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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES  
11 CENTRAL CIVIL WEST

12 CRAIG CLARK and HENRY NELSON, on  
behalf of themselves and all others similarly  
situated,

13 Plaintiffs,

14 v.

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

18 Defendants.  
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Case No. BC594022  
(Consolidated with Case Nos. BC660722 &  
BC594129)

CLASS ACTION

Assigned to: Hon. Kenneth R. Freeman

DEFENDANTS QUEST DIAGNOSTICS  
CLINICAL LABORATORIES, INC. AND  
QUEST DIAGNOSTICS INC.'S ANSWER  
TO PLAINTIFFS CRAIG CLARK AND  
HENRY NELSON'S CONSOLIDATED  
CLASS ACTION AND PAGA COMPLAINT

Complaint Filed: July 6, 2017

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2. The class action allegations, Labor Code Private Attorney General Act, and/or Business and Professions Code § 17200 representative action allegations are legally meritless because a class and/or representative action is an inappropriate vehicle for the prosecution of Plaintiffs' claims and Plaintiffs have failed to state a claim upon which relief can be granted on a class-wide or representative basis.

### THIRD AFFIRMATIVE DEFENSE

(Failure to State a Class Action)

3. The Complaint, and corresponding claims for relief purportedly alleged against Defendants, fail to set forth facts sufficient to constitute a class action, in that, among other things, members of the class have divergent interests, and questions of law or fact affecting only individual members of the putative class predominate over questions of law or fact common to members of the putative class.

#### FOURTH AFFIRMATIVE DEFENSE

(Inadequate Class Representatives)

4. The class action allegations fail because Plaintiffs do not constitute proper representatives of the putative class, are not qualified to protect and represent fairly and adequately the interests of every member of the putative class, and do not have claims typical of other putative class members.

## FIFTH AFFIRMATIVE DEFENSE

(Lack of Standing)

5. Plaintiffs lack standing to assert the Complaint or any purported claim for relief alleged therein on behalf of themselves or others.

## SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

6. Each and every purported cause of action is barred, in whole or in part, by the applicable statute of limitations, including but not limited to California Code of Civil Procedure §§ 338 and 340 and California Business and Professions Code § 17208.

## SEVENTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction Doctrine)

7. The Complaint, and each purported cause of action alleged therein, should be abated in the Court's discretion, and Plaintiffs and the putative class members should be required to pursue their administrative remedies with the California Labor Commissioner/Division of Labor Standards Enforcement, which has primary jurisdiction over these claims.

#### **EIGHTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Administrative Remedies)

8. Plaintiffs' Complaint, and each purported cause of action alleged therein, is barred because Plaintiffs failed to pursue administrative remedies with the California Division of Labor Standards Enforcement, Labor and Workforce Development Agency. Plaintiffs should be ordered to pursue administrative remedies with the California Division of Labor Standards Enforcement, which has primary jurisdiction over their claims.

#### **NINTH AFFIRMATIVE DEFENSE**

(Conduct Not Unlawful, Unfair or Fraudulent)

9. Plaintiffs' Complaint fails to state a claim under California Business and Professions Code § 17200 *et seq.* because Defendants' conduct was not unlawful, unfair or fraudulent.

#### **TENTH AFFIRMATIVE DEFENSE**

(Barred by Due Process Protections)

10. Plaintiffs' claims are barred, in whole or in part, because California Business and Professions Code § 17200 *et seq.* and other statutes and regulations referenced in the Complaint are insufficiently definite to provide adequate or fair notice of the conduct proscribed, in violation of the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 7 of the California Constitution.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

(Legitimate Business Purpose)

11. Defendants allege that they cannot be liable for any alleged violation of California Business and Professions Code Sections 17200 *et seq.* because their actions, conduct, and dealings with employees were lawful, and were carried out in good faith and for legitimate business purposes.

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 (No Proper Representative Claim)

3 12. Plaintiffs' claim under California Business and Professions Code Section  
4 Sections 17200, et seq. is not appropriate for resolution on a representative basis.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 (Lack of Specificity)

7 13. Plaintiffs' cause of action claiming unfair business practices in violation of California  
8 Business and Professions Code Sections 17200, et seq. is barred because Plaintiffs failed to plead  
9 specific facts capable of stating a claim for unfair business practices.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (No Actual Injury/Damages)

12 14. Plaintiffs and the putative class members did not suffer actual injury as a result of any  
13 actions taken by Defendants or their agents, and Plaintiffs and the putative class members are thus  
14 barred from asserting any causes of action against Defendants.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 (Safe Harbor)

17 15. Plaintiffs' cause of action based upon California Business and Professions Code  
18 Sections 17200, et seq. is barred because the conduct alleged falls within a safe harbor.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 (Unconstitutionality of Penalties)

21 16. Plaintiffs' claims for "penalties" under the California Labor Code are barred because  
22 California's laws, rules, and procedures permitting penalties thereunder deny due process and thus  
23 violate the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section  
24 7 of the California Constitution.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 (Laches)

27 17. Each of the purported causes of action in the Complaint is barred by the doctrine of  
28 laches because Plaintiffs unreasonably delayed asserting such claims, resulting in prejudice to

1 Defendants.

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

3 (Waiver)

4 18. The Complaint, and each and every purported cause of action alleged therein, is  
5 barred because Plaintiffs and the putative class members have waived their rights, if any, to the relief  
6 being sought in the Complaint.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 (Estoppel)

9 19. Plaintiffs and the putative class members, by their own acts and omissions, are  
10 estopped from asserting some or all of the purported causes of action alleged in the Complaint, and  
11 are barred from any recovery therefrom.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 (Consent)

14 20. The Complaint, and each and every purported cause of action alleged therein, is  
15 barred because Plaintiffs and the putative class members, through express or implied agreement,  
16 consented to the conduct of which they now complains.

17 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

18 (Unjust Enrichment)

19 21. Plaintiffs and the putative class members are barred from recovery against  
20 Defendants because any recovery in favor of them would result in their unjust enrichment.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 (Unclean Hands)

23 22. Plaintiffs and the alleged class members have or had unclean hands with respect to  
24 the matters alleged in the Complaint and are therefore barred from recovering any relief on the  
25 Complaint or any purported cause of action alleged therein.

26 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

27 (Good Faith Dispute)

28 23. Plaintiffs' causes of action based upon violations of the Labor Code are barred

1 because there is a good faith dispute as to whether any wages are owed.

2 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

3 (Set-Off/Offset/Recoupment)

4 24. Some or all of the purported causes of action in the Complaint are subject to setoff,  
5 offset and/or recoupment.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 (Settlement and Release)

8 25. Some or all of the purported causes of action in the Complaint are subject to the  
9 doctrine of settlement and release.

10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 (PAGA – Plaintiff Not Aggrieved)

12 26. Plaintiffs are not “aggrieved employees” as defined under the Labor Code Private  
13 Attorneys General Act of 2004 (“PAGA”) and/or California Business & Professions Code § 17200  
14 et seq. Therefore, Plaintiffs lack standing to pursue causes of action under either statute.

15 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

16 (PAGA -- Failure to Exhaust Remedies)

17 27. Plaintiffs’ Complaint, and each purported cause of action alleged therein, is barred  
18 because Plaintiffs have failed to satisfy the notice and exhaustion requirements under California’s  
19 Private Attorneys General Act (“PAGA”).

20 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

21 (PAGA – Unconstitutionality)

22 28. Although Defendants deny that they committed or have responsibility for any act that  
23 could support recovery under the PAGA, if and to the extent any such liability is found, recovery  
24 against Defendants under PAGA is unconstitutionally excessive and violates Defendants’ due  
25 process rights.

26 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

27 (PAGA – Unlawful Delegation of Executive Authority)

28 29. The purported cause of action under the PAGA is barred to the extent private actions

1 seeking PAGA penalties manifest an unlawful delegation of executive authority.

2 **THIRTIETH AFFIRMATIVE DEFENSE**

3 (PAGA – Duplicative Recovery)

4 30. Plaintiffs, and the individuals on whose behalf Plaintiffs seek relief, are not entitled to  
5 recovery of penalties under PAGA to the extent that such penalties are sought in addition to penalties  
6 for the same claims and such duplicative recovery is barred and constitutes unjust enrichment.

7 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

8 (Claims Barred by Res Judicata/Collateral Estoppel/Release)

9 31. Plaintiff's claims and/or the claims of putative class members are barred, in whole or  
10 in part, due to res judicata, collateral estoppel, or by release of claims.

11 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

12 (Claims Subject to Arbitration Agreement)

13 32. As to some members of the putative class, the Court lacks jurisdiction over the  
14 Complaint, and each and every purported cause of action alleged therein, because they are subject to  
15 a binding arbitration agreement with Defendants.

16 **RESERVATION OF RIGHT TO AMEND ANSWER**

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18 Defendants hereby give notice that Defendants intend to rely on such other and further  
19 defenses as may become available during discovery in this action and reserves the right to amend its  
20 answer to assert any such defenses.

21 WHEREFORE, Defendant prays as follows:

22 1. That Plaintiffs and the alleged class members take nothing by reason of his Complaint  
23 and that judgment be entered in favor of Defendants;


24 2. That the Court award Defendants their reasonable attorneys' fees and costs of suit  
25 incurred herein pursuant to California Labor Code Section 218.5; and

26 3. For such other and further relief as the Court deems just and proper.  
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1 Dated: August 8, 2017

SIDLEY AUSTIN LLP

2  
3 By: 

4 Max C. Fischer  
5 Heidi Larson Howell  
6 Sonia A. Vucetic  
7 Attorneys for Defendants  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA                     )  
                                                           ) SS  
COUNTY OF LOS ANGELES                 )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013.

On August 8, 2017, I served the foregoing document(s) described as **DEFENDANT QUEST DIAGNOSTICS CLINICAL LABORATORIES, INC. ANSWER TO PLAINTIFF CRAIG CLARK AND HENRY NELSON'S CONSOLIDATED CLASS ACTION AND PAGA COMPLAINT** on all interested parties in this action by the method described below:

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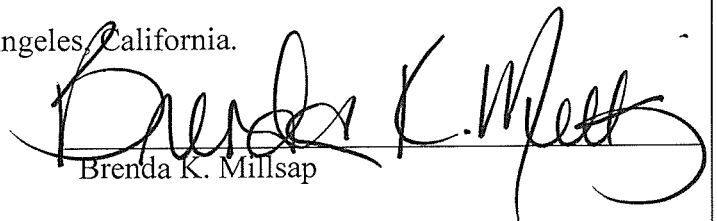
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BY ELECTRONIC MAIL VIA CASE ANYWHERE: In accordance with the Court's ruling governing Los Angeles Superior Court Case No. BC660722 and BC594129 requiring all documents to be served upon the above listed interested parties via Case Anywhere Service system.

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

Executed on August 8, 2017, at Los Angeles, California.

  
Brenda K. Millsap