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individually and on behalf of all others similarly situated

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HENRY NELSON, individually and on
behalf of all others similarly situated

Plaintiffs,

vs.

QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC.; QUEST
DIAGNOSTICS INCORPORATED;
QUEST DIAGNOSTICS NICHOLS
INSTITUTE; QUEST DIAGNOSTICS
DOMESTIC HOLDER LLC; and DOES 1
through 20, inclusive,

Defendants.

Case No. 30-2016-00850985-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

Judge William Claster

Dept CX102

1 Plaintiff Henry Nelson, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Henry Nelson ("Plaintiff") brings this putative class action and
5 representative action defendant Quest Diagnostics Clinical Laboratories, Inc., Quest Diagnostics
6 Incorporated; Quest Diagnostics Nichols Institute; Quest Diagnostics Domestic Holder LLC; and
7 DOES 1 through 20, inclusive (collectively, "Defendants"), on behalf of himself individually,
8 other aggrieved employees, and a putative class persons employed by Defendants as non-exempt
9 Route Service Representatives, or functionally equivalent positions, throughout California.

10 2. Defendants provide laboratory services throughout California.

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

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

17 (a) Failing to pay all wages (including minimum wages and overtime wages);

18 (b) Failing to include bonuses, shift differentials, or other incentive pay in the regular
19 rate of pay to calculate overtime compensation;

20 (c) Failing to provide meal periods or compensation in lieu thereof;

21 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

22 (e) Failing to provide accurate itemized wage statements; and

23 (f) Failing to pay all wages due upon separation of employment.

24 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
25 of himself and all others similarly situated in California to recover, among other things, unpaid
26 wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to Labor
27 Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
28 1198, and 2698 *et seq.*

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

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

8 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
9 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
10 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
11 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
12 official policy of Defendants.

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

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

20 **CLASS ACTION ALLEGATIONS**

21 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
22 himself and all others similarly situated who were affected by Defendants' Labor Code, Business
23 and Professions Code §§ 17200 and IWC Wage Order violations.

24 18. All claims alleged herein arise under California law for which Plaintiff seeks relief
25 authorized by California law.

26 19. Plaintiff's proposed Class consists of and is defined as follows:

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1 Class

2 All persons currently and formerly employed by Defendants as non-exempt Route
3 Service Representatives, or functionally equivalent positions, in the State of
4 California within four years prior to the filing of this action to the present.

5 20. Plaintiff also seeks to certify the following Subclass of employees:

6 Waiting Time Subclass

7 All Class members who separated their employment with Defendants at any time
8 within three years prior to the filing of this action to the present.

9 21. Plaintiff reserves the right to establish other or additional Subclasses, or modify
10 any Class or Subclass definition, as appropriate.

11 22. Members of the Class and Subclass described above will be collectively referred
12 to as "class members." Plaintiff reserves the right to re-define the above Class and Subclass and
13 add additional Subclasses as appropriate based on investigation, discovery and specific theories
14 of liability.

15 23. There are common questions of law and fact as to the Class and Subclass that
16 predominate over any questions affecting only individual members including, but not limited to:

17 (a) Whether Defendants required Plaintiff and class members to work off-the-clock
18 and/or rounded their time punches, resulting in a failure to pay all wages
19 (including minimum wages and overtime wages) for all hours worked by Plaintiff
20 and class members;

21 (b) Whether Defendants required Plaintiff and class members to work over 8 hours
22 per day, over twelve (12) hours per day and/or over forty (40) hours per week and
23 failed to include bonuses, shift differentials, or other incentive pay in the regular
24 rate of pay to calculate overtime compensation;

25 (c) Whether Defendants deprived Plaintiff and class members of timely meal periods
26 or required Plaintiff and class members to work through meal periods without
27 compensation;
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- 1 (d) Whether Defendants deprived Plaintiff and class members of rest breaks or
2 required Plaintiff and class members to work through rest breaks without
3 compensation;
- 4 (e) Whether Defendants failed to provide accurate itemized wage statements to
5 Plaintiff and class members;
- 6 (f) Whether Defendants failed to timely pay all wages due to Plaintiff and Subclass
7 members upon termination or within seventy-two (72) hours of resignation;
- 8 (g) Whether Defendants' conduct was willful or reckless; and
- 9 (h) Whether Defendants engaged in unfair business practices in violation of Business
10 and Professions Code §§ 17200, *et seq.*

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

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

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

24 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
25 interests of all members of the Class and Subclass because it is in their best interests to prosecute
26 the claims alleged herein to obtain full compensation and penalties due them and the Class and
27 Subclass. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in
28 litigating large employment class actions and versed in the rules governing class action discovery,

1 certification and settlement. Plaintiff has incurred and, throughout the duration of this action,
2 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
3 for the prosecution of this action for the substantial benefit of each class member.

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

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

17 GENERAL ALLEGATIONS

18 25. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 persons in non-exempt employee positions of Route Service Representative, or functionally
20 equivalent positions.

21 26. Plaintiff is or was employed in a non-exempt Route Service Representative
22 position at Defendants' California business location(s).

23 27. Defendants continue to employ non-exempt Route Service Representative
24 employees within California.

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

1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive wages for all time
3 worked (including minimum wages and overtime wages) and that they were not receiving all
4 wages earned for work that was required to be performed. In violation of the Labor Code and
5 IWC Wage Orders, Plaintiff and class members were not paid wages (including minimum wages
6 and overtime wages) for all hours worked when Defendants required Plaintiff and class members
7 to work off-the-clock and rounded their time punches. Additionally, Defendants failed to
8 correctly calculate Plaintiff's and class members' overtime rates when Defendants failed to
9 include bonuses, shift differentials, or other incentive pay in the regular rate of pay.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive all required meal
12 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate
13 of pay when they did not receive a timely, uninterrupted meal period. In violation of the Labor
14 Code and IWC Wage Orders, Plaintiff and class members did not receive all meal periods or
15 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
16 when they did not receive a timely, uninterrupted meal period.

17 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to receive all rest breaks or
19 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
20 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
21 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
22 Plaintiff and class members' regular rate of pay when a rest break was missed.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive itemized wage
25 statements that accurately showed their gross and net wages earned, total hours worked and all
26 applicable hourly rates in effect and the number of hours worked at each hourly rate in accordance
27 with California law. In violation of the Labor Code, Plaintiff and class members were not
28 provided with accurate itemized wage statements.

1 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other employees were entitled to timely payment of wages
3 due upon separation of employment. In violation of the Labor Code, Plaintiff and Waiting Time
4 Subclass members did not receive payment of all wages within permissible time periods.

5 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known they had a duty to compensate Plaintiff and class members, and Defendants
7 had the financial ability to pay such compensation but willfully, knowingly and intentionally
8 failed to do so all in order to increase Defendants' profits.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order § 3)

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

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

17 37. During the relevant time period, Defendants paid Plaintiff and class members less
18 than minimum wages when they required Plaintiff and class members to work off-the-clock and
19 rounded their time punches. To the extent these hours do not qualify for the payment of overtime,
20 Plaintiff and class members were not being paid at least minimum wages for their work.

21 38. During the relevant time period, Defendants regularly failed to pay at least
22 minimum wages to Plaintiff and class members for all hours worked pursuant to Labor Code
23 §§ 1194 and 1197.

24 39. Defendants' failure to pay Plaintiff and class members the required minimum
25 wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and class
26 members are entitled to recover the unpaid balance of their minimum wage compensation as well
27 as interest, costs and attorneys' fees.

1 40. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to
2 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
3 thereon.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME AND DOUBLE TIME**

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

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

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

13 43. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
14 period, Defendants were required to compensate Plaintiff and class members for all overtime
15 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
16 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
17 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
18 day of any work week, or after twelve (12) hours in any work day.

19 44. Plaintiff and class members were non-exempt employees entitled to the
20 protections of California Labor Code §§ 510 and 1194.

21 45. During the relevant time period, Defendants failed to pay Plaintiff and class
22 members overtime wages for all overtime hours worked when they required Plaintiff and class
23 members to work off-the-clock and rounded their time punches. To the extent these hours qualify
24 for the payment of overtime, Plaintiff and class members were not being paid proper overtime
25 wages.

26 46. During the relevant time period, Defendants failed to pay Plaintiff and class
27 members overtime wages at the correct rate when they failed to include bonuses, shift
28 differentials, or other incentive pay in the overtime rate.

1 47. In violation of state law, Defendants have knowingly and willfully refused to
2 perform their obligations and compensate Plaintiff and class members for all wages earned and
3 all hours worked, including work performed off the clock as alleged above.

4 48. Defendants' failure to pay Plaintiff and class members the unpaid balance of
5 overtime and double time compensation, as required by California law, violates the provisions
6 of Labor Code §§ 510 and 1198, and is therefore unlawful.

7 49. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
8 recover their unpaid overtime and double time compensation as well as interest, costs and
9 attorneys' fees.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

17 52. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
18 any person for a work period of more than five (5) hours without a meal period of not less than
19 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
20 work the meal period may be waived by mutual consent of the employer and the employee."

21 53. Labor Code § 512(a) provides that an employer may not require, cause or permit
22 an employee to work for a period of more than five (5) hours per day without providing the
23 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
24 total work period per day of the employee is not more than six (6) hours, the meal period may be
25 waived by mutual consent of both the employer and the employee.

26 54. Labor Code § 512(a) also provides that an employer may not employ an employee
27 for a work period of more than ten (10) hours per day without providing the employee with a
28 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no

1 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not waived.

3 55. During the relevant time period, Plaintiff and class members did not receive
4 compliant meal periods for working more than five (5) and/or ten (10) hours per day because their
5 meal periods were short, missed, or late and/or they were not permitted to take a second meal
6 period.

7 56. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
8 an employer to pay an employee one additional hour of pay at the employee's regular rate of
9 compensation for each work day that a meal period is not provided.

10 57. At all relevant times, Defendants failed to pay Plaintiff and class members meal
11 period premium for missed, late, and untimely meal periods pursuant to Labor Code § 226.7(b)
12 and section 11 of the applicable IWC Wage Order.

13 58. As a result of Defendants' failure to pay Plaintiff and class members an additional
14 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered
15 and continue to suffer a loss of wages and compensation.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO PERMIT REST BREAKS**

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

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

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

23 61. Section 12 of the applicable IWC Wage Order states "every employer shall
24 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
25 the middle of each work period" and the "authorized rest period time shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
27 thereof" unless the total daily work time is less than three and one-half (3½) hours.
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1 62. During the relevant time period, Plaintiff and class members did not receive a ten
2 (10) minute rest period for every four (4) hours or major fraction thereof worked because they
3 were required to work through their daily rest periods and/or were not authorized to take their rest
4 periods.

5 63. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
6 an employer to pay an employee one additional hour of pay at the employee's regular rate of
7 compensation for each work day that the rest period is not provided.

8 64. At all relevant times, Defendants failed to pay Plaintiff and class members rest
9 period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
10 section 12 of the applicable IWC Wage Order.

11 65. As a result of Defendants' failure to pay Plaintiff and class members an additional
12 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
13 continue to suffer a loss of wages and compensation.

14 **FIFTH CAUSE OF ACTION**

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

16 (Violation of Labor Code § 226)

17 66. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

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

3 68. During the relevant time period, Defendants have knowingly and intentionally
4 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
5 and class members. The deficiencies include, among other things, the failure to correctly state
6 the gross and net wages earned, total hours worked and all applicable hourly rates in effect and
7 the number of hours worked at each hourly rate by Plaintiff and class members.

8 69. As a result of Defendants' knowing and intentional failure to comply with Labor
9 Code § 226(a), Plaintiff and class members have suffered injury and damage to their statutorily-
10 protected rights. Specifically, Plaintiff and class members are deemed to suffer an injury
11 pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor Code §
12 226(a). Plaintiff and class members were denied both their legal right to receive, and their
13 protected interest in receiving, accurate itemized wage statements under Labor Code § 226(a). In
14 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
15 Defendants have prevented Plaintiff and class members from determining if all hours worked
16 were paid at the appropriate rate and the extent of the underpayment. Plaintiff have had to file
17 this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
18 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
19 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
20 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
21 Defendants.

22 70. Plaintiff and class members are entitled to recover from Defendants the greater of
23 all actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or fifty
24 dollars (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars
25 (\$100.00) per employee for each violation in subsequent pay periods, in an amount not exceeding
26 four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

27 71. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
28 class members from knowing, understanding and disputing the wages paid to them, and resulted

1 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
2 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
3 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be
4 shown according to proof at trial.

5 72. Plaintiff and class members are also entitled to injunctive relief under California
6 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
7 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

10 (Violation of Labor Code §§ 201, 202 and 203)

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

13 74. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
14 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
15 if an employee voluntarily leaves his employment, his wages shall become due and payable not
16 later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
17 hours previous notice of his intention to quit, in which case the employee is entitled to his wages
18 at the time of quitting.

19 75. During the relevant time period, Defendants willfully failed to pay Waiting Time
20 Subclass members all their earned wages upon termination including, but not limited to, proper
21 minimum wages and overtime compensation, either at the time of discharge or within seventy-
22 two (72) hours of their leaving Defendants' employ.

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

26 77. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
27 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then
28 the wages of the employee shall continue as a penalty from the due date at the same rate until

1 paid or until an action is commenced; but the wages shall not continue for more than thirty (30)
2 days.

3 78. Waiting Time Subclass members are entitled to recover from Defendants the
4 statutory penalty which is defined as Waiting Time Subclass members regular daily wages for
5 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum
6 pursuant to Labor Code § 203.

7 **SEVENTH CAUSE OF ACTION**

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

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

11 80. Defendants' conduct, as alleged herein, has been and continues to be unfair,
12 unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights
13 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

14 81. Defendants' activities, as alleged herein, violate California law and constitute
15 unlawful business acts or practices in violation of California Business and Professions Code
16 §§ 17200, *et seq.*

17 82. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated
18 on the violation of any state or federal law.

19 83. Defendants' policies and practices have violated state law in at least the following
20 respects:

21 (a) Failing to pay all wages earned (including minimum wages and overtime
22 wages) to Plaintiff and class members in violation of Labor Code §§ 510,
23 1194, 1197, and 1198;

24 (b) Failing to provide meal periods without paying Plaintiff and class
25 members premium wages for every day said meal periods were not
26 provided in violation of Labor Code §§ 226.7 and 512;

- 1 (c) Failing to authorize or permit rest breaks without paying Plaintiff and class
2 members premium wages for every day said rest breaks were not
3 authorized or permitted in violation of Labor Code § 226.7;
- 4 (d) Failing to provide Plaintiff and class members with accurate itemized
5 wage statements in violation of Labor Code § 226; and
- 6 (f) Failing to timely pay all earned wages to Plaintiff and Waiting Time
7 Subclass members upon separation of employment in violation of Labor
8 Code §§ 201, 202 and 203.

9 84. Defendants intentionally avoided paying Plaintiff and class members' wages and
10 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
11 undercut their competitors and establish and gain a greater foothold in the marketplace.

12 85. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
13 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
14 during a period that commences four years prior to the filing of the Complaint; an award of
15 attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
16 award of costs.

17 **EIGHTH CAUSE OF ACTION**

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

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

21 87. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
22 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
23 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
24 violation of the code may, as an alternative, be recovered through a civil action brought by an
25 aggrieved employee on behalf of himself and other current or former employees pursuant to the
26 procedures specified in Labor Code § 2699.3.

27 88. For all provisions of the Labor Code except those for which a civil penalty is
28 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred

1 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
2 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
3 period in which Defendants violated these provisions of the Labor Code.

4 89. Defendants' conduct violates numerous Labor Code sections including, but not
5 limited to, the following:

6 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197 and 1198 for
7 failure to timely pay all earned wages (including minimum wages and overtime
8 wages) owed to Plaintiff and other aggrieved employees during employment and
9 upon separation of employment as herein alleged;

10 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
11 Plaintiff and other aggrieved employees and failure to pay premium wages for
12 missed meal periods as herein alleged;

13 (c) Violation of Labor Code § 226.7 for failure to authorize or permit Plaintiff and
14 other aggrieved employees rest breaks and failure to pay premium wages for
15 missed rest periods as herein alleged;

16 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
17 statements to Plaintiff and other aggrieved employees as herein alleged; and

18 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
19 records.

20 90. Further, Labor Code § 558(a) provides "any employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
23 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
24 pay period for which the employee was underpaid in addition to an amount sufficient to recover
25 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
28

1 be paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties provided
2 for in this section are in addition to any other civil or criminal penalty provided by law.

3 91. As set forth above, Defendants have violated numerous provisions of the Labor
4 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
5 seeks the remedies set forth in Labor Code § 558 for themselves, the underpaid employees, and
6 the State of California.

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

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

13 94. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved
14 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each
15 aggrieved employee per pay period for each subsequent violation.

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

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

21 **PRAYER FOR RELIEF**

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

- 24 1. For certification of this action as a class action, including certifying the Class and
25 Subclass alleged by Plaintiff;
- 26 2. For appointment of Henry Nelson as the class representative;
- 27 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
- 28 4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For liquidated damages pursuant to Labor Code § 1194.2;

7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to PAGA, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e), 1194, and 2699;

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

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

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

11. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties, including interest thereon;

12. For penalties pursuant to Labor Code § 2699 *et seq.*;

13. For pre-judgment interest; and

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

Dated: March 1, 2017

AEGIS LAW FIRM, PC

By: Jess L. Campbell
Jessica L. Campbell
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On March 7, 2017, I served the foregoing document entitled:

5 • **PLAINTIFF'S FIRST AMENDED COMPLAINT**

6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a
true copy thereof enclosed in sealed envelope(s) addressed as follows:

7 Jonathan M. Brenner, Esq.
8 Max C. Fischer, Esq.
9 SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013

10 *Attorneys for Defendants*

11 ☐ (BY MAIL) I am readily familiar with the firm's practice of collection and processing
12 correspondence for mailing. Under that practice it would be deposited with the U.S.
13 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
14 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

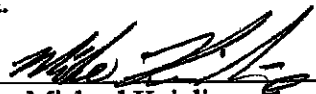
15 ☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
16 practice of Aegis Law Firm PC for collection and processing correspondence for
17 overnight delivery, and I caused such document(s) described herein to be deposited for
delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

18 ☒ (BY ELECTRONIC TRANSMISSION) I caused said document(s) to be served via
19 electronic transmission via Case Anywhere on the date below. (*Cal. Code Civ. Proc.* §
1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

20 ☐ (BY PERSONAL SERVICE) I delivered the foregoing document by hand delivery to
21 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
5(b)(2)(A).)

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on March 7, 2017, at Irvine, California.

25 
26 Michael Knieling
27
28