued wages
9 due to Plaintiff and the Aggrieved employees who were discharged or who have quit during
10 the relevant period.

11 **Failure to Reimburse Expenses**

12 55. California Labor Code § 2802 provides that an employer shall indemnify his
13 or her employees for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties.

15 56. As alleged supra, Defendant required or requires as a condition of
16 employment that Plaintiff and the Aggrieved Employees utilize their personal cell phones in
17 the daily and routine discharge of their duties to communicate with Defendant managers,
18 supervisors, and colleagues. Defendant does not and has not reimbursed Plaintiff and the
19 Aggrieved Employees for expenses they incurred in the routine and daily use of their personal
20 cell phone for work related duties and communications.

21 57. As a direct result of Defendant's failure to reimburse Plaintiff and the
22 Aggrieved Employees for their personal cell phone expenses they necessarily incurred in the
23 discharge of their work-related duties, Defendant has violated Labor Code Section 2802.

24 **Damages**

25 58. Defendant's actions constitute continuing and ongoing unlawful activity
26 prohibited by the California Labor Code, as alleged and therefore these acts constitute
27 violations of the PAGA.
28

1 59. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to
2 recover from Defendant civil penalties in the amount of a hundred dollars (\$100) for each
3 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200)
4 for each aggrieved employee per pay period for each subsequent violation; and

5 60. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other
6 applicable statute.

7 61. As alleged supra, notice of these violations was provided pursuant to Labor
8 Code §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than
9 65 days have passed since notice was provided and Plaintiff has not received any notification
10 from the LWDA that it intends to investigate the alleged violations. Therefore, the
11 representative Plaintiff is entitled to prosecute her PAGA claims under Labor Code §2699,
12 et seq.

13 62. The proper measure of damages and penalties under the PAGA is as to all
14 Aggrieved Employees, whether a part of this action or not. Further this claim needs no
15 certification to proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969,
16 970-975.

17 63. Accordingly, Plaintiff respectfully requests that the Court award judgment and
18 relief in her favor including an award of civil penalties under California Labor Code §2699
19 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period
20 for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per
21 pay period for each subsequent violation during the relevant period, according to proof.

22 64. Plaintiff as the personal representative of the Aggrieved Employees, will and
23 does seek to recover any and all penalties for each and every violation shown to exist or to
24 have occurred during the liability period, in an amount according to proof, as to those
25 penalties that are otherwise only available to public agencies. Said funds recovered will be
26 distributed in accordance with the PAGA, with at least 75% of said PAGA penalty recovery
27 being reimbursed to the State of California and the LWDA.
28

1 **PRAYER FOR RELIEF**

2 65. WHEREFORE, the representative Plaintiff pursuant to PAGA prays for
3 judgment as follows:

4 66. Upon the PAGA Cause of Action, for civil penalties and wages pursuant to
5 statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §§
6 201-203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1198, 2802 and applicable Wage Order
7 No. 4.

8 67. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to
9 Labor Code §2699 and any other applicable statute; and

10 68. For such other and further relief the Court may deem just and proper.
11

12 DATED: June 14, 2021

WHITEHEAD EMPLOYMENT LAW

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15 By: 
16 Jacob N. Whitehead, Esq.
17 Meghan N. Higday, Esq.
18 Attorneys for Plaintiff and
19 the Aggrieved Employees
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EXHIBIT A

**March 19, 2021 PAGA
Notice**



March 19, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via First Class Mail

Ola A. Ofunniyin, Esq.
Parker Poe Adams & Bernstein LLP
620 South Tyron Street, Suite 800
Charlotte, North Carolina 28202

Via Certified Mail

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2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that the representative Laura Becker ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly situated current and former employees (the "Aggrieved Employees") against Laboratory Corporation of America, a Delaware corporation (hereinafter "Defendant") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full time employees, including but not limited to Phlebotomists, Specimen Handlers, Patient Intake representatives, Couriers, Clinical Laboratory Scientists, Technologists or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify Defendant of Plaintiff's intent to file a PAGA action complaint against Defendant and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendant's failure to provide compliant rest/meal breaks; failure to compensate for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendant during the statutory period upon their separation or termination of employment.

Based upon these violations, as further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4).

Laura Becker is currently employed by Defendant starting on approximately August 5, 2019 as a full time, hourly compensated, non-exempt phlebotomist who drew blood for medical testing.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. Defendant's work locations were routinely understaffed, with Defendant demanding unreasonable amounts of work to be completed daily. Defendant required Plaintiff and the Aggrieved Employees to always be on call during their meal and rest breaks. Supervisors would routinely interrupt Plaintiff and the Aggrieved Employees meal breaks either in person or via call or text to come back on shift or to answer questions while on break. Often if Plaintiff and the Aggrieved Employees were even able to take a meal break, they were untimely or less than thirty minutes in length. This made it impossible for Plaintiff and the Aggrieved Employees to have a duty-free uninterrupted meal break. Defendant rarely provided rest breaks for Plaintiff and the Aggrieved Employees, and when Plaintiff and the Aggrieved Employees attempted to take a rest break, they would be instructed to return to work. Defendant has never recorded nor paid Plaintiff and the Aggrieved Employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiff or the Aggrieved Employees validly waived their rest and meal break periods.

Defendant also intentionally failed to properly pay such employees all of the overtime wages that they were due. Due to Plaintiff and the Aggrieved Employees working off the clock during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded 8 hours a day or over 40 hours in a week. Plaintiff and the Aggrieved Employees were also required to work for approximately ten to fifteen minutes prior to being able to clock in at the beginning of each workday without pay.

Further, during the relevant statutory period, Plaintiff and certain of the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications. Utilization of their personal cell phones was an essential part of the job. Plaintiff and the Aggrieved Employees were required by Defendant to use their personal cell phones to call or text supervisors and co-workers or to receive calls or texts from supervisors or co-workers. Plaintiff and the Aggrieved Employees were provided a landline, but Plaintiff and the Aggrieved Employees were rarely close enough to the landline to pick up if someone called. Due to the high workload and demands by Defendant, and the nature of Plaintiff and the Aggrieved Employees job duties, they were unable to stop what they were doing to pick up the phone. Defendant instead would call and text Plaintiff and the Aggrieved Employees personal phones to convey any messages or information during the workday. Defendant also called and sent text messages to Plaintiff and the Aggrieved Employees while they were off the clock, regarding scheduling changes, updated assignments, and regarding shift coverage requests. At no time has Defendant ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones for these daily work-related communications.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, Plaintiff will bring an action against Defendant under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

Due to the foregoing-described actions, Defendant has unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to those Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.”

Per the IWC Wage Order No. 4, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were never able to take Labor Code compliant, timely and duty-free rest breaks. Plaintiff and Aggrieved Employees were rarely provided an uninterrupted meal break due to Defendant’s unreasonable work expectations including during their meal breaks. Defendant actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendant have not paid premium pay penalties for the missed and non-compliant rest and meal

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 4 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 4, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *"All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."*

Under Labor Code §1194 (a) *"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."*

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney's fees and costs.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, the Plaintiff and the Aggrieved Employees often worked through and during rest break and meal break periods while off the clock, worked off the clock for the first portion of their shift, and also on their own time, which meant they were working more than an eight-hour shift most of the time but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, 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...shall be kept on file for not less than three years. An employer*

shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest or meal breaks and at the beginning of their shift due to Defendant's operational policies and practices. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant's unlawful business and compensation practices under the Labor Code and IWC No. 4, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to "*furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, 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.*"

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their rest and meal breaks, worked off the clock at the beginning of their shifts, and often on their own personal time while off the clock. Due to Defendant's unlawful instructions and practices demanding that Plaintiff and the Aggrieved Employees continue working while off the clock and such time and hours work was never recorded by Defendant. Consequently, such hours worked, including overtime hours and corresponding correct rates of pay nor premium pay for non-compliant rest and meal breaks is and was not reflected on the Plaintiff and Aggrieved Employees' wage statements during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when certain of the Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay certain of the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, "*An 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As described above, the Plaintiff and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant. Defendant has violated Labor Code § 2802 and the Plaintiff and certain of the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by §2802.

Conclusion

In sum, as has been factually alleged, Defendant violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 1194 (a) and 2802, and IWC No. 4. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest, and attorneys' fees and civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW


Meghan N. Higday