	Case 2:20-cv-10146 Document 1 Filed 11/	/04/20 Page 1 of 15 Page ID #:1		
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12	UNITED STATES I	DISTRICT COURT		
13	CENTRAL DISTRICT OF CALIFORNIA			
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16	SHANNON WILLIAMS, as an individual and on behalf of all others similarly	Case No. 2:20-cv-10146		
17	situated,	DEFENDANT LABCORP EMPLOYER SERVICES, INC.'S		
18	Plaintiff,	EMPLOYER SERVICES, INC.'S NOTICE OF REMOVAL TO FEDERAL COURT PURSUANT TO		
10	v.	28 U.S.C. § 1332(d)—CLASS ACTION FAIRNESS ACT		
20	LABCORP EMPLOYER SERVICES, INC., a Delaware corporation; LABCORP			
21	INC., a Delaware corporation; LABCORP STAFFING SOLUTIONS, INC., a Delaware corporation; WELLNESS			
22	Delaware corporation; WELLNESS CORPORATE SOLUTIONS, LLC, a Maryland corporation; and DOES 4-10,			
23	Defendant.			
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	1 NOTICE OF REMOVAL			

TO THE CLERK OF THE ABOVE-CAPTIONED COURT:

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant LabCorp Employer Services, Inc. ("Defendant"), by and through its attorneys, K&L Gates LLP, hereby removes to this Court the action entitled Shannon Williams v. LabCorp Employer Services, Inc. et al., Case No. 20STCV33583 (the "State Court Action") from the Superior Court of the State of California, County of Los Angeles, in which court the State Court Action was filed. In support of this Notice of Removal, Defendant states as follows:

1. As set forth below, the case is properly removed to this Court under 28 U.S.C. § 1441 because the Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d), in that this matter is a civil action in which the amount in controversy exceeds the sum of \$5,000,000 exclusive of costs and interest, there are more than 100 members in the putative class, and is between citizens of different states.

2. By filing this Notice of Removal, Defendant does not intend to waive, and hereby reserves, any objection as to venue, the legal sufficiency of the claims alleged in the Action and all other defenses. Defendant reserves the right to supplement and amend this Notice of Removal.

BACKGROUND

3. On September 2, 2020, Plaintiff Shannon Williams ("Plaintiff") filed the State Court Action naming LabCorp Employer Services, Inc. ("LES"), LabCorp Staffing Solutions, Inc., and Wellness Corporate Solutions, LLC as the only named defendants.

4. Defendant LES was served in the State Court Action with a copy of the Summons and Complaint by personal service on Defendant LES's registered agent on October 5, 2020. As such, service of the State Court Action was completed on October 5, 2020, at the time of personal delivery. Cal. Code Civ. Proc. § 415.10; Fed. R. Civ. Proc. 4(e)(2)(A).

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1 5. Attached hereto as Exhibit A is a true and correct copy of the Summons 2 filed in the State Court Action. Attached hereto as Exhibit B is a true and correct copy 3 of the Complaint filed in the State Court Action. Attached hereto as Exhibit C is a true 4 and correct copy of the Civil Case Cover Sheet filed in the State Court Action. 5 Attached hereto as Exhibit D is a true and correct copy of the Notice of Case 6 Assignment filed in the State Court Action. Attached hereto as Exhibit E is a true and 7 correct copy of the Court Order Regarding Newly Filed Class Action and Certificate of 8 Mailing filed in the State Court Action. Attached hereto as Exhibit F is a true and 9 correct copy of the Certificate of Mailing of the Court Order Regarding Newly Filed 10 Class Action. Attached hereto as Exhibit G is a true and correct copy of the Initial 11 Status Conference Order (Complex Litigation Program) filed in the State Court Action. 12 Attached hereto as Exhibit H is a true and correct copy of the Proof of Service of 13 Summons and Complaint on Defendant LES. Attached hereto as Exhibit I is a true and 14 correct copy of the Proof of Service of Summons and Complaint on Defendant 15 LabCorp Staffing Solutions, Inc. Attached hereto as Exhibit J is a true and correct 16 copy of the Proof of Service of Summons and Complaint on Defendant Wellness 17 Corporate Solutions, LLC. Attached hereto as Exhibit K is a true and correct copy of 18 the First Amended Complaint filed on October 23, 2020. Attached hereto as Exhibit L 19 is a true and correct copy of the Notice of Service of Process of the First Amended 20 Complaint. These materials comprise "all process, pleadings, and orders served" upon 21 Defendant in the State Court Action. See 28 U.S.C. § 1446(a).

6. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is timely because it was filed within thirty (30) days of Defendant's being served with the Summons and Complaint (i.e., process) in this action. (*See* Ex. H (Proof of Service) and ¶ 4 above.) The Summons and Complaint are the initial pleadings setting forth the claim for relief on which this removal is based. (*See* Ex. A (Summons), Ex. B (Compl.).)

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7. Defendant is one of three named defendants in this action; however, a

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1 minimal diversity class action may be removed "by any defendant without the consent 2 of all defendants." 28 U.S.C. § 1453(b); see, e.g., United Steel et al. v. Shell Oil Co., 3 549 F.3d 1204, 1208-1209 (9th Cir. 2008) (explaining that in minimal diversity cases, 4 other defendants cannot prevent or defeat removal of an entire action).

BASIS FOR REMOVAL

8. The Class Action Fairness Act of 2005 ("CAFA") creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a citizen of a State different from any defendant," and involves a putative class that consists of more than 100 members. 28 U.S.C.

§§ 1332(d)(2)(A) and (d)(5). Each of these three requirements is met.¹

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THE PUTATIVE CLASS EXCEEDS 100 MEMBERS

9. According to the First Amended Complaint, the putative class is "[a]ll non-exempt individuals who worked for LabCorp providing mobile health services in California at any time during the period beginning February 5, 2019 through the date of judgment in this action."² (See Ex. K (FAC) ¶ 33.)

- Plaintiff alleges a claim for Unfair Competition in violation of Business & Professions Code §§ 17200 *et seq.* (See Ex. K (FAC) ¶¶ 80-83.) In connection with that claim, Plaintiff seeks "[r]estitution of <u>all amounts owed</u> in unpaid wage compensation, 27 including for unpaid overtime wages, unpaid minimum wages, and unpaid premium wages for meal and rest period violations . . . pursuant to California Business & Professions Code § 17203." (See Ex. K (FAC) at Prayer ¶ 8 (emphasis added).) 28

¹⁸ A notice of removal need only provide a "short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a). Because § 1446 tracks Rule 8's liberal pleading standard, a notice of removal need only allege the grounds plausibly and need not be supported by evidentiary submissions. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) ("In sum, as specified in § 1446(a), a defendant's 19 20 notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is 21 required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation."); *Roa v. TS Staffing Servs., Inc.*, No. 2:14-CV-08424-ODW, 2015 WL 300413, at *2 (C.D. Cal. Jan. 22, 2015) ("The 'short and plain statement' language from § 1446(a) applies to the entire notice of removal, and therefore would 22 23 apply equally to all CAFA allegations and not just the amount-in-controversy 24 requirement."). Defendant interprets the first definition of the class period—"from February 5, 2019 25 until judgment in this matter"—as a typographical error. (See Ex. K (FAC) ¶ 36.) 26

1 10. Defendant employed more than 3,864 non-exempt employees who 2 provided mobile health services in California during the putative class period—the 3 four years preceding the filing of the Complaint. As such, the size of the putative class 4 exceeds 100 persons.

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THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000

11. Although Defendant denies all liability alleged in the First Amended Complaint if damages or restitution were awarded on Plaintiff's claims, the aggregate amount as to the putative class would exceed $$5,000,000.^3$

12. In her Original Complaint filed on September 2, 2020, Plaintiff alleged nine causes of action on a class basis during the putative class period. The caption of the Complaint stated that it is a "Class Action Complaint" and asserted the following class claims:

(1) Minimum Wage Violations

(2) Failure to Pay Overtime Wages

(3) Meal Period Violations

(4) Rest Period Violations

(5) Unlawful Failure to Reimburse for Necessary Expenditures

22 In order to establish the amount in controversy requirement is met, Defendant does not concede liability nor is it required to do so. See Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) ("Even when defendants have persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5 million, they 23 24 are still free to challenge the actual amount of damages in subsequent proceedings and at trial. This is so because they are not stipulating to damages suffered, but only estimating the damages that are in controversy."); *Lewis v. Verizon Communications, Inc.*, 627 F3d 395, 400 (9th Cir. 2010) ("To establish the jurisdictional amount, 25 26 Verizon need not concede liability for the entire amount, which is what the district court was in essence demanding by effectively asking Verizon to admit that at least \$5 million of the billings were 'unauthorized' within the meaning of the complaint."). 27 Moreover, defenses do not affect the amount in controversy. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 295-96 (1938); Riggins v. Riggins, 415 F.2d 28

1259, 1261-62 (9th Cir. 1969). 5

Accordingly, the longest statute of limitations applicable to Plaintiff's wage claims is four years. *See* Bus. & Prof. Code § 17208. Plaintiff filed her Complaint on 20 September 2, 2020. (See Ex. A (Summons); Ex. B (Compl.).) Therefore, for purposes of this Notice of Removal, Defendant alleges that the relevant time period is from September 2, 2016 until judgment in this matter.

(6) Itemized Wage Statement Violations

(7) Waiting Time Penalties

(8) Unfair Competition

(9) Declaratory Relief

(See Ex. B (Compl.).)

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13. On October 23, 2020, Plaintiff filed her First Amended Complaint ("FAC") adding a single cause of action, on behalf of herself and as a representative of alleged aggrieved employees in the State of California, pursuant to California's Private Attorney's General Act of 2004 ("PAGA"). (*See* Ex. K (FAC) ¶¶ 91-97.) Plaintiff bases her PAGA claim on the same alleged predicate violations of the Labor Code that form the basis of her putative class action, in addition to violations of Labor Code §§ 210, 216, 225.5, 226(c), 226.3, 558, 1182.12, and 1174. (*See* Ex. K (FAC) ¶ 97.)

13 14. In connection with her claims, Plaintiff seeks several categories of 14 monetary relief, including, *inter alia*, (1) "unpaid minimum wages, unpaid overtime 15 and double-time wages, and unpaid premium wages for meal and rest period 16 violations," (2) "liquidated damages pursuant to California Labor Code § 1194.2," (3) 17 "penalties for inaccurate itemized wage statements pursuant to California Labor Code 18 § 226," (4) "waiting time penalties as to those class members who have quit or been 19 discharged pursuant to California Labor Code § 203," (5) "restitution of all amounts 20 owed in unpaid wage compensation, including for unpaid overtime wages, unpaid 21 minimum wages, and unpaid premium wages for meal and rest period violations . . . 22 pursuant to California Business & Professions Code § 17203," and (6) "civil penalties 23 pursuant to Labor Code §§ 2699(f) and (g) for each aggrieved employee for each pay 24 period in which a violation occurred," and (7) "reasonable attorney's fees and costs as 25 provided by Labor Code §§ 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure § 26 1021.5, and such other provisions as may be applicable." (See Ex. K (FAC), Prayer.)

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Failure to Pay Meal and Rest Break Premiums

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- 15. With regard to Plaintiff's claims for missed meal and rest periods,
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Plaintiff alleges that (i) "Defendants have a policy or practice of failing to provide
Plaintiff and members of the Class with lawful meal periods" (*See* Ex. K (FAC) ¶ 59)
and (ii) "Defendants have a policy or practice of failing to authorize and permit
Plaintiff and class members to take the rest periods required" by California law (*See*Ex. K (FAC) ¶ 65).

Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order and California Labor Code § 226.7(b), each putative class member may recover one hour of pay for each work day that the meal period was not provided and one hour of pay for each work day that the rest period was not provided.

Plaintiff does not allege how many shifts the meal and rest periods were not provided to Plaintiff and the other putative class members. (*See* Ex. K (FAC) ¶¶ 21-25, 56-67.) Plaintiff also does not allege how many shifts qualified Plaintiff and other putative class members for a meal and rest period. (*See* Ex. K (FAC) ¶¶ 21-25, 56-67.) Plaintiff does, however, allege that she and the putative class members "frequently" and "routinely" worked more than eight and twelve hours in a workdays or more than forty hours in a workweek. (*See* Ex. K (FAC) ¶¶ 18, 53.) Based on these allegations, Defendant alleges that each event resulted in more than five hours worked.

In light of Plaintiff's allegations, and pursuant to the applicable case law, Defendant is entitled to assume and allege, for purposes of this removal, a 50% violation rate over the course of the four year statute of limitations period for Plaintiff's meal and rest break claims. *See Bridges v. Dealer's Choice Truckaway System, Inc.*, 2020 4937505, at *5 (C.D. Cal. Aug. 24, 2020) (finding 50% violation rate reasonable for missed meal and rest periods based on "policy and practice" allegations); *see also Elizarraz v. United Rentals, Inc.*, 2019 WL 1553664, at *3-4 (C.D. Cal. Apr. 9, 2019 (finding a 50% violation rate reasonable based on "pattern and practice" allegations); *Marquez v. Toll Global Forwarding (USA), Inc.*, 2018 WL 3046965, at *3 (C.D. Cal. June 19, 2018 (accepting an alternately offered 50% violation rate of meal break penalties based on language that the violations occurred

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"often.").

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Defendant alleges that the average hourly rate for the putative class members was approximately \$16.18 per hour from September 2, 2016 through December 31, 2016; \$17.00 per hour from January 1, 2017 through December 31, 2017; \$17.80 per hour from January 1, 2018 through December 31, 2018; \$19.41 per hour from January 1, 2019 through December 31, 2019; and \$21.03 per hour from January 1, 2020 through November 4, 2020.

Defendant further alleges that the events worked by the putative class members during the relevant time period is as follows: 9,688 events worked from September 2, 2016 through December 31, 2016; 29,064 events worked from January 1, 2017 through December 31, 2017; 29,064 events worked from January 1, 2018 through December 31, 2018; 29,064 events worked from January 1, 2019 through December 31, 2019; and 27,947 events worked from January 1, 2020 through November 4, 2020.⁴

The approximate calculation for the potential damages for Plaintiff's missed meal and rest period claims is, therefore, as follows:

Meal Periods:

9/2/16 - 12/31/16: 9,688 events worked \$16.18/event x 50% = \$78,375.92

1/1/17 - 12/31/17: 29,064 events worked x \$17.00/event x 50% = \$247,044.00

1/1/18 - 12/31/18: 29,064 events worked x \$17.80/event x 50% = \$258,669.60

1/1/19 - 12/31/19: 29,064 events worked x \$19.41/event x 50% = \$282,066.12

1/1/20 - 11/04/20: 27,947 events worked x \$21.03/event x 50% = \$293,862.71

Total =\$1,160.018.35

⁴ Defendant was able to obtain an accurate count of the number of events worked by the putative class members for the period beginning November 1, 2019 through the present. Defendant requires additional time to tabulate the number of events worked by putative class members from September 2, 2016 through October 31, 2019.
Accordingly, the number of events alleged for the 2017-2019 time periods have been extrapolated based on the data available for the period beginning November 1, 2019 through the present. Defendant is informed and believes, and thereon alleges, that the actual number of events worked for the 2017-2019 time periods is larger that what is extrapolated here.
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Rest Periods:

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9/2/16 - 12/31/16: 9,688 events worked \$16.18/event x 50% = \$78,375.92

1/1/17 - 12/31/17: 29,064 events worked x \$17.00/event x 50% = \$247,044.00

1/1/18 - 12/31/18: 29,064 events worked x \$17.80/event x 50% = \$258,669.60

1/1/19 - 12/31/19: 29,064 events worked x \$19.41/event x 50% = \$282,066.12

1/1/20 - 11/04/20: 27,947 events worked x \$21.03/event x 50% = \$293,862.71

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Total =$1,160.018.35
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The total alleged damages for Plaintiff's missed meal and rest period claims is, therefore, approximately **\$2,320,036.69**.

Failure to Pay Overtime Wages

16. With regard to Plaintiff's claim for failure to pay overtime compensation, Plaintiff alleges that Defendant "has uniform policies and practices that deprive its employees of the overtime compensation to which they are entitled under California law." (*See* Ex. K (FAC) ¶ 20.) Plaintiff alleges that [she] and members of the Class routinely worked more than eight and 12 hours in a workday, as well as more than 40 hours in a workweek, when including the time it took them to travel to and from the event locations and to perform work before and after their scheduled shifts." (*See* Ex. K (FAC) ¶ 53; *see also id.* at ¶ 18 (alleging Plaintiff "frequently worked" more than eight hours and twelve hours in a shift).)

Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order and California Labor Code §§ 510 and 1198, each putative class member has a right to overtime compensation at one-and-one half times the regular hourly rate for hours worked in excess of eight hours in a day or forty hours in a week or for the first eight hours worked on the seventh day of work, as well as to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve hours in a day or in excess of eight hours on the seventh day of work.

Plaintiff does not allege how many hours each putative class member worked in
excess of eight hours or twelve hours in a day. (*See* Ex. K (FAC) ¶¶ 17-20, 50-55.)

Plaintiff does, however, allege that she and the putative class members "frequently" and "routinely" worked more than eight and twelve hours in a workdays or more than forty hours in a workweek. (*See* Ex. K (FAC) ¶¶ 18, 53.) Plaintiff further alleges that Defendant "has uniform policies and practices that deprive its employees of the overtime compensation to which they are entitled under California law." (*See* Ex. K (FAC) ¶ 20.)

Based on such allegations, and pursuant to the applicable case law, Defendant is entitled to assume and allege, for purposes of this removal, a 60% violation rate over the course of the four-year statute of limitations period. See Hull v. Mars Petcare US, Inc., 2018 WL 3583051, at *4 (C.D. Cal. July 25, 2018) ("Courts in this district routinely find a 60% assumption reasonable where, as here, the alleged violations are based on a standard policy."); see also Alvarez v. Office Depot, Inc., 2017 WL 5952181, at *3 (C.D. Cal. Nov. 30, 2017) (finding 60% violation rate reasonable where complaint alleges a "uniform practice" of wage and hour violations); Herrera v. Carmax Auto Superstores California LLC, 2014 WL 12586254, at *6 (C.D. Cal. June 12, 2014) ("The Complaint alleges that much of the overtime that Plaintiffs were required to work occurred off the clock; accordingly, Defendant cannot be expected to produce evidence of how often overtime violations may occur. Defendant must be entitled to monetize this claim with a reasonable and conservative estimate."); compare with Mejia v. DHL Express (USA) Inc., 2015 WL 2452755, at *4 (C.D. Cal. May 21, 2015) (finding a 100% violation rate to be a reasonable assumption based on allegations that Defendant "adopted and maintained uniform policies, practices and procedures" that caused the purported violations of California' wage and hour laws); *Duberry v. J. Crew. Grp., Inc.*, 2015 WL 4575018, at *6 (C.D. Cal. July 28, 2015) (finding that allegations of a "uniform policy" justified assuming a 100% violation rate).

Based on this assumption, the approximate calculation of potential damages for
Plaintiff's overtime compensation claims is as follows:

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9/2/16 - 12/31/16: 9,688 events worked x \$24.27⁵/event x 60% = \$141,076.70
1/1/17 - 12/31/17: 29,064 events worked x \$25.50/event x 60% = \$444,679.20
1/1/18 - 12/31/18: 29,064 events worked x \$26.70/event x 60% = \$465,605.30
1/1/19 - 12/31/19: 29,064 events worked x \$29.115/event x 60% = \$507,719.02
1/1/20 - 11/04/20: 27,947 events worked x \$31.545/event x 60% = \$528,952.87
Total: \$2,088,033.09

The total alleged damages for Plaintiff's unpaid overtime claim is, therefore, approximately **\$2,088,033.09**

Failure to Pay Minimum Wages

17. With regard to Plaintiff's claim for unpaid minimum wages, Plaintiff alleges that Defendant failed to pay her and the putative class members at or above the California minimum wage. (*See* Ex. K (FAC) ¶ 49.) Specifically, Plaintiff alleges that Defendant required her and the putative class members to work off the clock by expecting them to "check and respond to emails, view available shifts on [Defendant]'s software system; communicate with [Defendant] about scheduling and work; and take tutorials and tests on various health topics, but are not paid for any of this time." (*See* Ex. K (FAC) ¶ 14.) Plaintiff also alleges that Defendants required her and other putative class members "to drive to each job, located at the site of [Defendant]'s clients, and then drive home, but does not compensate them for any of this drive time, even though [Plaintiff] often drives hours roundtrip for a single shift." (*See* Ex. K (FAC) ¶ 14.)

California Labor Code § 1194 provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount

⁵ The dollar amounts used for this calculation equal one and a half times the applicable average hourly rate for each time period: \$16.18 per hour from September 2, 2016 through December 31, 2016; \$17.00 per hour from January 1, 2017 through December 31, 2017; \$17.80 per hour from January 1, 2018 through December 31, 2018; \$19.41 per hour from January 1, 2019 through December 31, 2019; \$21.03 per hour from January 1, 2020 through November 4, 2020.

of this minimum wage or overtime compensation, including interest thereon[.]"

According to the State of California, Department of Industrial Relations, the minimum wage for each year within the relevant time period is as follows: \$10.00 in 2016, \$10.50 in 2017, \$11.00 in 2018, \$12.00 in 2019, \$13.00 in 2020.

Plaintiff does not allege how many hours she and each putative class member worked off the clock. (*See* Ex. K (FAC) ¶¶ 14-16, 45-49.) Plaintiff does, however, allege that Defendant has "uniform policies and practices through its California locations requiring its non-exempt employees to perform off-the-clock work." (*See* Ex. K (FAC) ¶ 16.) Plaintiff further alleges that neither she nor the putative class members were paid for their time driving to and from each event that they worked. (*See* Ex. K (FAC) ¶ 14.)

Based on such allegations, and pursuant to the applicable case law, Defendant is entitled to assume and allege, for purposes of this removal, that Plaintiff and the putative class members worked one hour per event without being paid the required minimum wage. *See, e.g., Mejia*, 2015 WL 2452755, at *4; *Duberry*, 2015 WL 4575018, at *6.

The approximate calculation of potential damages for Plaintiff's claim for unpaid minimum wages is as follows:

9/2/16 - 12/31/16: 9,688 events worked x \$10.00/event = \$96,880.00 1/1/17 - 12/31/17: 29,064 events worked x \$10.50/event = \$305,172.00 1/1/18 - 12/31/18: 29,064 events worked x \$11.00/event = \$319,704.00 1/1/19 - 12/31/19: 29,064 events worked x \$12.00/event = \$348,768.00 1/1/20 - 11/04/20: 29,064 events worked x \$13.00/event = \$377,832.00 Total: \$ 1,448,356.00 The total alleged damages for Plaintiff's unpaid minimum wage claim is, therefore, approximately **\$1,448,356.00**. Liquidated Damages

18. Plaintiff also seeks liquidated damages in connection with her claim

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for unpaid minimum wages. (See Ex. K (FAC), ¶ 47, Prayer ¶ 5.)

Pursuant to California Labor Code § 1194.2(a), "an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

Courts in this district routinely consider liquidated damages as part of the amount in controversy for purposes of subject matter jurisdiction. See, e.g., Graham v. IFCO Systems N.A., Inc., 2017 WL 1243498, at *8 (C.D. Cal. Mar. 3, 2017) (considering liquidated damages part of the amount in controversy); see also Lucas v. Michael Kors (USA), Inc., 2018 WL2146403, at *6 (C.D. Cal. May 18, 2018) (same).

Thus, based on Plaintiff's unpaid minimum wage claim, the total alleged liquidated damages without including interest is approximately \$1,448,356.00.

Aggregation of Claims

Under CAFA, "the claims of all members of a putative class shall be 19. aggregated" to determine the amount in controversy. 28 U.S.C. §1332(d)(6). The total alleged aggregated damages for Plaintiff's claims for missed meal and rest periods (\$2,320,036.69), unpaid overtime (\$2,088,033.09), unpaid minimum wages (\$1,448,356.00) and liquidated damages (\$1,448,356.00) is approximately **\$7,304,781.78**, which exceeds the \$5,000,000 jurisdictional minimum.

20. Given that Plaintiff seeks additional damages for, *inter alia*, pay stub penalties, waiting time penalties, PAGA civil penalties, and attorney's fees, and seeks relief for herself and on behalf of the members of the putative class (which far exceeds 100) over the course of a four-year period, Defendant alleges that the "matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs," thereby satisfying the jurisdictional minimum.⁶ 28 U.S.C. §1332(d)(6).

Defendant denies all liability and that Plaintiff (and any class member) is entitled to any relief. 13

DIVERSITY OF CITIZENSHIP

21. 28 U.S.C. §1332(d)(2)(A) requires that "any member of a class of plaintiffs is a citizen of a State different from any defendant."

22. Plaintiff alleges that she resides in Riverside County, California. (*See* Ex. K (FAC) \P 1.) Upon information and belief, at the time of commencement of this action in state court and at the time of filing of this removal petition, Plaintiff was and still is a natural person and a citizen and resident of the State of California.⁷

23. Defendant LabCorp Employer Services, Inc. was incorporated under the laws of Delaware. Defendant is a duly formed Delaware corporation in good standing at the time the State Court Action was filed and at the time of the filing of this Notice. Thus, LabCorp is a citizen of Delaware, based on its place of incorporation. (*See* Ex. K (FAC) \P 2.)

24. Defendant LabCorp Employer Services, Inc.'s corporate headquarters and principal place of business is in North Carolina. Defendant's executives control and coordinate the corporation's activities from Defendant's headquarters in Burlington, North Carolina. Thus, Defendant is also a citizen of North Carolina based on its principal place of business.

25. Because Plaintiff is a citizen of a different state than Defendant, the minimal diversity requirement set forth in 28 U.S.C. § 1332(d)(2) is satisfied.

REMOVAL PROCEDURES

26. Removal is properly made to the United States District Court for the Central District of California under 28 U.S.C. § 1441(a), because the Superior Court of the State of California for the County of Los Angeles, where the State Court Action is currently pending, is within the Central District of California.

A notice of removal may rely on "information and belief" to allege the citizenship of the parties. *See Ehrman v. Cox Communications, Inc.*, 932 F.3d 1223, 1227 (9th Cir. 2019) (concluding that citizenship alleged "upon information and belief" is sufficient to establish minimal diversity jurisdiction at pleading stage).

27. The United States District Court for the Central District of California has jurisdiction over this case pursuant to the Class Action Fairness Act, 28 U.S.C.
§ 1332(d), in that this matter is a civil action in which the amount in controversy exceeds the sum of \$5,000,000 exclusive of costs and interest, has more than 100 members in the putative class, and is between citizens of different states.

NOTICE OF REMOVAL HAS BEEN TIMELY FILED

28. Defendant timely filed this Notice of Removal. As noted above,
Defendant was served with the Summons and Complaint via personal service on
October 5, 2020 (*See* Ex. H (Notice of Service of Process).) Pursuant to California
Code of Civil Procedure § 415.10 and Federal Rule of Civil Procedure 4(e)(2)(A),
service was deemed completed on October 5, 2020. Accordingly, Defendant has filed
this Notice of Removal within 30 days. 28 U.S.C. § 1453(b).

NOTICE TO PLAINTIFF AND STATE COURT

29. As required by 28 U.S.C. § 1446(d), written notice of this Notice of Removal is being promptly served upon counsel for Plaintiff and a copy of this Notice of Removal is being filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles.

WHEREFORE, Defendant respectfully requests the removal of the State CourtAction from the Superior Court of the State of California for the County of LosAngeles, to the United States District Court for the Central District of California.

Dated: November 4, 2020

K&L GATES LLP

By: /s/ Kate G. Hummel

Christopher J. Kondon Saman M. Rejali Kate G. Hummel Lucy C. Jackson Attorneys for Defendants LabCorp Employer Services, Inc., and LabCorp Staffing Solutions, Inc.

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EXHIBIT K

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1 2 3 4	LAUREN TEUKOLSKY (SBN 211381) lauren@teuklaw.com TEUKOLSKY LAW, APC 201 S. Lake Avenue, Suite 305 Pasadena, CA 91101 Telephone: (626) 522-8982 Facsimile: (626) 522-8983	Bupener Count of Celifernia Sounty of Los Angelos OCT 2 3 2020 Sherri R. Carter, Exercitive Officer/Clerk
5	RAMIT MIZRAHI (SBN 233315)	By America Pices
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7	201 S. Lake Avenue, Suite 305 Pasadena, CA 91101 Telephone: (626) 380-9000	
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9	Attorneys for Plaintiff Shannon Williams and the Putative Class	
10	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA
11		LOS ANGELES
12	(UNLIMITED)	JURISDICTION)
13	SHANNON WILLIAMS, as an individual and on behalf of all others similarly situated,	CASE NO. 20STCV33583
14	Plaintiff,	FIRST AMENDED CLASS ACTION COMPLAINT:
15	V.	(1) MINIMUM WAGE VIOLATIONS;
16	LABCORP EMPLOYER SERVICES, INC., a	(2) FAILURE TO PAY OVERTIME WAGES;
17	Delaware corporation; LABCORP STAFFING SOLUTIONS, INC., a Delaware corporation;	(3) MEAL PERIOD VIOLATIONS;
18	WELLNESS CORPORATE SOLUTIONS, LLC, a Maryland corporation; and DOES 4-10,	(4) REST PERIOD VIOLATIONS;
19 20	Defendants.	(5) UNLAWFUL FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES;
21		(6) ITEMIZED WAGE STATEMENT
22		VIOLATIONS; (7) WAITING TIME PENALTIES;
23		(B) UNFAIR COMPETITION;
24		(9) DECLARATORY RELIEF;
25		(10) PRIVATE ATTORNEYS GENERAL
26		ACT PENALTIES;
27		DEMAND FOR JURY TRIAL Action Filed: 9/2/20 Trial Date: None set
28		I FIRI LFRRE: MORE SEL
	FIRST AMENDED CLASS ACTION C	OMPLAINT, DEMAND FOR JURY TRIAL
•	·	Not Defined
		Not Defined
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Plaintiff Shannon Williams ("Plaintiff") on behalf of herself and all current and former similarly situated employees brings this Class Action Complaint against Defendants LabCorp Employer Services, Inc., LabCorp Staffing Solutions, Wellness Corporate Solutions, LLC, and Does 4-10 (collectively, "LabCorp"), and on information and belief alleges as follows:

PARTIES

1. Plaintiff SHANNON WILLIAMS has been employed by LabCorp since approximately April 2019 to the present. In her various roles at LabCorp, she provides mobile health services, including temperature checks, flu shots, and health screenings, often in a "lead" role. Ms. Williams is over 18 years of age and resides in Riverside County. At all relevant times, LabCorp was an employer.

2. Defendant LABCORP EMPLOYER SERVICES, INC., formerly operating as Wellness Corporate Solutions, LLC, is and at all relevant times was a Delaware corporation doing business throughout California, including the County of Los Angeles.

3. Defendant LABCORP STAFFING SOLUTIONS, INC. is and at all relevant times was a Delaware corporation doing business throughout California, including the County of Los Angeles.

4. Defendant WELLNESS CORPORATE SOLUTIONS, LLC is and at all relevant times was a Maryland corporation doing business throughout California, including the County of Los Angeles.

17 5. Plaintiff is informed and believes and based thereon alleges that LabCorp Employer 18 Services, Inc., LabCorp Staffing Solutions, Inc., and Wellness Corporate Solutions, LLC share common ownership and common management. Further, Plaintiff is informed and believes and based thereon 19 20 alleges that LabCorp Employer Services, Inc., LabCorp Staffing Solutions, Inc., and Wellness Corporate 21 Solutions, LLC are a single employer for purposes of liability because of interrelation of operations, 22 common management, centralized control of labor relations, and common ownership or financial control. 23 Plaintiff is informed and believes and based thereon alleges that there is such a unity of interest and ownership between LabCorp Employer Services, Inc., LabCorp Staffing Solutions, Inc., and Wellness 24 25 Corporate Solutions, LLC that their separate personalities no longer exist, and that an inequitable result would follow if they were not all liable. Plaintiff is informed and believes and based thereon alleges that 26 27 LabCorp Employer Services, Inc., LabCorp Staffing Solutions, Inc., and Wellness Corporate Solutions, 28 LLC jointly employed Plaintiff and all similarly situated and similarly aggrieved persons.

6. The true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 4 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, agents, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Class to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

7. Plaintiff is informed and believes, and thereupon alleges, that at all times material herein, each of the Defendants was the agent or employee of, and/or working in concert with, his/her co-Defendants and was acting within the course and scope of such agency, employment, and/or concerted activity. Plaintiff alleges that to the extent certain acts and omissions were perpetrated by certain Defendants, the remaining Defendant or Defendants confirmed and ratified said acts and omissions.

8. Whenever and wherever reference is made in this complaint to any act or failure to act by a Defendant, Defendants, or LabCorp, such allegations and references shall also be deemed to mean the acts and failure to act of each Defendant acting individually, jointly, and severally.

9. Adherence to the fiction of the separate existence of each LabCorp entity would permit an abuse of the corporate privilege and would sanction fraud or promote injustice on the part of the individual Defendants by allowing said individual Defendants to escape liability for their misdeeds, which misdeeds resulted in damages being suffered by Plaintiff and similarly situated employees of the Defendant corporation.

JURISDICTION AND VENUE

10. The Superior Court of the State of California has jurisdiction in this matter because both
 LabCorp Employer Services, Inc., LabCorp Staffing Solutions, Inc., and Wellness Corporate Solutions,
 LLC regularly conduct business in California. No federal question is at issue because the claims are based
 solely on California law. This case falls within the Court's unlimited jurisdiction because the amount in
 controversy exceeds \$25,000.

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FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

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11. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, because the acts and omissions complained of herein occurred in the County of Los Angeles, and Plaintiff and her similarly situated co-workers were employed by LabCorp within the County of Los Angeles.

GENERAL FACTUAL ALLEGATIONS

12. Among LabCorp's offerings to its clients is an onsite health services and biometric screening program. LabCorp goes to its customers' business locations, where it performs health screenings to test body temperature, blood pressure, blood glucose, cholesterol, and body compositions, administers flu shots, and provides health education.

13. Since April 2019, Ms. Williams has worked for LabCorp, providing mobile health services, including temperature checks, flu shots, and health screenings, often in a "lead" role. She is paid between \$18 and \$35 an hour for her work, depending on the type of shift she is working, and occasionally receives bonuses offered to incentivize employees to accept specific shifts.

Off-the-Clock Work

14. LabCorp failed to pay Ms. Williams and similarly situated individuals for certain hours that they were required to work off the clock. Ms. Williams and similarly situated employees are expected to: check and respond to emails; view available shifts on LabCorp's software system; communicate with LabCorp about scheduling and work; and take tutorials and tests on various health topics, but are not paid for any of this time. In addition, LabCorp requires Ms. Williams and similarly situated employees to drive to each job, located at the site of LabCorp's clients, and then drive home, but does not compensate them for any of this drive time, even though Ms. Williams often drives hours roundtrip for a single shift.

15. Further, Ms. Williams and similarly situated employees, when working as a lead or nurse, are required to: review event specifics and staff information; correspond with event staff to confirm their scheduling and attendance; print event-specific paperwork (including the list of scheduled appointments for the event); for some events, receive and organize inventory at home prior to the event (such as vaccines for flu shot events, and for screenings cholestech machines, power cords, tablets, hotspots, BMI machines, stadiometers, scales, privacy screens, tablecloths, chux pads, boxes of glucose testing

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1 cassettes, capillary tubes, gauze, alcohol pads, band-aids, batteries, pens, hand sanitizer, paper towels, 2 consent booklets, consent forms, gloves, measuring tape, clip boards, biohazard containers, blood pressure machines), refrigerate certain items (for example flu vaccines); count the inventory, request 3 additional supplies if needed; prepare supplies for transport and load their vehicles with them to 4 5 transport them to the event. After events, they are required to: fill out paperwork; pack up inventory/supplies; drive to a UPS location using their personal vehicles to drop off paperwork (such as 6 7 consent forms) and/or inventory within 12 hours of an event ending; and get a receipt from UPS, take a photo of the receipt with the tracking number, and either email or text it to the Program Manager as 8 9 confirmation. Although LabCorp pays leads and nurses for an additional 30 minutes of work per shift, it is not nearly enough to cover all of the time spent before and after events as described in this paragraph, 10 which on average takes closer to 1½ hours total per shift, if not more. 11

16. On information and belief, LabCorp has uniform policies and practices throughout its California locations requiring its non-exempt employees to perform off-the-clock work.

Overtime Violations

17. Throughout Ms. Williams's employment, LabCorp has failed to pay her and her similarly situated coworkers proper overtime pay.

18. Ms. Williams and her coworkers typically have shifts that start in the morning and run until the event is finished. Ms. Williams has frequently worked shifts longer than eight hours, including shifts in excess of twelve hours, when including the time it took her to travel to and from the event location. However, LabCorp does not pay Ms. Williams and her similarly situated coworkers proper overtime compensation because it does not compensate them for any of the time they spend traveling to and from the event location.

19. Further, LabCorp frequently pays Ms. Williams and her similarly situated coworkers
bonuses to work on certain shifts, but does not include the bonus amounts in the "regular rate of pay"
when calculating the overtime premium rate. These bonuses are non-discretionary and LabCorp's failure
to include them in the regular rate of pay violates Labor Code § 510(a) and IWC Wage Order 4
§ 3(A)(1)(a).

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20. On information and belief, LabCorp pays all of its similarly situated employees in California in the same unlawful manner as Ms. Williams and has uniform policies and practices that deprive its employees of the overtime compensation to which they are entitled under California law.

Meal and Rest Period Violations

21. LabCorp also committed meal and rest period violations with respect to Ms. Williams and her similarly situated coworkers who worked in lead and/or nurse roles.

22. When serving as a lead or nurse, Ms. Williams was scheduled in such a manner that did not allow any time for meal or rest breaks. If Ms. Williams had taken her meal and rest breaks, she would have been leaving her team understaffed, and would not have been able to finish her work by the scheduled end time of the event. Ms. Williams did not receive a meal period for all but a small number of the shifts she worked five or more hours as a lead or nurse, even though she was entitled to a duty-free 30-minute unpaid meal period for each of these shifts. Furthermore, by not counting driving time to customer sites as compensable work time, LabCorp does not properly track employee time so as to provide the meal and rest breaks required

23. LabCorp did not provide Ms. Williams or similarly situated employees with any premium pay for missed meal breaks.

24. On information and belief, LabCorp's non-exempt employees throughout California similarly situated to Ms. Williams were not authorized or permitted to take proper meal periods under California law, and were not provided with any premium pay.

25. For the same reasons that she did not receive the meal breaks to which she was entitled, Ms. Williams and similarly situated coworkers did not receive a ten-minute rest break for every four hours worked, or major fraction thereof. LabCorp did not pay Ms. Williams any premium pay for these missed breaks. To Ms. Williams' knowledge, LabCorp did not even have a procedure for employees to request premium pay for missed breaks.

Unreimbursed Business Expenses

26 26. LabCorp violated the Plaintiff's rights and other similarly situated employees by failing to
27 reimburse for necessary business expenses.

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27. LabCorp required Ms. Williams and similarly situated LabCorp workers to supply and use their own smartphones and devices to run an application necessary for their work including, but not limited to, an application called "Shiftboard" which employees needed to view work events in their area, sign up for shifts, and receive updates from the company. LabCorp did not provide Ms. Williams or similarly situated employees with smartphones or other devices they could use for work-related purposes. Accordingly, Ms. Williams and others were required to use their own smartphones and other devices, as well as their own data plans, to access information about their shifts and company updates, as well as send and receive work-related emails and text messages.

28. In addition, Ms. Williams and similarly situated LabCorp employees regularly drove far distances in their personal vehicles to LabCorp's clients, sometimes driving over 100 miles roundtrip for a single work shift. LabCorp did not regularly reimburse employees for mileage, gas, maintenance, or any other expense related to the use of a personal vehicle for work purposes.

29. When working as a lead or nurse, Ms. Williams and similarly situated employees were required to use their own resources to print out paperwork for events (including schedules and forms), but were not reimbursed for these expenses. They were also required to use their personal vehicles to drop off paperwork and/or inventory at a UPS location within 12 hours of the end of their shift, but they were not reimbursed for the mileage incurred in doing so.

30. Further, LabCorp does not regularly reimburse employees for parking fees at events and for other work-related travel expenses.

Wage Statement Violations and Waiting Time

31. As a result of LabCorp's failure to pay all earned regular wages and overtime wages, and premiums for meal and rest period violations, LabCorp failed to pay all wages owed to separating employees at the time of separation from their respective employments, in violation of Labor Code § 203.

32. Pursuant to Labor Code § 226, LabCorp was obligated to furnish Ms. Williams and other similarly situated employees with complete and accurate itemized wage statements that show, among other things, the inclusive dates of the pay period, the last four digits of an employee's social security number or other identification number, all correct gross and net wages earned, all regular and overtime hours worked, all applicable hourly rates of pay and the number of hours worked at each rate, and

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premium wages for meal and rest period violations. However, LabCorp failed to furnish Ms. Williams and similarly situated employees with compliant wage statements, in violation of Labor Code § 226.

PAGA ALLEGATIONS

33. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2699(c), and as an aggrieved employee is entitled to proceed under PAGA.

34. Pursuant to § 2699(c), "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. Plaintiff was employed by LabCorp, and has suffered one or more of the violations alleged herein.

35. Plaintiff is statutorily entitled to prosecute this matter to recover civil penalties as to any and all Labor Code violations covered under PAGA, as to herself as well as all other aggrieved employees in California.

CLASS ALLEGATIONS

36. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seeks to represent is composed of and defined as follows: All non-exempt individuals who worked for LabCorp providing mobile health services in California at any time during the period beginning February 5, 2019 through the date of judgment in this action.

37. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because the class is easily ascertainable and there is a well-defined community of interest in the litigation.

38. <u>Numerosity</u>: The potential members of the Class as defined are so numerous that joinder of all the members is impracticable. While the precise number of putative class members has not been determined at this time, Plaintiff is informed and believes that LabCorp employs more than 100 individuals who provide mobile health services in California. Joinder of all members of the proposed Class is therefore impracticable.

26 39. <u>Commonality</u>: There are questions of law and fact common to the Class that predominate 27 over any questions affecting only individual members of the Class. These common questions of law and 28 fact include, without limitation:

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(a) Whether LabCorp uniform policies, including with respect to travel time and to lead-related work, result in LabCorp suffering and permitting employees to perform work off the clock for no compensation;

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(b) Whether LabCorp's uniform policies, including with respect to travel time and to lead-related work, result in LabCorp failing to pay premium wages to non-exempt employees who work more than eight hours in a consecutive shift, violates California law, including Labor Code §§ 510 and 1194;

(c) Whether LabCorp's meal period policies and/or practices complied with the requirements of the Labor Code and Wage Order 4;

(d) Whether LabCorp's rest period policies and/or practices complied with the requirements of the Labor Code and Wage Order 4;

(e) Whether LabCorp's reimbursement policy and/or practices complied with the requirements of the Labor Code § 2802(a);

(f) Whether LabCorp furnished legally compliant wage statements to members of the Class pursuant to Labor Code § 226; and

(g) Whether LabCorp engaged in unfair and unlawful business practices in violation of Business & Professions Code § 17000, *et seq*.

40. <u>Predominance of Common Questions</u>: Common questions of law and fact predominate over questions that affect only individual members of the Class. The common questions of law set forth above are numerous and substantial and stem from LabCorp's policies and/or practices applicable to each individual class member, such as their uniform policies and practices that deprive its employees of the overtime compensation to which they are entitled under California law. As such, these common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

41. <u>Typicality</u>: The claims of Plaintiff are typical of the claims of the Class because Plaintiff
has been employed by LabCorp in California in various roles, including that of "lead," during the statutes
of limitation applicable to each cause of action pled in the Complaint in this action, and Plaintiff suffered
each of the legal violations alleged herein.

42. <u>Adequacy of Representation</u>: Plaintiff is fully prepared to take all necessary steps to fairly and adequately represent the interests of the members of the Class. Moreover, Plaintiff's counsel is ready, willing and able to fully and adequately represent the members of the Class and Plaintiff. Plaintiff's counsel has prosecuted numerous wage-and-hour class actions in state and federal courts in the past and is committed to vigorously prosecuting this action on behalf of the members of the Class.

43. <u>Superiority</u>: The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The class action format is an efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, LabCorp would gain an unfair advantage because it would be able to exploit and overwhelm the limited resources of each individual plaintiff with its vastly superior financial and legal resources. Moreover, requiring each member of the Class to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their employer for fear of retaliation. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent adjudications. Further, the claims of the individual members of the class are likely not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto.

44. As such, the Class identified above is maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

45. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all previous paragraphs.

27 46. California Labor Code §§ 1182.11 and 1197, and IWC Wage Order 4 § 4, require
28 Defendants to pay Plaintiff and class members at or above the state minimum wage for every hour

FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

Defendants suffer or permit those employees to work.

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47. California Labor Code § 1198 makes employment of an employee under conditions the IWC prohibits unlawful. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer that has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

48. Defendants have failed to pay Plaintiff and members of the Class at or above the California minimum wage for many hours they have worked, including but not limited to mandatory hours that Defendants required employees to work but failed to provide any compensation for such work (i.e., "off the clock" work).

49. As a direct and proximate result of Defendants' unlawful conduct as alleged herein,
Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid
wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and
statutory damages and penalties and other appropriate relief from Defendants' violations of the
California Labor Code and IWC Wage Order 4.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

50. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all previous paragraphs.

51. It is unlawful under California law for an employer to suffer or permit an employee to
work in excess of eight hours per workday or 40 hours per workweek without paying premium wages of
no less than one and one-half times the regular rate of pay under California Labor Code § 510 and IWC
Wage Order 4 § 3. Employees who work more than 12 hours per day are entitled to an overtime premium
of twice their regular rate of pay. *Id*.

26 52. California Labor Code § 1198 makes employment of an employee for longer hours than
27 the IWC sets or under conditions the IWC prohibits unlawful. California Labor Code §1194(a) entitles
28 an employee to recover in a civil action the unpaid balance of all overtime compensation due but not paid.

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53. Here, Plaintiff and members of the Class routinely worked more than eight and 12 hours in a workday, as well as more than 40 hours in a workweek, when including the time it took them to travel to and from the event locations and to perform work before and after their scheduled shifts. By failing to compensate Plaintiff and members of the Class for all hours worked, Defendants deprived them of the overtime compensation to which they were entitled.

54. Defendants' failure to include non-discretionary bonuses in the "regular rate of pay" when calculating the overtime premium rate also deprived Plaintiff and Class members of proper overtime compensation.

55. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code and IWC Wage Order 4.

THIRD CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

56. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all previous paragraphs.

California Labor Code § 512(a) prohibits an employer from employing a worker for a work 19 57. period of more than five hours per day without providing the employee with a 30-minute meal period. It 20 also prohibits an employer from employing a worker for a work period of more than ten hours per day 21 without providing a second 30-minute meal period. Labor Code § 226.7(a) prohibits an employer from 22 requiring an employee to work during any meal period mandated by an applicable Industrial Wage Order. 23 IWC Wage Order 4 § 11(A) prohibits employers from employing a worker for more than five hours 24 without a meal period of at least 30 minutes. Under both California Labor Code § 226.7(b) and IWC 25 Wage Order 4 § 11(B), if an employer fails to provide an employee a meal period as required, the 26 employer must pay the employee one hour of pay at the employee's regular rate of compensation for 27 each workday that the meal period is not provided as required. 28

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58. California Labor Code § 1198 makes employment of an employee under conditions the IWC prohibits unlawful.

59. Defendants have a policy or practice of failing to provide Plaintiff and members of the Class with lawful meal periods required by California Labor Code §§ 226.7 & 512, and IWC Wage Order 4 §11.

60. Defendants also have a policy or practice of failing to pay each of their employees who was not provided with a meal period as required an additional one hour of compensation at each employee's regular rate of pay.

61. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code and IWC Wage Order No. 4.

FOURTH CAUSE OF ACTION REST PERIOD VIOLATIONS (AGAINST ALL DEFENDANTS)

62. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all previous paragraphs.

California Labor Code § 226.7(a) prohibits an employer from requiring an employee to 19 63. work during any rest period mandated by an applicable Industrial Wage Order. IWC Wage Order No. 4 20 § 12(A) requires employers to authorize and permit employees to take a paid duty-free rest period of at 21 least 10 minutes for every four hours worked or major fraction thereof, which insofar as practicable shall 22 be in the middle of each work period. Under both California Labor Code § 226.7(b) and IWC Wage Order 23 4 § 12(B), if an employer fails to provide an employee a rest period as required, the employer must pay 24 the employee one hour of pay at the employee's regular rate of compensation for each workday that a 25 rest period is not provided as required. 26

27 64. California Labor Code § 1198 makes employment of an employee under conditions the
28 IWC prohibits unlawful.

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65. Defendants have a policy or practice of failing to authorize and permit Plaintiff and class members to take the rest periods required by California Labor Code § 226.7 and IWC Wage Order 4 § 12.

66. Defendants also have a policy or practice of failing to pay each of their employees who was not provided with a rest period as required an additional one hour of compensation at each employee's regular rate of pay.

67. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and members of the Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code and IWC Wage Order No. 4.

FIFTH CAUSE OF ACTION

UNLAWFUL FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES (AGAINST ALL DEFENDANTS)

68. Plaintiff, on behalf of herself and the Class, reallege and incorporates by reference all previous paragraphs.

69. Labor Code §2802(a) provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience or the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

21 70. Defendants have maintained and continue to maintain an unlawful practice of failing to
22 reimburse or otherwise indemnify Plaintiff and other members of the Class for the costs of purchasing
23 smartphones, iPads, laptops, and other devices and data plans, which were necessary to the discharge of
24 Plaintiff's duties and/or her obedience to Defendants' directions, in violation of Labor Code §2802.
25 Defendants have also maintained an unlawful practice of failing to regularly reimburse employees for the
26 miles they drive in their personal vehicles to their job assignments, for parking fees at events, and for
27 other work-related travel expenses.

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71. During the relevant time period, Plaintiff and other members of the Class suffered losses equal to the value of any unreimbursed necessary expenditures, and have therefore not been paid all wages due to them and are entitled to restitution and/or payments of unpaid wages in amounts to be proven at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (AGAINST ALL DEFENDANTS)

72. Plaintiff, on behalf of herself and the Class, realleges and incorporates by reference all previous paragraphs.

73. California Labor Code § 226(a) requires employers semimonthly or at time of paying wages to provide to their employees the following information: gross and net wages earned, total hours worked (including overtime hours), all applicable hourly rates (including overtime rates) and the number of hours worked at each rate, and the name and address of the legal entity that is the employer. IWC Wage Order 4 §7(B) similarly requires employers semimonthly or at the time of each payment of wages to furnish to each employee an itemized statement in writing showing the inclusive dates of the period for which the employee is paid and the correct name of the employer. These required disclosures of information are essential to enable employees to determine whether they have been paid in compliance with the law and to determine the identity of the employers who are responsible for any payments that remain due.

74. Pursuant to Defendants' unlawful policies and practices as alleged herein, Defendants have knowingly and intentionally failed to provide Plaintiff and other class members with the legally mandated disclosures as required by California Labor Code § 226(a). Further, Defendants' policies and practices of failing to pay overtime compensation, failing to pay for all hours worked, and failing to pay premium wages for meal and rest period violations, necessarily meant that the itemized wage statements of Plaintiff and other class members failed to contain the information required by Labor Code § 226(a).

75. California Labor Code § 226(e) provides that an employee who suffers injury as a result
of a knowing and intentional failure by an employer to comply with § 226(a) may recover the greater of
actual damages or the penalties designated by statute of \$50 for the initial pay period in which a violation

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occurs and \$100 per employee for each violation in a subsequent pay period up to an aggregate penalty of \$4,000.

California Labor Code §1198 makes employment of an employee under conditions the 76. IWC prohibits unlawful.

77. Defendants have knowingly and intentionally failed to furnish Plaintiff and other class members with the information required by California Labor Code § 226(a) and IWC Wage Order 4 § 7(B).

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

Plaintiff, on behalf of herself and members of the Class, realleges and incorporates by 78. reference all previous paragraphs.

California Labor Code § 201 requires an employer who discharges an employee to pay all 79. compensation due and owing to that employee immediately upon the employee's discharge from 14 employment. California Labor Code § 202 requires an employer promptly to pay all compensation due and owing to an employee within 72 hours after that employee's employment terminates, including by 16 resignation. California Labor Code § 204 requires an employer to pay all wages due to its employees when those wages are due. California Labor Code § 203 provides that if an employer willfully fails to pay 18 all compensation due promptly upon discharge or resignation, as required by §§ 201 and 202, the 19 employer shall be liable for waiting time penalties in the form of continued compensation for up to 30 20 work days.

By failing to compensate Plaintiff and members of the Class as required by California law, 80. as set forth above, Defendants have violated and continue to violate California Labor Code § 204, which requires employers, including Defendants, to pay their employees their full wages when due.

By failing to compensate Plaintiff and members of the Class as required by California law, 25 81. as set forth above, Defendants have willfully failed to make timely payment of the full wages due to its 26 employees who quit or have been discharged, thereby violating California Labor Code §§ 201-02. 27

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82. Defendants' willful failure to timely pay members of the Class their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, terminated members of the Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

83. Plaintiff, on behalf of herself and members of the Class, realleges and incorporates by reference all previous paragraphs.

84. Defendants have engaged in unfair and unlawful business practices in violation of California Business & Professions Code §17200, *et seq.*, by engaging in the unlawful conduct alleged above, including but not limited to: failing to pay the overtime premiums required by state law; failing to pay the minimum wage required by state law; failing to provide employees with all meal periods and paid rest breaks to which they are entitled; failing to reimburse or otherwise indemnify employees for necessary expenditures; failing to provide employees information required by California Labor Code §§ 226(a) and 1174 and Wage Order 4; and failing to pay full wages when due and failing to make timely payment of full wages to employees who quit or have been discharged.

85. Plaintiff is informed and believes, and based upon such information and belief, alleges that by engaging in the unfair and unlawful business practices complained of above, Defendants were able to lower their labor costs and thereby obtain a competitive advantage over law-abiding employers with which they compete, in violation of California Business & Professions Code § 17200, *et seq.*, and California Labor Code § 90.5(a), which sets forth the public policy of California to enforce minimum labor standards vigorously to ensure that employees are not required or permitted to work under substandard and unlawful conditions and to protect law abiding employers and their employees from competitors that lower their costs by failing to comply with minimum labor standards.

86. As a direct and proximate result of Defendants' unfair and unlawful conduct as alleged
herein, Plaintiff and members of the Class have sustained injury and damages, including unpaid wages
and lost interest, in an amount to be established at trial. Plaintiff and class members seek restitution of all

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unpaid wages owed to the class members, disgorgement of all profits that Defendants have enjoyed as a 1 result of their unfair and unlawful business practices, penalties, and injunctive relief. 2 NINTH CAUSE OF ACTION 3 **DECLARATORY RELIEF** 4 5 (AGAINST ALL DEFENDANTS) Plaintiff, on behalf of herself and the members of the Class, realleges and incorporates by 87. 6 7 reference all previous paragraphs. Under Section 1060 of the Code of Civil Procedure, any person who "who desires a 8 88. declaration of his or her rights or duties with respect to another . . . may, in cases of actual controversy 9 10 relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights." 11 Plaintiff desires a declaration that LabCorp's policy and practice of failing to compensate 89. 12 Plaintiff and putative class members for the time spent traveling to and from events violates California 13 law. There exists an actual controversy between Plaintiff and each Defendant relating to the rights and 14 15 duties of the parties under these laws. Accordingly, Plaintiff brings this claim against each Defendant to obtain a declaratory 90. 16 judgment establishing that Defendants' policies and practices with respect to overtime, meal and rest 17 periods, and wage statements fail to provided Plaintiff and members of the Class with the overtime 18 compensation, minimum wages, meal and rest periods, and wage statements, respectively, to which they 19 20 are entitled, and that such policy or practices violates California law. **TENTH CAUSE OF ACTION** 21 VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT 22 (AGAINST ALL DEFENDANTS) 23 Plaintiffs, on behalf of herself and members of the Class, realleges and incorporates by 91. 24 25 reference all previous paragraphs. PAGA provides that aggrieved employees may bring a civil action against an employer to 26 92. recover any civil penalties that could be recovered by the Labor and Workforce Development Agency 27 28 ("LWDA") under the California Labor Code. The procedures for bringing a PAGA action are outlined FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL

in Labor Code § 2699.3.

93. Pursuant to Labor Code § 2699.3, an aggrieved employee may commence a civil action arising under Labor Code § 2699 after the following requirements have been met:

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a. The aggrieved employee shall give written notice ("Notice") to the LWDA and the employer of the Labor Code provisions that the employer allegedly violated, including the facts and theories to support the alleged violations.

b. The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received. Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice, the aggrieved employee may commence a civil action.

94. Plaintiffs have satisfied these procedural prerequisites. On August 17, 2020, Plaintiffs gave notice to the LWDA of Defendants' violations as set forth in this Complaint, and of Plaintiffs' intent to file a PAGA action to recover penalties and underpaid wages.

95. This same notice was served upon AxleHire by certified mail on August 17, 2020.

96. The LWDA provided no Notice within 65 calendar days of the postmark date of the Notice that it intended to investigate the alleged violation.

18 97. Plaintiffs have therefore satisfied the requirements of Labor Code § 2699.3 and may
19 recover civil penalties and underpaid wages for the violations of the following statutory sections:

• Overtime violations (Labor Code §§ 510, 558, 1194(a) and 1198).

• Off-the clock work (Labor Code §§ 204, 1182.12, 1194; 1194.2, 1197 and 1198).

• Meal period violations (Labor Code §§ 226.7, 512, 558 and 1198).

• Rest period violations (Labor Code §§ 226.7, 516, 558 and 1198).

• Waiting time violations (Labor Code §§ 201, 202, 203, and 216).

• Timely payment provisions (Labor Code §§ 204 and 210).

• Wage statement violations (Labor Code §§ 226(a), 226(c), 226.3, and 225.5).

• Inaccurate record-keeping (Labor Code §§ 1174, 1198 and Wage Order 4, § 7(A)(3)).

• Unreimbursed expenses (Labor Code § 2802).

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1		PRAYER	
2	WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this		
3	suit is brought against Defendants, jointly and severally, as follows:		
4	1.	For an order certifying the proposed Class;	
5	2.	For an order appointing Plaintiff as representative of the Class;	
6	3.	For an order appointing Counsel for Plaintiff as Counsel for the Class;	
7	4.	For an award of damages in the amount of unpaid wage compensation, including for	
8		unpaid minimum wages, unpaid overtime and double-time wages, and unpaid premium	
9		wages for meal and rest period violations, and interest thereon, subject to proof at trial;	
10	5.	For liquidated damages pursuant to California Labor Code § 1194.2;	
11	6.	Penalties for inaccurate itemized wage statements pursuant to California Labor Code	
12		§ 226, subject to proof at trial;	
13	7.	Waiting time penalties as to those class members who have quit or been discharged	
14		pursuant to California Labor Code § 203, subject to proof at trial;	
15	8.	Restitution of all amounts owed in unpaid wage compensation, including for unpaid	
16		overtime wages, unpaid minimum wages, and unpaid premium wages for meal and rest	
17		period violations, and interest thereon, in an amount according to proof at trial, pursuant	
18		to California Business & Professions Code § 17203;	
19	9.	A declaratory judgment that Defendants' policies and practices not to compensate	
20		Plaintiff and putative class members for the time spent traveling to and from events violate	
21		California law;	
22	10.	. For civil penalties pursuant to Labor Code § 2699(f) and (g) for each aggrieved employee	
23		for each pay period in which a violation occurred.	
24	11.	Prejudgment and postjudgment interest on all due and unpaid wages pursuant to	
25		California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;	
26	12.	On all causes of action, for reasonable attorneys' fees and costs as provided by Labor Code	
27		§§ 218.5, 226, 1194, 2699(g)(1), and Code of Civil Procedure § 1021.5, and such other	
28		provisions as may be applicable; and	
	FIR	-19- ST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL	
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1	13. For such	other and further r	elief the Court may	y deem just and pro	oper.
2	DATED: October 22, 20	20	Respectfully subn	nitted,	
3			TEUKOLSKY L		
4			MIZRAHI LAW,	APC	
5					
6			By: Rame Laure	Mizahi	
7 8			Ramit	: Mizrahi	WILLIAMS
9			Allorneys for Fia	intiff SHANNON	
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1	DEMAND FOR JURY TRIAL			
2	Plaintiff and all class member	Plaintiff and all class members hereby respectfully demand a jury trial on all claims and causes		
3	of action with respect to which they	of action with respect to which they have such a right.		
4	DATED: October 22, 2020	Respectfully submitted,		
5		TEUKOLSKY LAW, APC		
6		MIZRAHI LAW, APC		
7				
8		By: <u>Pariel Mizzahi</u> Lauren Teukolsky		
9		Lauren Teukoľsky Ramit Mizrahi		
10		Attorneys for Plaintiff SHANNON WILLIAMS		
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: LabCorp Hit with Mobile Health Services Worker's Lawsuit Over Alleged Calif. Labor Code Violations