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Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ASHLEY BROWN, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

MINUTECLINIC DIAGNOSTIC MEDICAL
GROUP OF CALIFORNIA, INC., a California
Corporation; et al.;

Defendants.

Case No.: 30-2021-01185270-CU-OE-CXC
*[Assigned to Hon. Judge Glenda Sanders, Dept
CX101, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: September 9, 2022

Time: 1:30 p.m.

Dept.: CX101

Complaint filed: February 22, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest PAGA-only case in
17 California’s history - a \$12.5 million-dollar court approved settlement, which followed extensive
18 litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
19 company (*Garcia v. Macy’s*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed.

25 6. Over the last several consecutive years, I have been selected by my peers as a
26 “Super Lawyer” in Employment Litigation.

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BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested but productive mediation, Plaintiff and Defendants (collectively, the “Parties”) entered into a Class and PAGA Action Settlement Agreement and Release resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in exchange for Defendants’ agreement to pay \$670,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees of MinuteClinic who worked in California at any time during the Class Period of February 22, 2017, through the Preliminary Approval Date (the “Class” or “Class Members”). Under the terms of the Settlement Agreement, Defendants will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$9,750, and PAGA Penalties of \$40,000 of which \$30,000 will be paid to the LWDA and the remaining \$10,000 will be paid to the Aggrieved Employees. After subtracting the agreed-upon deductions from the Settlement Amount, approximately \$366,916.67 will be available to pay the individual settlement amounts to approximately 675 Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 670,000.00
Attorneys’ Fees (1/3)	\$ 233,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 9,750.00
PAGA Penalties	\$ 40,000.00
<i>Net Settlement Amount</i>	\$ 366,916.67

8. Assuming approximately 675 total Class Members employed during the Class Period, each will receive approximately \$543 on average.

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her

1 estimated settlement payment and the number of Pay Periods he/she is credited with working
2 during the Class Period (attached hereto as **Exhibit B**).

3 **PROCEDURAL BACKGROUND**

4 10. My office has performed considerable work and diligently investigated and
5 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
6 significant settlement fund for the benefit of the Class. We efficiently communicated and
7 exchanged information informally with Defense counsel which enabled the parties to
8 successfully settle the case. Because of the risks involved in litigating the case and the contested
9 legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair,
10 reasonable, and adequate.

11 11. After being retained by Plaintiff, we submitted a letter to the California Labor
12 Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney
13 General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**, and simultaneously
14 sent a letter to Defendant requesting the production of his personnel and timekeeping records to
15 further evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction
16 over the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

17 12. Meanwhile, on February 22, 2021, Plaintiff filed a putative class action
18 Complaint, alleging claims arising out of Defendants' alleged: (1) Failure to Pay Minimum
19 Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Breaks; (4) Failure to
20 Provide Rest Breaks, (5) Failure to Timely Pay Final Wages; (6) Failure to Provide Accurate
21 Wage Statements, and (7) Unfair Competition. On April 21, 2021, Plaintiff filed a First
22 Amended Complaint adding a cause of action for representative claims under PAGA.

23 13. Defendants fully denied the allegations. However, before incurring significant
24 costs and expenses in protracted discovery and litigation, the parties agreed to explore an early
25 resolution through mediation. In preparation for the mediation, the Parties informally
26 exchanged documents and information that allowed both sides to calculate the potential damages
27 and evaluate potential risk, including extensive policies and procedures pertaining to each claim
28 alleged, and statistics relating to the number of current and former employees, number of shifts,

1 pay periods and other things. In this regard, Defendants provided a comprehensive database of
2 timekeeping and payroll records of the Class Members that consisted of nearly 50,000 shifts (and
3 almost 7,500 pay periods) worked by the Class Members. This robust sampling enabled both
4 parties and their experts to take a deep dive into the claims. During this process, Plaintiff's
5 counsel and their retained expert evaluated the potential claims, risks, and defenses as to all
6 similarly situated employees.

7 14. On March 10, 2022, the Parties participated in a full-day mediation with Steve
8 Serratore, a highly experienced wage and hour class action mediator. At the conclusion of
9 mediation, Mr. Serratore issued a mediator's proposal calling for a class-wide settlement for
10 \$670,000. The Parties accepted the mediator's proposal and memorialized the terms of the
11 settlement in a long-form Settlement Agreement. Under the terms of the settlement, the Parties
12 now seek preliminary approval of the Settlement.

13 **THE WAGE AND HOUR CLAIMS AND CLASS COUNSEL'S INVESTIGATION**

14 15. The putative Class in this case consists of approximately 675 similarly situated
15 non-exempt employees who worked for Defendants in California during the Class Period.
16 Plaintiff alleged numerous wage and hour violations on behalf of the non-exempt employees.
17 However, Defendants vigorously contested and denied each of Plaintiff's material allegations on
18 the merits and as to the propriety of a class action or PAGA representative action on behalf of the
19 putative class and allegedly aggrieved employees.

20 16. Indeed, before getting to the merits of any specific claim, Defendant argued that
21 the case could not proceed on a class action basis because over 90% of the Class Members had
22 reportedly entered into arbitration agreements with class action waivers. And given that the
23 parties were awaiting the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v.*
24 *Moriana* at the time of mediation, the parties had to factor the unknown as to whether the PAGA
25 claims would remain viable (and now that the decision has come down and appears to be a
26 mixed bag in light of Justice Sotomayor's concurrence and the California Supreme Court holding
27 in *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, the decision to settle seems
28 even more proper).

1 17. In light of the various risks facing each side, the Parties agreed to mediate. And
2 there, Plaintiff raised a variety of claims on behalf of the Class. First, Plaintiff alleged claims for
3 unpaid minimum and overtime wages based on the theory that Defendant's practices required the
4 Class Members to perform pre-shift tasks work before clocking in and post-shift tasks after
5 clocking out – without compensation. Thus, Plaintiff argued that this led to unpaid minimum and
6 overtime wages on each such occasion, along with waiting time penalties under Labor Code §
7 203 for each *former* Class Member.

8 18. However, Defendant vehemently opposed these unpaid wage claims both on the
9 merits and as to the propriety of pursuing them on a class and representative PAGA basis. For
10 example, Defendant argued that it maintained lawful policies to compensate employees for all
11 time worked, including time spent on temperature checks. And Defendant argued that this claim
12 was also inherently unmanageable and not suitable for class certification since it would require
13 individualized assessments as to whether each Class Member performed off the clock work, how
14 much time was spent performing such work, and whether Defendant knew or should have known
15 (since no liability attaches otherwise).

16 19. Second, Plaintiff also alleged that Class members were often denied compliant
17 meal and rest breaks due to the nature of the work. However, Defendant countered that it
18 provided and made available meal and rest breaks to all employees, and any employee who did
19 not take a meal or rest break did so entirely of his or her own volition. In this regard, Defendant
20 produced its written policies and practices, which it argued show full compliance with the law.
21 As such, Defendant argued that these claims were without merit because, for each violation, a
22 fact-finder would have to determine why a break was noncompliant/nonexistent, because if it
23 was by the employee's choice, no liability attaches to the Defendant.

24 20. Third, Plaintiff also claimed that Defendant provided wage statements to the Class
25 that failed to accurately state the name and address of the employer. However, Defendant raised
26 a variety of defenses to this claim, namely that the wage statements did include the necessary
27 information. Additionally, Defendant argued that, even if some wage statements omitted the
28 necessary information, Plaintiff would be unable to prove the required "knowing and intentional"

1 and “injury” elements; thus, Defendant argued that statutory penalties under § 226(e) could not
2 be recovered under these facts.

3 21. Plaintiff also alleged various PAGA claims arising out of the claimed violations
4 mentioned above. However, Defendant argued that these type of “derivative” claims have no
5 merit.

6 22. Nonetheless, the Parties concluded that further litigation of the Action would be
7 protracted and expensive, and that it is desirable that the Action be fully and finally settled in
8 order to limit further risk, expense and protracted litigation.

9 **EVALUATION OF THE SETTLEMENT**

10 23. In preparation for mediation, Peter Carlson, a senior associate within my office,
11 and I formulated a damages model based upon detailed data obtained through informal discovery
12 and information exchanges. The summary of the claims below is based on calculations by our
13 expert and us, and the risks that we potentially faced, giving significant credit to the defenses that
14 Defendants raised or would like raise in further proceedings. Following the informal exchange
15 and other information provided by Defendants, we estimated the following data points through
16 the date of mediation: (1) approximately 575 total Class Members shortly prior to the January
17 2022, mediation (“the pre-mediation period”), (2) approximately 38,765 workweeks in the pre-
18 mediation period, (3) approximately 283,311 shifts worked in the pre-mediation period, and (4)
19 approximately 9,225 pay periods during the pre-mediation PAGA Period. From these metrics,
20 and when factoring in claim certification probabilities and liability probabilities, we formulated
21 detailed damages models to value the claims in preparation for mediation and to reach a realistic
22 and reasonable resolution.

23 24. Plaintiff’s claim for unpaid minimum and overtime wages was based on the
24 allegation that the Class Members were underpaid by an average of 3 minutes per shift, for a
25 total of 14,165 hours during the pre-mediation, at an effective rate of pay of \$87.44 per hour (a
26 blended rate, incorporating the base wage and overtime premium). As such, the maximum
27 potential damages for this wage claim was \$1,238,587.

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1 25. But this maximum figure ignores Defendants' multiple defenses to the unpaid
2 wage claim. First, Defendants argued that the off-the-clock claims are unmanageable and would
3 require a person-by-person analysis as to whether off-the-clock work occurred, whether a Class
4 Member was working or engaged in personal activities (such as socializing or making phone
5 calls, which cannot be considered work time), and whether Defendants knew or had reason to
6 know that such work was performed. As such, Defendants argued that this constituted precisely
7 the type of individualized inquiry that is not appropriate for certification. Based on this
8 argument, and others, Plaintiff assigned a 50% discount based on the risk that the Court would
9 deny class certification on the unpaid wage claims. Additionally, Defendants alleged that, if
10 certification were granted, it would defeat the wage claim on two fronts: (1) due to the arbitration
11 agreements, and (2) due to its compliant policies and practices that paid the Class for all hours
12 worked. Therefore, Plaintiff assigned an additional 50% discount for risks at the merits stage
13 (primarily due to the arbitration agreement), resulting in a total risk-adjusted value for the unpaid
14 wage claim of \$309,646.

15 26. These unpaid wage claims also gave rise to Plaintiff's claim for waiting time
16 penalties under Labor Code § 203. In this respect, there were 250 Class Members that separated
17 from employment during the relevant period, and those individuals earned an average daily wage
18 of \$466. Therefore, the maximum potential waiting time penalties totaled \$3,495,000.
19 However, Defendants argued that it would defeat the waiting time penalty claim as to Plaintiff's
20 off-the-clock claim because the failure to pay wages, if any, was not willful given Defendants'
21 facially compliant policy. Plaintiff applied a 50% risk of defeat at the class certification stage,
22 and an additional 75% discount at the trial and/or summary judgment stage (based on the
23 arbitration agreement issue and the willful defenses), resulting in the risk-adjusted value of
24 \$436,875.

25 27. With regard to Plaintiff's meal and rest break claims, the Class Members worked
26 283,311 shifts during the pre-mediation period. Based on an alleged 26.9% violation rate for the
27 meal period claims, as extrapolated from the pre-mediation sampling, and a 25% violation rate
28 for the rest break claims, the maximum potential damages are \$4,442,280 and \$4,128,505,

1 respectively.

2 28. But Defendants strongly opposed these claims based on the argument that these
3 fall directly into the category of impermissible “individualized issues” which cannot meet class
4 certification standards since Defendants had compliant written policies the employees had ample
5 latitude regarding whether, when, and how they took their breaks. Therefore, Defendants
6 asserted that a fact-finder would have to determine for each Class Member whether a break was
7 missed and why, and why a break was noncompliant/nonexistent, because if it was by the
8 employee’s choice, no liability attaches to the Defendants. Based on these arguments, Plaintiff
9 believes there is a 50% risk that the Court would deny class certification on these meal and rest
10 break claims.

11 29. Defendants also argued that, even if certification were granted, it would defeat
12 these claims on the merits because Defendants utilized compliant policies and practices and it
13 would present sufficient evidence that the workers were properly provided with all breaks.
14 Moreover, Defendants argued that Plaintiff would be unable to present sufficient evidence
15 establishing the number of meal and rest period violations in order to allow a fact-finder to
16 appropriately determine damages. Plaintiff acknowledged the risks and incorporated a further
17 40% reduction on the merits, with an additional 40% reduction for the arbitration agreement
18 issue, resulting in a 80% risk adjustment on the meal and rest break claims. Thus, Plaintiff
19 therefore calculates the risk-adjusted value of the meal claims to be \$444,228 and the rest break
20 claims to be \$412,850.

21 30. Finally, Plaintiff estimates the maximum potential penalties for the wage
22 statement claims as \$917,636 (based on approximately 9,225 pre-mediation allegedly violative
23 wage statements issued for the one-year statute of limitations). However, Defendant raised many
24 defenses, including that: (a) these violations, if any, did not result in any “injury” under § 226(e),
25 (b) the violations, if any, were not “knowing and intentional” and could not support the
26 assessment of penalties, and (c) “derivative” wage statement claims are without merit. These
27 defenses all went to the merits, not to defeating class certification. Thus, Plaintiff only assigned a
28 nominal 10% at class certification but applied a 50% risk on the merits, the majority of which

represents the risk presented by the arbitration agreements, resulting in a risk-adjusted value for the wage statement claims of \$412,936.

31. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	309,646
•	Waiting Time Penalty Claims	\$	436,875
•	Meal Period Claims	\$	444,228
•	Rest Break Claims	\$	412,850
•	Wage Statement Claims	\$	<u>412,936</u>
•	Total Risk Adjusted Penalties and Damages	\$	2,016,535

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

32. The settlement was the product of extensive arm's length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

33. The settlement will result in a fair payment to each class member based on the percentage of pay periods each Class Member worked during the Class Period. As set forth hereinabove, Plaintiff and her counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

34. Plaintiff's counsel brought to bear a great deal of experience in negotiating the settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery and investigation, making it possible to exercise informed judgment throughout the settlement process, including significant document review (e.g. documents pertaining to Defendant's policies and procedures, personnel documents, among others), and conducted an extensive analysis of the detailed class-wide data provided by Defendant.

35. Based on my experience in other cases, including wage and hour matters, I believe I am qualified to evaluate the class claims and viability of defenses in this class action. In this case, the recovery for each class member is reasonable, fair, and adequate, and a settlement at this time is in the best interests of the class. The settlement provides each class member with compensation for the alleged violations when viewed in relation to the costs and risks inherent in obtaining class certification and proceeding to trial.

36. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and conditions of the settlement as set forth in the abovementioned Settlement Agreement.

37. Of course, the settlement amount represents a compromise figure, taking into account the various risks surrounding class certification and the merits of Defendant's asserted defense. Nevertheless, the settlement provides for fair and adequate payments to the class members, with no reversion to Defendant.

PLAINTIFF IS NOT SEEKING AN ENHANCEMENT PAYMENT

38. At the time of mediation, Plaintiff separately resolved claims relating to discrimination and wrongful termination for a very modest settlement in the lower five figures. As a result of this separate settlement, Plaintiff is not seeking a service award.

**ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE
REQUESTED FEES AND COSTS**

39. As set forth above, I have over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future.

/ / /

1 40. When this case was taken on a contingency fee basis, with my firm agreeing to
2 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
3 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
4 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
5 those expenditures.

6 41. It is my experience that attorney fee awards of one-third of a common fund
7 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
8 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
9 is further warranted because it is within the range of reasonableness typically awarded in class
10 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
11 amount of costs incurred at the time of final approval.

12 **SETTLEMENT ADMINISTRATOR**

13 42. The parties request that the Court appoint ILYM Group to serve as the Settlement
14 Administrator. ILYM Group is experienced in administering class action settlements, and has
15 provided a proposal to administer this settlement for a total of \$9,750, which is attached hereto as
16 **Exhibit D.**

17 **SUBMISSION TO THE LWDA**

18 43. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
19 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit E.**

20 **EXHIBITS AND CONCLUSION**

21 44. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
22 "A."

23 45. The proposed Class Notice is attached as Exhibit "B."

24 46. A true and correct copy of the notice letter we submitted to the LWDA is attached
25 as Exhibit "C."

26 47. ILYM Group's proposal to administer the Settlement is attached hereto as Exhibit
27 "D."

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48. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "E."

49. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 29, 2022, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

1 **LAUBY MANKIN & LAUBY LLP**

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10 Attorneys for Plaintiff

11 ASHLEY BROWN, on behalf of herself and in her

12 representative capacity for all similarly situated Aggrieved

13 Employees

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24 Attorneys for Defendants

25 MINUTECLINIC DIAGNOSTIC MEDICAL GROUP OF

26 CALIFORNIA, INC.; et al.

27 SUPERIOR COURT OF THE STATE OF CALIFORNIA

28 FOR THE COUNTY OF ORANGE

29 ASHLEY BROWN, individually, on a
30 representative basis, and on behalf of all
31 others similarly situated;

32 Plaintiff,

33 vs.

34 MINUTECLINIC DIAGNOSTIC MEDICAL
35 GROUP OF CALIFORNIA, INC., a
36 California Corporation; et al.;

37 Defendants.

Case No.: 30-2021-01185270-CU-OE-CXC
[Assigned to Hon. Judge Glenda Sanders,
Dept CX101, for all purposes]

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: February 22, 2021
FAC Filed: April 21, 2021

1 Plaintiff Ashley Brown (“Plaintiff”) and Defendants MinuteClinic Diagnostic Medical
2 Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and
3 MinuteClinic Diagnostic Medical Group of San Diego, Inc. (“Defendants”) (Plaintiffs and
4 Defendants are collectively referred to as the “Parties”) agree to settle this action subject to the
5 terms and conditions below.

6 **I. DEFINITIONS**

7 1. “Action” means the lawsuit entitled *Ashley Brown v. MinuteClinic Diagnostic*
8 *Medical Group of California, Inc., et al*, Case No. 30-2021-01185270-CU-OE-CXC, pending
9 in the Superior Court of the State of California for the County of Orange.

10 2. “Class Claims” means all claims for wages, benefits, and related penalties
11 actually asserted or that reasonably could have been asserted in the Action based on the facts
12 alleged in the Action including but not limited to all of the following: (1) Failure to Pay
13 Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Breaks; (4)
14 Failure to Provide Rest Breaks, (5) Failure to Timely Pay Final Wages; (6) Failure to Provide
15 Accurate Wage Statements, and (7) Unfair Competition.

16 3. “Class Counsel” means Brian J. Mankin, Esq. and Peter J. Carlson, Esq. of
17 Lauby Mankin & Lauby LLP located at 4590 Allstate Drive, Riverside, CA 92501.

18 4. “Class Counsels’ Attorney Fees’ and Costs” means attorneys’ fees and costs
19 agreed upon by the Parties and approved by the Court for Class Counsel’s fees incurred in the
20 Action, including through final approval and disbursement of payments under this Settlement
21 and obtaining entry of the Judgement terminating the Action, and which shall not exceed one-
22 third of the Gross Settlement Amount (\$233,333.33) in fees, plus reasonable litigation costs
23 not to exceed \$20,000

24 5. “Class Member(s)” means all current and former non-exempt employees of
25 MinuteClinic who worked in California at any time during the Class Period.

26 6. “Class Notice” shall mean the document attached hereto as **Exhibit A**.

27 7. “Class Period” means between February 22, 2017 and the date of Preliminary
28 Approval of this settlement.

1 8. “Class Settlement Payment” is the allocation from the Net Settlement Amount
2 paid to Participating Class Members on a pro rata basis and does not include the PAGA
3 Employee Payment to PAGA employees.

4 9. “Complaint” means the operative Complaint filed in this Action by Plaintiff
5 Ashley Brown on April 21, 2021 in the Superior Court of the State of California for the County
6 of Orange, Case No. 30-2021-01185270-CU-OE-CXC.

7 10. “Court” means the Superior Court of the State of California for the County of
8 Orange.

9 11. “Date of Preliminary Approval” means the date the Court preliminarily
10 approves this Settlement Agreement, and the exhibits thereto, and enters the Order Granting
11 Preliminary Approval .

12 12. “Defendants” mean MinuteClinic Diagnostics Medical Group of California,
13 Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic
14 Diagnostic Medical Group of San Diego, Inc. (“MinuteClinic”).

15 13. “Defendant’s Counsel” means Morgan Lewis & Bockius LLP.

16 14. “Effective Date” means the date the Final Order and Judgment becomes
17 binding. The Final Order and Judgment becomes binding on the later of: (i) if no Class
18 Member timely and properly intervenes or files a motion to vacate the Judgment under Code of
19 Civil Procedure § 663, then thirty (30) calendar days after the date the Court enters an order
20 granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion
21 to vacate the Judgment, then sixty-one (61) calendar days following the date of final resolution
22 of any challenge to the Final Order and Judgment where the resolution affirms the final
23 approval order and judgment, assuming no appeal is filed; or (iii) if a Class Member timely
24 and properly intervenes or files a motion to vacate the Judgment under Code of Civil
25 Procedure § 663, and if a timely appeal is filed, then the date of final resolution of that appeal
26 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
27 approval of the Settlement. The Effective Date cannot occur, and Defendants will not be
28 obligated to fund this Settlement, unless and until there is no possibility of an appeal or further

1 appeal (by anyone who has the right to, or claims to have the ability to, take an appeal) that
2 could potentially prevent this Settlement Agreement from becoming final and binding.

3 15. "Final Approval Hearing" means the hearing on Plaintiff's motion for judgment
4 and final approval of this Settlement.

5 16. "Final Order and Judgment" means the final order entered by the Court after the
6 Final Approval Hearing, approving the settlement and entering judgment pursuant to this
7 Settlement Agreement.

8 17. "Gross Settlement Amount" means the maximum amount payable by
9 Defendants under this Agreement, inclusive of all payments made to Participating Settlement
10 Employees, to Class Counsel, to the California Labor and Workforce Development Agency
11 ("LWDA") in settlement of the California Private Attorney General Act, Cal. Lab. Code
12 §2698, *et seq.* claims, to the Settlement Administrator for Administrative Costs, which is the
13 sum of Six Hundred Seventy Thousand Dollars and Zero Cents (\$670,000.00). Defendants
14 shall separately pay the employers' share of applicable payroll tax obligations on the wage
15 portion of the payments.

16 18. "LWDA" means the California Labor and Workforce Development Agency.

17 19. "LWDA PAGA Penalty Amount" is the 75% share (or \$30,000) of the \$40,000
18 allocated from the PAGA Payment for civil penalties that will be paid to the LWDA.

19 20. "Net Settlement Amount" is the portion of the Gross Settlement Amount
20 eligible for distribution to Participating Class Members. It equals the Gross Settlement amount
21 less Class Counsels' Attorney Fees' and Costs, Settlement Administration Expenses, and the
22 PAGA Payment.

23 21. "Order Granting Preliminary Approval" means the Order entered by the Court
24 substantially in the form attached to Plaintiff's Motion for Preliminary Approval of this
25 Settlement and preliminarily approving, *inter alia*, the terms and conditions of this Agreement,
26 the manner and timing of providing notice to the Settlement Employees, and the time period
27 for Class Members to opt-out of and/or make objections to the settlement of the Class Claims
28 under this Settlement.

1 22. “PAGA” means the California Labor Code Private Attorneys General Act,
2 California Labor Code §§ 2698 *et seq.*

3 23. “PAGA Claims” means all claims for PAGA civil penalties that were stated or
4 could have been stated based on the facts alleged in the Action, including but not limited to
5 claims for PAGA civil penalties based on all of the following: (1) Failure to Pay Minimum
6 Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods; (4) Failure to
7 Provide Rest Breaks, (5) Failure to Timely Pay Wages; (6) Failure to Timely Pay Final Wages;
8 and (7) Failure to Provide Accurate Wage Statements.

9 24. “PAGA Employees” means those non-exempt employees of MinuteClinic who
10 worked in California at any time during the PAGA Period.

11 25. “PAGA Employee Payment” is the 25% share (or \$10,000) of the Forty
12 Thousand Dollars (\$40,000) allocated from the Gross Settlement Amount for PAGA penalties
13 that will be paid to members of the PAGA Group.

14 26. “PAGA Payment” means the Forty Thousand Dollars (\$40,000.00) of the Gross
15 Settlement Amount allocated to the settlement of PAGA Claims which is comprised of the
16 LWDA PAGA Penalty Amount and the PAGA Employee Payment.

17 27. “PAGA Period” means the period from December 20, 2019 and the Date of
18 Preliminary Approval of this settlement.

19 28. “Participating Class Members” means those Class Members who do not opt out
20 of the Class Claims portion of this Settlement by submitting a timely valid Request for
21 Exclusion.

22 29. “Participating Settlement Employees” means all Participating Class Members
23 and PAGA Employees.

24 30. “Parties” means collectively Plaintiff and Defendants, as defined herein.

25 31. “Plaintiff” means Plaintiff Ashley Brown.

26 32. “Released Class Claims” means the Class Claims that Participating Class
27 Members are fully and irrevocably releasing the Released Parties from in exchange for the
28 consideration provided by this Settlement Agreement, including any and all claims, demands,

1 rights, liabilities, and causes of action that have been or could have been asserted in the instant
2 Action based on the allegations in the operative Complaint and LWDA Notice in this Action
3 for the duration of the Class Period, including but not limited to, claims for (1) Failure to Pay
4 Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Breaks; (4)
5 Failure to Provide Rest Breaks, (5) Failure to Timely Pay Final Wages; (6) Failure to Provide
6 Accurate Wage Statements, and (7) Unfair Competition. In addition, each Participating Class
7 Member who cashes their settlement payment shall be deemed to have released all claims set
8 forth above under the California Labor Code and the FLSA. The time period governing the
9 Released Class Claims shall be the same as the Class Period.

10 33. "Released PAGA Claims" means any and all claims for civil penalties under the
11 Private Attorneys General Act, Labor Code § 2698 *et seq.*, that have been or could have been
12 asserted against the Released Parties, on behalf of Aggrieved Employees and State of
13 California, based on the facts stated in Plaintiff's operative Complaint and in Plaintiff's
14 February 11, 2021, notice letter to the LWDA, including all PAGA claims seeking civil
15 penalties for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3)
16 Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks, (5) Failure to Timely Pay
17 Wages; (6) Failure to Timely Pay Final Wages; and (7) Failure to Provide Accurate Wage
18 Statements, and based on or arising from alleged violations of the California Labor Code,
19 including Sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512,
20 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, 2699, *et seq.*, and of the California Wage
21 Orders. The time period governing the PAGA Released Claims shall be any time during the
22 PAGA Period. The PAGA Released Claims do not release any potential claims for wages or
23 statutory penalties.

24 34. "Released Parties" means MinuteClinic Diagnostics Medical Group of
25 California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., MinuteClinic
26 Diagnostic Medical Group of San Diego, Inc., CVS Health Corporation and their affiliates,
27 divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or
28 their present and former officers, partners, directors, managers, supervisors, employees,

1 attorneys, agents, shareholders and/or successors, assigns, trustees, heirs, administrators,
2 executors, representatives and/or principals thereof.

3 35. "Request for Exclusion" means a timely submitted written request to opt out of
4 the settlement of Class Claims in this Settlement by any Class Member other than Plaintiff,
5 pursuant to the procedure set forth in Paragraph 62 below.

6 36. "Response Deadline" is forty-five (45) calendar days from the date the Notice is
7 mailed to the Class Members and PAGA Employees, or in the case of re-mailed notices, sixty
8 (60) days from the date the original Notice is mailed to the Class Members and PAGA
9 Employees.

10 37. "Settlement Administrator" means ILYM Group, a third-party class action
11 settlement administrator as agreed to by the Parties and approved by the Court for the purposes
12 of administering this settlement. The Parties each represent that they do not have any financial
13 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
14 Administrator that could create a conflict of interest.

15 38. "Settlement Administration Expenses" means the costs payable from the Gross
16 Settlement Amount to the Settlement Administrator for administering this Settlement,
17 including, but not limited to printing, distributing and tracking documents for this Settlement,
18 calculating estimated amounts per Settlement Member, distributing the Settlement Amount,
19 providing necessary reports and declarations, and other duties and responsibilities set forth
20 herein to process and in effectuating this Settlement, as requested jointly by the parties.

21 39. "Settlement Agreement" means this Class Action and PAGA Settlement and
22 Release.

23 40. "Settlement Employees" means all Class Members and PAGA Employees.

24 41. "Settlement Employee Data" means all information that MinuteClinic provides
25 to the Settlement Administrator that identifies or can be used to identify Settlement
26 Employees, including, without limitation, their names, addresses, phone numbers, email
27 addresses, employee numbers, and social security numbers, and the respective number of pay
28 periods each Settlement Employee worked during the Class Period and PAGA Period.

42. “Settlement Period” means the applicable Class Period and PAGA Period, as defined herein.

II. LITIGATION BACKGROUND

43. On February 11, 2021, Plaintiff Ashley Brown (“Brown”) submitted a notice with the LWDA. On February 22, 2021, she filed a putative class action complaint in the Superior Court of the State of California for the County of Orange alleging various Labor Code violations by MinuteClinic, including (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal and rest breaks, (4) failure to timely pay final wages, (5) failure to provide accurate wage statements and (6) unfair and unlawful competition (the “Complaint”). On April 21, 2021, Plaintiff filed a First Amended Complaint adding a cause of action for representative claims under PAGA.

44. MinuteClinic denies Plaintiff’s claims, and asserts that, during all relevant times, Class Members were properly paid for all hours worked, received all regular and overtime wages to which such Class Members were entitled, and were provided with compliant meal and rest breaks in accordance with California law. MinuteClinic also asserts that, at all times, Class Members received wage statements that were compliant with the Labor Code, were timely paid all wages as required under the Labor Code, and that Class Members who ended their employment with MinuteClinic during the Class Period were properly compensated for all wages due as required by California law. Consequently, MinuteClinic does not believe that any liability to Plaintiff or Class Members exists, or that Plaintiff or Class Members are entitled to any recovery. In addition, MinuteClinic contends that Plaintiff’s claims are not suitable for class, collective, or representative treatment. MinuteClinic has agreed to resolve the Action via this Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the Effective Date does not occur, MinuteClinic does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural, merit, and factual grounds, including, without limitation, the ability to challenge class and representative treatment on any grounds, assert any and all other

1 privileges and potential defenses, and enforce its class and representative action waiver
2 (including waiver of Plaintiff's non-individual PAGA claims) in its arbitration agreements.

3 45. It is the desire of the Parties to fully, finally, and forever settle, compromise,
4 and discharge all Released Class Claims and Released PAGA Claims against the Released
5 Parties.

6 46. It is the intention of the Parties that this Settlement Agreement shall constitute a
7 full and complete settlement and release of the Released Class Claims and Released PAGA
8 Claims as to all of the Released Parties. As to the Plaintiff it is the Parties' intention that any
9 individual claims she may have against Defendants be fully resolved and released subject to a
10 separate individual settlement agreement that will result in the total payment of \$30,000 to
11 Plaintiff and her attorneys. Plaintiff is not seeking a service award in light this separate
12 Individual settlement agreement. Plaintiff's separate individual settlement agreement,
13 including any monetary payments owed to Plaintiff pursuant to the terms of the separate
14 individual settlement agreement, are conditioned on final approval of this Settlement
15 Agreement and the passing of the Effective Date. If this Settlement Agreement is not finally
16 approved by the Court and the Effective Date does not occur, Plaintiff and Defendants agree
17 that the separate individual settlement agreement is void.

18 **III. TERMS OF SETTLEMENT**

19 47. **Non-Admission.** Nothing in this Settlement Agreement, or any
20 communications, papers, or orders related to this Settlement Agreement, shall be construed to
21 be or deemed an admission by the Released Parties of any liability, culpability, or wrongdoing
22 toward the Plaintiff, the Settlement Employees, or any other person, and Defendants
23 specifically disclaims any liability, culpability, or wrongdoing toward the Plaintiff, the
24 Settlement Employees, or any other person, or that class certification or a representative action
25 is appropriate in this or any other matter. Each of the Parties has entered into this Settlement
26 Agreement with the intention to avoid further disputes and litigation with the attendant
27 inconvenience, expenses, and contingencies. This Settlement Agreement and any
28 communications, papers, or orders related to the Settlement Agreement may not be cited or

1 otherwise admitted as evidence of liability or that class certification is appropriate or that a
2 representative action could ever be manageably tried before a court. There has been no final
3 determination by any court as to whether a class should be certified, or whether the
4 representative claims can manageably be adjudicated, other than for settlement purposes only.
5 Furthermore, nothing in this Settlement shall be considered any form of waiver of any
6 alternative dispute resolution provisions.

7 48. **Certification of Class Members as to Class Claims and Approval of**
8 **Representative Action.** The Parties stipulate, for settlement purposes only, to the certification
9 by the Court of a class of Class Members as to all Class Claims asserted in the Action for
10 settlement purposes only. The Parties also stipulate to a court forum for purposes of seeking
11 court approval of the settlement of the PAGA claims. The Parties further stipulate that, for
12 settlement purposes only, Lauby Mankin & Lauby LLP, may be preliminarily and
13 conditionally appointed as Class Counsel. Defendants' stipulation to the certification of a class
14 of Class Members and to a representative action for PAGA Employees shall not be construed
15 as an admission or acknowledgment of any kind that any class should be certified or that any
16 claims should be given class or representative action treatment

17 49. **Non-Approval By The Court.** In the event that this Settlement Agreement is
18 not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by
19 the Court:

- 20 a. The Settlement Agreement shall have no force or effect, other than the
21 confidentiality and non-disclosure provisions and the non-admission provisions;
- 22 b. The Settlement Agreement shall not be admissible in any judicial,
23 administrative or arbitral proceeding for any purpose or with respect to any issue,
24 substantive or procedural;
- 25 c. The preliminary certification of the class of Class Members and the
26 approval of a representative action shall become null and void, and the fact that the
27 Parties stipulated to the certification of Class Members and Class Claims, and to
28 approval of representative treatment of the PAGA Claims, for purposes of this

1 Settlement shall not be admissible in any judicial, administrative or arbitral
2 proceeding for any purpose or with respect to any issue, substantive or procedural;
3 and

4 d. None of the Parties to this Settlement Agreement will be deemed to have
5 waived any claims, objections, defenses or arguments with respect to the issue of
6 arbitration, class certification, representative treatment, or the merits of Plaintiff's
7 claims.

8 50. **Settlement Allocation.** MinuteClinic agrees to pay the Gross Settlement
9 Amount, subject to Court approval, to the following allocations:

10 a. From the Gross Settlement Amount, Class Counsel may seek from the
11 Court the Class Counsels' Attorney Fees' and Costs, which MinuteClinic will not
12 oppose.

13 b. From the Gross Settlement Amount, the Parties agree to allocate the
14 payment of Settlement Administration Expenses in a reasonable amount, which
15 amount shall not exceed \$10,000.00.

16 c. If the Court approves a lesser amount of attorney's fees, litigation costs, or
17 Settlement Administration Expenses than those sought, any amount disallowed by
18 the Court shall be added to the Net Settlement Amount and apportioned equally to
19 Participating Class Members.

20 d. From the Gross Settlement Amount, the Parties agree to allocate \$40,000 to
21 the PAGA Payment as follows: (1) the \$30,000 LWDA Penalty Amount, and (2)
22 the \$10,000 PAGA Employee Payment on a pro rata basis based on the number of
23 pay periods that PAGA employees worked during the PAGA Period.

24 MinuteClinic shall provide the Settlement Administrator the number of pay
25 periods worked by PAGA Employees during the PAGA Period. The number of
26 pay periods worked by PAGA Employees shall be determined based on
27 MinuteClinic's employment records. The PAGA Employee Payment shall be
28 treated as miscellaneous income, which shall be reported on an IRS 1099 without
withholdings.

e. The Net Settlement Amount is the balance of the Gross Settlement Amount after payments have been made for Class Counsels' Attorney Fees' and Costs, Settlement Administration Expenses, and the PAGA Payment (the LWDA PAGA Penalty Amount and the PAGA Employee Payment). Settlement Payments shall be allocated to the Participating Class Members for allegedly unpaid wages, overtime, premium wages, the Participating Class Members' share of payroll taxes, and related fees, interest, and penalties. The Net Settlement Amount shall be used to pay all Settlement Payment amounts due to Participating Class Members based on their pay periods worked in the Class Period.

51. **Objections by Participating Class Members to the Settlement of Class**

Claims. Any Class Member who opts out of the settlement of the Class Claims may not object to the settlement. Any Class Member who does not opt out will become a Participating Class Member, and will still be bound by the settlement even if he/she objects to the settlement so long as his/her objection is overruled. The procedure for filing an objection is described in more detail in Paragraph 61, below.

52. **Opt Outs By Class Members from the Settlement of Class Claims.** Class Members who wish to "opt-out" of and be excluded from the settlement of the Class Claims must submit a written Request for Exclusion to the Class Claims aspects of the settlement, as described in more detail in Paragraph 62, below. Even if a Class Member opts out of the settlement of the Class Claims, he/she shall be deemed to have fully, finally, and forever released the Released Parties from the Released PAGA Claims as set forth in full in Section VI, below.

53. **Releases.** Upon the Effective Date, all Participating Settlement Employees shall be deemed to have fully, finally, and forever released all Released Parties from the Released Class Claims and Released PAGA Claims as set forth in full in Section VI, below.

54. **No Reliance.** All Parties represent that they have not received, and shall not rely on, advice or representations from other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or local law.

1 55. **Entry of Judgment.** At the Final Approval Hearing, the Parties will request
2 that the Court, among other things: (a) certify the Class Members and Class Claims for
3 purposes of settlement only; (b) enter a Final Order and Judgment; (c) approve the settlement
4 of the Class Claims as fair, adequate, reasonable, and binding on all Participating Settlement
5 Employees; (d) approve the settlement of the PAGA Claims as providing genuine and
6 meaningful relief, consistent with the underlying purpose of the PAGA to benefit the public;
7 and (e) incorporate the terms of this Settlement Agreement into its Final Order and Judgment.

8 56. **Notice to the LWDA.** In connection with their filing of a motion requesting
9 preliminary approval of the Settlement, Class Counsel shall provide all required notices to the
10 LWDA, including this Settlement Agreement, the Motions for Preliminary and Final Approval,
11 and of the Final Order and Judgment as required pursuant to Labor Code Section 2699 *et seq.*

12 **IV. SETTLEMENT ADMINISTRATION**

13 57. **Summary of Duties.** The Settlement Administrator shall be responsible for:
14 (a) estimating each Settlement Employee's recovery from the Net Settlement Amount;
15 (b) preparing and mailing Class Notices with estimated settlement payment amounts to all
16 Settlement Employees, including taking appropriate steps to skip trace, update and locate any
17 individual Settlement Employee whose address or contact information as provided to the
18 Settlement Administrator is inaccurate or outdated; (c) receiving and serving on Class Counsel,
19 Defendant's Counsel, and the Court, any Requests for Exclusion, copies of written objections,
20 and any withdrawal and rescission statements from Class Members; (d) providing to Class
21 Counsel and Defendant's Counsel a weekly report of activity; (e) establishing a toll-free
22 telephone line and responding to inquiries and requests for information or assistance from
23 Settlement Employees; (f) maintaining the Gross Settlement Amount account at a federally
24 insured banking institution; (g) determining and paying the final amounts due to be paid to
25 Participating Settlement Employees after adjustment for funds due to Class Members who opt
26 out of the settlement of Class Claims; (h) preparing and delivering to Participating Settlement
27 Employees necessary tax reporting documents, including Forms W2 and 1099 where
28 applicable, (i) reporting to Class Counsel, Defendant's Counsel, and the Court regarding the

1 completion of the tasks identified in this paragraph; and (j) carrying out other related tasks in
2 accordance with the terms of this Settlement Agreement.

3 58. **Certification Reports Regarding Settlement Employees Payment**

4 **Distribution.** Within seven (7) calendar days after expiration of the Response Deadline, the
5 Settlement Administrator will provide Defendants' counsel and Class Counsel with a written
6 report which certifies: a.) the number of Class Members who have submitted valid Requests
7 for Exclusion; b.) the number of Settlement Members who have submitted a timely and valid
8 objection to the settlement, along with copies of all such objections. Additionally, the
9 Settlement Administrator will provide to counsel for the Parties any updated reports regarding
10 the administration of the Settlement Agreement as reasonably requested by a Party.

11 59. **Use of Settlement Employee Data.** The Settlement Administrator has, and
12 will maintain for as long as it accesses, processes, stores or transmits any Settlement Employee
13 Data supplied by Defendants, a comprehensive, written information security program that
14 complies with applicable law and industry best practices (the "Security Program"). The
15 Security Program will apply to all locations, systems, devices and equipment used by the
16 Settlement Administrator (or any vendors, subcontractors, or third parties retained by
17 Administrator) to access, process, store, or transmit Settlement Employee Data
18 ("Administrator Systems"), and it will include physical, administrative, and technical security
19 controls that prevent unauthorized access to, disclosure of, loss of, or use of the Administrator
20 Systems and the Settlement Employee Data that those Administrator Systems process, store,
21 or transmit. In the event that the Settlement Administrator suspects that any Administrator
22 Systems or Settlement Employee Data that the Administrator Systems or the Settlement
23 Administrator processes, stores, or transmits is subject to any suspected or actual unauthorized
24 access, use, or disclosure, the Settlement Administrator will immediately notify counsel for
25 MinuteClinic. The Settlement Administrator shall use Settlement Employee Data only to the
26 extent necessary to administer the settlement, shall securely delete Settlement Employee Data
27 when no longer required for that purpose or by law, and shall not disclose Settlement
28 Employee Data to any third party.

1 60. **Disputes.** All disputes relating to the Settlement Administrator's ability and
2 need to perform its duties shall be referred to the Court, if necessary, which will have
3 continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all
4 payments and obligations contemplated by the Settlement Agreement have been fully
5 executed.

6 61. **Objections.** Any Class Member, other than Plaintiff, may object to the terms of
7 this Settlement, except as to the Released PAGA Claims. To object, a Class Member shall
8 inform the Settlement Administrator, in writing, of his or her objection which must be
9 postmarked by the Response Deadline at the address set forth in the Class Notice. Such
10 objection shall include the objecting Class Member's full name, address, telephone number,
11 and dates of employment with Defendants, the case name and number, the basis for the
12 objection, including any legal support and each specific reason in support of the objection, as
13 well as any documentation or evidence in support thereof, and, if the Objecting Class Member
14 is represented by counsel, the name and address of his or her counsel. The Settlement
15 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
16 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
17 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
18 Participating Class Member who files an objection remains eligible to receive monetary
19 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any
20 fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any
21 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
22 final judgment. Rather, the right to appeal is preserved by becoming a party of record by
23 timely and properly intervening or filing a motion to vacate the judgment under Code of Civil
24 Procedure Section 663. Class Members and PAGA Employees may not object to or opt-out of
25 the Settlement with respect to the PAGA Claims. The Parties may file a response to any
26 objections submitted by Participating Class Members at or prior to the Final Approval Hearing.
27 Participating Class Members shall be permitted to withdraw their objections in writing by
28 submitting a withdrawal statement to the Settlement Administrator not later than one (1)

1 business day prior to the Court's Final Approval Hearing, or as otherwise ordered by the
2 Court. Any Class Member who desires to object to the Released Class Claims in the
3 Settlement but fails to timely submit a written objection or in person objection at the Final
4 Approval Hearing waives any right to object and will be foreclosed from making any objection
5 to this Settlement. Any Class Member who does not timely and properly become a party of
6 record by intervening or filing a motion to vacate the judgment waives any and all rights to
7 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
8 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under
9 California Code of Civil Procedure Section 473, and extraordinary writs.

10 62. **Requests for Exclusion.** Any Class Member, other than Plaintiff, may request
11 to be excluded from the Settlement by submitting a "Request for Exclusion" to the Settlement
12 Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
13 should state words to the effect of:

14 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE
15 MINITECLINIC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED
16 FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
17 THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."

18 To be valid, any Request for Exclusion must include the full name, address, telephone number,
19 last four digits of the social security number or date of birth, and signature of the Class
20 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
21 Settlement Administrator at the specified address in the Class Notice. Any such Request must
22 be made in accordance with the terms set forth in the Class Notice. A Request for Exclusion
23 will be timely only if postmarked by the Response Deadline, unless the Parties otherwise agree
24 in writing. Any Settlement Class Member who timely requests exclusion in compliance with
25 these requirements: (i) will not have any rights under this Agreement with respect to the
26 Released Class Claims, including the right to object, appeal, or comment on the Settlement; (ii)
27 will not be entitled to receive any payments under this Agreement for the Released Class
28 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the

1 Released Class Claims. Any PAGA Employee who requests timely exclusion will still be
2 subject to the PAGA Released Claims to the fullest extent permitted by law and shall be sent
3 his or her share of PAGA Penalties. Attempted group, class, or subclass requests for exclusions
4 shall be ineffective and disregarded by the Settlement Administrator. Class Members
5 submitting untimely or deficient opt-outs shall become Class Members, shall be bound by the
6 Settlement, and will receive a Class Settlement Payment. Class Members shall be permitted to
7 rescind their opt out statements in writing by submitting a rescission statement to the
8 Settlement Administrator not later than one (1) business day prior to the Court's Final
9 Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall
10 not accept late opt-outs without the written authorization of Defendant beyond the Response
11 Deadline.

12 63. The Parties shall request that a Final Approval Hearing be set within a
13 reasonable time after the last day of the Notice Period, and no earlier than 90 calendar days
14 after the Motion for Preliminary Approval of Settlement is filed with the Court.

15 64. No later than thirty (30) calendar days before the Final Approval Hearing, the
16 Settlement Administrator shall provide Class Counsel and counsel for Defendant with a
17 "Declaration of Compliance" with the terms of this Settlement to be filed with the court by
18 Class Counsel.

19 65. Class Counsel shall file a Motion for Final Approval, Memorandum of Points
20 and Authorities in Support of the Settlement, and any other documents reasonably necessary to
21 obtain the Court's approval of Settlement pursuant to Code or on the date required by the
22 Court.

23 66. **Report re Exclusions and Objections.** If the Court enters the Order Granting
24 Preliminary Approval, then at the resulting Final Approval Hearing, Plaintiff and Defendants,
25 through their counsel of record, shall address any timely written objections, if any, from Class
26 Members who are not opt-outs, and any concerns of the Court, if any. Along with the motion
27 for final approval, the Settlement Administrator will present a full declaration to the Court on
28 all disputes, exclusions and objections received, any evidence submitted, and any initial

1 resolution of dispute made by the Settlement Administrator. The Court will consider any
2 disputes and objections at Final Approval Hearing and shall have the right to review and
3 reverse any decision made by the Settlement Administrator regarding a claim dispute.

4 67. **Final List of Participating Settlement Employee Payments.** When and if the
5 Court enters the Final Order and Judgment, and the Effective Date as defined herein has
6 passed, the Settlement Administrator shall prepare a final list of all Participating Settlement
7 Employees and their applicable estimated Class Settlement Payment and/or PAGA Employee
8 Payment. The Settlement Administrator shall calculate applicable federal and state deductions
9 for the Class Settlement Payment and shall include such information in the final list. The
10 Settlement Administrator shall provide this list to the Parties within five (5) court days after
11 the Effective Date. For each Participating Settlement Employee on this list, the Settlement
12 Administrator will issue checks payable to said Participating Settlement Employees.

13 68. **Calculation of Payments to Settlement Employees.** The Settlement
14 Administrator will calculate pro rata Class Settlement Payments to Participating Class
15 Members based on each Participating Class Member's relative percentage of pay periods
16 worked in the Class Period as reflected on Defendants' internal records. This same percentage
17 will also determine the pro rata share of the PAGA Employee Payment to the PAGA
18 Employees. After deducting for Class Counsels' Attorney Fees' and Costs, the PAGA
19 Payment (both the LWDA PAGA Penalty Amount and the PAGA Group Payments paid to the
20 PAGA Group), and Settlement Administration Expenses, the remainder of the Gross
21 Settlement Amount will be allocated to Class Members as the Net Settlement Amount.

22 69. **Disputes re Individual Class Settlement Payments and PAGA Employee**
23 **Payments.** The Class Notice will inform Class Members of the number of pay periods they
24 worked in the Class Period and PAGA Period and their estimated Class Settlement Payment
25 and PAGA Employee Payment. Settlement Class Members will have the opportunity, should
26 they disagree with Defendant's records regarding the pay periods stated on the Class Notice, to
27 provide documentation and/or an explanation to show contrary dates of work in relevant
28 positions. Such dispute must be submitted to the Settlement Administrator by the Response

1 Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to
2 determine whether an adjustment is warranted. The Settlement Administrator will determine
3 the eligibility for, and the amounts of, any individual Class Settlement Payment or PAGA
4 Employee Payment under the terms of this Agreement. The Settlement Administrator's
5 determination of the eligibility for and amount of any Class Settlement Payment and PAGA
6 Employee Payment will be binding upon the Settlement Class Member and the Parties.

7 70. **Allocation of Payments to Settlement Employees.** All Class Settlement
8 Payments to Participating Class Members shall be allocated as follows: (a) 10% as wages, (b)
9 45% as penalties, and (c) 45% as interest. All PAGA Employee Payments will be allocated
10 entirely to penalties. Defendants are responsible for funding the payment of the employer tax
11 contributions as required by law. Participating Class Members must pay their own portion of
12 payroll and all applicable income taxes on the 10% of Class Settlement Payment that is unpaid
13 wages, and such amounts will be withheld from Class Settlement Payments. Participating
14 Class Members shall be exclusively liable for any and all tax liability, if any, other than for the
15 employer tax contributions.

16 71. **Qualified Settlement Fund.** Defendants shall provide payment to the
17 Settlement Administrator within fifteen (15) court days after the Effective Date. The
18 Settlement Administrator shall create a Qualified Settlement Fund ("QSF"), to be funded by
19 Defendant and administered by the Settlement Administrator.

20 72. **Timing of Distribution of Settlement Checks.** Within seven (7) court days
21 after Defendants fund the Settlement as set forth herein, the Settlement Administrator shall
22 distribute checks to all Participating Settlement Employees, issue a check to the LWDA for the
23 LWDA PAGA Penalty Amount, and pay Class Counsels' Attorney Fees' and Costs.

24 73. **Uncashed Settlement Checks.** Participating Settlement Employees shall have
25 180 calendar days after mailing by the Settlement Administrator to cash their settlement
26 checks. If any Participating Settlement Employee's check is not cashed within that period, the
27 check will be void and a stop-payment will be issued, and the Settlement Administrator shall
28 issue the unclaimed funds to the California State Controller's Office in the name of the

1 Participating Settlement Employee. The release will be binding upon all Participating
2 Settlement Employees who do not cash their checks within the 180-day period. In the event
3 that any settlement check is returned to the Settlement Administrator within 180 days of
4 mailing, the Settlement Administrator will, within five (5) business days of receipt of the
5 returned settlement check, perform a skip trace to locate the individual, and notify Defense
6 Counsel and Class Counsel of the results. If a new address is located by these means, the
7 Administrator will have ten (10) business days to re-issue the check. Neither Defendant,
8 Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any
9 liability for lost or stolen settlement checks, forged signatures on settlement checks, or
10 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
11 Participating Settlement Employees notifies the Settlement Administrator that he or she
12 believes that a settlement check has been lost or stolen, the Settlement Administrator shall
13 immediately stop payment on such check. If the check in question has not been negotiated
14 prior to the stop payment order, the Settlement Administrator will issue a replacement check.

15 74. **Declaration of Settlement Administrator.** On a date to be determined by the
16 Court after the 180 day check cashing deadline, the Settlement Administrator shall provide a
17 declaration describing all payments that were issued from the Gross Settlement Amount,
18 including the number of uncashed checks, the value of the uncashed checks and the date upon
19 which the uncashed check fund was transmitted to the State Controller's Office, which will be
20 filed with the Court by Class Counsel and served on all Parties.

21 **V. NOTICE OF SETTLEMENT**

22 75. Within twenty (20) calendar days after the Date of Preliminary Approval by the
23 Court, Defendant shall provide to the Settlement Administrator the Settlement Employee Data.
24 As set forth in Paragraph 59, above, the Settlement Administrator shall keep this information
25 confidential and secure from breach.

26 76. The Settlement Administrator shall finalize for mailing the Class Notice
27 (**Exhibit A**, hereto). Class data for Settlement Employees shall not be disclosed to Plaintiff,
28 Class Counsel, or any other Settlement Employees without the written consent of Defendant.

1 77. Prior to mailing the Class Notices, the Settlement Administrator will update the
2 Settlement Employee Data using the National Change of Address database and other available
3 resources deemed suitable by the Settlement Administrator. Any returned envelopes from the
4 initial mailing with forwarding addresses will be used by the Settlement Administrator to
5 locate Settlement Employees and re-mail the Class Notice to the correct or updated address.
6 The Settlement Administrator will use all appropriate tracing methods, including skip tracing,
7 to ensure that the Class Notices are received by Settlement Employees. The Settlement
8 Administrator shall also take reasonable steps including skip tracing to locate any Settlement
9 Employees whose Class Notice is returned as undeliverable.

10 78. The Parties agree that the procedures set forth in this Section comply with due
11 process requirements, constitute reasonable and the best practicable notice under the
12 circumstances, and constitute an appropriate and sufficient effort to locate current addresses
13 for Class Members such that no additional efforts to do so shall be required. Any Class
14 Members who do not receive the Class Notice after these procedures have been followed will
15 nonetheless be bound by this Settlement.

16 **VI. RELEASES BY PARTICIPATING SETTLEMENT EMPLOYEES AND**
17 **PLAINTIFF**

18 79. **Release by Participating Class Members.** Upon entry of the Final Approval
19 Order and Defendant's funding of the Gross Settlement Amount, and except as to such rights
20 or claims as may be created by this Settlement Agreement, the Participating Class Members
21 will forever completely release and discharge the Released Parties from the Released Class
22 Claims for the Class Period. It is the intent of the Parties that the Final Order and judgment
23 entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect
24 and be final and binding upon Participating Class Members regarding the Released Class
25 Claims. Each Participating Class Member will be deemed to have made the foregoing Release
26 as if by manually signing it.

27 80. The period of the Released Class Claims shall extend to the limits of the Class
28 Period. The judgment entered as a result of this settlement shall have *res judicata* effect to the

1 fullest extent allowed by law. The definition of Released Class Claims shall not be limited in
2 any way by the possibility that Plaintiff or Participating Class Members may discover new
3 facts, legal theories or legal arguments not alleged in the Action as to Defendants but which
4 might serve as an alternative basis for pursuing the same claims, causes of action, or legal
5 theories of relief falling within the definition of Released Class Claims. Any Class Member
6 who submits a timely and valid request for exclusion to the settlement of the Class Claims will
7 not be bound by the release of the Released Class Claims. However, he/she will still be bound
8 by the release of the Released PAGA Claims.

9 81. **Release of PAGA Claims.** Upon entry of the Final Order and Defendants'
10 funding of the Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor
11 Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees,
12 will forever completely release and discharge the Released Parties from the Released PAGA
13 Claims through the PAGA Period. It is the intent of the Parties that the Final Approval Order
14 and judgment entered by the Court shall have full equitable and collateral estoppel and *res*
15 *judicata* effect and be final and binding upon Aggrieved Employees regarding the Released
16 PAGA Claims. . No PAGA Employee may opt out of this release.

17 82. The period of the Released PAGA Claims shall extend to the limits of the
18 PAGA Period. The judgment entered as a result of this settlement shall have *res judicata* effect
19 to the fullest extent allowed by law. The definition of Released PAGA Claims shall not be
20 limited in any way by the possibility that Plaintiffs may discover new or different facts, legal
21 theories or legal arguments not alleged in the Action as to Defendants but which might serve as
22 an alternative basis for pursuing the same claims, causes of action, or legal theories of relief
23 falling within the definition of Released PAGA Claims.

24 83. **Release of Plaintiff's Individual Claims.** As set forth in the separate
25 Individual Settlement Agreement, Plaintiff shall release the Released Parties from the separate
26 Released Individual Claims upon the Effective Date occurring herein. Plaintiff's separate
27 Individual Settlement Agreement, and any monetary payments owed to Plaintiff pursuant to its
28 terms, are conditioned on final approval of this Settlement Agreement and the passing of the

1 Effective Date. If this Settlement Agreement is not finally approved by the Court and the
2 Effective Date does not occur, Plaintiff and Defendants agree that the separate individual
3 settlement agreement is void.

4 84. The Released Individual Claims include, but are not limited to, any and all
5 claims and/or causes of action, known or unknown, contingent or accrued, arising out of any
6 act or event that occurred prior to execution of this Settlement Agreement, including Plaintiff's
7 employment with Defendants and/or any of the Released Parties. Released Claims shall also
8 include, but are not limited to, any and all rights and claims whether based on tort (including,
9 but not limited to, any form of negligence, including, but not limited to, negligent hiring,
10 negligent retention, and/or negligent supervision), contract, or any federal, state or local law,
11 statute, act, order, constitution, or regulation, including, but not limited to, claims for disparate
12 treatment, disparate impact, harassment, discrimination, retaliation, failure to take all
13 reasonable steps to prevent discrimination and retaliation, failure to engage in the interactive
14 process, failure to provide a reasonable accommodation, wrongful termination in violation of
15 public policy, misclassification, unpaid minimum wages, unpaid overtime wages, failure to
16 provide meal or rest periods or pay meal or rest period penalties, wage statement violations,
17 waiting time penalties, conversion, false promise, intentional misrepresentation, breach of
18 contract, breach of covenant of good faith and fair dealing, fraudulent business practices,
19 unfair competition, whistleblowing, whistleblower retaliation, intentional infliction of
20 emotional distress, violation of California Labor Code (including but not limited to §§ 226 and
21 1198.5 and the Private Attorneys General Act), and any and all rights and claims arising under
22 Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the
23 Age Discrimination in Employment Act of 1967 ("ADEA"), as amended by the Older Workers
24 Benefit Protection Act of 1990, the Family and Medical Leave Act, the Families First
25 Coronavirus Response Act, the Genetic Information Nondiscrimination Act of 2008, the
26 Workers Adjustment and Retraining Notification Act, the National Labor Relations Act,
27 Sections 1981 through 1988 of Title 42 of the United States Code, the California Equal Pay
28 Law, the California Fair Employment and Housing Act, the California Government Code, the

1 California Family Rights Act, the Los Angeles Municipal Code, the Fair Labor Standards Act,
2 the Equal Pay Act of 1963, the California Workers Adjustment and Retraining Notification
3 Act, the California Business and Professions Code, any California Industrial Welfare
4 Commission Wage Order, the California Military & Veterans Code, the California Civil Code,
5 the Unruh Civil Rights Act, the California Domestic Violence and Sexual Assault Victim
6 Leave Act, the California Whistleblower Law, and the United States and California
7 constitutions. Plaintiff also releases the Released Parties from any and all obligations for
8 attorneys' fees incurred in regard to the Released Individual Claims. Notwithstanding the
9 foregoing, the "Released Individual Claims" shall not include any claims based on obligations
10 created by this Settlement Agreement or preclude Plaintiff from making a claim relating to the
11 enforcement of this Agreement.

12 85. Plaintiff understands that this is a full and final release covering all unknown
13 and unanticipated injuries, debts, claims, or damages which may have arisen, or may arise, in
14 connection with any act or omission by Defendants, or any Released Party before the date of
15 execution of this Settlement Agreement. For that reason, Plaintiff, being aware of the below
16 section, hereby waives any and all rights or benefits that she may have under the terms of
17 Section 1542 of the California Civil Code (as well as under any other statutes or common law
18 principles of a similar effect), which provides as follows:

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

25 86. In consideration of Plaintiff's promises, acknowledgments, and agreements set
26 forth herein with respect to the Released Individual Claims, and subject to the final approval of
27 this class and PAGA Settlement Agreement and the passing of the Effective Date, Defendants
28 agree to pay Plaintiff the Individual Settlement Payment of \$30,000 as set forth in the separate
Individual Settlement Agreement.

1 87. Plaintiff acknowledges that the Individual Settlement Payment is in exchange
2 for full settlement of all claims that were or could have been raised against the Released Parties
3 and includes amounts to which Plaintiff otherwise would not be entitled. Specifically, Plaintiff
4 acknowledges that the Individual Settlement Payment reflects full payment of all amounts she
5 contends (or may contend) she was owed by Defendants under municipal, state, and federal
6 law, as well as any and all attorneys' fees and costs incurred by Plaintiff in relation to her
7 employment with Defendants. Plaintiff further acknowledges that Defendants would not agree
8 to pay the Individual Settlement Payment unless (1) Plaintiff signed the Individual Settlement
9 Agreement and agreed to fulfill the promises contained therein, and (2) the Court enters final
10 approval of the Class and PAGA Settlement in the Action, and (3) the Effective Date occurs.

11 **VII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
12 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

13 88. Class Counsel will submit this Settlement Agreement to the Court together with
14 a Motion for Preliminary Approval of Settlement and Certification of the Class, and shall
15 report the settlement to the LWDA and otherwise comply with Section 2699(l) of the Labor
16 Code. The motion shall also seek an order:

- 17 (a) Preliminarily approving the settlement;
- 18 (b) Approving as to form and content the proposed Class Notice;
- 19 (c) Directing the mailing of the Class Notice and instructions by first class
20 mail to Settlement Employees;
- 21 (d) Preliminarily certifying the Class Members and Class Claims for purposes
22 of settlement and preliminarily appointing Plaintiff and Class Counsel as
23 representatives of the Class Members;
- 24 (e) Preliminarily approving settlement administration services to be provided
25 by the Settlement Administrator; and
- 26 (f) Scheduling a Final Approval Hearing on the question of whether the
27 proposed settlement should be finally approved as fair, reasonable and
28 adequate as to the Class Members.

1 89. Defendants shall provide to the Settlement Administrator the Settlement
2 Employee Data within twenty (20) calendar days after the Date of Preliminary Approval.
3 Defendants shall submit this information in electronic format as specified by the Settlement
4 Administrator.

5 90. The Parties shall cooperate with each other and the Settlement Administrator
6 during the process of giving Settlement Employees notice and Class Members the opportunity
7 to opt out of the settlement of the Class Claims, in every way necessary and appropriate to
8 assure effective communication to individual Class Members of information concerning their
9 rights and obligations under this Settlement Agreement.

10 91. Class Counsel shall provide the Court in connection with the Motion for Final
11 Approval of the Settlement a declaration by the Settlement Administrator of due diligence and
12 proof of mailing of the Notice of Settlement required to be mailed to Class Members by this
13 Settlement Agreement, and of the delivery results of the Settlement Administrator's mailings
14 including tracing and re-mailing efforts.

15 **VIII. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

16 92. Class Counsel will submit a proposed Final Order and Judgment for approval,
17 which shall include findings and orders:

- 18 (g) Confirm that Plaintiff provided adequate notice to the LWDA of the PAGA
19 portions of the settlement;
- 20 (h) Approving the PAGA portions of the settlement as providing genuine and
21 meaningful relief, consistent with the underlying purpose of the PAGA to
22 benefit the public;
- 23 (i) Approving the settlement of the Class Claims, adjudging the terms thereof
24 to be fair, reasonable and adequate, and directing that its terms and
25 provisions be carried out;
- 26 (j) Approving Class Counsel's application for an award of attorneys' fees and
27 reimbursement of out-of-pocket litigation expenses; and
28

(k) Providing that the Court will retain jurisdiction after the Final Approval Order solely for purposes of addressing (i) the interpretation and enforcement of the terms of this Stipulation; (ii) Settlement Administration matters; and (iii) such post-Final Judgment matters as may be appropriate under court rules or as otherwise sets forth in this Stipulation.

93. Following entry of the Court's Final Order and Judgment approving the Settlement Agreement, the parties will each act to assure its timely execution and the fulfillment of all its provisions, including but not limited to the following:

(l) Should an appeal be taken from the Final Order and Judgment approving the Settlement Agreement, all parties will support the Final Order and Judgment on appeal;

(m) The Parties and Class Counsel will certify to the Court completion of all payments required to be made by this Settlement Agreement.

IX. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

94. The preliminary schedule for notice, approval, and payment procedures carrying out this Settlement is as follows. This schedule is only intended to summarize pertinent events as they relate to settlement administration; it does not modify any other provisions of this Agreement or otherwise alter the Parties' obligations hereunder. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class, and sets further hearings. In the event of such modification, the parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

Within 20 days after the Date of Preliminary Approval	Defendants to provide the Settlement Administrator Settlement Employee Data, as well as any relevant information regarding their dates of employment and the number of pay periods worked by Settlement Employees during the applicable Settlement Period.
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30 days after Preliminary Approval of Settlement	Settlement Administrator to complete any skip trace or other address searched for Settlement Employees, including updating any contact information. Mailing by first class mail of Class Notice.
45 days after mailing of Class Notice; and 60 days after initial mailing of Class Notice for re-mailed Class Notices	"Response Deadline" for Class Members to opt-out or object to the settlement of the Class Claims.
1 business day prior to the hearing on Final Approval	Last day for Class Members to rescind objections or opt-outs to the settlement of the Class Claims.
As defined herein.	Effective Date
Within 5 court days after the Effective Date	Settlement Administrator to make the final calculation of payments from the Net Settlement Amount to be distributed to the Participating Settlement Employees and provide Defendants' counsel with a report listing the amount of all payments to be made to each Participating Settlement Employee.
Within 15 court days after the Effective Date	Defendants to transfer the Gross Settlement Amount to the Settlement Administrator who will deposit in a Settlement Administrator-established account at a federally insured banking institution, plus remit the employer's share of payroll taxes.
Within 7 court days of Defendants' transfer of Gross Settlement Amount to the Settlement Administrator	Settlement Administrator to distribute and pay: Settlement checks to all Participating Settlement Employees and the LWDA; Settlement Administration Expenses; and the attorney's fees and costs approved by the Court to Class Counsel.
180 days after payment of settlement checks	Expiration of Participating Settlement Employees' settlement checks.
TBD	Settlement Administrator to provide a declaration of payment and report regarding uncashed checks, which will be filed with the Court and served on Class Counsel and Defendants. Settlement Administrator to issue checks to the State Controller's Office, Unclaimed Property Division

1 **X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

2 95. Defendants will have, in their sole discretion, the right to void and withdraw
3 from the Settlement if 5 percent (5%) or more of Class Members opt out of the Settlement by
4 giving written notice to the Settlement Administrator at least 20 calendar days before the final
5 approval hearing date.

6 96. All Parties, signatories and their counsel shall not encourage opt-outs or
7 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
8 indirectly, through any means.

9 97. Defendant also has the right to withdraw from the Settlement at any time prior
10 to final approval if: (a) the Court issues an order requiring Defendants to pay more than the
11 Gross Settlement Amount (except for Defendants' obligation to pay the employer's share of
12 payroll taxes which is not included in the Gross Settlement Amount and will be funded
13 separately by Defendants); or (b) the Court does not conditionally certify a class, or otherwise
14 makes an order materially inconsistent with any of the terms of this Settlement Agreement; or
15 (d) Plaintiff or her counsel breach this Settlement Agreement. In the event of Defendants'
16 withdrawal, Defendants will pay the costs already incurred by the Settlement Administrator
17 unless the withdrawal is the result of Plaintiff's or her counsel's breach of the Settlement
18 Agreement.

19 98. If for any reason the Settlement is not approved by the court, or if Defendants or
20 Plaintiff withdraw from the Settlement, this Settlement Agreement and any related settlement
21 documents will be null and void, other than the confidentiality, non-disclosure provisions and
22 the non-admission provisions herein and any class or collective action certified or approved for
23 settlement purposes will be vacated. In such an event, neither this Settlement Agreement, nor
24 the settlement documents, nor the negotiations leading to the Settlement may be used as
25 evidence for any purpose, and Defendants shall retain the right to challenge all claims and
26 allegations in the action, to assert all applicable defenses, and to dispute the propriety of class
27 or collective certification on all applicable grounds.

1 99. If any time period specified in the above three paragraphs passes before the
2 party holding a right or option to request adjustment or rescind exercises that right or option,
3 that party shall be deemed to have waived its right or option and the Settlement Agreement
4 shall proceed on the terms specified herein.

5 100. Other than as specified above, this Settlement Agreement may not be changed,
6 amended, altered, or modified, except in writing and signed by counsel for the Parties hereto,
7 and approved by the Court. This Settlement Agreement may not be discharged except by
8 performance in accordance with its terms or by a writing signed by the Parties hereto.

9 **XI. CONFIDENTIALITY AND PUBLICITY**

10 101. Settlement Employee Data shall be kept strictly confidential by the Settlement
11 Administrator who will not release such information to Class Counsel and will only file such
12 information under seal if necessary. Class Counsel agrees that any information they receive or
13 have received in connection with this Settlement, may be used for this action only, and may
14 not be used for any purpose or in any other action or proceeding.

15 102. Plaintiff and Class Counsel agree not to disclose the terms of this Settlement,
16 except in court papers, or if required by legal process, as necessary to effectuate and administer
17 the terms of this Settlement, or for accounting or tax reporting purposes, prior to the filing of
18 the Motion for Preliminary Approval. Neither Plaintiff nor Class Counsel, directly or
19 indirectly, shall issue a press release or hold a press conference, publish information about the
20 settlement on any website (other than used by the Settlement Administrator for settlement
21 administration purposes), or otherwise publicize the settlement. Plaintiff and Class Counsel
22 agree not to respond to any press inquiries concerning the settlement except to refer reporters
23 to the papers filed with the Court. Notwithstanding the foregoing, Class Counsel may refer to
24 the Settlement in any adequacy of counsel declarations, or related court filings.

25 **XII. PARTIES' AUTHORITY**

26 103. The signatories hereby represent and warrant that they are fully authorized to
27 enter into this Settlement Agreement and bind the respective Parties hereto to the terms and
28 conditions hereof.

1 **XIII. MUTUAL FULL COOPERATION**

2 104. The Parties agree to fully cooperate with each other to accomplish the terms of
3 this Settlement Agreement, including but not limited to, executing such documents and taking
4 such other action as may reasonably be necessary to implement the terms of this Settlement
5 Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all
6 efforts contemplated by this Settlement Agreement and any other efforts that may become
7 necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the
8 terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
9 Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take
10 all necessary steps to secure the Court's preliminary and final approval of this Settlement
11 Agreement.

12 **XIV. NOTICES**

13 105. Unless otherwise specifically provided herein, all notices, demands or other
14 communications given hereunder shall be in writing and shall be deemed to have been duly
15 given as of the third business day after mailing by United States registered or certified mail,
16 return receipt requested, addressed as follows:

17 To Class Counsel:

18 LAUBY MANKIN & LAUBY LLP
19 Brian J. Mankin, Esq.
20 *brian@lmlfirm.com*
21 Peter J. Carlson, Esq.
22 *peter@lmlfirm.com*
4590 Allstate Drive
Riverside, CA 92501

23 To Defendant's Counsel:

24 Jennifer B. Zargarof, Esq.
25 Sonia A. Vucetic, Esq.
26 MORGAN LEWIS & BOCKIUS LLP
27 300 S. Grand Avenue
Twenty-Second Floor
28 Los Angeles, CA 90071
Tel: 213.612.2500
Fax: 213.612.2501

1 *jennifer.zargarof@morganlewis.com*
2 *sonia.vucetic@morganlewis.com*

3 If the identity of the persons to be notified for any party changes, or their address changes,
4 that party shall notify all other parties of said change in writing.

5 **XV. MISCELLANEOUS PROVISIONS**

6 106. **Captions and Titles.** Paragraph titles or captions contained herein are inserted
7 as a matter of convenience and for reference, and in no way define, limit, extend, or describe
8 the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement
9 Agreement is contractual and not merely a recital.

10 107. **Drafting.** The Parties hereto agree that the terms and conditions of this
11 Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the
12 Parties supervised by an experienced employment law mediator. Neither party shall be
13 considered the “drafter” of the Settlement Agreement for purposes of having terms construed
14 against that party, and this Settlement Agreement shall not be construed in favor of or against
15 any Party by reason of the extent to which any Party or his, her or its counsel participated in
16 the drafting of this Settlement Agreement.

17 108. **Extensions of Time.** If a party cannot reasonably comply with an obligation
18 under this Settlement Agreement by the deadline set forth herein applicable to that obligation,
19 that party may apply to the Court for a reasonable extension of time to fulfill that obligation.
20 Consent to such a request for an extension will not be unreasonably withheld by the other
21 party.

22 109. **Governing Law.** The rights and obligations of the parties hereunder shall be
23 construed and enforced in accordance with, and shall be governed by, the laws of the State of
24 California, without regard to principles of conflict of laws.

25 110. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any
26 amounts paid under the Settlement Agreement will modify any previously credited hours or
27 service under any employee benefit plan, policy, or bonus program sponsored by Defendants.
28 Such amounts will not form the basis for additional contributions to, benefits under, or any

1 other monetary entitlement under Defendants' sponsored benefit plans, policies, or bonus
2 programs. The payments made under the terms of this Settlement shall not be applied
3 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
4 form of compensation for the purposes of Defendant's benefit plan, policy, or bonus program.
5 Defendants retain the right to modify the language of its benefit plans, policies and bonus
6 programs to effect this intent, and to make clear that any amounts paid pursuant to this
7 Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any
8 similar measuring term as defined by applicable plans, policies and bonus programs for
9 purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional
10 contributions or benefits are not required by this Settlement Agreement.

11 111. **Integration.** This Settlement Agreement contains the entire agreement between
12 the Parties relating to the Settlement and transaction contemplated hereby, and supersedes and
13 replaces all prior negotiations, understandings, memoranda of understanding and proposed
14 agreements, written and oral, relating thereto. No extrinsic oral or written representations or
15 terms shall modify, vary or contradict the terms of this Settlement Agreement unless made in
16 writing and signed by duly authorized representatives of all Parties and approved in writing by
17 a final order of the Court. No waiver of any term, provision or condition of this Settlement
18 Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to
19 be or construed as a further or continuing waiver of any such term, provision or condition. The
20 Parties and their respective counsel all participated in the negotiation and drafting of this
21 Settlement Agreement and had available to them the advice and assistance of independent
22 counsel.

23 112. **Succession and No Prior Assignments.** This Settlement Agreement shall be
24 binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees,
25 executors, administrators, legal representatives, and successors. The Parties hereto represent,
26 covenant, and warrant that they have not directly or indirectly, assigned, transferred,
27 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion
28

1 of any liability, claim, demand, action, cause of action or rights herein released and discharged
2 except as set forth herein.

3 113. **Continued Jurisdiction.** Even after the Order of Final Judgment and
4 notwithstanding it, this Court will have and retain continuing jurisdiction over the lawsuit and
5 over all Parties and Putative Settlement PAGA and Class Members, to the fullest extent
6 necessary or convenient to enforce and effectuate the terms and intent of this Settlement and
7 all matters provided for it in and to interpret it.

8 114. Except as specifically provided herein, the Parties hereto will bear
9 responsibility for their own attorneys' fees and costs, taxable or otherwise incurred by them or
10 arising out of this lawsuit, and will not seek reimbursement thereof from any Party to this
11 Settlement Agreement. In the event that legal action arises out of this Stipulation for
12 Settlement Agreement or is necessary to enforce any of the terms or provisions of this
13 Settlement Agreement, the prevailing party in the action shall be entitled to recover its
14 reasonable attorneys' fees and costs.

15 **XVI. COUNTERPARTS**

16 115. **Counterparts.** This Settlement Agreement may be executed in counterparts
17 with signatures transmitted by facsimile or as an electronic image (including DocuSign) of the
18 original signature. When each Party has signed and delivered at least one such counterpart,
19 each counterpart shall be deemed an original, and, when taken together with other signed
20 counterparts, shall constitute one Settlement Agreement, which shall be binding upon and
21 effective as to all Parties. A facsimile signature or electronic image shall have the same force
22 and effect as the original signature.

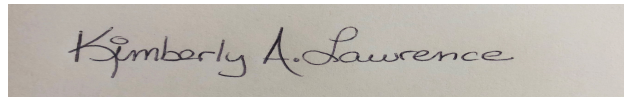
23
24 **READ CAREFULLY BEFORE SIGNING**
25 **PLAINTIFF**

26 Dated: June 21, 2022

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28 Ashley Brown (Jun 20, 2022 12:34 PDT)
Ashley Brown

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**DEFENDANTS MINUTECLINIC DIAGNOSTIC
MEDICAL GROUP OF CALIFORNIA, INC.;
MINUTECLINIC DIAGNOSTIC MEDICAL
GROUP OF ORANGE COUNTY, INC.;
MINUTECLINIC DIAGNOSTIC MEDICAL
GROUP OF SAN DIEGO, INC.**



Dated: July 25, 2022

By: Kimberly Lawrence

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APPROVED AS TO FORM.

Dated: June 25, 2022

MORGAN, LEWIS & BOCKIUS LLP

By 
Jennifer B. Zargarof
Sonia A. Vucetic
Attorneys for Defendants
MINUTECLINIC

Dated: June 21, 2022

LAUBY MANKIN LAUBY

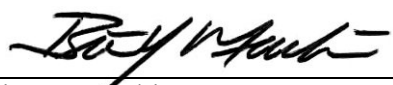
By 
Brian J. Mankin
Peter J. Carlson
Attorneys for Plaintiff
ASHLEY BROWN

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Ashley Brown v. MinuteClinic Diagnostic Medical Group, et al.
Superior Court of the State of California, County of Orange
Case No. 30-2021-01185270-CU-OE-CXC

To: all current and former non-exempt employees of MinuteClinic, who worked in California at any time between February 22, 2017 and [insert date of preliminary approval order], 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of a class action and representative lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2022, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or do not act.*

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and PAGA Employee in the above lawsuit against Defendants MinuteClinic Diagnostic Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc. (collectively, “Defendants” or “MinuteClinic”). Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible pay periods you worked at any MinuteClinic location in California between February 22, 2017 and [insert date of preliminary approval order] (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section IV.
EXCLUDE YOURSELF FROM SETTLEMENT OF THE CLASS CLAIMS	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion from the Settlement Class by [REDACTED], 2022 (see Section V for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment for the Class Claims, but you will preserve your right to pursue the Released Class Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT TO THE SETTLEMENT OF THE CLASS CLAIMS	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2022 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe that your number of pay periods that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited pay periods). Defendants’ records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Pay Period calculation is inaccurate.

BASIC INFORMATION

I. Why did I get this notice packet?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Brown v. MinuteClinic*, Orange County Superior Court Case No. 30-2021-01185270-CU-OE-CXC (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You received this notice because MinuteClinic’s records show that you were employed in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between February 22, 2017 and [insert date of preliminary approval order] (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by MinuteClinic as a non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On February 22, 2021, Plaintiff and Class Representative Ashley Brown, through her attorneys (“Class Counsel”), filed a class and representative action complaint against MinuteClinic for alleged wage and hour violations on behalf of all current and former non-exempt employees who were employed by MinuteClinic in California at any time since July 31, 2016. The Lawsuit alleges that MinuteClinic violated various Labor Code sections by failing to pay wages for all hours worked, failing to provide all required meal and rest breaks, failing to timely pay final wages, and failing to provide accurate and complete wage statements and engaging in unfair and unlawful competition during the Class Period. All of these claims are called the “Class Claims.” The Lawsuit also sought, also on behalf of the California Labor Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is December 20, 2019 and [insert date of preliminary approval order] (“PAGA Period”).

MinuteClinic has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, MinuteClinic is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. MinuteClinic has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, MinuteClinic and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to MinuteClinic, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by MinuteClinic, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, MinuteClinic will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by MinuteClinic in California at any time from February 22, 2017 and May 9, 2022 (the "Settlement Class") and approved a representative class all non-exempt employees employed by MinuteClinic in California at any time from December 20, 2019 and May 9, 2022 ("PAGA Employees"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become "Participating Class Members" and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against MinuteClinic.

Without admitting any wrongdoing, MinuteClinic has agreed to pay \$670,000 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved **XX** to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of **\$XX** will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other PAGA Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$40,000 of the Gross Settlement Amount will be allocated to Plaintiff's PAGA Claims. Of this amount, \$30,000 will be paid to the LWDA in satisfaction of the claims for civil penalties under PAGA, and the remaining \$10,000 will be divided between all PAGA Employees based on the number of pay periods worked during the PAGA Period, regardless of their receipt of payments for settlement of the Class Claims. You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. PAGA Employees includes "all current and former non-exempt employees of MinuteClinic who worked in California at any time during the PAGA Period." Review the information below to determine if you are an PAGA Employee and eligible to receive a share of the \$10,000 allocation:

Do you Qualify as an PAGA Employee?	Pay Periods Worked as an PAGA Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$233,333.33) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$ [REDACTED]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of Pay Periods a Settlement Class Member is credited with working during the Class Period. A Class Member is credited with one Pay Period Worked each time the Class Member works at least one shift during the Class Period in a non-exempt position in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Pay Periods Worked by all Settlement Class Members into the Net Settlement Amount to determine a per “Pay Period Value.” The Pay Period Value will be multiplied by the number of Pay Periods Worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Pay Periods Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Pay Periods Credited For each Settlement Class Member, the Pay Periods Worked at MinuteClinic during the Class Period will be calculated from MinuteClinic’s records. If you disagree with the number reported above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2022, with documentation to establish the number of eligible Pay Periods you claim to have actually worked for MinuteClinic in California between February 22, 2017 and May 9, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those PAGA Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. Participating Class Members and PAGA Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or PAGA Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller’s Office in the name of the Participating Class Member or PAGA Employee, so that the Participating Class Member or PAGA Employee can attempt to collect the funds at a later date.

Allocation and Taxes. Ten percent (10%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining ninety percent (90%) will be considered and reported equally as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the settlement payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and PAGA Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, MinuteClinic and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and PAGA Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Once the Court approves the proposed Settlement and enters Judgment, and MinuteClinic funds the Settlement, then the Settlement Agreement will bind all Class Members who have not opted out of the Settlement and will bar them from bringing the Class Claims against MinuteClinic. Specifically, the Participating Class Members will fully release and discharge Defendants and the Released Parties (defined as: “MinuteClinic Diagnostics Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., MinuteClinic Diagnostic Medical Group of San Diego, Inc., CVS Health Corporation and their affiliates, divisions, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, managers, supervisors, employees, attorneys, agents, shareholders and/or successors, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof”) of all claims, demands, rights, liabilities, and causes of action that were or could have been pled under local, state or federal law arising out of or based on the facts alleged in the operative Complaint against Defendants for the duration of the Class Period, including but not limited to claims for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Breaks; (4) Failure to Provide Rest Breaks, (5) Failure to Timely Pay Final Wages; (6) Failure to Provide Accurate Wage Statements, and (7) Unfair Competition. In addition, each Participating Class Member who cashes their settlement payment shall be deemed to have released all claims set forth above under the California Labor Code and the FLSA. The time period governing the Released Class Claims shall be the same as the Class Period. These released claims and damages are hereinafter referred to as “Released Class Claims.” The time period governing these Released Class Claims shall be at any time from February 22, 2017 and [insert date of preliminary approval order] (“Class Period”).

Release of PAGA Claims. Also upon the Court’s approval of the Settlement, entry of Judgment, and MinuteClinic’s funding of the Settlement Amount, the Settlement Agreement will bind Plaintiff, on behalf of the LWDA and PAGA Employees, and will bar them from bringing PAGA claims against Defendants and the Released Parties of all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in Plaintiff’s operative Complaint and in Plaintiff’s February 11, 2021, notice letter to the LWDA, including all PAGA claims seeking civil penalties for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks, (5) Failure to Timely Pay Wages; (6) Failure to Timely Pay Final Wages; and (7) Failure to Provide Accurate Wage Statements, and based on or arising from alleged violations of the California Labor Code, including Sections 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, 2699, *et seq.*, and of the California Wage Orders. The time period governing the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released Claims do not release any potential claims for wages or statutory penalties.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Settlement Payments. That section provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Pay Periods Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by MinuteClinic, who will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Class Claims in the Settlement.** If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion” from the Class Claims on a letter/card postmarked no later than [REDACTED], 2022 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should clearly confirm your desire to be excluded by stating something to the effect of:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MINUTECLINIC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2022. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, address, telephone number, dates of employment at MinuteClinic, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2022. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. **You need not object to the Settlement if you only dispute the number of Pay Periods Worked.**

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2022, at [REDACTED] a.m. in Department CX101 of the Orange County Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2022. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by MinuteClinic in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the above-described Released Class Claims. All PAGA Employees will be deemed to have entered into a release of the PAGA Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2022 at [REDACTED] a.m. in Department CX101 of the Orange County Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at Office of the Clerk, Orange County Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2022. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2022. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



February 11, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

MinuteClinic Diagnostic Medical Group of
California, Inc.
One CVS Drive
Woonsocket, RI 02895

MinuteClinic Diagnostic Medical Group of
Orange County, Inc.
One CVS Drive
Woonsocket, RI 02895

MinuteClinic Diagnostic Medical Group of San
Diego, Inc.
One CVS Drive
Woonsocket, RI 02895

Re: PAGA Civil Penalty Claim
Ashley Brown v. MinuteClinic Diagnostic Medical Group of California, Inc., et al.

To the Labor and Workforce Development Agency, MinuteClinic Diagnostic Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc.:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Ashley Brown (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), MinuteClinic Diagnostic Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc., and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately July through August 2020. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company's failure to accurately record and compensate for all hours worked. Also, at all relevant times, Claimant was compensated on an hourly basis plus additional compensation in the form of shift differentials and/or nondiscretionary bonuses. However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the pay period, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the requirement to provide patient care without adequate staffing and coverage, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of MinuteClinic Diagnostic Medical Group of California, Inc., MinuteClinic Diagnostic Medical Group of Orange County, Inc., and MinuteClinic Diagnostic Medical Group of San Diego, Inc. (the "MinuteClinic Entities") and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between the MinuteClinic Entities exists such that all entities acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the MinuteClinic Entities are an integrated enterprise and should be treated as a single employer because the MinuteClinic Entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the MinuteClinic Entities share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that certain MinuteClinic Entities are now and at all material times herein mentioned were the owner(s) of other MinuteClinic Entities, and are/were Claimant's and the Aggrieved Employees' actual employer. In addition, Claimant alleges that at all relevant times herein the MinuteClinic Entities had the authority, in the interest of the other MinuteClinic Entities, to exercise



independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the MinuteClinic Entities are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the MinuteClinic Entities were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that the MinuteClinic Entities were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, the MinuteClinic Entities have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the owners of the MinuteClinic Entities have conducted their personal affairs. Accordingly, the corporate veil should be pierced, and any liability attached to the MinuteClinic Entities, should be imposed jointly and severally against the owners of such entities. Adherence to the fiction of the separate existence of the corporate entity of the MinuteClinic Entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, the owners of the MinuteClinic Entities are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which



they were entitled at the rates agreed upon by the Company, including, but not limited to shift differential pay.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and



owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order



of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

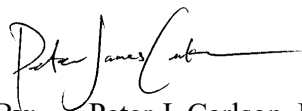
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

www.California-EmploymentLawyers.com



Re: Brown v. MinuteClinic Diagnostic Medical Group of California, Inc., et al.

February 11, 2021

Page 7



4590 Allstate Drive, Riverside, CA 92501
Toll Free 888.959.8508

EXHIBIT “D”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Brown v. Minute Clinic

Requesting Attorneys Name: Brian Mankin
 E-Mail: bjm@fernandezlauby.com
 ILYM Contact: Jonathan Paul
 E-Mail: Jonathan@ilymgroup.com
 Contact Number: 310.948.7117

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	700
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$650.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Opt-Outs	Hourly	\$70.00	1	\$70.00
NCOA	Flat Rate	\$250.00	1	\$250.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$680.00

NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$2.00	700	\$1,400.00
USPS First Class 1oz Postage	Per Piece	\$0.55	700	\$385.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$4.00	140	\$560.00
Toll Free Customer Service Representative	Flat Fee	\$250.00	1	\$250.00
Storage, Photocopies, Deliveries	Flat Fee	\$390.00	1	\$390.00

Subtotal \$2,985.00

I L Y M | G R O U P, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
1st Check Stub & Release - Print & Mail (W2/1099)	Per Check	\$2.00	700	\$1,400.00
USPS First Class 1oz Postage	Per Piece	\$0.55	700	\$385.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$4.00	70	\$280.00
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$750.00	1	\$750.00
Escheat Funds to State Controller	Per Piece	\$750.00	1	\$750.00

**Additional Bank fees may apply*

Subtotal \$4,990.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	2	\$200.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$445.00

TOTAL CASE ESTIMATE - NOT TO EXCEED: \$9,750.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT “E”