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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

SPENCER BICE,

Plaintiff,

vs.

**VENSURE HR, INC., a corporation;
VENSURE EMPLOYER SERVICES, INC., a
corporation, and DOES 1-100, inclusive,**

Defendants.

Case No.: STK-CV-UOE-2016-1264

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS**

This Class Action Settlement Agreement and Release of Claims ("Settlement Agreement" or "Settlement"), is entered into between Plaintiff Spencer Bice ("Plaintiff"), on behalf of himself and on behalf of the Class Members, and Defendants Vensure HR, Inc. and Vensure Employer Services, Inc. ("Defendants").

I. RECITALS.

1. Plaintiff filed this Class Action on January 26, 2016, in the Superior Court of California, County of San Joaquin, *Bice v. Vensure HR, Inc., et al.*, Case No. STK-CV-UOE-2016-1264. Plaintiff asserted causes of action for (1) Failure to Furnish Accurate Itemized Wage Statements; (2) Failure to Maintain Accurate Wage Statements; (3) Violation of Labor Code Section 226(b); (4) Violation of Labor Code section 1198.5; and (5) Violation of Labor Code section 432. Plaintiff asserted claims on a classwide basis and under the Labor Code Private Attorney General Act of 2004 ("PAGA") as to his First and Second causes of action.

1 2. On October 5, 2016, Plaintiffs filed a First Amended Complaint adding a third defendant,
2 Health Insurance and HR, Inc. d/b/a VIM HR ("VIM HR"). VIM HR is not a party to this Settlement
3 Agreement and no claims asserted by Plaintiff or the Class are being resolved pursuant to this Settlement
4 Agreement.

5 3. On February 15, 2017, the Parties engaged in mediation before renowned class action
6 mediator Jeffrey Ross, Esq. The matter did not settle at mediation.

7 4. The Parties proceeded to aggressively litigate the matter. Plaintiff propounded
8 substantial written discovery and obtained hundreds of pages of documents relating to Defendants' wage
9 statement policies and contracts with VIM HR. Plaintiff deposed the persons most knowledgeable for
10 Defendants and for VIM HR.

11 5. Plaintiff subsequently moved for class certification of the proposed Class on his First and
12 Second Causes of action. On June 29, 2018, the Court granted class certification of a class consisting of
13 all current and former California employees of VIM HR who received one or more itemized wage
14 statements within the meaning of Labor Code section 226(a) from January 26, 2015, through April 1,
15 2016 (the "Class").

16 6. On December 16, 2019, Plaintiff and Defendants engaged in another mediation before
17 Hon. William C. Pate (Ret.). Once again, the matter did not resolve at mediation.

18 7. The parties have continued to litigate the matter, and on July 2, 2020, the Court entered
19 summary judgment against VIM HR as to the PAGA claims asserted against it.

20 8. On July 14, 2020, Plaintiff filed a Second Amended Complaint adding a Sixth Cause of
21 Action, a putative class claim for breach of contract against Defendants, predicated on the same
22 violations set forth in Plaintiffs' First and Second Causes of Action.

23 9. For purposes of this Settlement only, Plaintiff contends, and Defendants do not dispute,
24 that there is sufficient evidence to support the requisites for certification of the Class as to the Sixth
25 Cause of Action for settlement purposes, specifically:

- 26 a. There are 1308 Class Members, which is so numerous as to make it impractical to
27 join all Class Members;
- 28 b. The Class is ascertainable from Defendants' records;
- c. Common questions of law and fact exist;
- d. The claims of the Plaintiff are typical of the claims of the Class Members and the
 Plaintiff is an adequate representative and should be appointed as such;
- e. Mayall Hurley P.C. is adequate to represent the Class and should be appointed as
 Class Counsel;

f. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which could establish incompatible standards of conduct; and

g. Questions of law and fact common to the members of the Class predominate over questions affecting individual members of the Class and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

10. Plaintiff and Defendants, while continuing to litigate this matter, ultimately agreed to reach a settlement taking into account the strengths and weaknesses of their respective positions.

11. By entering into this Settlement, Defendants admit no liability, and explicitly deny liability or wrongdoing of any kind arising from the claims alleged in the Class Action. This Settlement shall not constitute an admission by Defendants as to any interpretation of the law or as to the merits, validity, the accuracy of any of the claims made against them in the Class Action, or that the claims alleged are suitable for class-wide treatment.

II. DEFINITIONS.

12. "Class" and "Class Members" refers to all current and former California employees of Health Insurance & HR, Inc. d/b/a VIM HR who received one or more itemized wage statements within the meaning of Labor Code section 226(a) from January 26, 2015 through April 1, 2016.

13. "Class Action" refers to all of the claims made in the class action lawsuit identified in the recitals above, *Bice v. Vensure HR, Inc., et al*, San Joaquin County Superior Court Case No. STK-CV-UOE-2016-1264.

14. "Class Counsel" refers to Mayall Hurley P.C., by and through Robert J. Wasserman, William J. Gorham, Nicholas J. Scardigli, and Vladimir J. Kozina.

15. "Class List" refers to the list of Class Member information to be provided to the Settlement Administrator by Defendants.

16. "Class Notice" refers to the Notice of Partial Settlement of Class Action, substantially in the form attached here to as Exhibit 1, as it may be modified by agreement of the Parties or upon order of the Court, which will be sent to the Class Members.

17. "Class Period" means January 26, 2015 through April 1, 2016.

18. "Class Representative" refers to Plaintiff Spencer Bice

19. "Defendants" refers to Defendants Vensure HR, Inc. and Vensure Employer Services, Inc.

20. "Defense Counsel" refers to Jesse E.M. Randolph of the Randolph Legal Group.

21. "Effective Date" as defined below is a condition of performance of the obligations under this Settlement. The Effective Date is determined as follows. If no Class Member or any person claiming to have standing submits an objection or otherwise purports to object to the Settlement Agreement, then the Effective Date is the date of the Court's entry of a final approval order and judgment finally approving the Settlement Agreement ("Order of Final Approval"). If any Class Member or any person claiming to have standing submits an objection or otherwise purports to object to the Settlement Agreement, then the Effective Date is the date after (a) the Court's entry of a final approval order and judgment finally approving the Settlement Agreement ("Order of Final Approval"), and (b) the first to occur of the following: (1) the date for seeking appellate review of the Court's Order of Final Approval has passed without a timely appeal or request for review having been made (i.e., 31 days after entry of the trial court's Order of Final Approval and Judgment); or (2) if an appeal, review, or writ is sought from the Order of Final Approval, the day after the Order of Final Approval is affirmed or the appeal, review or writ is dismissed or denied, and the Order of Final Approval is no longer subject to further judicial review.

22. "Final Approval Hearing" means the hearing set by the Court for the purpose of determining, inter alia, (1) the fairness, adequacy, and reasonableness of the Settlement, (2) the Service Payment to Class Representative, and (3) the fees and costs of Class Counsel.

23. "Final Approval Order" or "Order of Final Approval" refer to the order of the Court granting final approval of this Settlement and entering a judgment approving this Settlement on substantially the same terms provided herein or as may be modified by subsequent agreement of the Parties.

24. "Maximum Settlement Amount" refers to the maximum amount which Defendants are, jointly and collectively, obliged to pay under this Agreement, i.e., Sixty-Five Thousand Dollars and Zero Cents (\$65,000.00).

25. "Net Settlement Amount" refers to the Maximum Settlement Amount, less the Court-approved (a) fees and costs of the Settlement Administrator, (b) payment to the California Labor and Workforce Development Agency ("LWDA"), (c) Service Payment of Class Representative, and (d) Class Counsel's Fees and Costs.

26. "Order of Preliminary Approval" or "Preliminary Approval Order" refers to the order of the Court granting preliminary approval of this Settlement and authorizing dissemination of the Class Notice.

27. "Participating Class Members" refers to all Class Members who choose to participate in this Settlement and who do not timely and validly exclude themselves from the Settlement in accordance with the procedures set forth herein.

28. "Parties" refers to Plaintiffs and Defendants.

29. "Plaintiff" refers to Plaintiff Spencer Bice

30. "Released Claims" refers collectively to the claims released by Participating Class Members and as defined in Paragraph 58.

31. "Released PAGA Claims" means the PAGA claims released by Plaintiff on behalf of himself and the other allegedly aggrieved employees and the LWDA, described in detail in Paragraph 59, as against Defendants.

32. "Released Parties" means collectively Defendants Vensure HR, Inc. and Vensure Employer Services, Inc., their insurers, parents, subsidiaries, affiliated companies, charitable organizations, partners, trustees, directors, officers, agents, attorneys, servants and employees, past and present and each of them.

33. "Response Period" means the final date, forty-five (45) days after the Settlement Administrator mails the Class Notice to the Class Members, upon which Class Members may submit a request for exclusion or objection to the Settlement.

34. "Settlement Administrator" refers to Atticus Administration, LLC, the third-party administrator whom the Parties have selected to administer the Settlement in accordance with the terms set forth herein and as approved by the Court.

35. "Settlement Share" refers to the payment to which a Participating Class Member is entitled to receive pursuant to the Settlement.

36. "Qualified Settlement Fund" or "QSF" means an account that will qualify and be characterized as a Qualified Settlement Fund under the provisions of the U.S. Treasury Regulations 1.486B-1 and 1.468B-5, to be set up as provided below, and into which the Maximum Settlement Amount is to be deposited as agreed herein, to be administered in a manner consistent with law and the terms of this Settlement.

III. APPLICATION FOR APPROVAL OF THE SETTLEMENT, CLASS CERTIFICATION, DISSEMINATION OF NOTICE, AND SETTING OF FINAL APPROVAL HEARING.

37. Promptly upon the full execution of this Agreement, Plaintiff shall apply to the Court for approval of the Settlement, including an Order of Preliminary Approval that, amongst other things, (a) preliminarily approves the Settlement under the legal standards relating to the approval of class action settlements; (b) preliminarily certifies the Class as to Plaintiff's Sixth Cause of Action for settlement purposes only; (c) approves the Class Notice and authorizes dissemination of the same; (d) preliminarily approves Spencer Bice as Class Representative; (e) preliminarily approves Mayall Hurley, P.C. as Class Counsel with respect to the Sixth Cause of Action; (f) preliminarily approves Atticus Administration, LLC to serve as Settlement Administrator; and (g) sets a Final Approval Hearing and briefing schedule. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to certification of a Class as to the Sixth Cause of Action shall have no bearing on and shall not be admissible on the question of whether a class action should be certified as to the Sixth Cause of Action in a non-settlement context.

IV. CONSIDERATION FOR THE SETTLEMENT.

38. Maximum Settlement Amount.

The Parties agree to settle this Class Action for the Maximum Settlement Amount of \$65,000.00. The settlement is being made on an all-in, non-reversionary basis, such that Defendants will pay the

entirety of the agreed-upon Maximum Settlement Amount. The Maximum Settlement Amount is paid by Defendants in full and final settlement of (a) the Released Claims, (b) the fees and costs of the Settlement Administrator, (b) the payment to the LWDA, (c) the Service Payment to the Class Representative, and (e) Class Counsel's Fees and Costs. The Maximum Settlement Amount shall be deposited into the QSF in a single payment of \$65,000.00.

39. Allocation of the Maximum Settlement Amount.

Subject to Court approval, the Maximum Settlement Amount of \$65,000 will be allocated as follows:

- (i) \$10,000 for the fees and costs of the Settlement Administrator;
- (ii) \$1,000 payment to LWDA under the PAGA;
- (iii) \$1,000 in Service Payment to the Class Representative;
- (iv) \$14,726.36 payment to Class Counsel for reasonable costs; and
- (v) \$6,940.31 payment to Class Counsel for attorneys' fees.

The remainder constitutes the Net Settlement Amount: \$31,333.33.

40. Reasonable Fees and Costs of the Settlement Administrator.

All of the Settlement Administrator's fees and costs, which are not to exceed \$10,000 unless otherwise approved by the Court, will be paid out of the Maximum Settlement Amount from the QSF.

41. Payment to the LWDA under the PAGA.

The Settlement allocates \$1,000 to the PAGA claims. Defendants do not oppose the allocation. Of that amount, 75% – or \$750 – will be paid to the LWDA, and 25% – or \$250 – will be returned to the portion of the Net Settlement Amount allocated to the Participating Class Members. The Settlement Administrator shall make payments to the LWDA within ten (10) days of the funding of the QSF by Defendants.

42. Service Payment to Class Representatives.

Subject to Court approval, the Class Representative will apply for a Service Payment of not to exceed \$1,000, in consideration for his efforts on behalf of the Class including, but not limited to, assisting in the investigation of his claims and consulting with Class Counsel, providing critical information and documents to Class Counsel, assisting in analysis of the claims, participating in settlement negotiations and mediation, sitting for deposition, as well as the drafting of the Settlement Agreement. Any Service Payment approved by the Court will be paid out of the Maximum Settlement Amount and shall be in addition to his Settlement Share under the terms of the Settlement. In addition to the claims released under the Settlement, and as set forth in greater detail below, the Class Representative will also provide a general release which includes California Civil Code section 1542 waiver. The Settlement Administrator will issue an IRS Form 1099 for any Service Payment approved by the Court. The Settlement Administrator shall mail the Service Payment to the Class Representative within 10 days after Defendants fund the QSF. Defendants do not oppose the proposed Service Payment.

1 43. Reasonable Attorneys' Fees and Costs to Class Counsel.

2 Subject to Court approval, Class Counsel will apply to the Court for an award of attorneys' fees
3 and costs incurred in connection with the prosecution of this matter; all of the work remaining to be
4 performed including, but not limited to, drafting the Settlement Agreement; drafting the Class Notice;
5 soliciting bids from, negotiating with, and retaining the Settlement Administrator; preparing all of the
6 motions and documents necessary to secure Court approval of the Settlement Agreement (including all
7 related appellate work); carrying out their duties to see that the Settlement Agreement is fairly
8 administered and implemented; responding to questions from Class Members; and obtaining dismissal
9 of the Class Action.

10 Class Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed
11 \$6,940.31, and declared costs of up to \$14,726.36. Defendants do not oppose Class Counsel's request.
12 The fees and costs awarded to Class Counsel by the Court shall be paid out of the Maximum Settlement
13 Amount from the QSF. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel in
14 connection with this payment. The Settlement Administrator shall distribute each installment payment
15 for the attorneys' fees and costs awarded to Class Counsel within 10 days after Defendants fund the
16 QSF.

17 In the event that a lesser sum is awarded for the attorneys' fees and costs referenced above, or for
18 the Service Payment referenced in Paragraph 42, the approval by the Court of any such lesser sum(s)
19 shall not be grounds for Plaintiff and/or Class Counsel to terminate the Settlement, but such an order
20 shall be appealable by them. In the event that such an appeal is filed, administration of the portion of the
21 attorneys' fees and/or costs award and/or service payment in dispute will be segregated and stayed
22 pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review,
23 additional amounts are distributable to the Participating Class Members, the cost of administration of the
24 payments to them will be paid out of such additional amounts and not by Defendants. In the event that
25 appellate review is not sought regarding Class Counsel's attorneys' fees and costs, any amount not
26 awarded in attorneys' fees, costs and Service Payment shall be added to the Maximum Settlement
27 Amount and distributed to the Participating Class Members in accordance with the terms of the
28 Settlement.

19 44. Tax Treatment of Settlement Shares.

20 For the purpose of taxes and required withholdings, the Parties agree to the following: the
21 entirety of each Participating Class Member's Settlement Share shall constitute non-wage penalties and
22 interest (for which an IRS Form 1099 shall be issued).

23 Defendants, Defendants' counsel, the Settlement Administrator, and Plaintiff's counsel make no
24 representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff
25 and Participating Class Members are not relying on any statement, representation, or calculation by
26 Defendants, Defendants' counsel, Plaintiff's counsel, or the Settlement Administrator in this regard.
27 Plaintiff and Participating Class Members understand and agree that they will be solely responsible for
28 the payment of any taxes and penalties assessed on their respective payments described herein and will
defend, indemnify, and hold Defendants, Defendants' counsel, Plaintiff's counsel and the Settlement
Administrator free and harmless from and against any claims resulting from treatment of such payments
as non-taxable damages.

1 45. No Effect on Employee Benefit Plans.

2 It is expressly understood and agreed that the receipt of Settlement Shares will not entitle any
3 Participating Class Member to additional or derivative compensation or benefits under any Defendants'
4 bonus, contest or other compensation or benefit plan or agreement in place during the period covered by
5 the Settlement, nor will it entitle any Participating Class Member to any increased retirement, 401k
6 benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that
7 the settlement awards provided for in this Agreement are the sole payments to be made by Defendants to
8 the Participating Class Members, and that the Participating Class Members are not entitled to any
9 additional or derivative compensation or benefits as a result of having received the Settlement Shares
10 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
11 might have been in effect during the period covered by this Settlement).

12 46. Undistributed Funds.

13 In the event that any checks mailed to Participating Class Members remain uncashed after the
14 expiration of 180 days, or an envelope mailed to a Participating Class Member is returned and no
15 forwarding address can be located for the Participating Class Member after reasonable efforts have
16 been made (including but not limited to skip tracing), then any such funds shall be transmitted to the
17 Settlement Administrator and distributed as follows in accordance with California Code of Civil
18 Procedure section 384:

19 100% to Court Appointed Special Advocates for Children of San Joaquin (serving
20 San Joaquin County).

21 V. ADMINISTRATION OF THE SETTLEMENT.

22 47. Duties of the Settlement Administrator.

23 The Settlement Administrator shall perform the duties required by this Settlement by, among
24 other things, and without limitation, (i) receiving and updating through normal and customary
25 procedures the Class List to be produced by Defendants, so that it is updated prior to the mailing of the
26 Class Notice, (ii) populating, printing, and mailing the Court-approved Class Notice, (iii) responding to
27 Class Member inquiries as appropriate, (v) performing necessary additional skip traces on any notices
28 and/or checks returned as undeliverable, (vi) tracking exclusions and calculating the Settlement Shares
of the Participating Class Members, (vii) resolving disputes during the administration process in the
manner described below, (viii) reporting to Class Counsel and Defense Counsel regarding
administration of the Settlement, (ix) establishing the QSF in the manner described below, (x) preparing
and mailing settlement checks to the Participating Class Members, (xi) preparing and distributing the
Court-approved payments to itself, the LWDA, the Class Representative, and Class Counsel, (xii)
preparing all appropriate tax forms required in connection with the payments called for by this
Settlement and remitting those forms and all required payments to the appropriate governmental
agencies, (xiii) providing notice of the Settlement in accordance with the Class Action Fairness Act
("CAFA"), (xiv) preparing a final report summarizing the administration of the Settlement, and (xv)
generally performing all normal and customary duties associated with the administration of such
settlements.

1 48. Dispute Resolution.

2 The Settlement Administrator shall have the initial responsibility for resolving any disputes that
3 arise during the administration of the Settlement including, without limitation, disputes regarding
4 whether a Class Member is entitled to a Settlement Share and, if so, the amount thereof. In resolving
5 such disputes, Defendants' records shall be presumed accurate and correct, and shall be final and
6 binding unless the information submitted by the individual (e.g., time records, wage statements,
7 employment records, etc.) proves otherwise. In the event that the Settlement Administrator cannot
8 resolve a dispute based upon a review of Defendants' records, the Settlement Administrator will
9 schedule a call with Class Counsel and Defense Counsel to discuss and resolve the dispute. After such
10 call, the Settlement Administrator will resolve the dispute and such resolution will be final and binding
11 on the Class Member.

12 49. Establishing the Qualified Settlement Fund.

13 The Settlement Administrator shall be responsible for establishing a QSF upon the Court's
14 approval to do so, which approval the Parties will jointly seek. The QSF will be taxed as a separate
15 entity for purposes of all federal, state, and local taxes, and the Parties agree to treat the QSF on a basis
16 consistent therewith. Any interest accrued shall inure to the benefit of the Class. The Maximum
17 Settlement Amount shall be deposited into the QSF. The deposit into the QSF shall be made within
18 fifteen (15) days after the Effective Date.

19 **VI. CLASS LIST, NOTICE TO CLASS MEMBERS, PARTICIPATION IN THE**
20 **SETTLEMENT, AND SETTLEMENT SHARES.**

21 50. Provision of the Class List.

22 Within 10 calendar days of the Court's entry of the Order of Preliminary Approval, Defendants
23 shall provide the Settlement Administrator with the Class List containing the following for each Class
24 Member: (i) name, (ii) last known address, (iii) social security number, and (iv) the number of wage
25 statements furnished to the Class Member on behalf of Health & HR Services, Inc. d/b/a VIM HR
26 during the Class Period. This information shall be treated by the Settlement Administrator as
27 Confidential Information.

28 51. Notice to Class Members.

 Promptly upon receipt of the Class List, the Settlement Administrator shall access the National
Change of Address Database ("NCOA") and update the addresses provided by Defendants. The
Settlement Administrator shall also populate the Class Notice with the number of wage statements
furnished to the Class Member during the Class Period. Within 10 calendar days after receipt of the
Class List, the Settlement Administrator shall mail the Class Notice to each Class Member via first-class
mail. For each notice returned as undeliverable before the Response Deadline, the Settlement
Administrator shall promptly attempt to determine a correct address using its best efforts and shall
resend the notice to any new address determined thereby.

1 52. No Claim Form Required.

2 Each Participating Class Member shall be entitled to a share of the Net Settlement Amount.
3 Participating Class Members shall not be required to complete a claim form. Class Members shall
4 receive a Class Notice informing them of the terms of the Settlement Agreement, their right to opt-out
5 and/or object, and an estimate of their share of the Net Settlement Amount. Unless a Class Member
elects to opt-out, he or she will be a Participating Class Member. Settlement Shares will be mailed to all
Participating Class Members.

6 53. Calculation of Settlement Shares.

7 The Settlement Shares will be proportionally based upon the number of wage statements
8 furnished to each Participating Class Member during the Class Period compared with the total number
9 of wage statements furnished to all Participating Class Members during the Class Period. The amount
10 of each Participating Class Member's Settlement Share shall be determined by the Settlement
11 Administrator by dividing the number of wage statements furnished to the Participating Class Member
12 during the Class Period by the total number of wage statements furnished to all Participating Class
Members during the Class Period, resulting in a payment ratio for each Participating Class Member.
Each Participating Class Member's payment ratio is then multiplied by the Net Settlement Amount to
determine his or her individual Settlement Share.

13 The Settlement Administrator shall mail the Settlement Shares to Participating Class Members
14 within 20 calendar days after Defendants fund the QSF.

15 54. Procedures for Challenges.

16 A Class Member may, before the Response Deadline, dispute the amount of his or her Settlement
17 Share, and the data used to calculate it, by timely sending a written notice to the Settlement
18 Administrator informing the Settlement Administrator of the nature of the dispute and providing any
19 records or documentation supporting their position. In response to such a challenge, Defendants will
20 first verify the accuracy of the information contained in its records. Next, Class Counsel and Defense
21 Counsel will make a good faith effort to resolve the dispute informally. If Class Counsel and Defense
Counsel are unable to agree, the dispute shall be resolved by the Settlement Administrator after
examination of the records provided by the Class Member and Defendant. The Settlement
Administrator's determination will be final and binding.

22 If, before the Response Deadline, an individual not previously identified in the Class List asserts
23 his or her membership in the Class and seeks recovery under the Settlement, the Settlement
24 Administrator shall provide Class Counsel and Defense Counsel with the evidence submitted by the
25 individual. To be eligible for recovery under this Settlement, individuals must provide sufficient proof
26 to the Settlement Administrator supporting his or her request for inclusion, including specific evidence
27 establishing that he or she qualifies as a Class Member as defined herein. If Class Counsel and Defense
28 Counsel agree an individual is not a Class Member, the Settlement Administrator will inform the
individual that their request for inclusion has been rejected. If Class Counsel and Defense Counsel are
unable to agree, the dispute shall be resolved by the Settlement Administrator after examination of the
records provided by the Class Member and Defendant. The Settlement Administrator's determination
will be final and binding.

1 **VII. EXCLUSIONS, OBJECTIONS AND BINDING EFFECT OF SETTLEMENT.**

2 55. Right to Opt-Out of Settlement.

3 The Class Notice will advise each Class Member of their right to exclude themselves from or
4 opt-out of the Settlement. To be effective, requests for exclusion must (a) be submitted in writing to the
5 Settlement Administrator, postmarked on or before the Response Deadline (i.e., no later than 30
6 calendar days from the date of mailing of the Class Notice); (b) contain the individual's full name,
7 current home (or mailing address), and the last four digits of his or her social security number; (c) be
8 signed by the individual; and (d) include written affirmation of his or her desire to exclude themselves
9 containing the following or substantially similar language:

10 "I elect to opt-out of the *Bice. v. Vensure HR, Inc., et al.* partial class action settlement. I
11 understand that by doing so, I will not be able to participate in the settlement, and will not
12 receive a share of the settlement."

13 The Settlement Administrator shall notify Class Counsel and Defense Counsel of the number of
14 opt-outs within 48 hours of its receipt of requests for exclusion. The Class Notice shall include the
15 specific address to which requests for exclusion must be mailed as well as a summary of this paragraph.
16 Any Class Member who timely requests exclusion from this Settlement shall not have any rights under
17 the Settlement, shall not be entitled to receive a Settlement Share, shall not be bound by the Settlement
18 or the Order of Final Approval, and shall not have the right to file an objection to the Settlement.

19 56. Right of Class Members to Object to Settlement.

20 The Class Notice will advise each Class Member of their right to object to the Settlement. To be
21 effective, the Class Member cannot opt-out and objections must (a) be mailed to the Court, postmarked
22 on or before the Response Deadline (i.e., no later than 45 calendar days from the date of mailing of the
23 Class Notice); (b) clearly identify the case name and number; (c) contain the objector's full name,
24 current home (or mailing address), and the last four digits of his or her social security number; (d)
25 clearly and concisely state all grounds for the objection; (e) indicate whether the objector is represented
26 by counsel and, if so, identify such counsel; (f) indicate whether the objector his or her counsel intend to
27 appear at the Final Approval Hearing; and (g) be signed by the objector or his or her counsel.

28 The Class Notice shall include the specific address to which objections must be mailed as well as
a summary of this paragraph. No Class Member may be heard at the Final Approval Hearing unless he
or she has complied with these requirements, or any requirements mandated by the Court, and any Class
Member who fails to comply with said requirements shall be deemed to have waived his or her right to
object to the Settlement. The Parties will not be responsible for any fees, costs, or expenses incurred by
any Class Member and/or his or her counsel related to any objections to the Settlement and/or appeals
arising therefrom. Any Class Member whose objection is overruled will be deemed to be a Participating
Class Member and subject to the terms of this Settlement and the Court's Order of Final Approval.

57. Binding Effect on Participating Class Members.

All Participating Class Members will bound by the terms and conditions of this Settlement, the
Court's Order of Final Approval, and the releases set forth herein.

1 **VIII. RELEASES**

2 58. Released Claims.

3 As of the Effective Date, and in exchange for the consideration provided herein, Plaintiffs, on
4 their own behalf and as Class Representatives, and all Participating Regular Rate Class Members,
5 hereby forever and completely release and discharge Defendant and Released Parties from any and all
6 claims for failure to furnish accurate itemized wage statements, failure to maintain accurate itemized
7 wage statements, in violation of California Labor Code section 226, breach of contract based upon
8 failure to furnish or maintain accurate itemized wage statements, and any other claims or causes of
9 action that could be raised based on the facts pled in this action and which arose during the Class Period.

10 In addition, all Participating Class Members shall be enjoined from seeking any monetary
11 relief/award by filing any claims with the Division of Labor Standards and Enforcement or
12 Department of Labor, or from initiating other proceeding regarding claims released under this
13 Settlement.

14 59. Released PAGA Claims.

15 As of the Effective Date, it is understood and agreed that Plaintiff, on behalf of himself, the
16 Labor and Workforce Development Agency, and the other aggrieved employees in the State of
17 California, releases Defendants and Released Parties from any and all claims based upon alleged
18 violations of the Private Attorneys' General Act, California Labor Code section 2699.3, based upon
19 allegations of violations of Labor Code section 226 from January 26, 2015, through the date of
20 Preliminary Approval. The claims described above are referred to herein as the "Released PAGA
21 Claims."

22 It is the intent of the Parties that the judgement entered by the Court upon final approval of the
23 Settlement shall have *res judicata* effect and be final and binding upon Plaintiffs and all Participating
24 Class Members.

25 60. Release by Class Representative.

26 As of the Effective Date, in addition to the Released Claims, and in consideration for receipt of a
27 Service Payment, Class Representative Spencer Bice expressly additionally releases all claims relating
28 to his relationship with Defendants, including but not limited to, claims for, breach of contract, breach of
the covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress;
defamation; wrongful discharge; retaliation; harassment; violation of public policy; constructive
discharge; whistleblowing; interference with prospective economic advantage or contractual relations;
unfair business practices; unfair competition; or other tort or personal injury; violation of any federal,
state, or other governmental statute, regulation, or ordinance, including, without limitation violation of
Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical
Leave Act, the California Fair Employment and Housing Act, the California Family Rights Act, the
California Labor Code or any Industrial Welfare Commission Wage Order, and vested benefits under
the Employee Retirement Income Security Act. The Class Representative expressly waives and
relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California
and does so understanding and acknowledging the significance of the waiver of Section 1542. Section

1 1542 of the Civil Code of the State of California states: A GENERAL RELEASE DOES NOT
2 EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
4 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
5 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
7 complete release and discharge of Defendants and Released Parties, Class Representative expressly
8 acknowledges that this Settlement is intended to include in its effect all claims that Class Representative
9 know of, as well as all claims that he does not know or suspect to exist in his favor against Defendants
10 and Released Parties, and that this Settlement contemplates the extinguishment of any such claims.

11 **IX. FINAL SETTLEMENT APPROVAL.**

12 **61. Final Approval Hearing.**

13 Class Counsel will take all necessary steps to secure the Court's final approval of this Settlement.
14 Defense Counsel agrees not to oppose Class Counsel's request for final approval of this Settlement as
15 long as the Class Counsel's request for final approval is consistent with the terms of this Settlement. A
16 Final Approval Hearing shall be held for the purpose of purpose of considering, *inter alia*, (a) the
17 fairness, adequacy, and reasonableness of the Settlement, (b) the Service Payments to Class
18 Representative, (c) the fees and reasonable costs of Class Counsel, and (d) the propriety of any timely
19 objections as well as Class Counsel's and Defense Counsel's response thereto. The date of the Final
20 Approval Hearing shall be set by the Court, and notice of such shall be provided to Class Members in
21 the Class Notice. Although the Court may continue the Final Approval Hearing without further notice
22 to the Class Members.

23 Plaintiff will respectfully request the Court enter an Order of Final Approval, and Defendants
24 agree not to oppose as long as the Order of Final Approval remains consistent with the terms of this
25 Settlement:

- 26 (i) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and
27 adequate, and directing consummation of its terms and provisions;
- 28 (ii) Approving payment to the Settlement Administrator;
- (iii) Approving the Service Payment to the Class Representative for his service as Class
Representative;
- (iv) Approving Class Counsel's application for fees and reasonable costs;
- (v) Permanently enjoining and restraining Participating Class Members from and against
initiating or pursuing against Defendants any individual, representative, or class claims
released by this Settlement;
- (vi) Entering judgment in this Class Action consistent with the terms of this Settlement; and
- (vii) Retaining jurisdiction to the extent necessary over the subject matter of the Class Action
and over the Parties and Class Members to enforce the terms of the Settlement.

1 **X. TERMINATION OF THE SETTLEMENT.**

2 62. Defendants' Right to Terminate the Settlement.

3 Notwithstanding any other provision in this Settlement, if ten percent (10%) or more of the Class
4 Members opt out of the Settlement, Defendants shall have the right, in their sole discretion, to rescind,
5 nullify, and terminate the Settlement within 10 business days after the expiration of the Response
6 Period. The Settlement Administrator shall notify Defense Counsel and Class Counsel via email
7 immediately if the ten percent (10%) threshold for opt-outs is exceeded. If Defendants exercise this
8 right, however, they shall be responsible for the reasonable fees and costs of the Settlement
9 Administrator to that point.

8 63. Effect of Termination.

9 If the Settlement is terminated in accordance with the terms set forth herein (a) the Settlement
10 shall have no force or effect, and no party shall be bound by any of its terms; except as otherwise
11 provided herein, (b) the Order of Preliminary Approval and/or Order of Final Approval shall be vacated,
12 (c) the Settlement and all negotiations, statements, and proceedings related thereto shall be without
13 prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in
14 the Class Action prior to the settlement, and (d) neither this Settlement Agreement, nor the filings in
15 connection with the sought approval thereof shall be admissible or offered into evidence in the Class
16 Action or in any other action for any reason whatsoever.

14 **XI. MISCELLANEOUS TERMS.**

15 64. Mutual Cooperation.

16 The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
17 Agreement, including but not limited to, executing and amending such documents and taking such other
18 actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The
19 Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and
20 any other efforts that may become necessary by order of the Court or otherwise, to effectuate this
21 Settlement Agreement and the terms set forth herein. Neither party, nor their counsel, employees, or
22 agents, shall solicit or encourage any Class Member to exclude themselves from the Settlement or object
23 to the Settlement.

22 65. Modification.

23 This Settlement Agreement may not be changed, altered, or modified, except in writing and
24 signed by counsel for the Parties, and approved by the Court, provided however that changes solely to
25 the timing and deadlines herein may be made for administrative convenience by written agreement of
26 counsel for all Parties without Court approval. This Settlement Agreement may not be discharged
27 except by performance in accordance with its terms or by a writing signed by the Parties hereto and
28 approved by the Court.

1 66. Integration Clause – Entire Agreement.

2 This Settlement Agreement and the attached exhibits contains the entire agreement between the
3 Parties relating to the settlement of the Class Action and the transaction contemplated hereby, and all
4 prior or contemporaneous agreements, understandings, representations, and statements, whether oral or
5 written and whether by a party or such party's legal counsel, are merged herein. In entering into this
Settlement Agreement, none of the Parties has relied on any representation or promise not expressly set
forth in this Settlement Agreement. No rights hereunder may be waived except in writing.

6 67. Class Counsel Signatories.

7 It is agreed that because of the anticipated large number of Participating Class Members, it will
8 be impossible or impractical to have each Participating Class Member execute this Settlement
Agreement. As such, Class Counsel is signing on behalf of the Participating Class Members. In
9 addition, the Notice will advise Class Members of the binding nature of the Settlement, and their right to
Opt-Out and/or object and shall have the same force and effect as if it were executed individually by
10 each Participating Class Member.

11 68. Confidentiality Preceding Preliminary Approval.

12 The Parties and their respective counsel agree that they will not issue any press releases, initiate
13 any contact with the press, respond to any press inquiry, or have any communication with the press
14 about the fact, amount or terms of the Settlement prior to the filing of the Motion for Preliminary
Approval. Any communication about the Settlement to Class Members prior to the court-approved
15 mailing will be limited to a statement that a settlement has been reached and the details will be
communicated in a forthcoming Court-approved notice.

16 69. No Publicity.

17 Following the filing of the Motion for Preliminary Approval, the Parties understand and agree
18 that there may be media coverage of the settlement not initiated by Plaintiff or Defendants, directly or
19 indirectly, as a result of the public filings. Notwithstanding the foregoing, Plaintiff, Defendants, and
their respective counsel agree that no Party shall issue any press release to the news media, nor shall any
20 Party disclose any information regarding this settlement in their marketing materials or firm websites,
nor shall any Party communicate in any way with news media concerning the settlement or the Class
21 Action. This provision shall not apply to or limit the public filing of motions or other case materials in
the Class Action related to seeking and obtaining Court approval of the proposed Settlement Agreement,
22 the fees and costs of Class Counsel, the Service Payment to the Class Representative, and the other relief
set forth in this Settlement Agreement. This provision also shall not prohibit Class Counsel from
23 responding to specific questions from Class Members or listing the class action lawsuit identified herein
by name in support of a motion for appointment as class counsel or motion for attorney's fees.

24 70. Interim Stay of Proceedings.

25 Pending the completion of the approval process, the Parties agree to a stay of all proceedings in
26 the Class Action except those necessary to implement the Settlement itself.
27
28

1 71. Notices.

2 Any notices, requests, requests, demands, or other communications required or necessitated by
3 this Settlement Agreement shall be in writing and, except as provided elsewhere in this Settlement
4 Agreement, shall be delivered as follows:

5 (i) If to Plaintiffs or Class Counsel, then to:

6 Robert J. Wasserman, Esq.
7 William J. Gorham, Esq.
8 Nicholas F. Scardigli, Esq.
9 Jenny D. Basyinger, Esq.
10 Vladimir J. Kozina, Esq.
11 MAYALL HURLEY, P.C.
12 2453 Grand Canal Blvd.
13 Stockton, CA 95207
14 Email: wgorham@mayallaw.com
15 Email: rwasserman@mayallaw.com
16 Email: nscardigli@mayallaw.com
17 Email: jbaysinger@mayalaw.com
18 Email: vjkozina@mayallaw.com

19 (ii) If to Defendants or Defense Counsel, then to:

20 Jesse E.M. Randolph, Esq.
21 RANDOLPH LEGAL GROUP
22 360 E. 1st Street #330
23 Tustin, CA 92780
24 Email: jesse@randolphlegalgroup.com

25 72. Retention of Jurisdiction by the Court.

26 Following approval of the Settlement and the Court's entry of the Order of Final Approval, the
27 Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to
28 the administration of the Settlement or the enforcement of the Settlement's terms.

29 73. Choice of Law.

30 This Settlement shall be governed by and construed, enforced and administered in accordance
31 with the laws of the State of California.

32 74. Construction.

33 This Agreement is entered into freely and voluntarily without duress or undue pressure or
34 influence of any kind or nature whatsoever and neither Party has relied on any promises,

representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each Party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of California Civil Code section 1654 (and any other equivalent state, federal, or local provision), which provides, in part, that "the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist."

75. Execution in Counterparts.

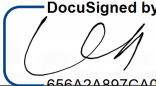
This Agreement may be executed in counterparts, by facsimile and/or by electronic signature/PDF, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by facsimile or electronically and any copies of any signatures are valid and binding.

76. Authority.

The individuals signing this Agreement represent and warrant that they are authorized to do so. Those individuals likewise represent and warrant that they have the authority to execute this Agreement and to take all appropriate action required and permitted to be taken by this Agreement, except such action that is the prerogative of the Court.

1/14/2022

DATED: January __, 2022

By  DocuSigned by:
666A2A897CA041B...
SPENCER BICE
Plaintiff

DATED: January __, 2022

By _____
Its _____
Defendant Vensure HR, Inc.

DATED: January __, 2022

By _____
Its _____
Defendant Vensure Employer Services, Inc.

1 **APPROVED AS TO FORM AND CONTENT:**

2 **DATED:** January __, 2022

RANDOLPH LEGAL GROUP

3 By _____

4 JESSE E.M. RANDOLPH
5 Attorneys for Defendants
6 VENSURE HR, INC. and
7 VENSURE EMPLOYER SERVICES, INC.

8 **DATED:** January 14, 2022

MAYALL HURLEY P.C.

9 By _____

10 ROBERT J. WASSERMAN
11 WILLIAM J. GORHAM
12 NICHOLAS F. SCARDIGLI
13 JENNY D. BAYSINGER
14 VLADIMIR J. KOZINA
15 Attorneys for Plaintiff and the Class
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1 representations or warranties regarding the subject matter hereof other than as set forth in this
2 Agreement. Each Party has been represented by counsel in the settlement negotiations leading up
3 to, and in connection with the preparation and execution of, this Settlement Agreement. The
4 Parties acknowledge and agree that all Parties had an equal hand in drafting this Agreement so
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8 interpreted most strongly against the Party who caused the uncertainty to exist."

6 75. Execution in Counterparts.

7 This Agreement may be executed in counterparts, by facsimile and/or by electronic
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12 Those individuals likewise represent and warrant that they have the authority to execute this Agreement
13 and to take all appropriate action required and permitted to be taken by this Agreement, except such
14 action that is the prerogative of the Court.

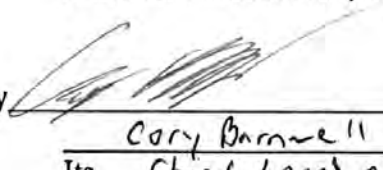
15 DATED: January ____, 2022

16 By _____
17 SPENCER BICE
18 Plaintiff

18 DATED: January 13, 2022

19 By  _____
20 Its Cory Barnwell
21 Chief Legal officer
22 Defendant Vensure HR, Inc.

22 DATED: January 13, 2022

23 By  _____
24 Its Cory Barnwell
25 Chief Legal officer
26 Defendant Vensure Employer Services, Inc.

1 **APPROVED AS TO FORM AND CONTENT:**

2 **DATED:** January 13, 2022

RANDOLPH LEGAL GROUP

3 By



4 JESSE E.M. RANDOLPH
5 Attorneys for Defendants
6 VENSURE HR, INC. and
VENSURE EMPLOYER SERVICES, INC.

7 **DATED:** January __, 2022

MAYALL HURLEY P.C.

8 By

9 ROBERT J. WASSERMAN
10 WILLIAM J. GORHAM
11 NICHOLAS F. SCARDIGLI
12 JENNY D. BAYSINGER
13 VLADIMIR J. KOZINA
14 Attorneys for Plaintiff and the Class
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