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County of Los Angeles

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David W. Slayton, Executive Officer / Clerk of Court

By: _____ T. Carter Deputy

*(Additional Plaintiffs' Counsel on Following Page)***SUPERIOR COURT FOR THE STATE OF CALIFORNIA****COUNTY OF LOS ANGELES**CRAIG CLARK and HENRY NELSON,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

QUEST DIAGNOSTICS CLINICAL
LABORATORIES, INC., a New Jersey
Corporation, QUEST DIAGNOSTIC
INC., a New Jersey Corporation and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. BC594022(CONSOLIDATED WITH CASE NOS. BC660722
& BC594129)

(Hon. Laura A. Seigle, Dept. SS-17)

CLASS ACTION**FIRST AMENDED CONSOLIDATED CLASS
ACTION AND PAGA COMPLAINT FOR:**

- 1. FAILURE TO PAY MINIMUM WAGES**
- 2. FAILURE TO PAY WAGES AT THE
AGREED RATE**
- 3. FAILURE TO PAY OVERTIME
COMPENSATION**
- 4. FAILURE TO PROVIDE MEAL PERIODS**
- 5. FAILURE TO PROVIDE REST PERIODS**
- 6. FAILURE TO PAY TIMELY WAGES UPON
TERMINATION OF EMPLOYMENT**
- 7. FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- 8. FAILURE TO REIMBURSE BUSINESS
EXPENSES**
- 9. UNFAIR BUSINESS PRACTICES**
- 10. LABOR CODE § 2698, et seq. ("PAGA")**

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Attorneys for Plaintiffs and the putative class

Plaintiffs CRAIG CLARK and HENRY NELSON, on behalf of themselves and all others similarly situated, hereby file this First Amended Consolidated Complaint (“FACC” or “Complaint”) against Defendants QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC., a New Jersey corporation, and QUEST DIAGNOSTIC INC., a New Jersey Corporation (collectively “Quest” or Defendants”), and Does 1 to 10 (hereinafter collectively, “Defendants”). This FACC amends the Consolidated Complaint filed by Mssrs. Clark and Nelson on July 7, 2017 before this Court (the “Consolidated Complaint”). Plaintiffs are informed and believe, and on the basis of that information and belief allege, as follows:

INTRODUCTION

1. This matter is brought as a class action pursuant to California Code of Civil Procedure § 382, on behalf of Plaintiffs and all others similarly situated to recover unpaid wages and penalties for Defendants' violations of the California Labor Code and the California Unfair Competition Law (Bus. & Prof. Code §§ 17200 *et seq.*).

2. This class action lawsuit challenges the Defendants' employment practices with respect to its Route Service Representatives (and other similarly-titled employees) employed in the State of California, based on Defendants' policy and practice of denying earned wages, including overtime pay to these non-exempt employees. In particular, Defendants require their employees to be present and perform work in excess of eight hours per day and/or forty hours per work week but fails to pay them overtime accordingly, and further fails to pay for all straight time hours worked. Also Defendants require such employees to perform work tasks during unpaid breaks fails to provide meal and rest breaks, fails to timely compensate employees for all wages earned, and fails to properly and accurately calculate overtime and report wages earned, hours worked, and wage rates.

3. In this case, Plaintiffs, on behalf of themselves and the putative class, seek relief for Defendants' unlawful employment policies, practices and procedures, which have resulted in the failure of Defendants to pay Plaintiffs and members of the putative class all wages due to them, including, failing to pay minimum wages for all hours worked (Labor Code §§ 1182.12, 1194, 1194.2, 1197); failing to pay in accordance with the designated wage scale (Labor Code §§ 221, 223.); the duty to provide off-duty meal periods (Labor Code §§ 226.7, 512, 516); failing to pay for overtime

1 hours worked (Labor Code §§ 204, 223, 510, 1194, 1198); failing to provide rest periods (Labor Code
2 §§ 226.7, 512, 516); failing to timely furnish accurate, itemized wage statements (Labor Code § 226.);
3 failing to pay wages due on termination (Labor Code §§ 201-203.); failing to reimburse business
4 expenses (Labor Code § 2802); violations of the California Unfair Competition Law (Bus. & Prof.
5 Code § 17200, *et seq.*); and enforcement of Labor Code § 2698 *et seq.* (“PAGA”).

6 4. In this action, Plaintiffs, on behalf of themselves and the members of the putative class,
7 seek general, liquidated, and punitive damages, injunctive relief, and restitution from Defendants.

8 5. The acts complained of herein have occurred, are presently occurring, and are expected
9 to continue occurring, within the time period from four (4) years preceding the filing of the original
10 complaint herein¹, up to and through the time of trial for this matter (hereinafter, the “Relevant Time
11 Period”).

12 **PARTIES**

13 ***Plaintiff Craig Clark***

14 6. Plaintiff Craig Clark is an individual over the age of eighteen (18) and is now, and/or
15 at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of
16 California. Throughout the Relevant Time Period, Mr. Clark worked for Defendants as a Route Service
17 Representative from Defendants’ Hub in Los Angeles County, California.

18 ***Plaintiff Henry Nelson***

19 7. Plaintiff Henry Nelson is an individual over the age of eighteen (18) and is now, and/or
20 at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of
21 California. During the Relevant Time Period, Mr. Nelson worked for Defendants.

22 ***Defendants Quest Diagnostics Clinical Laboratories, Inc. and Quest Diagnostic Inc.***

23 8. Plaintiffs are informed and believe, and based thereon allege, that Defendant Quest
24 Diagnostics Clinical Laboratories, Inc. and Quest Diagnostic Inc. are now, and/or all times mentioned
25 in this Complaint were, a New Jersey Corporation licensed to do business and actually doing business
26 in the State of California.

27
28 ¹ For the avoidance of doubt, this FACC does not change the Relevant Time Period as stated in the Consolidated
Complaint.

1 9. Plaintiffs are informed and believe, and based thereon allege, that Defendants are now,
2 and/or at all times mentioned in this Complaint were, the owners and operators of a business and/or
3 with numerous geographic locations within the State of California, including in Los Angeles County.
4 Among other things, Defendants provide services for the pick up, transportation and delivery of
5 laboratory specimens, supplies, reports, equipment and materials to the appropriate destinations.

6 10. Plaintiffs are informed and believe, and based thereon allege, that Defendants maintain
7 and operate a courier location in Van Nuys, California in the County of Los Angeles.

8 ***Defendants Does 1 through 10, Inclusive***

9 11. DOES 1 through 10 inclusive are now, and/or at all times mentioned in this Complaint
10 were, licensed to do business and/or actually doing business in the State of California. Plaintiffs do
11 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
12 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant to
13 California Code of Civil Procedure, section 474. Plaintiffs will seek leave of court to amend this
14 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 10
15 are believed to be business entities who were also co-employers of the Plaintiffs and the putative class
16 herein.

17 ***All Defendants***

18 12. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
19 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
20 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
21 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
22 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
23 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
24 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
25 matters referred to herein.

26 13. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
27 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
28 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within

1 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
2 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
3 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
4 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
5 matters referred to herein.

6 14. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
7 mentioned, Defendants, and each of them, proximately caused Plaintiffs, all others similarly situated
8 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
9 damages alleged in this Complaint.

10 15. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each
11 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
12 a joint venture, partnership and common enterprise, and were acting within the course and scope of,
13 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-employers
14 of the Plaintiffs and the putative class herein.

15 16. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each
16 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
17 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one
18 of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

19 **JURISDICTION AND VENUE**

20 17. The California Superior Court has jurisdiction in the matter because the claims exceed
21 the jurisdictional minimum of this court and Plaintiffs and Defendants are all residents of the State of
22 California. Further, the issues herein are based on California Statutes and law including the California
23 Labor Code and the California Unfair Competition Law.

24 18. Venue is proper in the County of Los Angeles because Defendants transact substantial
25 business in this County, Plaintiffs' claims arose in this County, and because Defendants maintain and
26 operate a courier hub location in Van Nuys, California in the County of Los Angeles.

27 **CONSOLIDATION OF CASES**

28 19. On January 8, 2016, Case Nos. BC594129 and BC594022 were consolidated for all

1 proceedings.

2 20. The cause of action for PAGA enforcement originally asserted in Case No. BC594129
3 has been incorporated herein.

4 21. On June 16, 2017, Case Nos. BC660722 and BC594022 were consolidated for all
5 proceedings.

6 **FACTUAL ALLEGATIONS**

7 ***Background***

8 22. According to Defendants' 10-k filed with the Securities and Exchange Commission for
9 2014, Quest Diagnostics Incorporated is the world's leading provider of diagnostic testing information
10 services, which during 2014 generated \$7.4 billion and processed approximately 156 test requisitions.

11 23. Plaintiffs and the other members of the putative class worked for Defendants as a
12 Route Service Representative (and in other similarly-titled positions) (hereinafter, "RSRs") and were
13 classified by defendants as non-exempt.

14 24. The primary work duties of RSRs include, among others, the pick up, transportation
15 and delivery of specimens, supplies, reports, equipment and materials to the appropriate destinations.

16 25. Additional job duties include, but are not limited to, operating company vehicles;
17 maintaining a driver's license and clean driving record; ensuring that routes are started with the proper
18 equipment and tools such as a scanner, paper logs, carry bag, properly prepared coolers, dry ice, a cell
19 phone, keys, door hangers and observation reports; following the schedule and sequence of the route
20 while allowing for will-call stops and special pick-ups; maintaining specimen integrity, including the
21 utilization of specimen carry bag to transport specimens from client office/lock box to vehicle by
22 temperature; following all scan/documentation requirements including but not limited to
23 tissue/irreplaceable and frozen tracking processes; and placing door hangers for will-call clients with
24 no specimens out and for clients who regularly provide specimens.

25 26. RSRs are also responsible for compliance with all of Defendants' standardized policies,
26 procedures and practices including, but not limited to, timekeeping, attendance and punctuality,
27 vehicle safety and cleanliness, safety and OSHA requirements, handheld /scanning device and usage,
28 proper handling and storage of all samples from the client office to the drop off point, proper packing

of specimens for shipment, end of day vehicle checks, dress code, and code of conduct.

Defendants' Failure to Pay Minimum Wages and Designated Rates

27. IWC Wage Order, number 4 defines "hours worked" to mean "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

28. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars (\$8.00) per hour.

29. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour.

30. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [], including interest thereon, reasonable attorneys' fees, and costs of suit."

31. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

32. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

33. RSRs are paid on an hourly-basis for their time spent picking up and transporting specimens and other items to the appropriate destinations. Hours worked include, but are not limited to, all hours that an employee is permitted or suffered to work including, but not limited to, off-the-clock work that an employer either knew or should have known that an employee was performing.

34. Defendants also maintained a time-rounding policy that did not compensate RSRs for

1 all hours worked.

2 35. As a matter of policy and/or practice, Defendants routinely suffered or permitted their
3 RSRs to work portions of the day during which they were subject to Defendants' control, but
4 Defendants failed to compensate them.

5 36. Throughout the Relevant Time Period, Defendants routinely required their RSRs,
6 including Plaintiffs and the members of the putative class, to clock out while performing certain work
7 tasks, including but not limited to, filling out incident reports and cleaning vehicles.

8 37. Plaintiffs and the other members of the putative class worked for Defendants as RSRs.
9 Throughout the Relevant Time Period Plaintiff, and the other members of the putative class, were
10 subject to Defendants' uniform policy and/or practice of failing to pay at least minimum wages and/or
11 designated rates for all hours worked. As a result, Plaintiffs and the other members of the putative
12 class were routinely denied compensation for all hours worked, including but not limited to, time spent
13 filling out incident reports, attending meetings and cleaning Defendants' vehicles.

14 38. Additionally, Defendants did not maintain adequate records of all wages earned, hours
15 worked, and meal and rest breaks taken.

16 ***Defendants' Failure to Pay Overtime Compensation***

17 39. Labor Code Section 1194 provides that an employee receiving less than the legal
18 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
19 this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees,
20 and costs of suit.

21 40. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
22 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
23 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
25 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
26 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
27 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
28 the regular rate of pay of an employee."

1 41. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
2 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
3 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
4 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
5 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
6 seventh (7th) day of work in any one workweek.

7 42. Plaintiffs and the other members of the putative class were classified as non-exempt by
8 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the
9 hours and time specified in the Wage Order, statutes and regulations identified herein.

10 43. As a matter of policy and/or practice, Plaintiffs and the members of the putative class
11 were frequently required to performed work before and after their scheduled shift as well as during
12 meal and rest breaks. Such work includes but is not limited to filling out incident reports and cleaning
13 Defendants' vehicles and was not recorded at the instruction of management.

14 44. Defendants also maintained a time-rounding policy that failed to compensate RSRs for
15 all hours worked.

16 45. Additionally, Defendants failed to correctly calculate Plaintiffs' and class members'
17 overtime rates when Defendants failed to include bonuses, shift differentials, or other incentive pay
18 into their regular rate of pay.

19 46. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiffs
20 and members of the putative class, and thus failed to pay overtime wages for the actual amount of
21 overtime hours worked.

22 47. Additionally, Defendants improperly calculated the amount of overtime wages owing,
23 and thus failed to pay Plaintiffs and members of the putative class all overtime wages due.

24 ***Defendants' Failure to Provide Meal Breaks***

25 48. Plaintiffs and the members of the class did not waive their meal periods, by mutual
26 consent with Defendants or otherwise. Plaintiffs and the members of the putative class did not enter
27 into any written agreement with Defendants agreeing to an on-the-job paid meal period. Nevertheless,
28 Defendants implemented a uniform policy and procedure in which Plaintiffs and members of the

1 Classes were not provided required duty-free meal periods.

2 49. Plaintiffs are informed and believe and based thereon allege that Defendants failed to
3 effectively communicate California meal period requirements to their RSRs including Plaintiffs and
4 the members of the putative class.

5 50. Plaintiffs are further informed and believe and based thereon allege that as a matter of
6 policy and/or practice, Defendants' routinely failed to provide their RSRs, including Plaintiffs and the
7 members of the putative class, with meal periods during which they were relieved of all duties by
8 requiring them to remain on call with their cell phone on and/or with their vehicles during meal
9 periods.

10 51. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 11 a. Failed to provide Plaintiffs and the members of the putative class with a first meal
12 period of not less than thirty (30) minutes during which they are relieved of all
13 duty before working more than five (5) hours;
- 14 b. Failed to provide Plaintiffs and the members of the putative class with a second
15 meal period of not less than thirty (30) minutes during which they are relieved of
16 all duty before working more than ten (10) hours per day; and
- 17 c. Failed to pay Plaintiffs and the members of the putative class one hour of pay at
18 their regular rate of compensation for each workday that a meal period was not
19 provided; and
- 20 d. Failed to accurately record all meal periods.

21 ***Defendants' Failure to Provide Rest Breaks***

22 52. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
23 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each
24 four (4) hours of work, during which employees are relieved of all duty.

25 53. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
26 number 4, section 12 required employers to pay one hour of additional pay at the regular rate of
27 compensation for each employee and each workday that a proper rest period is not provided.

28 54. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed to

1 effectively communicate California rest period requirements to their RSRs including Plaintiffs and the
2 members of the putative class. Plaintiffs are further informed and believe and based thereon allege that
3 throughout the Relevant Time Period Defendants failed to schedule rest periods.

4 55. Throughout the Relevant Time Period, Plaintiffs and the members of the putative class
5 were routinely denied the rest breaks they were entitled to under California law.

6 56. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 7 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiffs and the
8 members of the putative class were relieved of all duty for each four (4) hours of work;
9 b. Failed to compensate Plaintiffs and the members of the putative class for break time
10 when breaks were taken; and
11 c. Failed to pay Plaintiffs and the members of the putative class one (1) hour of pay at
12 their regular rate of compensation for each workday that a rest period was not
13 permitted.

14 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

15 57. At all times relevant hereto, Labor Code § 201 required an employer that discharges an
16 employee to pay compensation due and owing to said employee immediately upon discharge. Labor
17 Code Sections 202 requires an employer to pay an employee who quits any compensation due and
18 owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code
19 Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge
20 or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time
21 penalties in the form of continued compensation for up to thirty (30) work days.

22 58. Defendants willfully and knowingly failed to pay Plaintiffs and the members of the
23 putative class, upon termination of employment, all accrued compensation including payment of
24 minimum wage compensation, missed meal and rest periods compensation and for time spent
25 performing work off the clock at defendants' direction.

26 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

27 59. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4,
28 section 7 required employers to maintain adequate employment records and provide employees with

1 accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly
2 rates worked during each pay period, the corresponding number of hours worked at each hourly rate,
3 and meal breaks taken.

4 60. Wage statements provided to Plaintiffs and the members of the putative class by
5 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the
6 Labor Code section 226, IWC Wage Order number 4, section 7, and the UCL.

7 61. Moreover, Defendants did not maintain adequate records of all wages earned, hours
8 worked and breaks taken.

9 ***Defendants' Failure to Reimburse Business Expenses***

10 62. At all times relevant hereto, Labor Code § 2802 required an employer to indemnify an
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
12 the discharge of their duties. Per the section, “necessary expenditures or losses” includes all
13 reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the
14 rights granted by the section.

15 63. Defendants willfully and knowingly failed to indemnify or reimburse Plaintiffs and the
16 members of the putative class all necessary expenditures and losses incurred by them in direct
17 consequence of the discharge of their duties, in violation of Labor Code § 2802.

18 ***Facts Regarding Willfulness***

19 64. Plaintiffs are informed and believe and based thereon allege that Defendants are and
20 were advised by skilled lawyers, other professionals, employees with human resources background
21 and advisors with knowledge of the requirements of California and federal wage and hour laws.

22 65. Plaintiffs are informed and believe and based thereon allege that at all relevant times,
23 Defendants had a consistent policy or practice of failing to compensate the putative class members,
24 including Plaintiff, for all hours worked, including overtime.

25 66. Plaintiffs are informed and believe, and based thereon allege, that at all relevant times,
26 Defendants knew or should have known, that the putative class members, including Plaintiffs, were
27 entitled to receive duty-free meal periods within the first five (5) hours of any shift of six (6) or more
28 hours worked, and that any failure to do so requires Defendants to pay Plaintiffs and the members of

1 the putative class one (1) hour of wages per day for untimely, missed, or on-duty meal periods.

2 67. Plaintiffs are informed and believe, and based thereon allege, that at all relevant times,
3 Defendants knew or should have known, that the putative class members, including Plaintiffs, were
4 and are entitled to one (1) ten (10) minute rest break for each shift of four (4) hours or more, and that
5 any failure to allow said breaks requires Defendants to pay the putative class members, including
6 Plaintiffs, one (1) hour of wages per day for missed or on-duty rest breaks.

7 **CLASS ALLEGATIONS**

8 68. Plaintiffs incorporate by reference the allegations set forth above.

9 69. Plaintiffs bring this action as a class action California Code of Civil Procedure § 382
10 on behalf of himself and all others similarly situated. The class which Plaintiffs seek to represent is
11 composed of and defines as follows:

12 a. Plaintiff Class: All of Defendants' California-based Route Service Representatives
13 (and/or similarly titled employees) who worked for Defendants during the Relevant
14 Time Period.

15 b. Former Employee Sub-Class: All members of the Plaintiff Class who are no longer
16 employed by Defendants herein.

17 70. Numerosity: Plaintiffs are informed and believe and based thereon allege that the class
18 includes more than 40 individuals and is therefore so numerous that the individual joinder of all
19 members is impracticable. While the exact number and identification of class members are unknown
20 to Plaintiffs at this time and can only be ascertained through appropriate discovery directed to
21 Defendants, Plaintiffs are informed and believe that the class includes at least hundreds of members.

22 71. Questions of Law and Fact Common to the Class: Plaintiffs are informed and believe
23 and based thereon allege that common questions of law and fact exist as to all members of the class
24 which predominate over any questions affecting only individual members of the class. These common
25 legal and factual questions, which do not vary from class member to class member, and which may be
26 determined without reference to the individual circumstances of any class member, include, but are
27 not limited to, the following:

28 a. whether Plaintiffs and the members of the proposed class are subject to and entitled to

- 1 the benefits of California wage and hour statutes;
- 2 b. whether Defendants required, encouraged, suffered, or permitted Plaintiffs and the
- 3 members of the proposed class to perform certain work-related duties without
- 4 compensation equal to at least the California minimum wage;
- 5 c. whether Defendants required, encouraged, suffered, or permitted Plaintiffs and the
- 6 members of the proposed class to perform certain work-related duties without
- 7 compensation at the designated rate;
- 8 d. whether Plaintiffs and the members of the proposed class are entitled to overtime
- 9 compensation;
- 10 e. Whether Defendants failed to include bonuses, shift differentials, or other incentive pay
- 11 in the regular rate of pay for the purposes of calculating overtime payments, resulting
- 12 in a failure to pay all overtime wages owed.
- 13 f. whether Defendants failed to pay overtime compensation to Plaintiffs and the members
- 14 of the proposed class;
- 15 g. whether Plaintiffs and the members of the proposed class are entitled to meal and rest
- 16 periods;
- 17 h. whether Defendants had a policy and practice of failing to provide, and/or compensate
- 18 Plaintiffs and the members of the proposed class for meal and rest breaks;
- 19 i. whether Defendants' policy and practice of not providing, and/or compensating
- 20 Plaintiffs and the members of the proposed class for meal and rest breaks violated
- 21 California wage and hour law;
- 22 j. whether Defendants unlawfully and/or willfully failed to provide Plaintiffs and the
- 23 members of the proposed class with true and proper wage statements upon payment of
- 24 wages, in violation of Labor Code section 226;
- 25 k. whether Defendants unlawfully and/or willfully failed to reimburse Plaintiffs and the
- 26 members of the proposed class for all necessary expenditures and losses incurred by
- 27 them in direct consequence of the discharge of their duties, in violation of Labor Code
- 28 section 2802;

- 1 1. whether Defendants unlawfully and/or willfully failed to promptly pay compensation
2 owing to Plaintiffs and the members of the proposed Former Employee Sub-class upon
3 termination of their employment, in violation of Labor Code sections 201-203;
4 m. whether plaintiffs and members of the proposed class sustained damages, and if so, the
5 proper measure of such damages, as well as interest, penalties, costs, attorneys' fees,
6 and equitable relief; and;
7 n. whether Defendants' conduct as alleged herein violates the Unfair Business Practices
8 Act of California, Bus. & Prof. Code § 17200, *et seq.*

9 72. Typicality: Plaintiffs are informed and believe and based thereon allege that the claims
10 of the named Plaintiffs are typical of the claims of the members of the proposed class. Plaintiffs and
11 other class members sustained losses, injuries and damages arising from Defendants' common
12 policies, practices, procedures, protocols, routines, and rules which were applied to other class
13 members as well as plaintiff. Plaintiffs seek recovery for the same type of losses, injuries, and damages
14 as were suffered by other members of the proposed class.

15 73. Adequacy of Representation: Plaintiffs are informed and believe, and based thereon
16 allege, that Plaintiffs are an adequate representative of the class because he is a member of the class
17 and his interests do not conflict with the interests of the members he seeks to represent. Plaintiffs have
18 retained competent counsel, experienced in the prosecution of complex class actions, and together
19 Plaintiffs and his counsel intend to prosecute this action vigorously for the benefit of the class. The
20 interests of the class members will fairly and adequately be protected by Plaintiffs and his attorneys.

21 74. Superiority: Plaintiffs are informed and believe, and based thereon allege, that class
22 action is superior to other available methods for the fair and efficient adjudication of this litigation
23 since individual litigation of the claims of all class members is impracticable. It would be unduly
24 burdensome to the courts if these matters were to proceed on an individual basis, because this would
25 potentially result in hundreds of individual, repetitive lawsuits. Individual litigation presents the
26 potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse,"
27 and an inequitable allocation of recovery among those with equally meritorious claims. By contrast,
28 the class action device presents far fewer management difficulties and provides the benefit of a single

1 adjudication, economics of scale, and comprehensive supervision by a single court.

2 75. The various claims asserted in this action are additionally or alternatively certifiable
3 under the provisions of the California Code of Civil Procedure Section 382 because:

4 a. The prosecution of separate actions by hundreds of individual class members would
5 create a risk of varying adjudications with respect to individual class members, thus
6 establishing incompatible standards of conduct for Defendants, and

7 b. The prosecution of separate actions by individual class members would also create the
8 risk of adjudications with respect to them that, as a practical matter, would be
9 dispositive of the interest of the other class members who are not a party to such
10 adjudications and would substantially impair or impede the ability of such non-party
11 class members to protect their interests.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED**

14 **(On Behalf of Plaintiffs and the Putative Class Against All Defendants)**

15 76. Plaintiffs incorporate by reference the allegations set forth above.

16 77. Labor Code Section 1194 provides that an employee receiving less than the legal
17 minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this
18 minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and
19 costs of suit.

20 78. Pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed
21 by the Labor Commission is unlawful.

22 79. Wage Order No. 4-2001 states, "(A) Every employer shall pay to each employee wages
23 not less than nine dollars (\$9.00) per hour for all hours worked, effective July 1, 2014, and not less
24 than ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016, except:
25 LEARNERS. Employees during their first 160 hours of employment in occupations, in which they
26 have no previous similar or related experience, may be paid not less than 85 percent of the minimum
27 wage rounded to the nearest nickel. (B) Every employer shall pay to each employee, on the established
28 payday for the period involved, not less than the applicable minimum wage for all hours worked in

1 the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

2 80. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer than
3 the hours set by the Industrial Welfare Commission, or under conditions prohibited by the applicable
4 Wage Orders, including but not limited to, failing to keep records of and failing to correctly report
5 hours worked.

6 81. Labor Code Section 1174 requires that every person employing labor in this state shall
7 keep (1) a record showing the names and addresses of all employees employed and the ages of all
8 minors; (2) at a central location in the state or at the plants or establishments at which employees are
9 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
10 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
11 respective plants or establishments; (3) such records in accordance with rules established for this
12 purpose by the commission, but in any case, on file for not less than three years. This statute also
13 prevents an employer from prohibiting an employee from maintaining a personal record of hours
14 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to
15 keep the records required by Section 1174.

16 82. Throughout the Relevant Time Period, Defendants’ hourly compensation scheme
17 purported to compensate Plaintiffs and the other members of the putative classes for all hours worked.
18 In reality, Defendants suffered or permitted Plaintiffs and the other members of the putative classes to
19 work portions of their day without compensation, while subject to Defendants’ control, which resulted
20 in the Plaintiffs and the members of the putative class earning less than the legal minimum wage in
21 the State of California.

22 83. At all times relevant hereto, Defendants have willfully failed to keep the records
23 required by Section 1174. By failing to maintain adequate time records as required by Labor Code
24 section 1174(d) and IWC Wage Order, number 4, section 7(A), Defendants have made it difficult to
25 calculate the minimum wage compensation due Plaintiffs and the other members of the putative
26 classes.

27 84. Defendants owe Plaintiff, and the other members of the putative classes, minimum
28 wages and liquidated damages pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197, IWC

1 Wage Order, number 4, section 4 due in amounts to be determined at trial during the three (3) years
2 prior to the filing of the initial Complaint in this action.

3 85. Plaintiffs and the other members of the putative classes request payment of unpaid
4 minimum wages due in amounts to be determined at trial, interest, attorneys' fees and costs, against
5 Defendants in a sum as provided by the Labor Code and/or other statutes.

6 86. Plaintiffs and the members of the putative class also request relief as described below.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES AT THE AGREED RATE**

9 **(On Behalf of Plaintiffs and the Putative Class Against All Defendants)**

10 87. Plaintiffs incorporate by reference the allegations set forth above.

11 88. Labor Code Section 223 provides, "Where any statute or contract requires an employer
12 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
13 purporting to pay the wage designated by statute or contract."

14 89. Throughout the Relevant Time Period, Defendants' compensation scheme purported to
15 compensate Plaintiffs and the other members of the putative class for all hours worked. In reality,
16 Defendants suffered or permitted Plaintiffs and the other members of the putative class to work
17 portions of their day without compensation, while subject to Defendants' control, which resulted in
18 the Plaintiffs and the members of the putative class earning less than the designated rate.

19 90. Also throughout the Relevant Time Period, Defendants paid less than the agreed upon
20 compensation owed to Plaintiffs and the other members of the putative class, while purporting to pay
21 the designated wage scale. As a result, Defendants' conduct violates Labor Code Section 223.

22 91. Defendants owed and still owe Plaintiffs and the other members of the putative class
23 wages at the designated rate pursuant to the Labor Code in amounts to be determined at trial for the
24 hours worked during the relevant time period.

25 92. Plaintiffs and the other members of the putative class request payment of unpaid wages
26 at the designated rate in amounts to be determined at trial, plus interest, attorneys' fees and costs,
27 against Defendants in a sum as provided by the Labor Code and/or other statutes.

28 93. Plaintiffs and the members of the putative class also request relief as described below.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

3 **(On Behalf of Plaintiffs and the Putative Class Against All Defendants)**

4 94. Plaintiffs incorporate by reference the allegations set forth above.

5 95. Labor Code Section 1194 provides that an employee receiving less than the legal
6 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of
7 this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees,
8 and costs of suit.

9 96. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
10 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
11 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
12 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
13 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
14 regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess
15 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
16 the regular rate of pay of an employee."

17 97. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
18 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all
19 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
20 of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess
21 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
22 seventh (7th) day of work in any one workweek.

23 98. Plaintiffs and the members of the Classes do not satisfy any of the exemptions from the
24 overtime requirements of the Labor Code, or the Wage Order.

25 99. Throughout the Relevant Time Period, Defendants failed to pay Plaintiffs and members
26 of the putative class overtime wages based upon all hours worked, based on Defendants' uniform
27 policies, practices and procedures.

28 100. Defendants further failed to include bonuses, shift differentials, or other incentive pay

1 in the regular rate of pay for the purposes of calculating overtime payments, resulting in a failure to
2 pay all overtime wages owed.

3 101. Defendants' pattern, practice and uniform administration of corporate policy regarding
4 illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to
5 Labor Code Section 1194(a), to recovery by the members of the Classes, in a civil action, for the
6 unpaid balance of the full amount of the straight time compensation and overtime premiums owing,
7 including interest thereon, reasonable attorneys' fees, and costs of suit.

8 102. Pursuant to Labor Code Section 1194(a) and California Civil Code Section 3287(b),
9 Plaintiffs and the members of the putative class seek recovery of pre-judgment interest on all amounts
10 recovered herein.

11 103. Pursuant to Labor Code Section 1194, the members of the Classes request that the Court
12 award reasonable attorneys' fees and costs incurred by them in this action.

13 104. Plaintiffs and the members of the putative class also request relief as described below.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO ALLOW AND PAY FOR MEAL BREAKS**

16 **(On Behalf of Plaintiffs and the Putative Class Against All Defendants)**

17 105. Plaintiffs incorporate by reference the allegations set forth above.

18 106. Labor Code Section 226.7(a) provides that "No employer shall require any employee
19 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
20 Commission."

21 107. Labor Code Section 512 provides that "An employer may not employ an employee for
22 a work period of more than five hours per day without providing the employee with a meal period of
23 not less than 30 minutes, except that if the total work period per day of the employee is no more than
24 six hours, the meal period may be waived by mutual consent of both the employer and employee."

25 108. Labor Code Section 512 further provides that "An employer may not employ an
26 employee for a work period of more than 10 hours per day without providing the employee with a
27 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
28 12 hours, the second meal period may be waived by mutual consent of the employer and the employee

1 only if the first meal period was not waived.”

2 109. Labor Code Section 516 provides that the Industrial Welfare Commission may adopt
3 or amend working condition orders with respect to meal periods for any workers in California
4 consistent with the health and welfare of those workers.

5 110. Section 11(C) of Wage Order No. 4-2001 provides that “Unless the employee is
6 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty”
7 meal period and counted as time worked. An “on duty” meal period shall be permitted only when the
8 nature of the work prevents an employee from being relieved of all duty and when by written
9 agreement between the parties an on-the-job paid meal period is agreed to.”

10 111. Section 11(D) of Wage Order No. 4-2001 provides that “If an employer fails to provide
11 an employee a meal period in accordance with the applicable provisions of this order, the employer
12 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
13 workday that the meal period is not provided.”

14 112. Throughout the Relevant Time Period, Plaintiffs and the members of the putative class
15 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period
16 of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

17 113. Throughout the Relevant Time Period, Plaintiffs and the members of the putative class
18 consistently worked over ten (10) hours per work period, and therefore, were entitled to a second meal
19 period of not less than thirty (30) minutes.

20 114. Throughout the Relevant Time Period, Plaintiffs and the members of the putative class
21 did not waive their meal periods, by mutual consent with Defendants or otherwise.

22 115. Throughout the Relevant Time Period, Plaintiffs and the members of the putative class
23 did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

24 116. The Defendants implemented a uniform policy and procedure in which Plaintiffs and
25 members of the putative class were not provided required meal periods.

26 117. Defendants failed to comply with the required meal periods established by Labor Code
27 Section 226.7, Labor Code Section 512, Labor Code Section 516 and the applicable Wage Order.

28 118. Pursuant to Section 11 of Wage Order No. 4-2001, and Labor Code Section 226.7(b)

(which requires, in the event that “an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the industrial Welfare Commission, the employer shall 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”), the members of the Classes are entitled to damages in an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven at trial.

119. Pursuant to Labor Code Section 1194(a), Civil Code Section 3287(b), the members of the Classes seek recovery of pre-judgment interest on all amounts recovered herein.

120. Pursuant to Labor Code Section 1194, the members of the Classes request that the Court award reasonable attorneys’ fees and costs incurred by them in this action.

121. Plaintiffs and the members of the putative class also request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO ALLOW AND PAY FOR REST BREAKS

(On Behalf of Plaintiffs and the Putative Class Against All Defendants)

122. Plaintiffs incorporate by reference the allegations set forth above.

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

124. Labor Code Section 516 provides that the Industrial Welfare Commission may adopt or amend working condition orders with respect to rest periods for any workers in California consistent with the health and welfare of those workers.

125. IWC Wage Order, number 4-2001, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

126. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order, number 4-2001, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

127. Throughout the Relevant Time Period, Defendant implemented a uniform policy and procedure in which Plaintiffs and members of the putative class were not provided required rest

1 periods.

2 128. As a result, throughout the Relevant Time Period, Defendants regularly:

- 3 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiffs and the
4 members of the putative class were relieved of all duty for each four (4) hours of
5 work;
6 b. Failed to compensate Plaintiffs and the members of the putative class for break time
7 when breaks were taken; and
8 c. Failed to pay Plaintiffs and the members of the putative class one (1) hour of pay at
9 their regular rate of compensation for each workday that a rest period was not
10 permitted.

11 129. Plaintiffs and the members of the putative class also request relief as described below.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PAY COMPENSATION AT THE TIME OF TERMINATION**

14 **(On Behalf of Plaintiffs and the Former Employee Sub-Class Against All Defendants)**

15 130. Plaintiffs incorporate by reference the allegations set forth above.

16 131. California Labor Code section 203 provides that if an employer willfully fails to pay
17 compensation promptly upon discharge, as required by California Labor Code section 201 or 202, then
18 the employer is liable for waiting time penalties in the form of continued compensation of up to thirty
19 (30) work days.

20 132. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 consistently and willfully failed to timely pay Plaintiffs and the members of the putative Former
22 Employee Sub-Class, all wages due and owing upon termination of employment, including wages due
23 for off-the-clock work and premium pay for meal and rest periods as set forth hereinabove.

24 133. Plaintiffs, on behalf of themselves and the members of the putative Former Employee
25 Sub-Class, seek penalties to which they and the members of the putative Former Employee Sub-class
26 are entitled pursuant to California Labor Code section 203, in the amount of Plaintiffs' and each
27 Former Employee Sub-Class members' daily wage multiplied by thirty (30) days, the exact amount of
28 which is to be determined at trial.

134. Plaintiffs and the members of the putative class also request relief as described below.

SEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(On Behalf of Plaintiffs and the Putative Class Against All Defendants)

135. Plaintiffs incorporate by reference the allegations set forth above.

136. Labor Code Section 226(a) requires every employer, semimonthly or at the time of each payment of wages, 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 accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned and (6) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

137. As a matter of pattern and practice, in violation of Labor Code Section 226, including but not limited to Labor Code Section 226(a), Defendants did not maintain accurate records pertaining to Plaintiffs or the members of the putative class, including, but not limited to, when they began and ended each work period, meal period, rest period, the total daily hours worked, the total hours worked per pay period and applicable rates of pay.

138. Plaintiffs and the members of the putative class were harmed by Defendants' failure to provide the required information. Defendants' failure to comply with Labor Code Section 226(a) hindered Plaintiffs and the members of the putative class from determining the amount of wages, overtime, and other compensation actually owed to them, and damaged them in the amount of the unpaid wages, compensation, and overtime wages that were not reported by Defendants, as required.

139. Pursuant to Labor Code Section 226(e), Plaintiffs and the members of the putative class are entitled to penalties as follows:

- a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurs; and
- b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay

period.

140. Pursuant to Labor Code Section 226(g), the members of the Classes are entitled to an award of costs and reasonable attorneys' fees.

141. Plaintiffs and the members of the putative class also request relief as described below.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(On Behalf of Plaintiffs and the Putative Class Against All Defendants)

142. Plaintiffs incorporate by reference the allegations set forth above.

143. Labor Code Section 2802(a) requires every employer to indemnify their employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Labor Code Section 2802(c) specifies that, for purposes of Section 2802(a), the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by Section 2802.

144. As a matter of pattern and practice, in violation of Labor Code Section 2802(a), Defendants did not reimburse Plaintiffs or the members of the putative class for the expenditures they incurred, nor their losses, including, but not limited to, their reasonable costs and attorney's fees they incur to enforce the rights granted by Section 2802.

145. Plaintiffs and the members of the putative class were harmed by Defendants' failure to provide the required information. Defendants' failure to comply with Labor Code Section 2802(a) led to Plaintiffs and members of the putative class to lose money from expenditures they incurred and were not reimbursed for, including Plaintiffs needing to bring this litigation, and damaged them in the amount of the unreimbursed expenditures including attorney's fees and costs of litigation.

146. Pursuant to Labor Code Section 2802(c), the members of the Classes are entitled to reimbursement of necessary expenditures including an award of reasonable costs and attorneys' fees.

147. Plaintiffs and the members of the putative class also request relief as described below.

NINTH CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

(On Behalf of Plaintiffs and the Putative Class Against All Defendants)

1 148. Plaintiffs incorporate by reference the allegations set forth above.

2 149. Within the four years prior to the filing of the initial Complaint in this case, Defendants,
3 and each of them, committed acts of unfair competition as defined by California Business and
4 Professions Code section 17200, *et. seq.*, by engaging in the following unlawful, unfair and fraudulent
5 business acts and practices in the State of California, among others:

- 6 a. requiring, encouraging, suffering, and/or permitting Plaintiffs and the members of the
7 proposed class to perform certain work-related duties without compensation equal to
8 at least the California minimum wage;
- 9 b. requiring, encouraging, suffering, and/or permitting Plaintiffs and the members of the
10 proposed class to perform certain work-related duties without compensation at the
11 designated rate;
- 12 c. failing to pay Plaintiffs and the members of the proposed class overtime compensation
13 to which they were entitled;
- 14 d. failing to provide and/or compensate Plaintiffs and the members of the proposed class
15 for meal and rest periods;
- 16 e. unlawfully and/or willfully failing to provide Plaintiffs and the members of the
17 proposed class with true and proper wage statements upon payment of wages, in
18 violation of Labor Code section 226;

19 150. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts
20 and practices described herein, Defendants have received and continue to hold ill-gotten gains
21 belonging to Plaintiffs and the other members of the putative classes. As a direct and proximate result
22 of Defendants' unlawful business practices, Plaintiffs and the other members of the putative classes
23 have suffered economic injuries including, but not limited to, loss of wage compensation and
24 compensation for missed meal and rest periods.

25 151. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and practices,
26 Defendants have gained an unfair advantage over Defendants' competitors.

27 152. Plaintiffs and the other members of the putative classes seek full restitution on account
28 of the economic injuries they have suffered, along with disgorgement of ill-gotten gains from

1 Defendants as necessary and according to proof, to restore any and all monies withheld, acquired
2 and/or converted by Defendants by means of the unlawful, unfair and fraudulent business practices
3 complained of herein.

4 153. Plaintiffs and the other members of the putative classes seek appointment of a receiver,
5 as necessary, to oversee said restitution, including all wages earned and unpaid, including interest
6 thereon.

7 154. Further, if Defendants are not enjoined from engaging of the unlawful, unfair and
8 fraudulent conduct described above, Defendants will continue unabated in their conduct, which will
9 result in continued irreparable injury to members of the public, including, but not limited to the other
10 members of the putative classes who currently work for Defendants, and for which there is no adequate
11 remedy at law. Thus, Plaintiffs and the other members of the putative classes request that the Court
12 issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
13 conduct.

14 155. Plaintiffs and the members of the putative class also request relief as described below.

15 **TENTH CAUSE OF ACTION**

16 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

17 **(On Behalf of Plaintiffs and the Putative Class Against All Defendants)**

18 156. Plaintiffs incorporate by reference the allegations set forth above.

19 157. Plaintiffs have complied with the procedures for bringing suit specified in California
20 Labor Code Section 2699.3. By letter dated September 8, 2015, Plaintiff Clark, on behalf of himself
21 and the other aggrieved employees, gave written notice by certified mail to the LWDA and to
22 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
23 including the facts and theories to support the alleged violations. The LWDA has not advised Plaintiffs
24 it intends to take action on Plaintiffs' notice.

25 158. Plaintiff Nelson likewise completed PAGA exhaustion by letter sent on May 9, 2016.

26 159. This action arises out of the allegedly unlawful labor practices of Defendants in
27 California. Through this private attorneys general action, Plaintiffs represents himself, and other
28 aggrieved employees of Defendants that were in California, against whom Defendants have allegedly

1 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described
2 herein, Plaintiffs now seeks to recover civil penalties, including the value of unpaid wages, attorneys'
3 fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
4 Sections 558 and 2698, *et seq.*

5 160. Labor Code Section 1198 makes it unlawful for an employer to employ an employee
6 under conditions that violate the applicable Wage Order.

7 161. Plaintiffs are informed and believe that throughout the Relevant Time Period,
8 Defendants have applied centrally devised policies and practices to Plaintiffs and the other aggrieved
9 employees with respect to wages, hours, and working conditions.

10 162. Defendants' conduct violates numerous Labor Code sections as alleged above
11 including, but not limited to, the following:

- 12 a. Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, 1197 and 1198 for failure to
13 timely pay all earned wages (including minimum wages and overtime wages) owed to
14 Plaintiffs and other aggrieved employees during employment and upon separation of
15 employment as herein alleged;
- 16 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
17 Plaintiffs and other aggrieved employees and failure to pay premium wages for missed
18 meal periods as herein alleged;
- 19 c. Violation of Labor Code § 226.7 for failure to authorize or permit Plaintiffs and other
20 aggrieved employees rest breaks and failure to pay premium wages for missed rest
21 periods as herein alleged;
- 22 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage statements
23 to Plaintiffs and other aggrieved employees as herein alleged;
- 24 e. Violation of Labor Code § 2802 for failing to reimburse business expenses; and
- 25 f. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate records.

26 163. Further, Labor Code § 558(a) provides "any employer or other person acting on behalf
27 of an employer who violates, or causes to be violated, a section of this chapter or any provisions
28 regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows:

(1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee." Labor Code § 558(c) provides "the civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

164. As set forth above, Defendants have violated numerous provisions of the Labor Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiffs seek the remedies set forth in Labor Code § 558 for themselves, the underpaid employees, and the State of California.

165. Plaintiffs are "aggrieved employee(s)" because they were employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

166. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

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

168. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

169. For bringing this action, Plaintiffs are entitled to attorneys' fees and costs incurred herein.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiffs, on behalf of themselves and on behalf of the members of the putative
3 class, pray for judgment against Defendants as follows:

- 4 a. for an order certifying the class herein, appointing the named Plaintiffs as the class
5 representatives of all others similarly situated and appointing counsel for the named
6 Plaintiffs as counsel for members of the class;
- 7 b. An order awarding Plaintiffs and the members of the putative classes all wages
8 owed, all meal and rest break premiums owed, plus all penalties and
9 compensatory damages;
- 10 c. Liquidated damages;
- 11 d. Civil penalties;
- 12 e. An order requiring imposition of a constructive trust and/or disgorgement of
13 Defendants' ill-gotten gains to pay restitution to the Plaintiffs and the members of the
14 putative classes and to restore to the Plaintiffs and the members of the putative classes
15 all funds acquired by means of any act or practice declared by this Court to be an
16 unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or
17 regulations, or constituting unfair competition;
- 18 f. Pre-judgment and post-judgment interest;
- 19 g. For an award of attorneys' fees and costs incurred in the investigation, filing and
20 prosecution of this action pursuant to Code of Civil Procedure Section 1021.5,
21 Business and Profession Code Section 17200, *et seq.*, Labor Code section 1194;
22 PAGA; and any other applicable provision of law; and

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1 h. Such other and further relief as the Court may deem necessary or appropriate.
2
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4 DATED: September 4, 2026

**LAW OFFICES OF THOMAS W. FALVEY
BOYAMIAN LAW, INC.
AEGIS LAW FIRM PC
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**PROOF OF SERVICE
VIA CASE ANYWHERE
Craig Clark v. *Quest Diagnostics Clinical Laboratories, Inc.*
LASC Case No. BC594022
(Consolidated with BC594129 and BC660722)**

I am a citizen of the United States and employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 550 N. Brand Blvd., Suite 1500, Glendale, CA 91203.

On September 4, 2026, I served the foregoing documents described as **FIRST AMENDED CONSOLIDATED CLASS ACTION AND PAGA COMPLAINT**.

Pursuant to the Court's January 8, 2016, Order Authorizing Electronic Service, the above-named document has been electronically served on counsel of record by transmission through the Case Anywhere system on the date below. The transmission of this document to Case Anywhere system was reported as complete and a copy of the Case Anywhere Transaction Receipt will be maintained along with the original document and proof of service in our office.

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

Executed on September 4, 2026, at Glendale, California.

A.R.K.
Armand R. Kizirian

Craig Clark v. Quest Diagnostics Clinical Laboratories, Inc.
LASC Case No. BC594022
(Consolidated with BC594129 and BC660722)

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