

SETTLEMENT AGREEMENT AND RELEASE
LABOR CODE PRIVATE ATTORNEY'S GENERAL ACT

De Leon, V. VIP Emergent Care, Inc. et al.
Ventura Co. Sup. Ct. Case No 56-2021-00549419-CU-OE-VTA

This Settlement Agreement and Release (the “Agreement”) is made and entered into by and between Justin De Leon (“De Leon” or “Plaintiff”), on the one hand, and VIP Emergent Care, A Medical Corporation, et al. and Jaime Alonso Diaz, M.D. (collectively, “VIP” or “Defendants”), on the other hand. Plaintiff and Defendants shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Plaintiff was formerly employed by Defendants from January 7, 2019, until the termination of Plaintiff’s employment in December 2019.

B. On September 23, 2020, Plaintiff made an online filing with the California Labor and Workforce Development Agency (“LWDA”), in LWDA Case No. LWDA-CM-807442-20, asserting that Defendants failed to comply with various provisions of the California Labor Code (the “PAGA Notice”). Plaintiff seeks penalties pursuant to the California Labor Code Private Attorneys General Act (“PAGA”) as set forth in California Labor Code §2698 *et. seq.*, on behalf of all current and former non-exempt employees of VIP in Simi Valley, California who were employed by Defendants at any time from September 23, 2019, though the date of approval of this settlement (“PAGA Claim Employees”) for asserted violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558(a), 558(c), 1174, 1174.5, 1191, 1194, 1194.2, 1197, 1197.1, 1198, 2699(a), 2699(f), 2699.3, and 2699.5 and Industrial Welfare Commission Order No. 2001-4 (the “Representative PAGA Claims”). Plaintiff also seeks an award of reasonable attorneys’ fees and costs as permitted by the PAGA, Labor Code § 2699.

C. On January 4, 2021, Plaintiff filed a putative Class Action Complaint for: 1) Willful Failure to Pay Minimum Wages (Lab. Code §§ 1191, 1194, 1194.2, 1197); 2) Unpaid Overtime Wages (Lab. Code, §§ 510, 1194); 3) Failure to Provide Accurate Itemized Wage Statements (Lab. Code 226); 4) Failure to Timely Pay Wages Due at Termination (Lab. Code, § 201-203); 5) Unlawful Pre-Employment Inquiry About Conviction History (Fair Chance Act, Cal. Gov. Code, § 12952 *et seq.*); Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*); and Labor Code Private Attorneys General Act (Labor Code §§ 2699 *et seq.*) (the “Complaint”) in Ventura County Superior Court, titled, *JUSTIN DE LEON, individually and on behalf of all others similarly situated, Plaintiff, v. VIP EMERGENT CARE, INC. D/B/A VIP URGENT CARE, JAIME ALONSO DIAZ, M.D., and DOES 1 through 50, inclusive, Defendants*, Case Number 56-2021-00549419-CU-OE-VTA. The Complaint and the PAGA Notice will hereinafter be referred to collectively as the “Action,” and are attached hereto as **Exhibit A** and **Exhibit B**, respectively. On March 23, 2021, Plaintiff filed an amendment to the Complaint to correct the name of Defendant VIP Emergent Care, A Medical Corporation.

D. On September 9, 2022, the Parties attended a full day mediation session with experienced mediator, Shane Sagheb, Esq. After extensive arms-length negotiations, the Parties reached a settlement of the Representative PAGA Claims and Plaintiff’s individual claims, and entered into a memorandum of understanding, attached hereto as **Exhibit C** and incorporated herein. The settlement is further detailed in this Agreement, which the Parties will seek approval

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of with the Ventura County Superior Court by means of a Motion for Approval of PAGA Settlement (the "Motion").

E. The Parties acknowledge that there is a bona fide dispute as to the merits of Plaintiff's claims. The Parties further desire to compromise, settle and release all PAGA claims predicated on the alleged Labor Code violations to Plaintiff individually and all PAGA Claim Employees as set forth in the Action.

F. Through the course of civil discovery and investigation of Plaintiff's claims, Plaintiff learned there were approximately seven (7) employees at the Simi Valley location at any one time during the relevant claims period, and no employees at any other VIP location.

G. A material factor in this matter is that VIP stopped operating its business in September of 2020, and issued final paychecks to its employees in October of 2020.

H. The Parties believe and agree that the PAGA Settlement herein provides for a fair, adequate, and reasonable resolution of the PAGA claims, and have arrived at the settlement in extensive, arms-length negotiations, considering all relevant factors, present and potential.

I. By this Agreement, the Parties have settled, fully and finally, all PAGA claims that De Leon has or might have against VIP, up to and including the date of execution hereof, including but not limited to those claims which could be asserted in any lawsuit, or any administrative, civil, or governmental proceeding and any claims that could be asserted by the PAGA Claim Employees related to the representative PAGA claims.

NOW, THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the Parties agree as follows:

TERMS AND SETTLEMENT

1. **No Admission of Liability.** This Agreement memorializes the compromise of disputed claims. The Parties acknowledge that the execution of this Agreement and the payment of consideration or any other obligation hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of VIP, or any other person or business entity. VIP denies all allegations of wrongdoing arising out of the employment relationship between the Parties including the PAGA Claim Employees. The Parties intend, by this Agreement, merely to avoid the expense, delay, uncertainty, and burden of continued litigation.

2. **Consideration by VIP.** In exchange for a full and complete settlement and in release and discharge of the Released Claims with respect to Plaintiff's PAGA Claims and the PAGA Claim Employees, VIP will pay the gross amount of **Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00)** (the "Gross PAGA Settlement Amount"). Defendants shall not be required to pay more than the Gross Settlement Amount to obtain the PAGA relief provided in this Agreement or to fully and finally settle and resolve the PAGA Claims; provided, however, the Parties separately negotiated, and Defendants have agreed, to pay Fifteen Thousand Dollars (\$15,000) to Plaintiff for the settlement and release of his individual non-PAGA claims pursuant

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to the terms of a separate settlement agreement, which include all claims for wrongful termination and unlawful retaliation. In no way will the amount VIP is to pay as part of both settlements exceed the total sum of \$50,000.00. Defendants shall wire the Gross PAGA Settlement Amount to the Settlement Administrator pursuant to the timing listed below in Section 3. Upon the Settlement Administrator's receipt of the funds, the Settlement Administrator will then disburse payment pursuant to the timing listed below in Section 3, and according to the terms of this Agreement as follows:

2.1 *Representative Service Payment.* One check payable to Justin De Leon in the gross amount of **Five Thousand Dollars (\$5,000.00)**. The Parties intend this amount to represent compensation for Plaintiff as the PAGA representative on behalf of the PAGA Claim Employees and for any other PAGA claims De Leon has or may have against Defendant. The Settlement Administrator will issue an IRS form 1099 to Plaintiff regarding this payment. This is not a material term of this Agreement, and any denial or modification by a Court of this term will not invalidate the rest of this Agreement. Any reduced amounts will be added to the portion of the settlement to be paid to the LWDA and the PAGA Claim Employees under paragraph 2.4 of this Agreement.

2.2 *Attorney's Fees and Costs.* One-third (1/3) of the Gross Settlement Amount for attorneys' fees to Plaintiff's counsel, or **Eleven Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$11,666.67)** plus **Three Thousand Sixty-Five Dollars and Fifty Cents (\$3,065.50)** for reimbursement of Plaintiff's counsel's costs, the combined total of which is **\$14,732.17**. The Settlement Administrator shall issue appropriate IRS form 1099s to Plaintiff's counsel. This is not a material term of this Agreement, and any denial or modification by a Court of this term will not invalidate the rest of this Agreement. Any reduced amounts will be added to the portion of the settlement to be paid to the LWDA and the PAGA Claim Employees under paragraph 2.4 of this Agreement.

2.3 *Administration Costs.* Actual administration costs, currently estimated as **Five Hundred Dollars (\$500.00)** shall be paid to the Settlement Administrator, SETTLEMENT ADMINISTRATOR, from the Gross Settlement Amount, which will cover all costs of distribution, including: (a) reporting payment of the individual settlement payments to all required taxing and other authorities, take appropriate withholdings, and issue IRS Forms 1099; (b) translating, if necessary, any notices provided to the PAGA Claim Employees; (c) establishing a Qualified Settlement Fund ("QSF") for the purpose of administering the Settlement; and (d) all of the costs, fees, and expenses, incurred in performing the above listed functions and those contemplated in Section 3.

2.4 *Net PAGA Settlement Amount.* The remaining balance after deducting the amount being paid to Plaintiff, attorneys' fees and costs, and the Settlement Administrator's Fees is estimated to be no less than Fourteen Thousand Seven Hundred Sixty Seven Dollars and Eighty-Three Cents (**\$14,767.83**) (the "Net PAGA Settlement Amount"), which shall be distributed as follows:

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a. *Payment to LWDA.* Seventy Five Percent (75%) of the Net PAGA Settlement Amount, or no less than **(\$11,075.87)** shall be paid to the California Labor and Workforce Development Agency (“LWDA”) which represents civil penalties payable to the LWDA under the Labor Code Private Attorneys General Act (“PAGA”), Labor code section 2698, *et seq.*

b. *Payments to PAGA Claim Employees.* Twenty Five Percent (25%) of the Net Settlement Amount, or no less than **(\$3,691.96)** (the “PAGA Claim Employee Amount”) shall be paid to the PAGA Claim Employees which represents civil penalties payable to the PAGA Claim Employees as compensation for disputed civil penalties that are allegedly owed on the Representative PAGA Claims for the period from September 23, 2019, though the date of approval of this settlement by the Court as to all alleged PAGA Claim Employees described in the Lawsuit, which amounts shall be distributed by a Settlement Administrator agreed upon by the Parties pursuant to the formula set out in paragraph 2.5 below.

2.5 The formula for distribution of the amount described in Section 2.4(b) is as follows: Each PAGA Claim Employee shall be allocated a proportionate share of the PAGA Claim Employee Amount based on the Defendant's data regarding the number of Qualifying Wage Statements he/she received while employed as a PAGA Claim Employee during the relevant time set forth in Section 2.4(b). To perform this function, “Qualifying Wage Statements” are to be identified and tabulated by assigning a value of “1 wage statement” to each wage statement during the time which the individual was employed by Defendants in a non-exempt position in California from September 23, 2019, to the date of approval of this Agreement (the “Settlement Period”). After calculating the Qualifying Wage Statements for each individual PAGA Claim Employee, the Settlement Administrator shall then compute the sum of all Qualifying Wage Statements combined to arrive at an “aggregate total of all Qualifying Wage Statements worked by all PAGA Claim Employees.” After calculating the “aggregate total of all Qualifying Wage Statements worked by all PAGA Claim Employees,” the amount payable per-wage statement will then be calculated by dividing the amount specified in Section 2.4(b) by the “aggregate total of all Qualifying Wage Statements issued to all PAGA Claim Employees.” The amount payable per-wage statement will then be multiplied by the number of Qualifying Wage Statements worked by the individual PAGA Claim Employee. This figure will be known as the “PAGA Claim Employee Settlement Award” (defined herein as “the amount of money allocated to each PAGA Claim Employee”).

3. **PAGA Settlement Administration.** The Parties have agreed to selecting Phoenix Settlement Administrators of Orange, California, as the Settlement Administrator to administer the Settlement. All the Settlement Administrator’s costs and fees shall be paid from the Gross Settlement Amount.

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3.1 Within fifteen (15) business days after the Effective Date (as defined in Section 9), Defendants shall provide to the Settlement Administrator a spreadsheet, in a searchable electronic format, which contains the following for each individual falling within the definition of PAGA Claim Employee for the entire Settlement Period: (i) each PAGA Claim Employee's name, (ii) last known address, (iii) last known telephone number (if available), (iv) social security number, and (v) the number of Wage Statements during the Settlement Period (the "PAGA Claim Employee List"). The PAGA Claim Employee List shall be held as private and confidential information and shall not be shared with Plaintiff's counsel or any third party by the Settlement Administrator without the express written consent of Defendant's counsel of record and/or court order. The Settlement Administrator shall conduct one National Change of Address ("NCOA") search for all PAGA Claim Employees identified on the PAGA Claim Employees List.

3.2 Within fifteen (15) business days after the Effective Date Defendants shall transfer the Gross PAGA Settlement Amount to the Settlement Administrator to affect disbursement of the Gross PAGA Settlement Amount.

3.3 Within fourteen (14) calendar days of transfer of the Gross PAGA Settlement Amount, the Settlement Administrator shall distribute such funds under the allocation plan set forth in Sections 2.1- 2.5 above. All Settlement checks sent to the PAGA Claim Employees shall be accompanied with a Notice, attached hereto as **Exhibit D**, which shall provide a brief description of the Complaint and this Settlement.

3.4 As the Representative PAGA Claims is not a class action, the Parties agree that California Code of Civil Procedure section 384 shall not be applicable. Any checks uncashed after 6 months will escheat to the LWDA. The Settlement Administrator shall be responsible for administration of all unclaimed funds, including all reporting requirements proscribed by California law.

3.5 Within Twenty (20) calendar days of distributing the Gross PAGA Settlement Amount, the Settlement Administrator shall provide to the Parties, for filing with the Court by Plaintiff, a declaration verifying, under oath, that the Settlement Administrator has affected disbursement of the Gross Settlement Amount pursuant to the terms of this Agreement.

3.6 All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class mail, to counsel of record at their respective addresses.

4. **Court Approval, Dismissal, and Judgment.** Plaintiff's Counsel shall file a motion with the Court to enter the Order Approving Settlement and entering Judgment thereon. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed to obtain approval of this Agreement. The Court's approval of this Agreement shall be embodied in a written Order. The Parties shall also jointly request and reserve the Court's continuing jurisdiction over the construction, interpretation, implementation,

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and enforcement of this Settlement in accordance with its terms, and over the administration and distribution of the settlement proceeds pursuant to California Code of Civil Procedure section 664.6.

4.1 If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

4.2 Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of PAGA Claim Employees (Recital B); the definition of Effective Date (Section 8); the definition of Settlement Period (Section 2.5); the definition of Released Claims (Section 6); the definition of Released Parties (Section 6); the definition of Gross PAGA Settlement Amount (Section 2); the requirement for entry of an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Section 4. The following terms are not material to this Agreement, meaning the Court can modify the amounts allocated in this Agreement: the allocation of fees and costs to Plaintiff's counsel under Section 2.2; the amount of the Settlement Administration fee (Section 2.3); the amount paid to Plaintiff for his service under section 2.2.

5. **Taxes.** De Leon understands and acknowledges that VIP will not deduct any taxes or other withholdings from the representative service payment described in Section 2.1 above and that he is fully responsible for all taxes, if any, to the Internal Revenue Service, California Franchise Tax Board, or other taxing authorities, pertaining to any payments that he received under this Agreement. De Leon will receive an IRS Form 1099 for said sums. Plaintiff and each PAGA Claim Employee bear full responsibility for the payment of any taxes or withholdings arising from the PAGA Claim Employee Settlement Awards or enhancement payments paid to them. Neither Plaintiff's Counsel nor counsel for Defendants intend anything contained herein to constitute advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such. The tax issues for each PAGA Claim Employee are unique, and each PAGA Claim Employee is advised to obtain tax advice from his or her own advisor with respect to any payments resulting from this Settlement.

6. **Release by Plaintiff on Behalf of the LWDA.** Upon the approval by the Court of this Agreement, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, agrees to release Defendant, its affiliates, subsidiaries, owners, members, partners, officers, directors, predecessors, successors, assigns, agents, shareholders, investors, insurers and legal representatives ("Released Parties") for penalties for the Representative PAGA Claims, as defined in Recital B on page 1 of this Agreement ("Released Claims"). (The claims waived against unknown future successors and assigns of Defendants consist of the PAGA claims that

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are waived against Defendants). The express purpose of this Agreement and the Judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiff, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA (including all PAGA Claim Employees) from asserting any of the Released PAGA Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California or any PAGA Claim Employee to bring a PAGA claim on behalf of the LWDA based on the Released Claims is completely and forever foreclosed. Any Party to this Agreement may use the Agreement to assert that this settlement and the judgment to be entered by the Court following approval by this settlement bars any later-filed action asserting any of the Released PAGA Claims against any of the Released Parties at any time from September 23, 2019, though the date of approval of this Agreement.

The PAGA Claim Employees waive any rights provided by California Civil Code Section 1542 as to the Released PAGA Claims only, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

7. **De Leon 's Individual Release of Unknown PAGA Claims.** For the purpose of implementing a full and complete release and discharge of PAGA claims, De Leon expressly acknowledges that the releases given in the Agreement are intended to include in their effect, without limitation, that with respect to the Released Claims, all PAGA claims that he did not know or suspect at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Agreement is also for the release of those PAGA claims and contemplates the extinguishment of any such claims. In furtherance of this Agreement, De Leon waives any rights provided by California Civil Code Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

8. **Counsel Release.** As of the Effective Date, and except as otherwise provided by this Agreement, Plaintiff's Counsel and any counsel associated with Plaintiff's Counsel (Rose Law APC and Law Office of Michael Velarde), including without limitation Joe Rose, Esq. and Michael Velarde, Esq., waive any claim to costs and attorneys' fees and expenses against

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Defendants or the Released Parties arising from or related to the Action, except those incurred to enforce this Agreement, including but not limited to claims based on the California Labor Code, the California Civil Code, the California Code of Civil Procedure, the Fair Labor and Standards Act, or any other statute or law (the “Class Counsel Released Claims”).

9. **Effective Date.** The “Effective Date” of this Agreement is the date this Agreement is approved as provided herein and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Agreement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

10. **Circular 230 Disclosure.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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11. **Non-Publicity Provision.** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of this Agreement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Agreement of this case in any manner that identifies the Defendants, including but not limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor Plaintiff's counsel will discuss the terms or the fact of the Agreement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other PAGA Claim Employees. Plaintiff and Plaintiff's counsel agree not to publish any of the terms or conditions of this Agreement in any manner that identifies the Defendants. However, Plaintiff's counsel may identify this Agreement in other matters to demonstrate their adequacy as counsel in such other matters.

12. **LWDA Notice.** Pursuant to California Labor Code section 2699(l), Plaintiff will provide a copy of this Agreement to the LWDA concurrently with the filing of the motion for settlement approval. Plaintiff will also file a declaration in support of their Motion for Settlement Approval confirming that they have submitted the Agreement to the LWDA in compliance with Labor Code section 2699(l). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or Order.

13. **Successors.** This Agreement shall be binding upon, and inure to the benefit of, the Parties, and their heirs, representatives, executors, administrators, successors, insurers, and assigns, and shall inure to the benefit of each and all the Releasees, and to their heirs, representatives, executors, administrators, successors, and assignees.

14. **Breach by Parties.** In addition to any other rights the Parties have or may have under this Agreement, in the event of a breach by either party of any of the terms of this Agreement, the non-breaching Party shall be entitled, if it shall so elect, to institute legal proceedings to obtain damages for any such breach, or to enforce the specific performance of this Agreement by either party and to enjoin the other party from any further violation of this Agreement and to exercise such remedies cumulatively or in conjunction with all other rights and remedies provided by law. The Parties acknowledge, however, that the remedies at law for any breach by either party may be inadequate and that the non-breaching party shall be entitled to injunctive relief against the breaching party in the event of any breach. If the non-breaching party prevails in a proceeding for damages or injunctive relief, the breaching party agrees that the non-breaching party, in addition to other relief, shall be entitled to reasonable attorney fees, costs, and the expenses of litigation incurred by the non-breaching party in securing the relief granted by the Court.

15. **No Attorneys' Fees and Costs.** Except as otherwise set forth in this Agreement, the Parties agree that they shall bear their own respective costs and fees, including attorneys' fees, in connection with the negotiation and execution of this Agreement.

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16. **Agreement is Voluntary.** De Leon understands and agrees that he:

16.2 Has had a reasonable amount of time within which to consider the settlement terms memorialized in this Agreement before agreeing to them;

16.3 Has carefully read and fully understands all of the provisions of this Agreement;

16.4 Is, through this Agreement, releasing any and all PAGA claims he may have against any Releasees;

16.5 Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;

16.6 Knowingly and voluntarily intends to be legally bound by the same; and

16.7 Was represented by and consulted an attorney prior to agreeing to the terms of this Agreement.

17. **No Representations.** The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

18. **Ownership of Claims.** The Parties represent that they have not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim described in this Agreement. The Parties further agree to indemnify and hold harmless one another, and all of their present partners, officers, directors, employees against any and all claims based upon, arising out of, or in any way connected with any such actual transfer or assignment.

19. **Severability.** Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

20. **Integration.** This Agreement sets forth the entire agreement between the Parties and fully supersedes all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement. Any modifications in this Agreement must be in writing and signed by the Parties.

21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via facsimile or electronic transmission shall have the same force, validity and effect as the originals thereof. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

22. **Interpretation.** This Agreement, and any ambiguities or uncertainties herein, shall be equally and fairly interpreted, and construed, without reference to the identity of the Party drafting this document, upon the express understanding and agreement that the Parties

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participated equally in the negotiation and preparation of this Agreement, or have had equal opportunity to do so. Accordingly, the Parties, and each of them, expressly waive the benefits of California Civil Code section 1654, and any successor or amended statute.

23. **Governing Law and Venue.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, regardless of the conflicts of laws rules of any individual state. In addition, any action brought to enforce the provisions of this Agreement shall be commenced, prosecuted, and defended exclusively in the Superior Court of the State of California, County of Ventura.

24. **Captions And Headings.** The section headings, captions, and titles used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

[Signature Page to Follow]

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**PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES THE RELEASE OF
ALL KNOWN AND UNKNOWN PAGA CLAIMS.**

IN WITNESS WHEREOF the parties hereto execute this Agreement or have caused this Agreement to be duly executed by their respective authorized officer(s).

FOR PLAINTIFF, INDIVIDUALLY AND IN A REPRESENTATIVE CAPACITY

Dated: 3/5/2023


ID pBZdNmt5AkN8q2yb6jhGDGZK
Justin De Leon

Approved as to form:

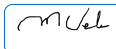
Rose Law APC

Dated: 3/6/2023


ID UT6ymvNcYTormyrtKfPL8oX
By: Joseph W. Rose, Esq.
Attorney for Plaintiff

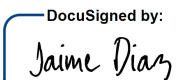
Law Office of Michael Velarde

Dated: 3/6/2023


ID 6Wuwus3CFvuMp7DgRyDthef5
By: Michael Velarde, Esq.
Attorney for Plaintiff

FOR DEFENDANTS

Dated: 3/27/2023

DocuSigned by:

B16CA3189B994C1
Jaime Alonso Diaz, M.D.

VIP Emergent Care, A Medical Corporation, et al.

Dated: 3/27/2023

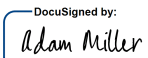
DocuSigned by:

B16CA3189B994C1
By: Jaime Alonso Diaz, M.D.
Its: Chief Executive Officer

Approved as to form:

MMG LLP

Dated: 3/20/2023

DocuSigned by:

9904ED4010BC41D
By: Adam Miller, Esq.
Attorney for Defendants

eSignature Details

Signer ID: pBZdNmt5AkN8g2yb6jhGDGZK
Signed by: Justin De Leon
Sent to email: deleon0623@gmail.com
IP Address: 172.250.104.87
Signed at: Mar 5 2023, 7:56 pm PST

Signer ID: 6Wuwus3CFvuMp7DgRyDthef5
Signed by: Michael Velarde
Sent to email: mvelarde@michaelvelardelaw.com
IP Address: 72.203.85.194
Signed at: Mar 6 2023, 2:01 pm PST

Signer ID: UT6yrnvNcYTormyrtKfPL8oX
Signed by: Joe Rose
Sent to email: joe@joeroselaw.com
IP Address: 76.176.209.39
Signed at: Mar 6 2023, 3:50 pm PST

Exhibit A

ROSE LAW, APC
11335 GOLD EXPRESS DRIVE, SUITE 135
GOLD RIVER, CALIFORNIA 95670

Joseph W. Rose, Bar No. 232261
joe@joeroselaw.com
Mehran Tahoori, Bar No. 283313
mehran@joeroselaw.com
ROSE LAW, APC
11335 Gold Express Drive, Suite 135
Gold River, California 95670
Telephone: (916) 273-1260
Facsimile: (916) 290-0148

Michael E. Velarde, Bar No. 266272
mvelarde@michaelvelardelaw.com
VELARDE & VELARDE
19200 Von Karman Ave., Suite 400
Irvine, California 92612
Telephone: (949) 492-4241
Facsimile: (949) 606-7168

Attorneys for Plaintiff

JUSTIN DE LEON, individually and
on behalf of all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

JUSTIN DE LEON, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

VIP EMERGENT CARE, INC. D/B/A VIP
URGENT CARE,
JAIME ALONSO DIAZ, M.D., and
DOES 1 through 50, inclusive,

Defendants.

VENTURA
SUPERIOR COURT
FILED

JAN 04 2021

MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____, Deputy

MARIANA SUAZO

Case No. 56-2021-00549419-CU-OE-VTA

CLASS ACTION COMPLAINT FOR:

1. Willful Failure to Pay Minimum Wages (Lab. Code §§ 1191, 1194, 1194.2, 1197);
2. Unpaid Overtime Wages (Lab. Code, §§ 510, 1194);
3. Failure to Provide Accurate Itemized Wage Statements (Lab. Code 226);
4. Failure to Timely Pay Wages Due at Termination (Lab. Code, § 201-203);
5. Unlawful Pre-Employment Inquiry About Conviction History (Fair Chance Act, Cal. Gov. Code, § 12952 et seq.);
6. Unfair Competition (Bus. & Prof. Code § 17200 et seq.).
7. Labor Code Private Attorneys General Act (Labor Code §§ 2699 et seq.)

[Unlimited Jurisdiction, amount in controversy exceeds \$25,000]

DEMAND FOR JURY TRIAL

1 Plaintiff JUSTIN DE LEON ("Plaintiff"), demanding a trial by jury, individually and on behalf
2 of all other workers similarly situated, complains and pleads facts having evidentiary support or likely to
3 have evidentiary support after a reasonable opportunity for further investigation and discovery, against
4 defendants VIP EMERGENT CARE, INC. D/B/A VIP URGENT CARE ("VIP"), JAIME ALONSO
5 DIAZ, M.D. ("Dr. Diaz"), and DOES 1 through 50, inclusive, collectively referred to as "Defendants,"
6 as follows:

7 INTRODUCTION

8 1. This is an employment class action by Plaintiff, a former employee of Defendants, for
9 unpaid wages and unlawful employment practices in violation of the California Labor Code, Industrial
10 Welfare Commission ("IWC") Wage Order No. 4-2001, and the Fair Chance Act (Gov. Code, §12952 *et*
11 *seq.*), seeking special damages, statutory penalties, equitable relief, attorney's fees, expert witness fees,
12 and costs. This action also seeks equitable relief and costs under the Unfair Competition Law (Bus. &
13 Prof. Code § 17200) based upon the aforementioned violations.

14 JURISDICTION AND VENUE

15 2. This Court has subject matter jurisdiction over all claims for relief herein and the amount
16 in controversy, exclusive of interest, exceeds \$25,000. (Cal. Const. art. VI, § 10.) This Court has personal
17 jurisdiction in that all Defendants reside in, maintain an office, transact business, have an agent, and/or
18 are found in the County of Ventura, State of California and are within the jurisdiction of this Court for
19 purposes of service of process. Damages suffered by Plaintiff exceed \$25,000, triggering the unlimited
20 jurisdiction of this Court.

21 3. Venue as to each defendant is proper in this judicial district under California Business and
22 Professions Code section 17203 and California Code of Civil Procedure sections 395(a) and 395.5. The
23 subject matter of this litigation and some or all of the alleged facts, conduct, and statutory violations
24 alleged occurred or otherwise transpired in Ventura County, California, and Defendants are subject to
25 personal jurisdiction in California. Additionally, the trade, commerce, business practices, and
26 employment described herein are carried on, in part, within Ventura County, California.

27 ///

28 ///

THE PARTIES**PLAINTIFF**

4. Plaintiff JUSTIN DELEON ("Plaintiff") is an adult who was employed in Simi Valley, California, by Defendants from January 7, 2019, until Defendants involuntarily terminated Plaintiff's employment in December 2019. Plaintiff is a resident of Ventura County. At the time of his termination, Plaintiff was employed part-time by Defendants in Ventura County as an administrative assistant in Defendants' urgent care clinic, VIP Urgent Care. Plaintiff is an "employee" as defined by the California Labor Code, the California Industrial Welfare Commission's ("IWC") orders regulating wages, hours, and working conditions.

DEFENDANTS

5. Defendants VIP EMERGENT CARE, INC. D/B/A VIP URGENT CARE (collectively, "VIP") is a California corporation doing business in Simi Valley, California. At all times referenced herein, VIP is and was a "person" as defined by California Labor Code section 18, and by California Business and Professions Code section 17201. At all times referenced herein, VIP is and was an "employer" as defined by the California Labor Code, the California Industrial Welfare Commission's ("IWC") orders regulating wages, hours, and working conditions.

6. Defendant JAIME ALONSO DIAZ, M.D. ("Dr. Diaz") is a natural person doing business in Simi Valley, California. At all times referenced herein, Dr. Diaz is and was a "person" as defined by California Labor Code section 18, and by California Business and Professions Code section 17201. At all times referenced herein, Dr. Diaz is and was an "employer" as defined by the California Labor Code, the California Industrial Welfare Commission's ("IWC") orders regulating wages, hours, and working conditions. At all times referenced herein, Dr. Diaz is and was an owner, director, officer, and/or managing agent of Defendant VIP within the meaning of Labor Code § 558.1.

CO-CONSPIRATORS AND JOINT EMPLOYERS

7. Various persons, individuals, partnerships, and associations, not named as defendants in this Complaint, have participated as co-conspirators and/or joint employers in the violations alleged herein and have performed acts and made statements in furtherance thereof.

///

DOE DEFENDANTS

8. In addition to Defendants VIP and Dr. Diaz, Plaintiff sues fictitiously Does 1 through 50, inclusive, because their names, capacities, status, or facts showing them to be liable are not presently known. Plaintiff will amend this Complaint to show their true names and capacities, with appropriate charging language, when such information has been ascertained. Plaintiff is informed and believes and thereupon alleges that each of the Doe defendants is responsible in some manner for the occurrences alleged and that Plaintiff's damages as alleged are proximately caused by such occurrences.

AGENCY, JOINT VENTURE, ALTER EGO

9. At all pertinent times mentioned in the causes of action into which this paragraph is incorporated by reference, on information and belief, each and every defendant was the principal, partner, agent, servant, employee, joint employer, co-conspirator and/or alter ego of the remaining defendants. In doing the things alleged in the causes of action into which this paragraph is incorporated by reference, each and every defendant was acting within the course and scope of this agency, partnership, servant, employment, joint employment, conspiracy and/or alter ego and was acting with the consent, permission, knowledge and/or authorization of the remaining defendants. All actions of each and every defendant alleged in the causes of action into which this paragraph is incorporated by reference were ratified and approved by the officers or managing agents of the remaining defendants.

DEFINITIONS

10. "Class Period" means the four (4) years immediately preceding filing of the initial Complaint in this action and continuing through the conclusion of trial on all issues presented.

11. "Defendants" means singularly and collectively Defendant VIP EMERGENT CARE, INC. D/B/A VIP URGENT CARE ("VIP") and Defendant JAIME ALONSO DIAZ, M.D. ("Dr. Diaz"), and defendants Does 1 through 50, inclusive.

12. "Non-Exempt Employees" means employees who are paid by Defendants on an hourly basis and not exempt from overtime compensation under the applicable Industrial Welfare Commission Wage Order(s).

CLASS ACTION ALLEGATIONS

13. The Plaintiff Class. Plaintiff brings the First through Sixth Claims for Relief herein for

1 himself and on behalf of all other workers similarly situated, as a class pursuant to Code of Civil
2 Procedure section 382. The class which Plaintiff seeks to represent is composed of and defined as follows:

3 All persons currently or formerly employed by Defendants as Non-Exempt
4 Employees within California during the Class Period, as defined herein (the
"Plaintiff Class").

5 14. The Former Employee Subclass. Plaintiff also seeks to represent, under Code of Civil
6 Procedure section 382, a "Former Employee Subclass" composed of and defined as follows:

7 All members of the Plaintiff Class whose employment was voluntarily or
8 involuntarily terminated and who were not paid all wages due and owing at
9 the time of discharge (the "Former Employee Subclass").

10 15. The Applicant Subclass. Plaintiff also seeks to represent, under Code of Civil Procedure
11 section 382, an "Applicant Subclass" composed of and defined as follows:

12 All members of the Plaintiff Class who applied for employment on or after
13 January 1, 2018, and were asked by Defendants unlawful questions about
14 their criminal conviction history before receiving a conditional offer of
employment in violation of the California Fair Chance Act (the "Applicant
Subclass").

15 16. During the Class Period, Defendants had, and continue to have, a consistent and uniform
16 policy and practice with respect to Plaintiff and members of the Plaintiff Class of:

17 a. Suffering or permitting employees to work "off-the-clock" without pay in
18 violation of California Labor Code sections 1194, 1194.2, 1197, and applicable Industrial Welfare
19 Commission Wage Order(s);

20 b. Failing to pay employees Daily Overtime Pay in violation of Labor Code section
21 510 and applicable Industrial Welfare Commission Wage Order(s);

22 c. Failing to provide employees 30-minute unpaid meal periods in violation of Labor
23 Code section 512 and applicable and applicable Industrial Welfare Commission Wage Order(s);

24 d. Failing to authorize and permit employees to take 10-minute paid rest periods in
25 violation of applicable Industrial Welfare Commission Wage Order(s);

26 e. Failing to provide employees with accurate itemized wage statements including
27 gross wages earned, total hours worked by the employee, all deductions, net wages earned, all
28

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee, in violation of Labor Code section 226 and applicable
3 Industrial Welfare Commission Wage Order(s);

4 f. Failing to keep accurate information with respect to each employee including time
5 records showing when the employee begins and ends each work period, meal periods, split shift
6 intervals, and total daily hours worked, in violation of applicable Industrial Welfare Commission
7 Wage Order(s); and

8 g. Willfully failing to prevent these unlawful labor conditions despite having the
9 power to do so.

10 17. During the Class Period, Defendants had, and continue to have, a consistent and uniform
11 policy and practice with respect to Plaintiff and members of the Former Employee Subclass of willfully
12 failing to pay compensation (including unpaid minimum wages and/or overtime, and/or meal break
13 penalties and/or rest break penalties) due and owing to separated employees in a prompt and timely
14 manner upon termination or resignation in violation of California Labor Code §§ 201 through 203, and
15 applicable Industrial Welfare Commission Wage Order(s).

16 18. From January 1, 2018, through the present, Defendants had, and continue to have, a
17 consistent and uniform policy and practice with respect to Plaintiff and members of the Applicant
18 Subclass of willfully making unlawful inquiries into their conviction histories before making a
19 conditional offer of employment in violation of the Fair Chance Act, Government Code § 12952 et seq.

20 19. Defendants' unlawful policies and practices as described herein serve as predicate acts for
21 application of the Unfair Competition Law (Bus. & Prof. Code § 17200 et seq.).

22 20. This action has been brought and may properly be maintained as a class action under Code
23 of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and
24 the proposed class is easily ascertainable:

25 a. Numerosity: A class action is the only available method for the fair and efficient
26 adjudication of this controversy. The members of the class and subclasses are so
27 numerous that joinder of all members is impractical, if not impossible; the total
28 number of the class members exceeds forty (40) workers. Membership in the class
will be determined based on analysis of the Defendants' employee and payroll
records, and other records that Defendants maintain.

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- b. Commonality: Plaintiff, members of the Plaintiff Class, members of the Former Employee Subclass, and members of the Applicant Subclass share a community of interests, as there are several common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members. A class action is superior to other methods for a fair and efficient adjudication of the controversy. These common questions include, but are not limited to:
- i. Whether Defendants suffered or permitted employees to work “off-the-clock” without pay in violation of California Labor Code sections 1194, 1194.2, 1197, and applicable Industrial Welfare Commission Wage Order(s);
 - ii. Whether Defendants failed to pay employees overtime pay in violation of Labor Code section 510 and applicable Industrial Welfare Commission Wage Order(s);
 - iii. Whether Defendants failed to provide employees 30-minute unpaid meal periods in violation of Labor Code section 512 and applicable and applicable Industrial Welfare Commission Wage Order(s);
 - iv. Whether Defendants failed to authorize and permit employees to take 10-minute paid rest periods in violation of applicable Industrial Welfare Commission Wage Order(s);
 - v. Whether Defendants failed to provide employees with accurate itemized wage statements including gross wages earned, total hours worked by the employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226 and applicable Industrial Welfare Commission Wage Order(s);
 - vi. Whether Defendants failed to keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked, in violation of applicable Industrial Welfare Commission Wage Order(s);
 - vii. With respect to the Former Employee Subclass, whether Defendants willfully failed to pay compensation (including unpaid minimum wages and/or overtime, and/or meal break penalties and/or rest break penalties) due and owing to separated employees in a prompt and timely manner upon termination or resignation in violation of California Labor Code §§ 201 through 203, and applicable Industrial Welfare Commission Wage Order(s);
 - viii. With respect to the Applicant Subclass, whether Defendants unlawfully inquired into the criminal conviction histories of applicants for employment before making conditional offers of employment in violation of the Fair Chance Act, Government Code § 12952 et seq.);
 - ix. Whether Defendants willfully failed to prevent these unlawful labor conditions despite having the power to do so; and
 - x. Whether Defendants engaged in unfair, unlawful and/or fraudulent business practices in violation of the UCL by a consistent policy and practice of, as alleged herein, violating minimum wage, overtime, meal

period, rest period, employment records access, and timely wage payment provisions of California's Labor Code and applicable IWC Wage Order(s).

- c. Typicality: Plaintiff's claims are typical of the claims of the employees of the proposed Plaintiff Class, the Former Employee Subclass, and the Applicant Subclass. Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of and caused by Defendants' conduct, in violation of California law as alleged herein. Plaintiff, who is a former employee, and all members of the Former Employee Subclass are owed typical "waiting time penalties" under California Labor Code §§ 201 through 203. Plaintiff was an applicant for employment on or after January 1, 2018 and, like all members of the Applicant Subclass, was asked about his criminal conviction history before receiving a conditional offer of employment in violation of the Fair Chance Act.
- d. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each worker is likely to render individual actions impractical. Should separate actions be brought by each individual employee, the resulting multiplicity of lawsuits would cause undue hardship and expense for the courts and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other employees who are not parties to those adjudications and/or may substantively impede their ability to adequately protect their interests. Defendants, in committing the Labor Code violations, Industrial Welfare Commission Wage Order violations, and unfair business practices regarding the putative class and subclass members, have acted and refused to act on grounds applicable to all claims, making injunctive and monetary relief appropriate for all class members.
- e. Adequacy of Representation: Plaintiff in this class action is an adequate representative of other similarly situated employees and the class members as a whole in that Plaintiff's claims are typical of those of the class and Plaintiff has the same interests as the class members. Plaintiff is committed to vigorous prosecution and has retained competent employment counsel experienced in wage and hour litigation and class/representative actions of this nature. Plaintiff is not subject to any individual defenses unique or distinct from those conceivably applicable to the class. Plaintiff anticipates no management difficulties. Plaintiff's counsel is experienced in class action employment litigation of this type.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

21. Defendants are in the business of providing health care services for profit to patients through urgent care centers situated in Simi Valley and Tarzana.

22. As part of Defendants' medical business, Defendants employed Plaintiff as an administrative assistant staffing the front desk of the VIP Urgent Care facility in Simi Valley, registering patients, collecting payments for service, collecting insurance billing information, scheduling

1 appointments, answering phone calls, opening and closing the facility, and assisting licensed healthcare
2 practitioners with patients, among other duties.

3 23. Plaintiff was employed by Defendants as an administrative assistant beginning January 7,
4 2019, earning an hourly wage of \$18.00, until his involuntary termination sometime in or after December
5 2019, when Defendants removed him from the work schedule. Defendants classified Plaintiff as an
6 hourly, non-exempt employee eligible for overtime compensation when working more than eight (8)
7 hours in any single workday, more than forty (40) hours in any 7-day workweek, and at times when
8 working seven consecutive workdays with no day of rest. Mr. De Leon was paid twice monthly.

9 24. At all times relevant to this dispute, Defendants used the private payroll service ADP® to
10 allow employees to record their work hours, view their itemized wage statements, adjust their deductions
11 and withholdings for reporting to the taxing authorities, and receive their twice monthly paychecks.
12 Defendants failed and/or refused to grant ADP® system access to Plaintiff, despite his repeated requests
13 for ADP® system access, for nearly a full year from his initial date of hire in November 2018 until
14 approximately October 2019. Consequently, Plaintiff was unable to accurately enter his own hours of
15 work for payroll calculation purposes, view his own itemized wage statements to verify the accuracy of
16 his work hours and pay, and adjust or correct errors to his deductions and withholdings for the taxing
17 authorities. Between November 2018 and approximately October 2019, Plaintiff was only able to view
18 his lump sum net earnings when it was electronically deposited directly into his bank account twice per
19 month, with no substantiation, itemized wage statements, or backup calculations available to Plaintiff.

20 25. Plaintiff, like other similarly situated employees of Defendants, typically worked an
21 assigned schedule of ten (10) hours per day, but was compensated at his regular (straight-time) hourly
22 rate of pay (\$18.00) for all hours worked during the workday rather than at the overtime rate of one and
23 one-half (1½) times Plaintiff's regular hourly rate of pay (i.e. \$27.00) for hours worked in excess of eight
24 (8) in a single workday, as required by California Labor Code section 510, and Industrial Welfare
25 Commission Order 4-2001.

26 26. Defendants have adopted no regularly scheduled alternative workweek that is valid under
27 Labor Code section 511 for Defendants' facilities at Simi Valley and Tarzana. Defendants have filed no
28 alternative workweek election results with the Department of Industrial Relations as required by Labor

1 Code section 511 for Defendants' facilities at Simi Valley and Tarzana.

2 27. At the time of hiring and throughout Plaintiff's employment, Defendants provided no
3 required notice under section 2810.5 of the Wage Theft Prevention Act (Lab. Code § 2810.5), to include:
4 Plaintiff's rate(s) of pay, designated pay day, Defendants' intent to claim allowances (meal or lodging
5 allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift,
6 day, week, piece, etc.), including any applicable rates for overtime, and Defendants' "doing business as"
7 names. At the time of Plaintiff's termination, Defendants provided no required notice under California
8 Unemployment Insurance Code 1089 of a change in the employment relationship, which is criminally
9 punishable as a misdemeanor.

10 28. Because Defendants' provided Plaintiff with no system or method for tracking and
11 reporting his hours of work (e.g. ADP®), all of Plaintiff's hours of work were not accurately captured,
12 Plaintiff was not fully paid for all hours of his labor, and Plaintiff at times worked "off-the-clock" for no
13 compensation, in violation of California's minimum wage laws (Cal. Lab. Code § 1191; IWC Wage
14 Order No. 2001-4).

15 29. At all times mentioned herein, and as a continuing practice, Defendants failed to
16 sufficiently staff its facilities and provide human resources systems and processes for Plaintiff, and
17 similarly situated employees, to be relieved of all duty for the purpose of taking uninterrupted 10-minute
18 paid rest breaks for every four (4) hours of work, and 30-minute unpaid meal periods. Plaintiff, like other
19 employees similarly situated, was therefore denied, discouraged, prevented, and impeded by Defendants
20 from taking said paid rest breaks and unpaid meal periods.

21 30. Plaintiff has incurred and continues to incur legal expenses and attorney's fees in sums
22 according to proof, which he is entitled to recover as a prevailing employee under Labor Code §§ 218.5
23 and 1194, and which he seeks in this action as described in the claims for relief and prayer below.

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CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Willful Failure to Pay Minimum Wages

Labor Code §§ 1194, 1194.2, 1197

(By Plaintiff and the Plaintiff Class Against All Defendants)

31. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set forth in this Complaint as though fully set forth in this claim for relief.

32. Labor Code section 1197 provides that payment of less than the minimum wage to employees is unlawful. Defendants' employees are governed by the Industrial Welfare Commission's Minimum Wage Orders, MW-2014, MW-2017, and MW-2019 establishing a minimum hourly wage of \$9.00 beginning July 1, 2014, \$10.00 beginning January 1, 2016, \$10.50 per hour beginning January 1, 2017, \$11.00 per hour beginning January 1, 2018, \$12.00 per hour beginning January 1, 2019, \$12.00 per hour beginning January 1, 2020 for employers of 25 or fewer employees, and \$13.00 per hour beginning January 1, 2020 for employers of 26 or more employees.

33. California law requires that employees be compensated for all time during which an employee is subject to the control of an employer. Defendants willfully failed and refused to pay Plaintiff and similarly situated employees minimum or regular wages while working "off the clock."

34. Because of Defendants' willful conduct in not paying minimum or regular wages, Plaintiff and Plaintiff Class members are entitled to recover the unpaid balance of the full amount of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit, under Labor Code § 1194. Plaintiff and Plaintiff Class members are also entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon under Labor Code § 1194.2.

35. Labor Code § 558.1 provides for individual liability for natural persons acting on behalf of an employer including owners, directors, officers, and managing agents of the employer, who violate or cause to be violated the employee protections of Labor Code § 1194.

36. As a proximate result of these minimum wage violations, Plaintiff and Plaintiff Class members have been damaged in an amount according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction of this Court.

1 37. Plaintiff is entitled to recover reasonable attorney's fees and costs under Labor Code §
2 1194 in prosecuting this claim.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **SECOND CLAIM FOR RELIEF**

5 **Unpaid Overtime Wages**

6 **Labor Code, §§ 510, 1194**

7 (By Plaintiff and the Plaintiff Class Against All Defendants)

8 38. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
9 forth in this Complaint as though fully set forth in this claim for relief.

10 39. Plaintiff and the Plaintiff Class members were governed by the wage and overtime
11 requirements of Labor Code § 510 and IWC Wage Order No. 4. IWC Wage Order No. 4 mandates
12 employees must be paid overtime of one and one-half times the employee's regular rate of pay for all
13 hours worked over eight (8) hours up to and including twelve (12) hours in any workday and over 40
14 hours in one work week, and for the first eight (8) hours worked on the seventh consecutive day of work
15 in a workweek, and double the employee's regular rate of pay for all hours worked over twelve (12) hours
16 in any workday.

17 40. During the last four years, the Defendants systematically denied Plaintiff and the Plaintiff
18 Class members overtime compensation for hours worked over eight (8) and twelve (12) in one day and
19 over forty (40) hours in one work week.

20 41. Plaintiff is entitled to recover the unpaid balance of the full amount of the overtime wages,
21 including interest thereon, reasonable attorney's fees, and costs of suit, under California Labor Code
22 section 1194.

23 42. Labor Code § 558.1 provides for individual liability for natural persons acting on behalf
24 of an employer including owners, directors, officers, and managing agents of the employer, who violate
25 or cause to be violated the employee protections of Labor Code § 1194.

26 43. As a proximate result of these overtime violations, Plaintiff and Plaintiff Class members
27 have been damaged in an amount according to proof at the time of trial, but in an amount in excess of the
28 minimum jurisdiction of this Court.

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11335 GOLD EXPRESS DRIVE, SUITE 135
GOLD RIVER, CALIFORNIA 95670

1 44. Plaintiff is entitled to recover reasonable attorney's fees and costs under Labor Code §
2 1194 in prosecuting this claim.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **THIRD CLAIM FOR RELIEF**

5 **Failure to Provide Accurate Itemized Pay Statements**

6 **Labor Code §§ 226**

7 (By Plaintiff and the Plaintiff Class Against All Defendants)

8 45. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
9 forth in this Complaint as though fully set forth in this claim for relief.

10 46. California Labor Code, § 226 requires employers, semimonthly or at the time of each
11 payment of wages, to furnish employees an accurate itemized statement in writing showing: (1) gross
12 wages earned; (2) total hours worked by the employee, except for employees whose compensation is
13 solely based on a salary and who is exempt from payment of overtime under Labor Code § 515,
14 subdivision (a), or any applicable order of the Industrial Welfare Commission; (3) the number of piece-
15 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
16 deductions, provided that all deductions made on written orders of the employee may be aggregated and
17 shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
18 paid; (7) the name of the employee and only the last four digits of his or her social security number or an
19 employee identification number other than a social security number; (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee.

22 47. Defendants failed to accurately itemize gross wages earned, total hours worked by the
23 employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay period
24 and the corresponding number of hours worked at each hourly rate by Plaintiff and members of the
25 Plaintiff Class, as required by California Labor Code § 226, because. Defendants' itemized wage
26 statements have not and do not conform to requirements of California Labor Code § 226.

27 48. Defendants have not complied and do not comply with Labor Code § 226, causing injury
28 and damages to Plaintiff and members of the Plaintiff Class. These damages include, but are not limited

1 to, costs that must be expended recalculating the correct rates for the regular and overtime hours worked
2 and the amount of employment taxes which were not properly paid to state and federal tax authorities.
3 These damages are difficult to estimate. Therefore, Plaintiff and members of the Plaintiff Class elect to
4 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
5 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to
6 Cal. Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than
7 four thousand dollars (\$4,000.00) for each Plaintiff and each member of the Plaintiff Class).

8 49. Labor Code § 558.1 provides for individual liability for natural persons acting on behalf
9 of an employer including owners, directors, officers, and managing agents of the employer, who violate
10 or cause to be violated the employee protections of Labor Code § 226.

11 50. Plaintiff is entitled to recover reasonable attorney's fees and costs under Labor Code §
12 218.5 in prosecuting this claim.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **FOURTH CLAIM FOR RELIEF**

15 **Willful Failure to Timely Pay Wages When Due at Termination**

16 **Labor Code §§ 201 – 203**

17 (By Plaintiff and the Plaintiff Class Against All Defendants)

18 51. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
19 forth in this Complaint as though fully set forth in this claim for relief.

20 52. Labor Code §§ 201 and 202 requires Defendants to pay employees all wages due
21 immediately upon involuntary discharge or layoff of an employee, and within 72 hours of an employee's
22 voluntary termination of employment. Labor Code § 203 provides that if an employer willfully fails to
23 timely pay such wages the employer must, as a penalty, continue to pay the employee's wages until the
24 back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

25 53. Plaintiff and Former Employee Subclass members were and are routinely and uniformly
26 required to wait longer than the statutory maximum for payment in full of all earned wages in their final
27 paychecks upon separation from employment. Plaintiff and Former Employee Subclass members are
28 entitled to compensation for unpaid wages, but to date have not received such compensation.

1 54. More than three (3) days have passed since Plaintiff and Former Employee Subclass
2 members have left Defendants' employ. Plaintiff and Former Employee Subclass members have not
3 absented themselves or made themselves unavailable for payment of such unpaid sums.

4 55. Because of Defendants' willful conduct in not paying wages owed at the time of separation
5 from employment, Plaintiff and Former Employee Subclass members are entitled to up to thirty (30) days
6 wages as a penalty under Labor Code § 203, together with interest thereon.

7 56. Labor Code § 558.1 provides for individual liability for natural persons acting on behalf
8 of an employer including owners, directors, officers, and managing agents of the employer, who violate
9 or cause to be violated the employee protections of Labor Code § 203.

10 57. As a proximate result of the aforementioned violations, Plaintiffs and California Subclass
11 members have been damaged in an amount according to proof at the time of trial, but in an amount in
12 excess of the minimum jurisdiction of this Court.

13 58. Plaintiff is entitled to recover reasonable attorney's fees and costs under Labor Code §
14 218.5 in prosecuting this claim.

15 WHEREFORE, Plaintiffs pray for relief as set forth below.

16 **FIFTH CLAIM FOR RELIEF**

17 **Unlawful Pre-Employment Inquiry About Conviction History**

18 **Fair Chance Act, Government Code, § 12952 et seq.**

19 (By Plaintiff and the Plaintiff Class Against All Defendants)

20 59. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
21 forth in this Complaint as though fully set forth in this claim for relief.

22 60. The Fair Chance Act (AB 1008), which is California's "ban the box" legislation and took
23 effect January 1, 2018, prohibits employers from inquiring into an applicant's criminal history before
24 making a conditional offer of employment. Even after making an offer of employment, an employer
25 cannot deny the applicant because of a conviction without making an individualized assessment.

26 61. The Fair Chance Act is codified within the Fair Employment and Housing Act at
27 Government Code section 12952, et seq. Subdivision (a) of Government Code section 12952 provides:

28 ///

(a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

- (1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.
- (2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.
- (3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:
 - (A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.
 - (B) Referral to or participation in a pretrial or posttrial diversion program.
 - (C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.
- (4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

62. Subdivision (d) of Government Code section 12952 provides:

- (d) This section does not apply in any of the following circumstances:
- (1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.
 - (2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

62. Defendants, and each of them, employ five or more employees. No defendant here is or was a state agency, a local agency, criminal justice agency, or a Farm Labor Contractor. No state, federal, or local law requires Defendants to conduct criminal background checks of Plaintiff and Applicant Subclass members for employment purposes or to restrict employment of Plaintiff and Applicant Subclass members based on criminal history.

63. At all relevant times since the Fair Chance Act became effective on January 1, 2018, Defendants impermissibly have included on applications for employment questions that seek the disclosure of the applicant's conviction history. For example, the application for employment Defendants' directed Plaintiff to complete on January 7, 2019 before making a conditional offer of employment included the following unlawful questions:

HAVE YOU EVER BEEN CONVICTED OF A CRIME? ☐ YES ☐ NO

If yes, please explain the number of conviction(s), nature of the offense(s) leading to the conviction(s), how recently the offense(s) was/were committed, sentence(s) imposed, and type(s) of rehabilitation. _____.

64. Defendants' unlawful acts entitle Plaintiff and the Applicant Subclass to declaratory relief, extraordinary relief, and a permanent injunction enjoining Defendants from unlawfully inquiring into an applicant's criminal history before making a conditional offer of employment.

65. Plaintiff is entitled to recover reasonable attorney's fees and costs including expert witness fees, under Government Code § 12965, subdivision (b), in prosecuting this claim.

WHEREFORE, Plaintiff prays for relief as set forth below.

1 **SIXTH CLAIM FOR RELIEF**

2 **Unfair Competition**

3 **Business & Professions Code § 17200, et seq.**

4 (By Plaintiff and the Plaintiff Class Against All Defendants)

5 66. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
6 forth in this Complaint as though fully set forth in this claim for relief.

7 67. California's Unfair Competition Law ("UCL," Bus. & Prof. Code § 17200 et seq. "is a
8 notoriously broad statute" (*Flamingo Indus. (USA) Ltd. v. United States Postal Service* (9th Cir. 2002)
9 302 F.3d 985, rev'd on other grounds by *Flamingo Indus. (USA) Ltd. v. United States Postal Service*
10 (2004) 540 U.S. 736) that defines "unfair competition" to include "any unlawful, unfair, fraudulent
11 business act or practice..." (Bus. & Prof. Code § 17200). The UCL "is not confined to anticompetitive
12 business practices but is also directed toward the public's right to protection from fraud, deceit, and
13 unlawful conduct." *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 519-520.

14 68. The UCL borrows violations from other statutes and authorizes any person who has
15 suffered injury and who has lost money or property because of such unfair practices to sue for relief under
16 the statute. The UCL also provides that a court may enjoin acts of unfair competition, issue declaratory
17 and other equitable relief, and order restitution of money or property acquired with unfair competition.

18 69. Any law or regulation including federal or state, statutory or common law, can serve as a
19 predicate for a UCL claim. If a business practice violates any law, it also violates the UCL and may be
20 redressed under the UCL. *People v. E.W.A.P., Inc.* (1980) 106 Cal.App.3d 315, 319. The UCL "borrows"
21 violations of other laws and treats them as unlawful practices independently actionable under the UCL.
22 *Farmers Ins. Exch. v. Sup.Ct.* (1992) 2 Cal.4th 377, 383. The UCL allows a remedy even where the
23 "borrowed" statute does not create a private right of action. *Stop Youth Addiction, Inc. v Lucky Stores,*
24 *Inc.* (1998) 17 Cal.4th 553, 561-567.

25 70. Defendants have engaged in unfair competition by violating the California Labor Code,
26 the applicable Wage Order(s) of the Industrial Welfare Commission, and the Fair Chance Act as
27 described in the preceding paragraphs. Defendants' unlawful predicate violations of these statutes and
28 regulations support application of the UCL.

1 WHEREFORE, Plaintiff prays for relief as set forth below.

2 **SEVENTH CLAIM FOR RELIEF**

3 **Labor Code Private Attorneys General Act**

4 **Labor Code §§ 2699 et seq.**

5 71. Plaintiff realleges and incorporates by this reference all of the preceding paragraphs set
6 forth in this Complaint as though fully set forth in this claim for relief.

7 72. Under Labor Code § 2699(a), any provision of the Labor Code that provides for a civil
8 penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") or
9 any of its departments, divisions, commissions, boards, agencies or employees for violation of the Labor
10 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
11 behalf of himself and other current or former employees pursuant to the procedures specified in Labor
12 Code § 2699.3. *Baumann v. Chase Inv. Services Corp.* (2014) C.A.9 (Cal.) 2014, 747 F.3d 1117,
13 certiorari denied.

14 73. For all provisions of the Labor Code except those for which a civil penalty is specifically
15 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00)
16 for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00)
17 for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated
18 these provisions of the Labor Code.

19 74. As alleged herein, Defendant's employment actions, policies, practices violate numerous
20 California Labor Code provisions and applicable IWC Wage Order(s) including, without limitation:

21 a. Labor Code §§ 1191, 1194, 1194.2, 1197, 1197.1, and 1198 for Defendants' failure
22 to fully compensate Plaintiff and other Aggrieved Employees for all minimum wages due;

23 b. Labor Code §§ 510, 1194 and 1198 for Defendants' failure to fully compensate
24 Plaintiff and other Aggrieved Employees for all daily, weekly, and 7th consecutive workday
25 overtime premium pay;

26 c. Labor Code §§ 226.7 and 512 for Defendants' failure to provide to Plaintiff and
27 other Aggrieved Employees legally required 30-minute unpaid meal periods or compensation in
28 lieu thereof;

1 d. Violation of Labor Code § 226.7 for Defendants' failure to provide to Plaintiff and
2 other Aggrieved Employees legally required 10-minute paid rest periods or compensation in lieu
3 thereof;

4 e. Violation of Labor Code §§ 226 and 226.3 for failure to provide to Plaintiff and
5 other Aggrieved Employees accurate itemized wage statements;

6 f. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
7 records;

8 g. Violation of Labor Code §§ 201, 202, 203, 204, and 210 for failure to timely pay
9 all earned wages owed to Plaintiff and other Aggrieved Employees during employment and upon
10 separation of employment;

11 75. Labor Code § 558(a) provides "any employer or other person acting on behalf of an
12 employer who violates, or causes to be violated, a section of this chapter or any provisions regulating
13 hours and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any
14 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee
15 was underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each subsequent
16 violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
17 employee was underpaid in addition to an amount sufficient to recover underpaid wages; (3) Wages
18 recovered pursuant to this section shall be paid to the affected employee." Labor Code § 558(c) provides
19 "the civil penalties provided for in this section are in addition to any other civil or criminal penalty
20 provided by law." Plaintiff seeks to recover these penalties pursuant to and to the extent allowed by the
21 PAGA.

22 76. Plaintiff is an "aggrieved employee" within the meaning of the PAGA because he was
23 employed by the alleged violator(s) and had one or more of the alleged violations committed against him,
24 and therefore is properly suited to represent the interests of all other Aggrieved Employees.

25 77. Plaintiff has exhausted the administrative and procedural requirements under Labor Code
26 § 2699.3 and is therefore able to pursue a claim for penalties on behalf of himself and all other Aggrieved
27 Employees under PAGA. Plaintiff gave written notice on September 23, 2020, by online filing with the
28 Labor and Workforce Development Agency (LWDA), accompanied by a \$75 filing fee, and by certified

1 mail (# 7019 2280 0000 4047 1933) to Defendants of the specific provisions of the Labor Code alleged
2 to have been violated, including the facts and theories to support the alleged violation. To date, the
3 LWDA has given no notice of any intention to investigate the alleged violations.

4 WHEREFORE, Plaintiff prays for relief as set forth below.

5 **PRAYER FOR RELIEF**

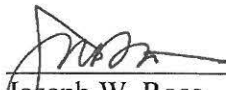
6 Plaintiff prays for relief as follows:

- 7 1. For compensatory damages, according to proof;
- 8 2. For prejudgment interest on liquidated sums and post-judgment interest accruing at a rate
9 of 10 percent per annum on the principal amount; and
- 10 3. For an injunction prohibiting future acts of unfair competition, a declaration that such acts
11 were and are unlawful, equitable relief, and restitution;
- 12 4. For reasonable attorney's fees and costs under Labor Code §§ 218.5, 1194, and
13 2699(g)(1);
- 14 5. For civil penalties as allowed by the California Labor Code;
- 15 6. For extraordinary relief, including: (a) a judicial declaration that Defendants' violated the
16 Fair Chance Act; and (b) a mandatory injunction compelling Defendants to comply with
17 the Fair Chance Act;
- 18 7. For reasonable attorney's fees and costs including expert witness fees, under Government
19 Code § 12965, subdivision (b); and
- 20 8. For such other and further relief in favor of Plaintiff as the Court deems proper.

21 Dated: December 28, 2020

ROSE LAW, APC

22
23 By:


24 Joseph W. Rose

25 Attorneys for Plaintiff JUSTIN DE LEON, individually
26 And on behalf of all others similarly situated
27
28

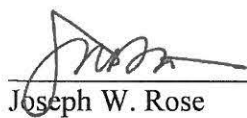
DEMAND FOR JURY TRIAL

Plaintiff JUSTIN DELEON, for himself and other similarly situated workers, demands a trial by jury of these claims for relief.

Dated: December 28, 2020

ROSE LAW, APC

By:


Joseph W. Rose

Attorneys for Plaintiff JUSTIN DE LEON, individually
And on behalf of all others similarly situated

ROSE LAW, APC
11335 GOLD EXPRESS DRIVE, SUITE 135
GOLD RIVER, CALIFORNIA 95670

Exhibit B



11335 Gold Express Drive, Suite 135
Gold River, California 95670
tel 916.273.1260
fax 916.290.0148
<https://joeroselaw.com>

Joseph W. Rose
Attorney at Law
joe@joeroselaw.com

Filed online with LWDA pursuant to Labor Code § 2699.5(1)(A)

September 23, 2020

PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: **LABOR CODE PRIVATE ATTORNEYS' GENERAL ACT CLAIM NOTICE**

Aggrieved Employee:	Justin De Leon
Employers:	VIP Emergent Care, Inc. dba VIP Urgent Care, Jaime Alonso Diaz, M.D.

Dear Labor Commissioner:

We represent Mr. Justin De Leon. We will be filing a representative action complaint on Mr. De Leon's behalf and on behalf of all those similarly situated. The following is a recitation of the facts and theories we believe justify an action under the Labor Code Private Attorney General Act ("PAGA") for numerous Labor Code violations as described below. We are providing you and the following employers notice via electronic online filing and certified mail, respectively, pursuant to Labor Code section 2699.3.

Jaime Alonso Diaz, M.D.
VIP Emergent Care, Inc. dba VIP Urgent Care
2944 Tapo Canyon Road #A
Simi Valley, CA 93063

Via Certified Mail 9590 9402 4621 8323 5123 19

Please notify us of your intent to investigate any or all of the claims alleged herein. Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Mr. De Leon, and all other similarly situated employees, pursuant to Labor Code section 2699. Specifically, the aggrieved PAGA class of employees would include all individuals who are currently performing or have formerly performed any work for as non-exempt workers, whether classified as employees or independent contractors at any point, who were paid on an hourly basis, within one year prior to the mailing of this notice, up to and including the date this matter is certified as a class action. The term worker shall include, but is not limited to, administrative, clerical, and assistive employees, and other aggrieved employees or similar positions that performed work under similar conditions for employers

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VIP Emergent Care, Inc. dba VIP Urgent Care (“VIP”), and Jaime Alonso Diaz, M.D. (“Dr. Diaz”) (collectively the “Employers”).

A. FACTS

The Employers are in the business of providing health care services for profit to patients through urgent care centers situated in Simi Valley and Tarzana.

As part of the Employers’ medical business, the Employers employed Mr. De Leon as an administrative assistant staffing the front desk of the VIP Urgent Care facility in Simi Valley, registering patients, collecting payments for service, collecting insurance billing information, scheduling appointments, answering phone calls, opening and closing the facility, and assisting licensed healthcare practitioners with patients, among other duties.

Mr. De Leon was employed by the Employers as an administrative assistant beginning January 7, 2019, earning an hourly wage of \$18.00, until his involuntary termination sometime in or after December 2019, when the Employers removed him from the work schedule. The Employers classified Mr. De Leon as an hourly, non-exempt employee eligible for overtime compensation when working more than eight (8) hours in any single workday, more than forty (40) hours in any 7-day workweek, and at times when working seven consecutive workdays with no day of rest. Mr. De Leon was paid twice monthly.

The Employers have a practice and policy of refusing to pay non-exempt workers minimum wages for all hours worked and overtime premiums, including those hours outside their regularly scheduled shift.

The Employers employed Mr. De Leon, and other similarly situated workers, typically for a 10-hour workday without paying any overtime premiums for hours worked exceeding eight (8) hours in a single workday. Aggrieved employees worked on this basis at both the Simi Valley and Tarzana locations, often working four (4) 10-hour workdays per workweek without receiving overtime premiums.

The Employers have adopted no regularly scheduled alternative workweek that is valid under Labor Code section 511 for the Employers’ facilities at Simi Valley and/or Tarzana.

The Employers have filed no alternative workweek election results with the Department of Industrial Relations as required by Labor Code section 511 for the Employers’ facilities at Simi Valley and/or Tarzana.

VIP did not permit Mr. De Leon and similarly situated workers to maintain accurate timecards of their hours worked. Instead work hours were entered by supervisors or managers inaccurately, depriving Mr. De Leon and similarly situated workers of minimum

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wages and overtime premiums for hours of work that were not recorded in the payroll system and were therefore worked “off the clock.”

Because VIP provided Mr. De Leon and similarly situated workers with no consistent system or method for tracking and reporting all their hours of work, all of Mr. De Leon’s hours of work were not accurately captured, Mr. De Leon was not fully paid for all hours of his labor, and Mr. De Leon at times worked “off-the-clock” for no compensation, in violation of California’s minimum wage laws.

Mr. De Leon and similarly situated individuals would often stay over their regularly scheduled shifts to complete administrative, clerical, and/or other assistive work, but they would not be paid for this time.

The Employers have a practice and policy of failing to provide legally compliant meal and rest periods, failing to provide accurate and complete itemized wage statements, and failing to pay these wages due at separation.

Mr. De Leon is informed and believes that the Employers’ timecards failed to document that any meal or rest breaks were ever taken by Mr. De Leon and similarly situated workers.

Mr. De Leon and similarly situated workers were not able to receive legally compliant meal and rest periods due to the Employers’ policy and practice of refusing to make them available.

For many months, the Employers did not issue any paystubs whatsoever to Mr. De Leon.

At the time of hiring and throughout Mr. De Leon’s employment, the Employers provided no required notice under section 2810.5 of the Wage Theft Prevention Act (Lab. Code § 2810.5), to include: Mr. De Leon’s rate(s) of pay, designated pay day, the Employers’ intent to claim allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime, and the Employers’ “doing business as” names.

At the time of Mr. De Leon’s termination, the Employers provided no required notice under California Unemployment Insurance Code 1089 of a change in the employment relationship.

B. ALLEGATIONS AND CHARGES

1. Claim One - Willful Failure to Pay Minimum Wages (Labor Code §§ 1194, 1194.2, 1197)

Labor Code section 1197 provides that payment of less than the minimum wage to employees is unlawful. The Employers employees are governed by the Industrial Welfare

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Commission's Minimum Wage Orders, MW-2014, MW-2017, and MW-2019 establishing a minimum hourly wage of \$9.00 beginning July 1, 2014, \$10.00 beginning January 1, 2016, \$10.50 per hour beginning January 1, 2017, \$11.00 per hour beginning January 1, 2018, \$12.00 per hour beginning January 1, 2019, \$12.00 per hour beginning January 1, 2020 for employers of 25 or fewer employees, and \$13.00 per hour beginning January 1, 2020 for employers of 26 or more employees.

California law requires that employees be compensated for all time during which an employee is subject to the control of an employer. The Employers willfully failed and refused to pay Mr. De Leon and similarly situated employees minimum or regular wages while working "off the clock."

Because of the Employers' willful conduct in not paying minimum or regular wages, Mr. De Leon and similarly situated workers are entitled to recover the unpaid balance of the full amount of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit, under Labor Code § 1194. Mr. De Leon and similarly situated workers are also entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon under Labor Code § 1194.2.

Labor Code § 558.1 provides for individual liability for natural persons acting on behalf of an employer including owners, directors, officers, and managing agents of the employer, who violate or cause to be violated the employee protections of Labor Code § 1194.

Mr. De Leon is entitled to recover reasonable attorney's fees and costs under Labor Code § 1194 in prosecuting this claim.

Labor Code section 2699(e)(2) provides for civil penalties of up to one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and up to two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation for all provisions of the Labor Code except those for which a civil penalty is specifically provided.

2. Claim Two - Unpaid Overtime Wages (Lab. Code, §§ 510, 1194)

Mr. De Leon and similarly situated workers were governed by the wage and overtime requirements of Labor Code § 510 and IWC Wage Order No. 4. IWC Wage Order No. 4 mandates employees must be paid overtime of one and one-half times the employee's regular rate of pay for all hours worked over eight (8) hours up to and including twelve (12) hours in any workday and over 40 hours in one work week, and for the first eight (8) hours worked on the seventh consecutive day of work in a workweek, and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any workday.

The Employers required Mr. De Leon and similarly situated workers to work shifts that regularly exceeded eight (8) hours per day, typically ten (10) or more hours, but did not pay

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Mr. De Leon and similarly situated individuals any overtime compensation for these hours, which was against the law.

During the last four years, the Employers systematically denied Mr. De Leon and similarly situated workers overtime compensation for hours worked over eight (8) and twelve (12) in one day and over forty (40) hours in one work week.

Mr. De Leon and similarly situated workers are entitled to recover the unpaid balance of the full amount of the overtime wages, including interest thereon, reasonable attorney's fees, and costs of suit, under California Labor Code section 1194.

Labor Code § 558.1 provides for individual liability for natural persons acting on behalf of an employer including owners, directors, officers, and managing agents of the employer, who violate or cause to be violated the employee protections of Labor Code § 1194.

Mr. De Leon is entitled to recover reasonable attorney's fees and costs under Labor Code § 1194 in prosecuting this claim.

Labor Code section 2699(e)(2) provides for civil penalties of up to one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and up to two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation for all provisions of the Labor Code except those for which a civil penalty is specifically provided.

3. Claim Three - Failure to Provide Accurate Itemized Wage Statements (Lab. Code 226)

California Labor Code, § 226 requires employers, semimonthly or at the time of each payment of wages, to furnish employees an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for employees whose compensation is solely based on a salary and who is exempt from payment of overtime under Labor Code § 515, subdivision (a), or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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The Employers failed to accurately itemize gross wages earned, total hours worked by the employee, all deductions, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. De Leon and other similarly situated workers, as required by California Labor Code § 226, because. The Employers' itemized wage statements have not and do not conform to requirements of California Labor Code § 226.

The Employers have not complied and do not comply with Labor Code § 226, causing injury and damages to Mr. De Leon and other similarly situated workers. These damages include, but are not limited to, costs that must be expended recalculating the correct rates for the regular and overtime hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, Mr. De Leon and other similarly situated workers elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for Mr. De Leon and per each similarly situated worker).

Labor Code § 558.1 provides for individual liability for natural persons acting on behalf of an employer including owners, directors, officers, and managing agents of the employer, who violate or cause to be violated the employee protections of Labor Code § 226.

Mr. De Leon is entitled to recover reasonable attorney's fees and costs under Labor Code § 218.5 in prosecuting this claim.

Labor Code section 2699(e)(2) provides for civil penalties of up to one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and up to two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation for all provisions of the Labor Code except those for which a civil penalty is specifically provided.

4. Claim Four - Willful Failure to Timely Pay Wages When Due at Termination (Labor Code §§ 201 – 203)

Labor Code §§ 201 and 202 requires the Employers to pay employees all wages due immediately upon involuntary discharge or layoff of an employee, and within 72 hours of an employee's voluntary termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

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Mr. De Leon and Former Employee Subclass members were and are routinely and uniformly required to wait longer than the statutory maximum for payment in full of all earned wages in their final paychecks upon separation from employment. Mr. De Leon and Former Employee Subclass members are entitled to compensation for unpaid wages, but to date have not received such compensation.

More than three (3) days have passed since Mr. De Leon and Former Employee Subclass members have left the Employers' employ. Mr. De Leon and Former Employee Subclass members have not absented themselves or made themselves unavailable for payment of such unpaid sums.

Because of the Employers' willful conduct in not paying wages owed at the time of separation from employment, Mr. De Leon and Former Employee Subclass members are entitled to up to thirty (30) days wages as a penalty under Labor Code § 203, together with interest thereon.

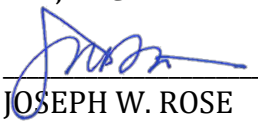
Labor Code § 558.1 provides for individual liability for natural persons acting on behalf of an employer including owners, directors, officers, and managing agents of the employer, who violate or cause to be violated the employee protections of Labor Code § 203.

Mr. De Leon is entitled to recover reasonable attorney's fees and costs under Labor Code § 218.5 in prosecuting this claim.

We look forward to hearing from you within 65 days. Thank you.

Sincerely,

ROSE LAW, APC

By: 
JOSEPH W. ROSE
Attorney at Law

Cc: Justin De Leon
VIP Emergent Care, Inc. dba VIP Urgent Care
Jaime Alonso Diaz, M.D.

*Justin De Leon v. VIP Emergent Care, Inc. dba VIP Urgent Care, and
Jaime Alonso Diaz, M.D.*
PAGA Claim Notice
September 23, 2020
Page 8

DECLARATION OF MAILING

I, Joseph W. Rose, declare as follows: I am employed in the County of Sacramento, State of California. I am over the age of eighteen and not a party to the within action; my business address is 11335 Gold Express Drive, Suite 135, Gold River, CA 95670, in said County and State. On September 23, 2020, I served the following documents:

Labor Code Private Attorneys' General Act Claim Notice

on the parties state below, by the following means of service:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

BY ELECTRONIC FILING

Jaime Alonso Diaz, M.D.
VIP Emergent Care, Inc. dba VIP Urgent Care2944
Tapo Canyon Road #A
Simi Valley, CA 93063

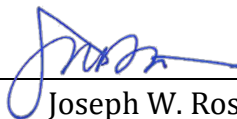
BY CERTIFIED MAIL
9590 9402 4621 8323 5123 19

☒ **BY UNITED STATES MAIL [CERTIFIED]:** I placed a true copy in a sealed envelope or package addressed to the persons as indicated above, on the above-mentioned date, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Gold River, California.

☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date by 5:00 p.m., based on the electronic filing requirements of the Labor and Workforce Development Agency, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

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

Executed on September 23, 2020



Joseph W. Rose

Exhibit C

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

This shall serve as a summary of the anticipated material terms of the final written Settlement Agreement in the dispute, as initiated by Justin De Leon ("Plaintiff") against his former employer, VIP Emergent Care, A Medical Corporation and Jaime Diaz (collectively, "Employer" or "Defendants"), as identified in the action known as *Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.*, Ventura County Superior Court Case No: 56-2021-00549419-CU-OE-VTA ("Complaint").

1. Summary of the Settlement: The settlement memorialized in this agreement includes the following essential terms, which are defined more fully throughout this MOU. Note that these are preliminary estimates only and the more specific definitions will control in the event of a conflict:

- a. Definition of "Aggrieved Employees" (2.a): all non-exempt workers in California who were employed by Employer in Simi Valley, California, at any time from September 23, 2019, though the date of approval of this settlement
- b. Total Settlement Amount, including amounts allocated to fees, incentive awards, PAGA allocation, Plaintiff's individual claims, and costs (3.a):
 - i. TOTAL: \$50,000
 - ii. ATTORNEYS' FEES & COSTS:
 - 1. Fees (3.d.i): up to 33.33%
 - 2. Costs (3.d.ii): up to \$4,000
 - iii. INCENTIVE AWARD(s) (3.e): up to \$5,000
 - iv. PLAINTIFF'S INDIVIDUAL CLAIMS: \$15,000 (inclusive of Plaintiff's fees and costs on those claims). Payments to Plaintiff characterized as non-wage penalties and shall be reported by Defendant as Form 1099 payments. The parties will meet and confer regarding appropriate tax allocation and treatment to be included in the formal, long form settlement agreement.
- c. Inclusive Dates of Settlement Period (2.b): September 23, 2019, though the date of approval of this settlement.
- d. Plaintiff shall dismiss the class claims brought by Plaintiff provided the court approves the settlement.

2. Definition of Parties and Settlement Period:

a. Definition of Aggrieved Employees

- i. "Aggrieved Employees" is defined as all non-exempt workers in California who were employed by Employer in Simi Valley, California, at any time

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

from September 23, 2019, though the date of approval of this settlement in the state of California.

- ii. The Settlement shall bind Plaintiff, who has timely provided notice to the Labor Workforce Development Agency in LWDA Case No. LWDA-CM-809120-20 related to the nature of his claims, and who thereby has standing to settle the matter on behalf of himself and all aggrieved or affected employees as proxy for the State of California. The Plaintiff, the State of California and all aggrieved employees shall be bound by the terms of the settlement and release. [Arias, supra, 46 Cal.4th at p. 986.](#)

- b. **Definition of Settlement Period:** The settlement period ("Settlement Period") shall run from September 23, 2019, to the date of approval of settlement.

3. Monetary Terms of Settlement

- a. **PAGA Settlement Amount:** The PAGA Settlement Amount is \$35,000 subject to the terms and conditions herein. The PAGA Settlement Amount includes all: (1) a service payment to the named Plaintiff; (2) PAGA counsels' fees; (3) PAGA counsels' costs; (4) settlement administration expenses; (5) the PAGA payment to the LWDA; and (6) payments to the aggrieved employees. The PAGA Settlement Amount less (1) a service payment to the named Plaintiff; (2) PAGA counsels' fees; (3) PAGA counsels' costs, (4) settlement administration expenses, is the Net Settlement Fund. Of the Net Settlement Fund, 75% will be paid to the LWDA ("LWDA Fund"), and the remaining 25% will be distributed to Aggrieved Employees as described below ("Aggrieved Employee Fund"). Each Aggrieved Employee shall be responsible for paying any taxes due on his or her settlement.
- b. **Individual Plaintiff's Settlement Amount:** The Individual Plaintiff's Settlement Amount is \$15,000 (inclusive of Plaintiff's fees and costs on those claims), which is in addition to the \$35,000 PAGA Settlement Amount, making the total amount of the settlement of all claims \$50,000. Plaintiff is receiving this amount of \$15,000, even though some but not all Plaintiff's individual claims have yet been formally filed, as Plaintiff intended to do so if the matter was not settled, which had been communicated to Defendant in advance. Payment of the Individual Plaintiff's Settlement Amount is contingent upon court approval of the other terms of the settlement, except that, as set forth below, there is no requirement that the payments set forth in Sections 3(d) and (e) be approved.
- c. **Division of PAGA Settlement Amounts:**
 - i. **Calculation of Individual PAGA Settlement Amounts:** Each Aggrieved Employee's estimated payment to be paid out of the total Aggrieved Employee Fund, after any payments for attorneys' fees, costs, service enhancement, settlement administration, and/or the LWDA Fund, shall be based on pay periods worked during the Settlement Period.

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

- ii. **Timing of Payment:** Defendant shall deposit the settlement funds with the Settlement Administrator after the judgment becomes non-appealable.
- iii. **Tax Allocation:** Payments to Aggrieved Employees shall be characterized as non-wages penalties and shall be reported by Defendant as Form 1099 payments. Payments to Plaintiff characterized as non-wage penalties and shall be reported by Defendant as Form 1099 payments, except as otherwise required by law. The parties will meet and confer regarding appropriate tax allocation and treatment to be included in the formal, long form settlement agreement.
- iv. **Cashing of Checks:** Aggrieved Employees will have 180 days from the date of mailing of their settlement check to cash their settlement check. In the event that there are any funds attributable to any Aggrieved Employee (e.g., uncashed settlement checks) that are not deposited or cashed within the 180-day period, said funds shall be reverted to the State of California Controller – Unpaid Wages Fund. Any failure of an Aggrieved Employee to deposit a check shall not affect the enforceability of the release of claims, as the parties jointly agree that valid consideration for same is the offer of monetary consideration by means of the offer of settlement and mailing of settlement checks.
- v. **Payment to LWDA:** 75% of the Net Settlement Fund shall be paid to the California Labor Workforce Development Agency ("LWDA"), and the remaining 25% shall be divided among the Aggrieved Employees.

d. Attorneys' Fees and Costs

- i. **Attorneys' Fees:** Counsel for Plaintiff and the Aggrieved Employees may seek up to 33.33% of the Total Settlement Amount as attorneys' fees.
 - ii. **Costs:** Counsel for the Aggrieved Employees may seek up to \$4,000 as reasonable out-of-pocket costs and expenses.
 - iii. The amount of Attorneys' Fees and Costs provided to Counsel for Plaintiff is not a material term of this MOU or settlement. Any denial or modification by a Court to the requested amount of Attorneys' Fees and/or Costs will not invalidate the rest of this MOU or the settlement, and is not grounds for appeal.
- e. Plaintiff's Service/Enhancement Award:** Plaintiff may seek an enhancement award of up to \$5,000. The incentive payment will be characterized as taxable income and reported by Defendant on an IRS Form 1099. The amount of the Service/Enhancement Award is not a material term of this MOU or settlement. Any denial or modification by a Court to the requested amount of the Service/Enhancement Award will not invalidate the rest of this MOU or the settlement, and is not grounds for appeal.

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

4. Appointment, Duties and Costs of Administrator

- a. Settlement Administrator:** The parties will jointly select, subject to Court Approval, the Settlement Administrator in this matter. Plaintiff proposes ILYM Group Inc. or Phoenix, The costs of settlement administration shall be paid out of the PAGA Settlement Amount prior to distribution to the LWDA and Aggrieved Employees.
- b. Delivery of Aggrieved Employee List:** Within fifteen (15) business days of the judgment in the Civil Action has becomes non-appealable, an electronic file containing the following information for each Aggrieved Employee shall be provided to Settlement Administrator:

 - i. Full name, last known address, social security number; and
 - ii. The number of pay periods each Aggrieved Employee worked for Employer in California within the Settlement Period.
- c.** The information provided to the Settlement Administrator shall be considered confidential, shall not be disclosed to anyone other than Defense counsel and the Settlement Administrator, and shall be returned to the Defendant at the conclusion of the matter. Specifically, the Settlement Administrator shall not provide Plaintiff's counsel with any information concerning any individuals, absent express written approval from Employer's counsel. **Notice Packet:** Counsel for Plaintiff and Defendant shall jointly draft a notice regarding the settlement for Aggrieved Employees, which will be provided to the Settlement Administrator for mailing with the checks and IRS Forms 1099.
- d. Delivery of the Notice Packet:** Defendant's counsel shall deliver the notice, Form 1099, and settlement check by First Class U.S. Mail with an enclosed, postage-paid return envelope to each Aggrieved Employee. Any Notices returned undeliverable shall be traced once to obtain a new address and be re-mailed by First Class Mail.
- e. Defendant's Obligations:**
- f.** Defendant shall deposit all amounts due under the Settlement Agreement with the Settlement Administrator within fifteen (15) business days after the judgment in the Civil Action has become non-appealable. Attorneys' fees, costs, and service awards will be paid within five (5) business days after Defendant deposits the amounts due under the Settlement Agreement with the Settlement Administrator

5. Release:

- a. Release on Behalf of the LWDA:** Upon the approval by the Court of this Agreement, Plaintiff, individually and as the representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, agrees to release Employer, its affiliates, parents, subsidiaries, owners, members,

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

partners, officers, directors, predecessors, successors, assigns, agents, shareholders, investors, insurers and legal representatives (“Released Parties”) for penalties under the California Private Attorneys’ General Act (Labor Code section 2698, *et seq.*) predicated on the violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 551-552, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and the IWC Wage Orders, that accrued at any time between October 8, 2019 to the date of approval of this Agreement, as well as any and all claims that Plaintiff may have individually relating to or arising from, in any way, his employment by Defendant (“Released Claims”).

The express purpose of this Agreement and the Judgment to be entered by the Court following approval of this settlement is to forever bar Plaintiff, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA (including all Aggrieved Employees) from asserting any of the Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiff, the State of California or any Aggrieved Employee to bring a PAGA claim on behalf of the LWDA is completely and forever foreclosed. Any Party to this Agreement may use the Agreement to assert that this settlement and the judgment to be entered by the Court following approval by this settlement bars any later-filed action asserting any of the Released Claims against any of the Released Parties at any time between September 23, 2019, to the date of approval of this Agreement.

The Aggrieved Employees waive any rights provided by California Civil Code Section 1542 as to the Released Claims only, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6. **Settlement Documentation and Approval:** The Settlement Agreement is contingent upon judicial approval and the Court has continuing jurisdiction over the claims alleged in the Complaint until approval is granted, judgment entered, and the claim is dismissed.
 - a. **Settlement Agreement:** All terms and conditions of this MOU shall be set forth in a formal, long form settlement agreement (“Settlement Agreement”), and the Settlement Agreement shall, when fully executed and approved by a court, replace this MOU, which shall then be of no further force and effect.
 - b. **Settlement Approval Documentation:** Settlement is subject to agreement of the parties on the terms and drafting/form of acceptable joint motion papers, Settlement Agreement, and proposed order approving the settlement. The first draft of all such papers are to be prepared by Plaintiffs’ counsel.

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

- c. Failure of Approval:** If the court fails to approve this settlement, the settlement is null and void and is not admissible in any other proceeding or action.
- 7. No Admission/Denial of Liability:** Employer denies any liability or wrongdoing of any kind associated with the claims alleged in this matter. Nothing in this MOU or the final Settlement Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Employer.
- 8. Governing Law:** This MOU is made under the laws of the State of California, without regard to otherwise applicable principles of conflicts of laws, whether of the State of California or any other jurisdiction.
- 9. Publicity and Confidentiality**
- a. Communication by Counsel:** Plaintiffs' counsel agrees that it will not initiate or contact or have any communications with the Aggrieved Employees during the settlement approval process. Nothing will prevent Plaintiffs' counsel from responding to inquiries from Aggrieved Employees. For its part, Defendant agrees that it shall refer any questions from Aggrieved Employees to the Claims Administrator.
- b. No Media:** No public comment, communications to media, or any form of advertising or public announcement (including social media) regarding the case shall be made by Plaintiff or his counsel at any time.
- c. Confidentiality:** Prior to filing of the motion(s) for approval, counsel for Plaintiff shall not discuss the terms of the settlement or the negotiations leading to settlement with any person other than the named Plaintiff.
- 10. Authority to Sign:** The signatories hereto represent and warrant that they have the authority to sign on behalf of their designated parties. This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

This 9th day of September 2022.

Plaintiff:

Justin De Leon

Employer:

By: Jaime Diaz
For: VIP Emergent Care, A Medical
Corporation

Jaime Diaz
Individually

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

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- 7. No Admission/Denial of Liability:** Employer denies any liability or wrongdoing of any kind associated with the claims alleged in this matter. Nothing in this MOU or the final Settlement Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Employer.
- 8. Governing Law:** This MOU is made under the laws of the State of California, without regard to otherwise applicable principles of conflicts of laws, whether of the State of California or any other jurisdiction.
- 9. Publicity and Confidentiality**
- a. Communication by Counsel:** Plaintiffs' counsel agrees that it will not initiate or contact or have any communications with the Aggrieved Employees during the settlement approval process. Nothing will prevent Plaintiffs' counsel from responding to inquiries from Aggrieved Employees. For its part, Defendant agrees that it shall refer any questions from Aggrieved Employees to the Claims Administrator.
 - b. No Media:** No public comment, communications to media, or any form of advertising or public announcement (including social media) regarding the case shall be made by Plaintiff or his counsel at any time.
 - c. Confidentiality:** Prior to filing of the motion(s) for approval, counsel for Plaintiff shall not discuss the terms of the settlement or the negotiations leading to settlement with any person other than the named Plaintiff.
- 10. Authority to Sign:** The signatories hereto represent and warrant that they have the authority to sign on behalf of their designated parties. This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

This 9th day of September 2022.

Plaintiff:

DocuSigned by:

Justin DeLeon

AEGM4238C8F34AD

Justin De Leon

9/13/2022 | 1:21 PM EDT

Employer:

DocuSigned by:

Jaime Diaz

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By: Jaime Diaz

For: VIP Emergent Care, A Medical Corporation

DocuSigned by:

Jaime Diaz

B16CA3189B994C1...

Jaime Diaz

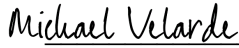
Individually

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

COUNSEL FOR PLAINTIFF AND EMPLOYER

Counsel for Plaintiff:

DocuSigned by:



9/13/2022 | 11:51 AM PDT

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Michael Velarde

DocuSigned by:



9/13/2022 | 1:21 PM EDT

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Joseph W. Rose

Counsel for Employer:

DocuSigned by:



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Adam Miller, Esq.

Mediation Settlement Terms Sheet
Justin De Leon v VIP Emergent Care, A Medical Corporation, et al.

COUNSEL FOR PLAINTIFF AND EMPLOYER

Counsel for Plaintiff:

Michael Velarde

Joseph W. Rose

Counsel for Employer:



Adam Miller, Esq.

Exhibit D

NOTICE OF SETTLEMENT OF LAWSUIT
UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
AND RELEASE OF CLAIMS

De Leon, V. VIP Emergent Care, Inc. et al.
Ventura Co. Sup. Ct. Case No 56-2021-00549419-CU-OE-VTA

<<Name>>
<<Address>>
<<City>>, <<State>>
<<Zip Code>>
XX - XX -

I. NOTICE OF PAGA SETTLEMENT

The Ventura County Superior Court (the "Court") has approved a settlement in a civil lawsuit filed by Justin De Leon ("Plaintiff") on behalf of himself and all other aggrieved employees captioned De Leon, V. VIP Emergent Care, Inc. et al., Case No 56-2021-00549419-CU-OE-VTA.

In this lawsuit, Plaintiff seeks to recover civil penalties for violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency ("LWDA") and other aggrieved employees under the Labor Code Private Attorneys General Act ("PAGA"). These civil penalties are based on Plaintiff's allegations that VIP Emergent Care, A Medical Corporation, doing business in Simi Valley, California, as VIP Urgent Care, and its principal Jaime Alonso Diaz, M.D. (collectively, "Defendants") had a practice and policy of: a) failing to pay Plaintiff and similarly aggrieved employees minimum wages for all hours worked in violation of Labor Code §§ 1191, 1194, 1194.2, 1197, and applicable Industrial Welfare Commission ("IWC") Wage Orders; b) failing to pay Plaintiff and similarly aggrieved employees overtime premiums for all overtime hours worked in violation of Labor Code §§ 510 and 1194, and applicable IWC Wage Orders; c) failing to furnish Plaintiff and similarly aggrieved employees with complete, accurate, itemized wage statements each payroll period in violation of Labor Code §§ 226 and 226.3, and applicable IWC Wage Orders; d) failed to timely pay Plaintiff and similarly aggrieved employees their final wages when terminating employment in violation of Labor Code §§ 201-203, and applicable IWC Wage Orders; e) making unlawful preemployment inquiries about criminal conviction history in violation of the Fair Chance Act, Government Code § 12952, et seq.; f); and did so in violation of the Unfair Competition Law, Business and Professions Code §§ 17200 et seq., and the Labor Code Private Attorneys General Act, Labor Code §§ 2699 et seq. ("PAGA").

The Court has not decided whether Plaintiff's claims are correct or incorrect. This Notice must not be understood as an expression of opinion by any Court about the merits of Plaintiff's claims. Throughout this litigation, Defendants have denied and continue to deny Plaintiff's allegations. Defendants maintain that they always complied with the California Labor Code and applicable IWC Wage Orders and agreed to compromise and settle Plaintiff's lawsuit without admitting liability solely to avoid the time, expense, and uncertainty of continued litigation.

You are receiving this Notice because you are in the group of employees referred to in the settlement as "PAGA Claim Employees," which includes all current and former non-exempt employees of VIP in Simi Valley, California who were employed by Defendants at any time from

PAGA SETTLEMENT NOTICE AND RELEASE OF CLAIMS

De Leon, V. VIP Emergent Care, Inc. et al.

Ventura Co. Sup. Ct. Case No 56-2021-00549419-CU-OE-VTA

Page 2 of 2

September 23, 2019, though the date of approval of this settlement, which was _____ [date]. The “Settlement Period” is defined as the time from September 23, 2019, through _____ [date]. Though, Defendants ceased operation of VIP Urgent Care in September 2020, and issued final paychecks employees in October 2020, employing no one thereafter.

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of qualifying wage statements received by each PAGA Claim Employee in the Settlement Period. Your individual PAGA payment has been calculated at \$ _____ [amount to be paid to this employee]. Your payment is enclosed with this Notice.

III. RELEASE

The Court has approved the parties’ Settlement Agreement (“Settlement”). By operation of the Settlement’s terms, all PAGA Claim Employees including you will release Defendants, their affiliates, subsidiaries, owners, members, partners, officers, directors, predecessors, successors, assigns, agents, shareholders, investors, insurers and legal representatives (“Released Parties”) for penalties for the “Representative PAGA Claims” including asserted violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558(a), 558(c), 1174, 1174.5, 1191, 1194, 1194.2, 1197, 1197.1, 1198, 2699(a), 2699(f), 2699.3, and 2699.5 and Industrial Welfare Commission Order No. 2001-4. Labor Code sections are referenced in the second paragraph of Section I on the previous page of this Notice.

Upon entry of the Order approving the Settlement, any PAGA Claim Employee covered by this Agreement (including you) is barred from proceeding with any claim under the PAGA released by this settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix Settlement Administrators at (800) 523- 5773 with any questions.

Settlement checks will be void six (6) months after issuance if not deposited or cashed. In such event, the Settlement Administrator shall escheat to the California Labor and Workforce Development Agency (LWDA). If your check is lost or misplaced, you must contact the Settlement Administrator immediately to request a replacement.