

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CAREFUSION RESOURCES, LLC, a Delaware Limited Liability Company; BECTON DICKINSON AND COMPANY, a New Jersey Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

KAREEM COLES, an individual, on behalf of himself, and on behalf of all persons similarly situated,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

12/02/2022 at 09:11:05 AM

Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court - Hall of Justice Courthouse
330 West Broadway
San Diego, CA 92101

CASE NUMBER: 37-2022-00048696-CU-OE-CTL
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

DATE: 12/08/2022
(Fecha)

Clerk, by _____, Deputy
(Secretario) B. Ramirez (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/02/2022 at 09:11:05 AM
Clerk of the Superior Court
By Brenda Ramirez, Deputy Clerk

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KAREEM COLES, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

CAREFUSION RESOURCES, LLC, a
Delaware Limited Liability Company;
BECTON DICKINSON AND COMPANY, a
New Jersey Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No: 37-2022-00048696-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SECTIONS 2698 *ET*
SEQ.

DEMAND FOR JURY TRIAL

1 Plaintiff KAREEM COLES, (“PLAINTIFF”), an individual, in his representative capacity
2 on behalf of himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against: CAREFUSION RESOURCES, LLC and BECTON
4 DICKINSON AND COMPANY (hereinafter collectively referred to as “DEFENDANT and/or
5 “DEFENDANTS”), alleges on information and belief, except for his own acts and knowledge which
6 are based on personal knowledge, the following:

7 INTRODUCTION

8 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys
9 General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current
10 and former aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage
11 and hour violations under the California Labor Code.

12 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
13 decreased their employment-related costs by systematically violating California wage and hour
14 laws.

15 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order
16 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 17 a. Failure to provide compliant meal and rest periods;
- 18 b. Failure to pay all minimum, regular and overtime wages;
- 19 c. Failure to maintain true and accurate records;
- 20 d. Failure to provide accurate itemized wage statements; and
- 21 e. Failure to timely pay wages due during, and upon termination of employment
- 22 f. Failure to reimburse employees for necessary expenditures.

23 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of
24 himself and all other aggrieved employees of DEFENDANTS in California seeking all civil
25 penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

26 5. PLAINTIFF reserves the right to name additional representatives throughout the
27 State of California.

28 ///

THE PARTIES

6. Defendant CAREFUSION RESOURCES, LLC is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

7. Defendant BECTON DICKINSON AND COMPANY is a New Jersey Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

8. In or around 2014 Defendant BECTON DICKINSON AND COMPANY completed a merger to acquire Carefusion Corporation and as a result acquired Defendant CAREFUSION RESOURCES, LLC. As such, Defendant CAREFUSION RESOURCES, LLC is a subsidiary of Defendant BECTON DICKINSON AND COMPANY. Defendant CAREFUSION RESOURCES, LLC and Defendant BECTON DICKINSON AND COMPANY were the joint employers of PLAINTIFFS and are therefore jointly responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

9. PLAINTIFF was employed by DEFENDANT in California from 2008 to June of 2022 as a non-exempt employee, paid in part an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF brings this action in his representative capacity on behalf of the State of California and on behalf of all persons who are or previously were employed by Defendant CAREFUSION RESOURCES, LLC and/or Defendant BECTON DICKINSON AND COMPANY in California who performed work for DEFENDANT CAREFUSION RESOURCES, LLC in California and classified as non-exempt employees (hereinafter “AGGRIEVED EMPLOYEES”) between September 16, 2021 and the present (“PAGA PERIOD”).

11. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code § 2699(c) because he was employed by DEFENDANT and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

12. PLAINTIFF and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANT, within the meanings set forth in the California Labor Code and the applicable Industrial Welfare Commission Wage Order.

13. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts alleged in this Complaint.

14. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

15. DEFENDANT was PLAINTIFF's employer or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JOINT EMPLOYER

16. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

17. Section 558 of the California Labor Code provides that “any employer *or other person* acting on behalf of an employer who violates, or causes to be violated, a section of this

chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall be subject to a civil penalty...” (*Lab. Code* § 558(a).);

18. Section 1197.1 of the Labor Code provides that “[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

19. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

20. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, and each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees the appropriate wages as complained of herein and proximately caused the complaints, injuries, and damages alleged herein.

21. At all relevant times, each DEFENDANT, whether named or fictitious, was the agent, employee or other person acting on behalf of each other DEFENDANT, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

22. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF’s wages, working hours, and/or working conditions.

23. Each DEFENDANT, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other DEFENDANT.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court has jurisdiction over PLAINTIFF's claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

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

THE CONDUCT

26. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked, failed to pay PLAINTIFF and other AGGRIEVED employees minimum wages for all time worked, failed to pay PLAINTIFF and other AGGRIEVED employees for off-the-clock work, failed to pay PLAINTIFF and other AGGRIEVED employees for overtime at the correct regular rate of pay, failed to pay PLAINTIFF and other AGGRIEVED employees for meal and rest premiums at the regular rate, failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for business expenses, failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES all wages when due, failed to maintain accurate records and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to

1 illegally profit and gain an unfair advantage over competitors who comply with the law. To the
2 extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
3 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

4 A. **Regular Rate Violation-Overtime, Double Time, Meal and Rest Period Premiums, and**
5 **Redeemed Sick Pay**

6 27. From time to time during the PAGA PERIOD, DEFENDANTS failed and continued
7 to fail to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for
8 their overtime and double time hours worked, meal and rest period premiums, and redeemed sick
9 pay. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due to
10 them for working overtime without compensation at the correct overtime and double time rates,
11 meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and
12 practice not to pay the AGGRIEVED EMPLOYEES at the correct rate for all overtime and double
13 time worked, meal and rest period premiums, and redeemed sick pay in accordance with applicable
14 law is evidenced by DEFENDANTS' business records.

15 28. State law provides that employees must be paid overtime at one-and-one-half times
16 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
17 at an hourly rate plus incentive pay that was tied to specific elements of an employee's performance.

18 29. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
19 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFF
20 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
21 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
22 basis with bonus compensation when the employees met the various performance goals set by
23 DEFENDANTS.

24 30. However, from-time-to-time, when calculating the regular rate of pay, in those pay
25 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double-
26 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-
27 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
28 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked

1 rather than just all non-overtime hours worked. Management and supervisors described the
2 incentive/bonus program to potential and new employees as part of the compensation package. As
3 a matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
4 EMPLOYEES must be included in the “regular rate of pay.” The failure to do so has resulted in a
5 systematic underpayment of overtime and double time compensation, meal and rest period
6 premiums, and redeemed sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
7 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time for
8 non-employees shall be calculated in the same manner as the regular rate of pay for the workweek
9 in which the non-exempt employee uses paid sick time, whether or not the employee actually works
10 overtime in that workweek. DEFENDANTS maintained paid time off (“PTO”) in lieu of sick pay
11 policy. As such, in such an instance, sick pay and PTO are synonymous, thereby requiring
12 DEFENDANTS to include non-discretionary incentive compensation in other regular rate of pay
13 for purposes of redeemed PTO. DEFENDANTS’ conduct, as articulated herein, by failing to
14 include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay
15 compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is recoverable
16 under Cal. Labor Code Sections 201, 202, 203 and/or 204.

17 31. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
19 matter of company policy, practice, and procedure, intentionally and knowingly failed to
20 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES at the correct rate of pay for
21 all overtime and double time worked, meal and rest period premiums, and sick pay. This uniform
22 policy and practice of DEFENDANTS was intended to purposefully avoid the payment of the
23 correct overtime and double time compensation, meal and rest p. eriod premiums, and sick pay as
24 required by California law which allowed DEFENDANT to illegally profit and gain an unfair
25 advantage over competitors who complied with the law. To the extent equitable tolling operates to
26 toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA PERIOD
27 should be adjusted accordingly.

28 **B. Meal Period Violations**

1 32. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
2 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning
3 the time during which an employee is subject to the control of an employer, including all the time
4 the employee is suffered or permitted to work. From time to time during the PAGA PERIOD,
5 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying
6 them for all the time they were under DEFENDANTS' control. Specifically, DEFENDANTS
7 required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'S
8 off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial
9 lunch. As a result, the PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
10 wage and overtime compensation by regularly working without their time being accurately recorded
11 and without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'
12 uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
13 time worked is evidenced by DEFENDANTS' business records.

14 33. From time to time during the PAGA PERIOD, as a result of their rigorous work
15 schedules and DEFENDANTS' inadequate staffing practices, PLAINTIFF and the other
16 AGGRIEVED EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal
17 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
18 AGGRIEVED EMPLOYEES are required to perform work as ordered by DEFENDANT for more
19 than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANTS
20 fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
21 for some workdays in which these employees are required by DEFENDANTS to work ten (10)
22 hours of work. The nature of the work performed by PLAINTIFF and other AGGRIEVED
23 EMPLOYEES does not qualify for the limited and narrowly construed "onduty" meal period
24 exception. When they were provided with meal periods, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were, from time to time, required to remain on duty and on call. DEFENDANTS'
26 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal
27 breaks is evidenced by DEFENDANTS' business records. PLAINTIFF and other AGGRIEVED
28

1 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
2 with DEFENDANT'S' strict corporate policy and practice.

3 **C. Rest Period Violations**

4 34. From time to time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were also required to work in excess of four (4) hours without being provided ten
6 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS'
7 inadequate staffing. Further, for the same reasons, these employees were denied their first rest
8 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from
9 time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of
10 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at
11 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When
12 they were provided with rest breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were,
13 from time to time, required to remain on duty and/or on call. PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were also not provided with one-hour wages in lieu thereof. As a result of their
15 rigorous work schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
17 DEFENDANTS and DEFENDANTS managers.

18 **D. Unreimbursed Business Expenses**

19 35. DEFENDANTS as a matter of corporate policy, practice, and procedure,
20 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and
21 the other AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF
22 and other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf
23 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
24 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
25 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
27 of his or her duties, or of his or her obedience to the directions of the employer, even though
28 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

1 36. In the course of their employment, DEFENDANTS required PLAINTIFF and other
2 AGGRIEVED EMPLOYEES to use their personal cell phones as a result of and in furtherance
3 of their job duties. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required
4 to use their personal cell phones in order to perform work related tasks. However, DEFENDANTS
5 unlawfully failed to reimburse PLAINTIFF and other AGGRIEVED EMPLOYEES for the use of
6 their personal cell phones. As a result, in the course of their employment with DEFENDANTS, the
7 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that
8 included, but were not limited to, costs related to the use of their personal cell phones, all on behalf
9 of and for the benefit of DEFENDANTS.

10 E. **Wage Statement Violations**

11 37. California Labor Code Section 226 required an employer to furnish its employees
12 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
13 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
14 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
15 name of the employee and only the last four digits of the employee's social security number or an
16 employee identification number other than a social security number, (8) the name and address of
17 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate by the employee.

19 38. From time to time during the PAGA PERIOD, when PLAINTIFF and other
20 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
21 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
22 to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with complete and accurate wage
23 statements which failed to show, among other things, all deductions, the total hours worked and all
24 applicable hourly rates in effect during the pay period, and the corresponding amount of time
25 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
26 periods.

27 39. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
28

1 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
2 Lab. Code § 226.

3 40. As a result, DEFENDANT issued PLAINTIFF and other AGGRIEVED
4 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
5 violations are knowing and intentional, were not isolated due to an unintentional payroll error due
6 to clerical or inadvertent mistake.

7 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

8 41. During the PAGA PERIOD, from time-to-time DEFENDANTS failed and
9 continued to fail to accurately pay PLAINTIFF and other members AGGRIEVED EMPLOYEES
10 for all hours worked.

11 42. During the PAGA PERIOD, from time-to-time DEFENDANTS required
12 PLAINTIFF and other AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work,
13 including but not limited to, submitting to Covid-19 health screenings that included temperature
14 checks. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while
15 off-the-clock.

16 43. DEFENDANTS directed and directly benefited from the undercompensated off-the
17 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

18 44. DEFENDANTS controlled the work schedules, duties, and protocols, applications,
19 assignments, and employment conditions of PLAINTIFF and the other AGGRIEVED
20 EMPLOYEES.

21 45. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
22 AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track,
23 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all
24 the work they performed

25 46. PLAINTIFF and the other AGGRIEVED EMPLOYEES were nonexempt
26 employees, subject to the requirements of the California Labor Code.

27 47. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed or

1 the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
2 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
3 DEFENDANTS' policies and practices also deprived them of overtime pay.

4 48. DEFENDANTS knew or should have known that PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES off-the-clock work was compensable under the law.

6 49. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
7 due to them for all hours worked at DEFENDANTS' direction, control, and benefit for the time
8 spent working while off-the-clock, including but not limited to, time spent submitting to Covid-19
9 health screenings. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the
10 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
11 evidenced by DEFENDANTS' business records.

12 **G. Unlawful Rounding Practices**

13 50. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable
14 timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for the actual time these employees worked each day, including overtime hours.
16 Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted
17 in PLAINTIFF and AGGRIEVED EMPLOYEES being undercompensated for all of their time
18 worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round
19 the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and the AGGRIEVED
20 EMPLOYEES in order to avoid paying these employees for all their time worked, including the
21 applicable overtime compensation for overtime worked. As a result, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by
23 working without their time being accurately recorded and without compensation at the applicable
24 overtime rates.

25 51. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
26 rounding policy and practice resulted in PLAINTIFF and the AGGRIEVED EMPLOYEES time
27 being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding
28 policy and practice caused PLAINTIFF and AGGRIEVED EMPLOYEES to perform work as

1 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-duty
2 meal break.

3 **H. Violations for Untimely Payment of Wages**

4 52. Pursuant to California Labor Code section 204, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFF
6 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
8 rest period premium wages within permissible time period.

9 **I. Unlawful Deductions**

10 53. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
11 and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do
12 so or notice to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS
13 violated Labor Code § 221.

14 **J. Timekeeping Manipulation**

15 54. During the PAGA PERIOD, DEFENDANTS, from time-to-time, did not have an
16 immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED
17 EMPLOYEES for the actual time PLAINTIFF and other AGGRIEVED EMPLOYEES worked
18 each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
19 DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded in
20 DEFENDANTS' timekeeping system for PLAINTIFF and other AGGRIEVED EMPLOYEES in
21 order to avoid paying these employees for all hours worked, applicable overtime compensation,
22 applicable sick pay, missed meal breaks and missed rest breaks.

23 55. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES, from time-to-time,
24 forfeited time worked by working without their time being accurately recorded and without
25 compensation at the applicable pay rates.

26 56. The mutability of the timekeeping system also allowed DEFENDANTS to alter
27 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
28 timekeeping system so as to create the appearance that PLAINTIFF and other AGGRIEVED

1 EMPLOYEES clocked out for thirty (30) minute meal break when in fact the employees were not
2 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
3 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
4 breaks each day or otherwise compensate them for missed meal breaks.

5 57. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
6 due them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
7 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
8 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
9 applicable law is evidenced by DEFENDANTS' business records

10 58. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
11 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
12 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
13 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
14 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
15 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
16 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
17 DEFENDANTS' policy caused PLAINTIFF to remain on-call and on-duty during what was
18 supposed to be his off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
19 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
20 and practice. Moreover, DEFENDANTS also provided PLAINTIFF with paystubs that failed to
21 comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF
22 for required business expenses related to the personal expenses incurred for the use of his personal
23 cell phone, on behalf of and in furtherance of his employment with DEFENDANT. To date,
24 DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
25 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.

26 **FIRST CAUSE OF ACTION**

27 **For Violation of the Private Attorneys General Act**

28 **[Cal. Lab. Code §§ 2698, et seq.]**

(By PLAINTIFF and Against All DEFENDANTS)

59. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

60. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

61. PLAINTIFF brings this Representative Action on behalf of the State of California with respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by DEFENDANT during the PAGA PERIOD (September 16, 2021 to present).

62. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of Labor Code Section 2699(c).

63. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

64. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By certified letter, return receipt requested, dated September 16, 2022, PLAINTIFF gave written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. (See Exhibit #1.)

65. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with notice of DEFENDANT'S violations, the LWDA has not provided any notice by

1 certified mail of its intent to investigate the DEFENDANT'S alleged violations as mandated by
2 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A,
3 PLAINTIFF may commence and is authorized to pursue this cause of action.

4 66. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
5 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor
6 Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510,
7 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802 ad 2804 in the following
8 amounts:

9 a. For violation of Labor Code Sections 201, 202, 203, and 204,
10 one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per
11 pay period for the initial violation and two hundred dollars (\$200) for
12 AGGRIEVED EMPLOYEE per pay period for each subsequent
13 violation [penalty per Labor Code Section 2699(f)(2)];

14 b. For violations of Labor Code Section 226(a), a civil penalty
15 in the amount of two hundred fifty dollars (\$250) for each
16 AGGRIEVED EMPLOYEE for any initial violation and one
17 thousand dollars for each subsequent violation [penalty per Labor
18 Code Section 226.3];

19 c. For violations of Labor Code Sections 204, a civil penalty in
20 the amount of one hundred dollars (\$100) for each AGGRIEVED
21 EMPLOYEE for any initial violation and two hundred dollars (\$200)
22 for AGGRIEVED EMPLOYEE for each subsequent violation
23 [penalty per Labor Code Section 210];

24 d. For violations of Labor Code Sections 226.7, 510 and 512, a
25 civil penalty in the amount of fifty dollars (\$50) for each underpaid
26 AGGRIEVED EMPLOYEE for the initial violation and hundred
27 dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for
28 each subsequent violation [penalty per Labor Code Section 558];

1 e. For violations of Labor Code Section 2269(a), a civil penalty
2 in the amount of two hundred fifty dollars (\$250) per AGGRIEVED
3 EMPLOYEE per violation in an initial citation and one thousand
4 dollars (\$1,000) per AGGRIEVED EMPLOYEE for each subsequent
5 violation [penalty per Labor Code Section 226.3];

6 f. For violations of Labor Code Section 1174(d), a civil penalty
7 in the amount of five hundred (\$500) dollars for per AGGRIEVED
8 EMPLOYEE [penalty per Labor Code Section 1174.5].

9 g. For violations of Labor Code Sections 1194, 1194.2, 1197,
10 1198 and 1199, a civil penalty in the amount of one hundred dollars
11 (\$100) per AGGRIEVED EMPLOYEE per pay period for the initial
12 violation and two hundred dollars fifty (\$250) per AGGRIEVED
13 EMPLOYEE per pay period for each subsequent violation [penalty
14 per Labor Code Section].

15 67. For all provisions of the Labor Code for which civil penalty is not specifically
16 provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100)
17 for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred
18 dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation.
19 PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
20 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
21 Section 2699(g)(1).

22 68. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
24 affected other AGGRIEVED EMPLOYEES. (*Carrington v. Starbucks Corp.* (2018) 30
25 Cal.App.5th 504, 519; See also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App.
26 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor
27 Code violation committed by an employer—to pursue penalties for all the Labor Code violations
28 committed by that employer."], Emphasis added, reh'g denied (June 13, 2018).)

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANT as follows:

- 3 a. For reasonable attorney's fees and costs of suit to the extent permitted by law, including
4 pursuant to Labor Code § 2699, *et seq.*;
- 5 b. For civil penalties to the extent permitted by law pursuant to the Labor Code under the
6 Private Attorneys General Act; and
- 7 c. For such other relief as the Court deems just and proper.

8 DATED: November 22, 2022

9 **ZAKAY LAW GROUP, APLC**

10
11 By: 
12

13 Shani O. Zakay
14 Attorney for PLAINTIFF

15
16
17 **DEMAND FOR A JURY TRIAL**

18 PLAINTIFF demands a jury trial on issues triable to a jury.

19
20 DATED: November 22, 2022

21 **ZAKAY LAW GROUP, APLC**

22
23 By: 
24

25 Shani O. Zakay
26 Attorney for PLAINTIFF
27
28

EXHIBIT 1



Clio #17803

September 16, 2022

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

CAREFUSION RESOURCES, LLC

c/o C T Corporation System

330 N Brand Blvd. STE 700

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 8870 1125

BECTON DICKINSON AND COMPANY

c/o C T Corporation System

330 N Brand Blvd. STE 700

Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 8870 1132

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff KAREEM COLES ("Plaintiff") and other aggrieved employees in a proposed lawsuit against Defendants CAREFUSION RESOURCES, LLC ("Defendant CareFusion Resources LLC") and BECTON DICKINSON AND COMPANY ("Defendant Becton Dickinson and Company"). Plaintiff was employed by Defendants in California from 2008 to June of 2022 as a non-exempt employee, paid on an hourly basis and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant CareFusion Resources, LLC and/or non-exempt employees employed by Defendant Becton Dickinson and Company who worked for Defendant CareFusion Resources, LLC in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KAREEM COLES, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

CAREFUSION RESOURCES, LLC, a
Delaware Limited Liability Company;
BECTON DICKINSON AND COMPANY, a
New Jersey Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND

THE APPLICABLE IWC WAGE ORDER;

6) FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;

7) FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;

8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

DEMAND FOR A JURY TRIAL

PLAINTIFF KAREEM COLES (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, allege on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

PRELIMINARY ALLEGATIONS

1. Defendant CareFusion Resources, LLC is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

2. Defendant Becton Dickinson and Company is a New Jersey Corporation and at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

3. In or around 2014 Defendant Becton Dickinson and Company completed a merger to acquire Carefusion Corporation and as a result acquired Defendant Carefusion Resources, LLC. As such, Defendant Carefusion Resources, LLC is a subsidiary of Becton Dickinson and Company. Defendant Carefusion Resources, LLC and Defendant Becton Dickinson and Company were the joint employers of PLAINTIFFS and are therefore jointly responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as “DEFENDANT” and/or “DEFENDANTS.”

4. DEFENDANT specializes in medical technology which aims to both reduce medication errors and to prevent healthcare associated infections.

1 5. PLAINTIFF was employed by DEFENDANT in California from 2008 to June of
2 2022 as a non-exempt employee, paid in part an hourly basis, and entitled to the legally required
3 meal and rest periods and payment of minimum and overtime wages due for all time worked.

4 6. PLAINTIFF brings this Class Action on behalf of himself and a California class,
5 defined as all non-exempt employees who worked for Defendant CareFusion Resources, LLC
6 and/or non-exempt employees employed by Defendant Becton Dickinson and Company who
7 worked for Defendant CareFusion Resources, LLC in California (the “CALIFORNIA CLASS”)
8 at any time during the period beginning October 2, 2020 and ending on the date as determined by
9 the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the
10 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

11 7. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
12 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
13 the CLASS PERIOD caused by DEFENDANT’s uniform policy and practice which failed to
14 lawfully compensate these employees. DEFENDANT’s uniform policy and practice alleged
15 herein was an unlawful, unfair, and deceptive business practice whereby DEFENDANT retained
16 and continues to retain wages due to PLAINTIFF and the other members of the CALIFORNIA
17 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction
18 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the
19 other members of the CALIFORNIA CLASS who have been economically injured by
20 DEFENDANT’s past and current unlawful conduct, and all other appropriate legal and equitable
21 relief.

22 8. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of DEFENDANTS DOES 1 through 50, inclusive, are
24 presently unknown to PLAINTIFF who therefore sues these DEFENDANTS by such fictitious
25 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
26 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are
27 ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
28 alleges, that the DEFENDANTS named in this Complaint, including DOES 1 through 50,

1 inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

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

11 10. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of the
12 PLAINTIFF'S employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
14 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
15 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
16 at all relevant times.

17 11. DEFENDANTS were PLAINTIFF'S employers or persons acting on behalf of
18 PLAINTIFF'S employer either individually or as an officer, agent, or employee of another person,
19 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
20 employee a wage less than the minimum fixed by California state law, and as such, are subject to
21 civil penalties for each underpaid employee.

22 12. DEFENDANT's uniform policies and practices alleged herein were unlawful,
23 unfair, and deceptive business practices whereby DEFENDANT retained and continue to retain
24 wages due to PLAINTIFF and other members of the CALIFORNIA CLASS.

25 13. PLAINTIFF and other members of the CALIFORNIA CLASS seek an injunction
26 enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and
27 other members of the CALIFORNIA CLASS who has been economically injured by
28

1 DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable
2 relief.

3 **JURISDICTION AND VENUE**

4 14. This Court has jurisdiction over this Action pursuant to California Code of Civil
5 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
6 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
7 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

8 15. Venue is proper in this Court pursuant to California Code of Civil Procedure,
9 Sections 395 and 395.5, because DEFENDANT operates in locations across California, employs
10 the CALIFORNIA CLASS across California, including in this County, and committed the
11 wrongful conduct herein alleged in this County against the CALIFORNIA CLASS.

12 **THE CONDUCT**

13 16. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
15 matter of company policy, practice, and procedure, intentionally, knowingly, and systematically
16 failed to provide legally compliant meal and rest periods, failed to accurately compensate
17 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
18 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
19 time worked, failed compensate PLAINTIFF and other members of the CALIFORNIA CLASS
20 for off-the-clock work, failed to pay PLAINTIFF and the other members of the CALIFORNIA
21 CLASS overtime at the correct regular rate of pay, failed to compensate PLAINTIFF and other
22 members of the CALIFORNIA CLASS meal and rest premiums at the regular rate, failed to
23 reimburse PLAINTIFF and other CALIFORNIA CLASS Members for business expenses, and
24 failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate
25 itemized wage statements showing, among other things, all applicable hourly rates in effect during
26 the pay periods and the corresponding amount of time worked at each hourly rate.
27 DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate
28 and full payment for all time worked as required by California law which allows DEFENDANT

1 to illegally profit and gain an unfair advantage over competitors who comply with the law. To
2 the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against
3 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

4 **A. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums,**
5 **and Redeemed Sick Pay**

6 17. From time to time during the CLASS PERIOD, DEFENDANT failed and
7 continues to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
8 Members for their overtime and double time hours worked, meal and rest period premiums, and
9 redeemed sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS Members
10 forfeited wages due to them for working overtime without compensation at the correct overtime
11 and double time rates, meal and rest period premiums, and redeemed sick pay rates.
12 DEFENDANT's uniform policy and practice not to pay the CALIFORNIA CLASS Members at
13 the correct rate for all overtime and double time worked, meal and rest period premiums, and
14 redeemed sick pay in accordance with applicable law is evidenced by DEFENDANT's business
15 records.

16 18. State law provides that employees must be paid overtime at one-and-one-half times
17 their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
18 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
19 employee's performance.

20 19. The second component of PLAINTIFF's and other CALIFORNIA CLASS
21 Members' compensation was DEFENDANTS' non-discretionary incentive program that paid
22 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
23 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
24 basis with bonus compensation when the employees met the various performance goals set by
25 DEFENDANTS.

26 20. However, from-time-to-time, when calculating the regular rate of pay, in those pay
27 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
28 time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-

1 discretionary bonus, DEFENDANTS failed to accurately include the non-discretionary bonus
2 compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
3 rather than just all non-overtime hours worked. Management and supervisors described the
4 incentive/bonus program to potential and new employees as part of the compensation package.
5 As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
6 CLASS members must be included in the "regular rate of pay." The failure to do so has resulted
7 in a systematic underpayment of overtime and double time compensation, meal and rest period
8 premiums, and redeemed sick pay to PLAINTIFF and other CALIFORNIA CLASS members by
9 DEFENDANTS. Specifically, California Labor Code Section 246 mandates that paid sick time
10 for non-employees shall be calculated in the same manner as the regular rate of pay for the
11 workweek in which the non-exempt employee uses paid sick time, whether or not the employee
12 actually works overtime in that workweek. DEFENDANTS maintained paid time off ("PTO") in
13 lieu of sick pay policy. As such, in such an instance, sick pay and PTO are synonymous, thereby
14 requiring DEFENDANTS to include non-discretionary incentive compensation in other regular
15 rate of pay for purposes of redeemed PTO. DEFENDANTS' conduct, as articulated herein, by
16 failing to include the incentive compensation as part of the "regular rate of pay" for purposes of
17 sick pay compensation was in violation of Cal. Lab. Code § 246 the underpayment of which is
18 recoverable under Cal. Labor Code Sections 201, 202, 203 and/or 204.

19 21. In violation of the applicable sections of the California Labor Code and the
20 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
21 matter of company policy, practice, and procedure, intentionally and knowingly failed to
22 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
23 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
24 This uniform policy and practice of DEFENDANT is intended to purposefully avoid the payment
25 of the correct overtime and double time compensation, meal and rest period premiums, and sick
26 pay as required by California law which allowed DEFENDANT to illegally profit and gain an
27 unfair advantage over competitors who complied with the law. To the extent equitable tolling
28

operates to toll claims by the CALIFORNIA CLASS members against DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

B. Meal Period Violations

22. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the CLASS PERIOD, DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF'Ss off-duty meal break. Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is evidenced by DEFENDANT's business records.

23. From time to time during the CLASS PERIOD, as a result of their rigorous work schedules and DEFENDANT's inadequate staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANT to work ten (10) hours of work. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, PLAINTIFF and other

CALIFORNIA CLASS Members were, from time to time, required to remain on duty and on call. DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

C. Rest Period Violations

24. From time to time during the CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and DEFENDANT's inadequate staffing. Further, for the same reasons, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANT's inadequate staffing, PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

D. Unreimbursed Business Expenses

25. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
3 even though unlawful, unless the employee, at the time of obeying the directions, believed them
4 to be unlawful."

5 26. In the course of their employment, DEFENDANT required PLAINTIFF and other
6 CALIFORNIA CLASS Members to use their personal cell phones as a result of and in furtherance
7 of their job duties. Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were
8 required to use their personal cell phones in order to perform work related tasks. However,
9 DEFENDANT unlawfully failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
10 Members for the use of their personal cell phones. As a result, in the course of their employment
11 with DEFENDANT, the PLAINTIFF and other CALIFORNIA CLASS Members incurred
12 unreimbursed business expenses that included, but were not limited to, costs related to the use of
13 their personal cell phones, all on behalf of and for the benefit of DEFENDANT.

14 **E. Wage Statement Violations**

15 27. California Labor Code Section 226 required an employer to furnish its employees
16 and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
17 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
18 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
19 name of the employee and only the last four digits of the employee's social security number or an
20 employee identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
22 period and the corresponding number of hours worked at each hourly rate by the employee.

23 28. From time to time during the CLASS PERIOD, when PLAINTIFF and other
24 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurately for
25 missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANT also
26 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
27 accurate wage statements which failed to show, among other things, all deductions, the total hours
28 worked and all applicable hourly rates in effect during the pay period, and the corresponding

1 amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed
2 meal and rest periods.

3 29. In addition to the foregoing, DEFENDANT, from time to time, failed to provide
4 PLAINTIFF and the CALIFORNIA CLASS Members with wage statements that comply with
5 Cal. Lab. Code § 226.

6 30. As a result, DEFENDANT issued PLAINTIFF and other members of the
7 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
8 DEFENDANT's violations are knowing and intentional, were not isolated due to an unintentional
9 payroll error due to clerical or inadvertent mistake.

10 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

11 31. During the CLASS PERIOD, from time-to-time DEFENDANT failed and
12 continues to fail to accurately pay PLAINTIFF and other members of the CALIFORNIA CLASS
13 for all hours worked.

14 32. During the CLASS PERIOD, from time-to-time DEFENDANT required
15 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift or post-shift
16 work, including but not limited to, submitting to Covid-19 health screenings that included
17 temperature checks. This resulted in PLAINTIFF and other members of the CALIFORNIA
18 CLASS to have to work while off-the-clock.

19 33. DEFENDANT directed and directly benefited from the undercompensated off-the-
20 clock work performed by PLAINTIFF and the other CALIFORNIA CLASS Members.

21 34. DEFENDANT controlled the work schedules, duties, and protocols, applications,
22 assignments, and employment conditions of PLAINTIFF and the other members of the
23 CALIFORNIA CLASS.

24 35. DEFENDANT was able to track the amount of time PLAINTIFF and the other
25 members of the CALIFORNIA CLASS spent working; however, DEFENDANT failed to
26 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
27 wages earned and owed for all the work they performed.
28

1 36. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
2 exempt employees, subject to the requirements of the California Labor Code.

3 37. DEFENDANT's policies and practices deprived PLAINTIFF and the other
4 CALIFORNIA CLASS Members of all minimum regular, overtime, and double time wages owed
5 for the off-the-clock work activities. Because PLAINTIFF and the other members of the
6 CALIFORNIA CLASS typically worked over forty (40) hours in a workweek, and more than
7 eight (8) hours per day, DEFENDANT's policies and practices also deprived them of overtime
8 pay.

9 38. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

11 39. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
12 forfeited wages due to them for all hours worked at DEFENDANT's direction, control, and
13 benefit for the time spent working while off-the-clock, including but not limited to, time spent
14 submitting to Covid-19 health screenings. DEFENDANT's uniform policy and practice to not
15 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
16 accordance with applicable law is evidenced by DEFENDANT's business records.

17 **G. Unlawful Rounding Practices**

18 40. During the CALIFORNIA CLASS PERIOD, DEFENDANTS did not have in
19 place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other
20 CALIFORNIA CLASS Members for the actual time these employees worked each day, including
21 overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and
22 practice that resulted in PLAINTIFFS and CALIFORNIA CLASS Members being
23 undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did
24 in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping
25 system for PLAINTIFFS and the members of the CALIFORNIA CLASS in order to avoid paying
26 these employees for all their time worked, including the applicable overtime compensation for
27 overtime worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members, from
28

1 time to time, forfeited compensation for their time worked by working without their time being
2 accurately recorded and without compensation at the applicable overtime rates.

3 41. Further, the mutability of DEFENDANTS' timekeeping system and unlawful
4 rounding policy and practice resulted in PLAINTIFFS and CALIFORNIA CLASS Members'
5 time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful
6 rounding policy and practice caused PLAINTIFFS and CALIFORNIA CLASS Members to
7 perform work as ordered by DEFENDANTS for more than five (5) hours during a shift without
8 receiving an off-duty meal break.

9 **H. Violations for Untimely Payment of Wages**

10 42. Pursuant to California Labor Code section 204, PLAINTIFF and the
11 CALIFORNIA CLASS members were entitled to timely payment of wages during their
12 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
13 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
14 meal period premium wages, and rest period premium wages within permissible time period.

15 **I. Unlawful Deductions**

16 43. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
17 and CALIFORNIA CLASS Members' pay without explanations and without authorization to do
18 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
19 DEFENDANTS violated Labor Code § 221.

20 **J. Timekeeping Manipulation**

21 44. During the CLASS PERIOD, DEFENDANTS, from time-to-time, did not have an
22 immutable timekeeping system to accurately record and pay PLAINTIFF and other members of
23 the CALIFORNIA CLASS for the actual time PLAINTIFF and other members of the
24 CALIFORNIA CLASS worked each day, including regular time, overtime hours, sick pay, meal
25 and rest breaks. As a result, DEFENDANT was able to and did in fact, unlawfully, and
26 unilaterally alter the time recorded in DEFENDANTS' timekeeping system for PLAINTIFF and
27 other members of the CALIFORNIA CLASS in order to avoid paying these employees for all
28

1 hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and
2 missed rest breaks.

3 45. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS, from
4 time-to-time, forfeited time worked by working without their time being accurately recorded and
5 without compensation at the applicable pay rates.

6 46. The mutability of the timekeeping system also allowed DEFENDANTS to alter
7 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
8 timekeeping system so as to create the appearance that PLAINTIFF and other members of the
9 CALIFORNIA CLASS clocked out for thirty (30) minute meal break when in fact the employees
10 were not at all times provided an off-duty meal break. This practice is a direct result of
11 DEFENDANT's uniform policy and practice of denying employees uninterrupted thirty (30)
12 minute off-duty meal breaks each day or otherwise compensate them for missed meal breaks.

13 47. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
14 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
15 for the time the timekeeping system was inoperable. DEFENDANTS' uniform policy and
16 practice to not pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all
17 hours worked in accordance with applicable law is evidenced by DEFENDANTS' business
18 records.

19 48. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
20 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.
21 PLAINTIFF was required to perform work as ordered by DEFENDANT for more than five (5)
22 hours during a shift without receiving an off-duty meal break. Further, DEFENDANT failed to
23 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
24 by DEFENDANT to work ten (10) hours of work. When DEFENDANT provided PLAINTIFF
25 with a rest break, they required PLAINTIFF to remain on-duty and on-call for the rest break.
26 DEFENDANT policy caused PLAINTIFF to remain on-call and on-duty during what was
27 supposed to be her off-duty meal periods. PLAINTIFF therefore forfeited meal and rest breaks
28 without additional compensation and in accordance with DEFENDANT'S strict corporate policy
and practice. Moreover, DEFENDANT also provided PLAINTIFF with paystubs that failed to
comply with Cal. Lab. Code § 226. Further, DEFENDANT also failed to reimburse PLAINTIFF

1 for required business expenses related to the personal expenses incurred for the use of his
2 personal cell phone, on behalf of and in furtherance of his employment with DEFENDANT. To
3 date, DEFENDANT has not fully paid PLAINTIFF the minimum, overtime and double time
4 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
5 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
6 \$75,000.

7 **CLASS ACTION ALLEGATIONS**

8 49. PLAINTIFF bring this Class Action on behalf of himself, and a California class
9 defined as all non-exempt employees who worked for Defendant CareFusion Resources, LLC
10 and/or non-exempt employees employed by Defendant Becton Dickinson and Company who
11 worked for Defendant CareFusion Resources, LLC in California (the “CALIFORNIA CLASS”)
12 at any time during the period beginning October 2, 2020 and ending on the date as determined by
13 the Court (the “CLASS PERIOD”).

14 50. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
15 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
16 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
17 illegal meal and rest period policies, failed to reimburse for business expenses, failed compensate
18 for off-the-clock work, failure to provide accurate itemized wage statements, failure to maintain
19 required records, and interest, statutory and civil penalties, attorney’s fees, costs, and expenses.

20 51. The members of the class are so numerous that joinder of all class members is
21 impractical.

22 52. Common questions of law and fact regarding DEFENDANT’s conduct, including
23 but not limited to, off-the-clock work, unpaid meal and rest period premiums, failure to accurately
24 calculate the regular rate of pay for overtime compensation, failure to accurately calculate the
25 regular rate of compensation for missed meal and rest period premiums, failing to provide legally
26 compliant meal and rest periods, failed to reimburse for business expenses, failure to provide
27 accurate itemized wage statements accurate, and failure to ensure they are paid at least minimum
28 wage and overtime, exist as to all members of the class and predominate over any questions

1 affecting solely any individual members of the class. Among the questions of law and fact
2 common to the class are:

- 3 a. Whether DEFENDANT maintained legally compliant meal period policies and
4 practices;
- 5 b. Whether DEFENDANT maintained legally compliant rest period policies and
6 practices;
- 7 c. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
8 Members accurate premium payments for missed meal and rest periods;
- 9 d. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
10 Members accurate overtime wages;
- 11 e. Whether DEFENDANT failed to pay PLAINTIFF and the CALIFORNIA CLASS
12 Members at least minimum wage for all hours worked;
- 13 f. Whether DEFENDANT failed to compensate PLAINTIFF and the CALIFORNIA
14 CLASS Members for required business expenses;
- 15 g. Whether DEFENDANT issued legally compliant wage statements;
- 16 h. Whether DEFENDANT committed an act of unfair competition by systematically
17 failing to record and pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all time worked;
- 19 i. Whether DEFENDANT committed an act of unfair competition by systematically
20 failing to record all meal and rest breaks missed by PLAINTIFF and other
21 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit
22 of this work, required employees to perform this work and permits or suffers to
23 permit this work;
- 24 j. Whether DEFENDANT committed an act of unfair competition in violation of the
25 UCL, by failing to provide the PLAINTIFF and the other members of the
26 CALIFORNIA CLASS with the legally required meal and rest periods.

27 53. PLAINTIFF are members of the CALIFORNIA CLASS and suffered damages as
28 a result of DEFENDANT's conduct and actions alleged herein.

1 54. PLAINTIFF'S claims are typical of the claims of the CALIFORNIA CLASS, and
2 PLAINTIFF have the same interests as the other members of the class.

3 55. PLAINTIFF will fairly and adequately represent and protect the interests of the
4 CALIFORNIA CLASS Members.

5 56. PLAINTIFF retained able class counsel with extensive experience in class action
6 litigation.

7 57. Further, PLAINTIFF'S interests are coincident with, and not antagonistic to, the
8 interest of the other CALIFORNIA CLASS Members.

9 58. There is a strong community of interest among PLAINTIFF and the members of
10 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANT are
11 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
12 sustained.

13 59. The questions of law and fact common to the CALIFORNIA CLASS Members
14 predominate over any questions affecting only individual members, including legal and factual
15 issues relating to liability and damages.

16 60. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy because joinder of all class members is impractical. Moreover,
18 since the damages suffered by individual members of the class may be relatively small, the
19 expense and burden of individual litigation makes it practically impossible for the members of
20 the class individually to redress the wrongs done to them. Without class certification and
21 determination of declaratory, injunctive, statutory, and other legal questions within the class
22 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
23 create the risk of:

24 a. Inconsistent or varying adjudications with respect to individual members of the
25 CALIFORNIA CLASS which would establish incompatible standards of conduct
26 for the parties opposing the CALIFORNIA CLASS; and/or,

27 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
28 which would as a practical matter be dispositive of the interests of the other

1 members not party to the adjudication or substantially impair or impeded their
2 ability to protect their interests.

3 61. Class treatment provides manageable judicial treatment calculated to bring an
4 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
5 the conduct of DEFENDANT.

6 **FIRST CAUSE OF ACTION**

7 **Unlawful Business Practices**

8 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 62. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 63. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
14 Code § 17021.

15 64. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
16 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
17 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
18 as follows:

19 Any person who engages, has engaged, or proposes to engage in unfair
20 competition may be enjoined in any court of competent jurisdiction. The court may make
21 such orders or judgments, including the appointment of a receiver, as may be necessary to
22 prevent the use or employment by any person of any practice which constitutes unfair
23 competition, as defined in this chapter, or as may be necessary to restore to any person in
24 interest any money or property, real or personal, which may have been acquired by means
25 of such unfair competition. (Cal. Bus. & Prof. Code § 17203).

26 65. By the conduct alleged herein, DEFENDANT has engaged and continues to
27 engage in a business practice which violates California law, including but not limited to, the
28 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
including Sections 201, 202, 203, 204, 210, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198,
and 2802, for which this Court should issue declaratory and other equitable relief pursuant to Cal.

1 Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
2 constitute unfair competition, including restitution of wages wrongfully withheld.

3 66. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
4 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
5 or substantially injurious to employees, and were without valid justification or utility for which
6 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
7 Business & Professions Code, including restitution of wages wrongfully withheld.

8 67. By the conduct alleged herein, DEFENDANT's practices were deceptive and
9 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
10 mandated meal and rest periods and the required amount of compensation for missed meal and
11 rest periods, failed to pay minimum and overtime wages owed, and failed to reimburse all
12 necessary business expenses incurred, due to a systematic business practice that cannot be
13 justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission
14 requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should
15 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
16 restitution of wages wrongfully withheld.

17 68. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
18 unfair, and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
19 other members of the CALIFORNIA CLASS to be underpaid during their employment with
20 DEFENDANT.

21 69. By the conduct alleged herein, DEFENDANT's practices were also unfair and
22 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
23 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members as
24 required by Cal. Lab. Code §§ 226.7 and 512.

25 70. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
26 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
27 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
28

1 each workday in which a second off-duty meal period was not timely provided for each ten (10)
2 hours of work.

3 71. PLAINTIFF further demands on behalf of himself and on behalf of each
4 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
5 not timely provided as required by law.

6 72. By and through the unlawful and unfair business practices described herein,
7 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
8 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
9 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
10 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
11 to unfairly compete against competitors who comply with the law.

12 73. All the acts described herein as violations of, among other things, the Industrial
13 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
14 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
15 unscrupulous, were deceptive, and thereby constitute unlawful, unfair, and deceptive business
16 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

17 74. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
18 and do, seek such relief as may be necessary to restore to them the money and property which
19 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
20 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
21 business practices, including earned but unpaid wages for all time worked.

22 75. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
23 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
24 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
25 engaging in any unlawful and unfair business practices in the future.

26 76. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
27 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
28 DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a

1 result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
2 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
3 and economic harm unless DEFENDANT is restrained from continuing to engage in these
4 unlawful and unfair business practices.

5 **SECOND CAUSE OF ACTION**

6 **Failure To Pay Minimum Wages**

7 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1)**

8 **Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

9 77. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 78. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
13 for DEFENDANT's willful and intentional violations of the California Labor Code and the
14 Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate
15 and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

16 79. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
17 policy, an employer must timely pay its employees for all hours worked.

18 80. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a less wage than
20 the minimum so fixed is unlawful.

21 81. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
22 including minimum wage compensation and interest thereon, together with the costs of suit.

23 82. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
24 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
25 work. As set forth herein, DEFENDANT's uniform policy and practice was to unlawfully and
26 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
27 CALIFORNIA CLASS.

1 83. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
2 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
3 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
4 and the other members of the CALIFORNIA CLASS in regard to minimum wage pay.

5 84. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately calculated the correct time worked and consequently underpaid the actual time
7 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
8 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
9 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
10 laws and regulations.

11 85. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
13 minimum wage compensation for their time worked for DEFENDANT.

14 86. During the CLASS PERIOD, PLAINTIFF and the other members of the
15 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
16 failure to pay all earned wages.

17 87. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
18 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
19 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
20 suffered and will continue to suffer an economic injury in amounts which are presently unknown
21 to them, and which will be ascertained according to proof at trial.

22 88. DEFENDANT knew or should have known that PLAINTIFF and the other
23 members of the CALIFORNIA CLASS were under-compensated for their time worked.
24 DEFENDANT systematically elected, either through intentional malfeasance or gross
25 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
26 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
27 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
28 for their time worked.

1 89. In performing the acts and practices herein alleged in violation of California labor
2 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
3 and provide them with the requisite compensation, DEFENDANT acted and continues to act
4 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
5 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
6 consequences to them, and with the despicable intent of depriving them of their property and legal
7 rights, and otherwise causing them injury in order to increase company profits at the expense of
8 these employees.

9 90. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
10 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
11 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
12 California Labor Code and/or other applicable statutes. To the extent minimum wage
13 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
14 terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
15 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
16 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
17 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good
18 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
19 recover statutory costs.

20 **THIRD CAUSE OF ACTION**

21 **Failure To Pay Overtime Compensation**

22 **(Cal. Lab. Code §§ 204, 510, 1194 and 1198)**

23 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against ALL Defendants)**

24 91. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 92. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANT's willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
2 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
3 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

4 93. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
5 policy, an employer must timely pay its employees for all hours worked.

6 94. Cal. Lab. Code § 510 provides that employees in California shall not be employed
7 more than eight (8) hours per workday and/or more than forty (40) hours per workweek unless
8 they receive additional compensation beyond their regular wages in amounts specified by law.

9 95. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
10 including minimum and overtime compensation and interest thereon, together with the costs of
11 suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
12 than those fixed by the Industrial Welfare Commission is unlawful.

13 96. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
14 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
15 they worked, including overtime work.

16 97. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
17 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
18 implementing a uniform policy and practice that failed to accurately record overtime worked by
19 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
20 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
21 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
22 (12) hours in a workday, and/or forty (40) hours in any workweek.

23 98. In committing these violations of the California Labor Code, DEFENDANT
24 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
25 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
26 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
27 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
28 regulations.

1 99. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
2 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
3 overtime compensation for their time worked for DEFENDANT.

4 100. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS are not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF bring this Action on behalf of himself, and the CALIFORNIA CLASS, based on
10 DEFENDANT's violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 101. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS were paid less for overtime worked that they were entitled to, constituting
14 a failure to pay all earned wages.

15 102. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
16 CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
17 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194, & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were regularly required
19 to work, and did in fact work overtime, and did in fact work overtime as to which DEFENDANT
20 failed to accurately record and pay as evidenced by DEFENDANT's business records and
21 witnessed by employees.

22 103. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
23 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
24 amount of overtime they worked, PLAINTIFF and the other members of the CALIFORNIA
25 CLASS have suffered and will continue to suffer an economic injury in amounts which are
26 presently unknown to them, and which will be ascertained according to proof at trial.

27 104. DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were undercompensated for their time worked.

1 DEFENDANT systematically elected, either through intentional malfeasance or gross
2 nonfeasance, to not pay them for their labor as a matter of uniform company policy, practice and
3 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay PLAINTIFF
4 and the other members of the CALIFORNIA CLASS the correct overtime wages for their
5 overtime worked.

6 105. In performing the acts and practices herein alleged in violation of California labor
7 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
8 and provide them with the requisite compensation, DEFENDANT acted and continues to act
9 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
10 CALIFORNIA CLASS with a conscious of and utter disregard for their legal rights, or the
11 consequences to them, and with the despicable intent of depriving them of their property and legal
12 rights, and otherwise causing them injury in order to increase company profits at the expense of
13 these employees.

14 106. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS
15 request recovery of overtime wages, according to proof, interest, statutory costs, as well as the
16 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
17 California Labor Code and/or other applicable statutes. To the extent overtime compensation is
18 determined to be owed to the CALIFORNIA CLASS Members who have terminated their
19 employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or 202, and therefore
20 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
21 penalties are sought herein. DEFENDANT's conduct as alleged herein was willful, intentional,
22 and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are
23 entitled to seek and recover statutory costs.

24
25
26
27
28 ///

1 **FOURTH CAUSE OF ACTION**

2 **Failure To Provide Required Meal Periods**

3 **(Cal. Lab. Code §§ 226.7 & 512)**

4 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 107. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 108. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
9 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
10 required by the applicable Wage Order and Labor Code. The nature of the work performed by
11 PLAINTIFF and CALIFORNIA CLASS Members did not prevent these employees from being
12 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
13 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
14 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
15 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
16 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
17 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
18 Members with a second off-duty meal period in some workdays in which these employees were
19 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
20 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
21 and in accordance with DEFENDANT's strict corporate policy and practice.

22 109. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
23 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
24 who were not provided a meal period, in accordance with the applicable Wage Order, one
25 additional hour of compensation at each employee's regular rate of pay for each workday that a
26 meal period was not provided.

110. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

Failure To Provide Required Rest Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

111. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

112. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers. In addition, DEFENDANT failed to compensate PLAINTIFF and other CALIFORNIA CLASS Members for their rest periods as required by the applicable Wage Order and Labor Code. As a result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest periods is evidenced by DEFENDANT's business records.

113. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

3 114. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Reimburse Employees for Required Expenses**

8 **(Cal. Lab. Code §§ 2802)**

9 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 116. Cal. Lab. Code § 2802 provides, in relevant part, that:

14 An employer shall indemnify his or her employee for all necessary
15 expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or her duties, or of his or her obedience to the directions of the
17 employer, even though unlawful, unless the employee, at the time of obeying the
18 directions, believed them to be unlawful.

19 117. From time to time during the CLASS PERIOD, DEFENDANT violated Cal. Lab.
20 Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
21 members for required expenses incurred in the discharge of their job duties for DEFENDANT's
22 benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA CLASS members
23 for expenses which included, but were not limited to, personal expenses incurred for the use of
24 personal cell phones all on behalf of and for the benefit of DEFENDANT. Specifically,
25 PLAINTIFF and other CALIFORNIA CLASS Members were required by DEFENDANT to use
26 their own cell phones to execute their essential job duties on behalf of DEFENDANT.
27 DEFENDANT's uniform policy, practice and procedure was to not reimburse PLAINTIFF and
28 the CALIFORNIA CLASS members for expenses resulting from the use of personal cell phones
for DEFENDANT within the course and scope of their employment for DEFENDANT. These
expenses were necessary to complete their principal job duties. DEFENDANT is estopped by

1 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
2 necessary expenses incurred by PLAINTIFF and the CALIFORNIA CLASS members,
3 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA CLASS
4 members for these expenses as an employer is required to do under the laws and regulations of
5 California.

6 118. PLAINTIFF therefore demand reimbursement for expenditures or losses incurred
7 by her and the CALIFORNIA CLASS members in the discharge of their job duties for
8 DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory
9 rate and costs under Cal. Lab. Code § 2802.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure To Provide Accurate Itemized Statements**

12 **(Cal. Lab. Code § 226)**

13 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

14 119. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 120. Cal. Labor Code § 226 provides that an employer must furnish employees with an
18 "accurate itemized" statement in writing showing:

- 19 a. Gross wages earned,
- 20 b. (2) total hours worked by the employee, except for any employee whose
21 compensation is solely based on a salary and who is exempt from payment of
22 overtime under subdivision (a) of Section 515 or any applicable order of the
23 Industrial Welfare Commission,
- 24 c. the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis,
- 26 d. all deductions, provided that all deductions made on written orders of the employee
27 may be aggregated and shown as one item,
- 28 e. net wages earned,

- f. the inclusive dates of the period for which the employee is paid,
- g. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
- h. the name and address of the legal entity that is the employer, and
- i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

121. When DEFENDANT did not accurately record PLAINTIFF'S and other CALIFORNIA CLASS Members' missed meal and rest breaks, or were paid inaccurate missed meal and rest break premiums, or were not paid for all hours worked, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, all deductions, the accurate gross wages earned, net wages earned, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods.

122. In addition to the foregoing, DEFENDANT failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period

1 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
2 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
3 of the CALIFORNIA CLASS herein).

4 **EIGHTH CAUSE OF ACTION**

5 **Failure To Pay Wages When Due**

6 **(Cal. Lab. Code § 203)**

7 **(Alleged by PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

8 124. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
9 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
10 Complaint.

11 125. Cal. Lab. Code § 200 provides that:

12 As used in this article:

- 13 (d) "Wages" includes all amounts for labor performed by employees of every
14 description, whether the amount is fixed or ascertained by the standard of time,
15 task, piece, Commission basis, or other method of calculation.
16 (e) "Labor" includes labor, work, or service whether rendered or performed under
17 contract, subcontract, partnership, station plan, or other agreement if the to be
18 paid for is performed personally by the person demanding payment.

19 126. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
20 an employee, the wages earned and unpaid at the time of discharge are due and payable
21 immediately."

22 127. Cal. Lab. Code § 202 provides, in relevant part, that:

23 If an employee not having a written contract for a definite period quits his or her
24 employment, his or her wages shall become due and payable not later than 72 hours
25 thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
27 Notwithstanding any other provision of law, an employee who quits without providing a
28 72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

29 128. There was no definite term in PLAINTIFF'S or any CALIFORNIA CLASS
Members' employment contract.

30 129. Cal. Lab. Code § 203 provides:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
3 discharged or who quits, the wages of the employee shall continue as a penalty from the
4 due date thereof at the same rate until paid or until an action therefor is commenced; but
5 the wages shall not continue for more than 30 days.

6 130. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
7 terminated, and DEFENDANT has not tendered payment of wages to these employees who
8 missed meal and rest breaks, as required by law.

9 131. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
10 members of the CALIFORNIA CLASS whose employment has, PLAINTIFF demand up to thirty
11 (30) days of pay as penalty for not paying all wages due at time of termination for all employees
12 who terminated employment during the CLASS PERIOD and demand an accounting and payment
13 of all wages due, plus interest and statutory costs as allowed by law.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFF pray for a judgment against each Defendant, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

- 18 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
19 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
20 b. An order temporarily, preliminarily and permanently enjoining and restraining
21 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
22 c. An order requiring DEFENDANT to pay all overtime wages and all sums
23 unlawfully withheld from compensation due to PLAINTIFF and the other members
24 of the CALIFORNIA CLASS; and
25 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
26 for restitution of the sums incidental to DEFENDANT's violations due to
27 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

28 2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant

1 to Cal. Code of Civ. Proc. § 382;

- 2 b. Compensatory damages, according to proof at trial, including compensatory
3 damages for overtime compensation due to PLAINTIFF and the other members of
4 the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest
5 thereon at the statutory rate;
- 6 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
7 the applicable IWC Wage Order;
- 8 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
9 which a violation occurs and one hundred dollars (\$100) per each member of the
10 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
11 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
12 violation of Cal. Lab. Code § 226
- 13 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
14 penalty from the due date thereof at the same rate until paid or until an action
15 therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 16 f. The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
17 CLASS incurred in the course of their job duties, plus interest, and costs of suit.
- 18
19
20
21
22
23
24
25
26
27

28 ///

1 3. On all claims:

- 2 a. An award of interest, including prejudgment interest at the legal rate;
- 3 b. Such other and further relief as the Court deems just and equitable; and
- 4 c. An award of penalties, attorneys' fees, and costs of suit, as allowable under the law,
- 5 including, but not limited to, pursuant to Labor Code § 218.5, § 226, and/or § 1194.
- 6

7 DATED: September 16, 2022

ZAKAY LAW GROUP, APLC

8

9 By: 

Shani O. Zakay

Attorney for PLAINTIFF

10

11

12 **DEMAND FOR A JURY TRIAL**

13 PLAINTIFF demands a jury trial on issues triable to a jury.

14

15 DATED: September 16, 2022

ZAKAY LAW GROUP, APLC

16

17 By: 

Shani O. Zakay

Attorney for PLAINTIFF

18

19

20

21

22

23

24

25

26

27

28

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Becton Dickinson & Company
 c/o CT Corporation System
 330 N Brand Blvd, Ste 700
 Glendale, CA 91203



9590 9402 7020 1225 2861 95

2. Article Number (Transfer from service label)

7021 1970 0001 8870 1132

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Delivery Service

9/16/22 Coles 002-326

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

if Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Carefusion Resources, LLC
 c/o CT Corporation System
 330 N Brand Blvd, Ste 700
 Glendale, CA 91203



9590 9402 7020 1225 2861 26

2. Article Number (Transfer from service label)

7021 1970 0001 8870 1125

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SEP 20 2022

9/16/22 Coles 002-326

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

if Restricted Delivery

Domestic Return Receipt