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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

22CV393408

Case No. _____

JOSEPH DAGUIL, on behalf of
the State of California, as a
private attorney general,

Plaintiff,

vs.

ROCHE SEQUENCING
SOLUTIONS, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

1.Civil Penalties Pursuant to Labor Code § 2699,
et seq. for violations of Labor Code §§ 201, 202,
203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Joseph Daguil (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Roche Sequencing Solutions, Inc.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
11 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Roche Sequencing Solutions, Inc. (“DEFENDANT”) is a corporation
24 that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. DEFENDANT offers diagnostics solutions in the healthcare industry.

27 6. PLAINTIFF has been employed by DEFENDANT in California since 2013 and
28

1 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
2 basis, and entitled to the legally required meal and rest periods and payment of minimum and
3 overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to
7 himself and all individuals who are or previously were employed by DEFENDANT in
8 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
9 during the time period of October 22, 2020 until a date as determined by the Court (the "PAGA
10 PERIOD").

11 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
15 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
16 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
17 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
18 the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
21 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
22 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
23 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
24 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
25 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
26 responsible in some manner for one or more of the events and happenings that proximately
27 caused the injuries and damages hereinafter alleged.

28 10. The agents, servants and/or employees of the Defendants and each of them acting

1 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
2 agent, servant and/or employee of the Defendants, and personally participated in the conduct
3 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
4 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
5 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
7 agents, servants and/or employees.

8 9 THE CONDUCT

10 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
11 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
12 meaning the time during which an employee is subject to the control of an employer, including
13 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
14 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
15 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
16 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
17 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
18 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
19 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
20 testing or any other testing and/or examination required as a condition of employment.
21 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
22 practice of rounding the actual time worked and recorded by PLAINTIFF and other
23 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
24 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
25 they would have been paid had they been paid for actual recorded time rather than "rounded"
26 time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and other
27 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
28 condition of employment, required these employees to submit to mandatory temperature checks

1 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
2 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
4 by working without their time being correctly recorded and without compensation at the
5 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
7 records.

8 12. State law provides that employees must be paid overtime and meal and rest break
9 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
10 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
11 to specific elements of an employee's performance.

12 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
13 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
14 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
15 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
16 hourly basis with incentive compensation when the employees met the various performance
17 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
18 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
19 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
20 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
21 break premium pay. Management and supervisors described the incentive program to potential
22 and new employees as part of the compensation package. As a matter of law, the incentive
23 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
24 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
25 overtime compensation and meal and rest break premiums to PLAINTIFF and other
26 AGGRIEVED EMPLOYEES by DEFENDANT.

27 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
28 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and

1 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
2 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
3 more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
5 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
6 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
7 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
8 other AGGRIEVED EMPLOYEES. PLAINTIFF and other AGGRIEVED EMPLOYEES
9 therefore forfeit meal breaks without additional compensation and in accordance with
10 DEFENDANT's corporate policy and practice.

11 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
12 are also required from time to time to work in excess of four (4) hours without being provided
13 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
14 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
15 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
16 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
17 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
19 in lieu thereof. DEFENDANT did not have a policy or practice which paid for off-duty rest
20 periods to PLAINTIFF and the other AGGRIEVED EMPLOYEES. As a result,
21 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all
22 the legally required paid rest periods is evidenced by DEFENDANT's business records.
23 Additionally, the applicable California Wage Order requires employers to provide employees
24 with off-duty rest periods, which the California Supreme Court defined as time during which
25 an employee is relieved from all work related duties and free from employer control. In so
26 doing, the Court held that the requirement under California law that employers authorize and
27 permit all employees to take rest period means that employers must relieve employees of all
28 duties and relinquish control over how employees spend their time which includes control over

1 the locations where employees may take their rest period. Employers cannot impose controls
2 that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
3 DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED EMPLOYEES from
4 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF
5 and other AGGRIEVED EMPLOYEES cannot leave the work premises during their rest period.

6 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
7 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
8 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
9 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
10 meaning the time during which an employee was subject to the control of an employer,
11 including all the time the employee was permitted or suffered to permit this work.
12 DEFENDANT requires these employees to work off the clock without paying them for all the
13 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
14 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
15 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
16 worked by working without their time being accurately recorded and without compensation at
17 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
18 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
19 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
20 1197.1.

21 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and other
22 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
23 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
24 provides that every employer shall furnish each of his or her employees with an accurate
25 itemized wage statement in writing showing, among other things, gross wages earned and all
26 applicable hourly rates in effect during the pay period and the corresponding amount of time
27 worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by
28 failing to list the correct legal entity that employs PLAINTIFF and other AGGRIEVED

1 EMPLOYEES. Aside, from the violations listed above in this paragraph, DEFENDANT fails
2 to issue to PLAINTIFF an itemized wage statement that lists all the requirements under
3 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provides
4 PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements which violated
5 Cal. Lab. Code § 226.

6 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
7 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
8 wages are paid not more than seven calendar days following the close of the payroll period.
9 Cal. Lab. Code § 210 provides:

10 [I]n addition to, and entirely independent and apart from, any other penalty provided in
11 this article, every person who fails to pay the wages of each employee as provided in
12 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
13 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

14 19. DEFENDANT from time to time fails to pay PLAINTIFF and other
15 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
16 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
17 payment.

18 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
19 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
20 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
21 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
22 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
23 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

24 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
25 employees be calculated by dividing the employee’s total wages, not including overtime
26 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
27 of employment.

28 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at

1 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
2 non-discretionary incentive wages which increased their regular rate of pay. However, when
3 sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED
4 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
5 Code Section 246.

6 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
7 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
8 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
9 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
10 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
11 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

12 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
13 to collect or receive from an employee any part of wages theretofore paid by said employer to
14 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
15 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
16 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
17 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
18 and thereby fails to pay these employees all wages due at each applicable pay period and upon
19 termination. PLAINTIFF and other AGGRIEVED EMPLOYEES seek recovery of all illegal
20 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

21 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
22 PLAINTIFF and other AGGRIEVED EMPLOYEES for required business expenses incurred
23 by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

3 26. In the course of their employment PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
8 PLAINTIFF and other AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
9 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
10 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
11 which included, but were not limited to, costs related to the use of their personal cellular phones
12 all on behalf of and for the benefit of DEFENDANT.

13 27. All of the conduct and violations alleged herein occurred during the PAGA
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
15 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
16 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
17 AJDAR 12157 (Certified for Publication 12/19/18).

18 **JURISDICTION AND VENUE**

19 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

21 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
23 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
24 in this County and/or conducts substantial business in this County, and (ii) committed the
25 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
26 EMPLOYEES.

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1 now commence a representative civil action under PAGA pursuant to Section 2699 as the
2 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
3 defined.

4 34. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay
8 minimum wages, (d) failed to pay overtime wages and sick pay wages, and (e) failed to
9 reimburse employees for required expenses, all in violation of the applicable Labor Code
10 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
11 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
12 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
13 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery
14 of only civil penalties as prescribed by the Labor Code Private Attorney General Act of
15 2004 as the representative of the State of California for the illegal conduct perpetrated on
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
26 law, including, but not limited to, pursuant to Labor Code §2699.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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Dated: January 18, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff