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8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

10 DREW TARTALA, individually, and on behalf of
the State of California and Aggrieved Employees,
11 as a private attorney general,

12 Plaintiff,

13 vs.

14 ACTION URGENT CARE INC., a California
Corporation; LIFETIME APP, INC., a Delaware
15 Corporation; and GENEVIEVE HISMATULLIN,
an individual

16
17 Defendants.

Case No.: CGC-21-596837

**DECLARATION OF TRAVIS J. BURCH,
ESQ. AND EXHIBITS IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR COURT APPROVAL OF
THE PARTIES' PAGA SETTLEMENT**

DATE: May 14, 2024

TIME: 9:30 A.M.

DEPT: 302

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19
20 I, Travis J. Burch, Esq., declare as follows:

21 1. I am an attorney at law duly licensed to practice before all the courts in the State of
22 California and am attorney of record for plaintiffs herein, and if called upon to testify could and
23 would competently do so.

24 2. I am a partner in the law firm of Shalchi Burch LLP and counsel for the Plaintiff in
25 this matter. I submit this declaration in support of the motion to approve the settlement.

26 3. In accordance with Labor Code Section 2699(1)(2), I uploaded the [Proposed] Order
27 and PAGA Settlement Agreement into the LWDA PAGA web portal.
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1 4. Marked and attached hereto as “Exhibit 1” is the Parties’ PAGA Settlement
2 Agreement (“Settlement” or “Agreement” or “Settlement Agreement”), entered into between
3 Plaintiff Drew Tartala (“Plaintiff”), for himself and on behalf of the State of California and other
4 Aggrieved Employees pursuant to the PAGA, and Defendants Action Urgent Care Inc., Lifetime
5 App, Inc. (“Defendants”) (collectively “Parties”). The Parties also drafted and agreed to the form
6 and contents of a [Proposed] PAGA Settlement Notice (“Notice”) for the administrator to mail to
7 the Aggrieved Employees when settlement payments are made. The Notice is attached as Exhibit
8 A to the Settlement Agreement attached hereto as Exhibit 1. Plaintiffs’ counsel respectfully
9 requests the Court approve the Notice and sign the Proposed Order.

10 5. Plaintiff satisfied the prerequisites under Labor Code Section 2699.3(a), including
11 but not limited to, providing the Labor and Workforce Development Agency (“LWDA”) and the
12 employer with written notice of the specific provisions of the California of the Labor Code alleged
13 to have been violated, including the facts and theories to support the alleged violations, by way of
14 written correspondence on sent by U.S. Certified Mail. The LWDA did not respond to the letters
15 sent on behalf of the Plaintiffs. Attached hereto as “Exhibit 2” are true and correct copies of the
16 Notices.

17 **SUMMARY OF PLAINTIFF’S PAGA CLAIMS**

18 6. Defendants are involved in providing services related to the urgent care medical
19 services. Plaintiff was hired by Defendants as an exempt salaried employee in the role of a
20 recruiter and later as a director of human resources and separated his employment with Defendants
21 on or about August 27, 2021.

22 7. On August 31, 2021 Plaintiff filed his initial PAGA Notice against Defendant
23 Action Urgent Care, Inc., Inc.; and on February 28, 2023 filed an amended PAGA Notice adding
24 factual details; and a final September 28, 2023 amended PAGA Notice adding Defendant Lifetime
25 App, Inc. On November 30, 2021, Plaintiff filed the initial Complaint in this matter alleging
26 individual claims and a PAGA claim. Plaintiff filed a Second Amended Complaint on or about
27 January 18, 2024.
28

1 8. The Parties attended a full day mediation with highly esteemed neutral mediator,
2 Hon. Jamie Jacobs-May (Ret.) on September 18, 2023.

3 9. The Second Amended Complaint herein alleged a PAGA claim predicated on
4 violations of Labor Code Sections 200, 201, 202, 203, 204, 207, 208, 210, 226(a)-(c), 226.3, 226.7,
5 227.3, 246, 248, 248.5, 432.5, 510, 511, 512(a), 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1198,
6 1198.5, 1199, 2800, 2802, 3550, 3551. In particular, Plaintiff alleged violations which included
7 penalties for: (1) failure to post dates and locations of pay; (2) failure to pay final pay checks at the
8 proper location; (3) unpaid minimum, regular, and overtime wages, (4) illegal alternative
9 workweek schedule; (7) failure to provide compliant meal and rest periods or meal period
10 premiums; (8) wage statement violations; (9) failure to keep accurate records; (10) untimely
11 payment of wages during employment, (11) untimely payment of wages at separation; (12)
12 derivative violations under Sections 558 and 558.1; (13) posting and notice or workers'
13 compensation information; (14) failure to reimburse business expenses; (15) failure to pay unused
14 vacation; (16) posting notice of and payment of paid sick leave.

15 **DEFENDANTS' POSITION**

16 10. Defendants vigorously deny all of Plaintiff's allegations. Defendants also argue that
17 they maintained accurate written records which demonstrated potentially aggrieved employees
18 received legally compliant meal breaks and rest breaks during the relevant time period. Defendants
19 also argue that Plaintiff's PAGA claims were not susceptible to proof on a representative basis
20 because of the inherent varying nature of each aggrieved employees' job functions and duties
21 making any trial plan unmanageable under *Wesson v. Staples the Office Superstore, LLC*, 68
22 Cal.App.5th 746, 770. While the California Supreme Court has now held that a court may not strike
23 PAGA claims based on manageability¹, there remain issues of proving up claims when there are
24 not systemic documented violations.

25 ///

26 ///

27 _____
28 ¹ *Estrada v. Royalty Carpet Mills, Inc.* January 18, 2024, California Supreme Court S274340.

1 **PLAINTIFF’S COUNSEL’S INVESTIGATION**

2 11. Throughout the litigation, Plaintiff’s counsel conducted a thorough investigation of
3 the violations comprising the PAGA claim. Shortly after Defendants answered the initial
4 complaint, Plaintiff’s counsel immediately propounded voluminous written discovery. After some
5 motion practice, the Parties entered into a stipulated protected order and Defendants provided a
6 contact list of 385 potentially aggrieved employees. Initially, Plaintiff’s counsel called fifty (50)
7 employees from the list. Over the course of three months, Plaintiff’s counsel was able to interview
8 fourteen (14) employees out of the initial fifty (50) employees. The remainder were not responsive
9 and either would not return multiple phone calls, or indicated they were disinterested and did not
10 want to get involved. One of the hurdles was that the Defendants had extremely high turnover of
11 employees and many employees were only employed for one or two pay periods and indicated
12 they had moved on and were not interested in discussing their experience.

13 12. In addition to interviewing potentially aggrieved employees, Plaintiff’s counsel also
14 relied on Plaintiff’s knowledge of the employment practices of Defendants. However, Plaintiff
15 was an exempt employee that was not entirely privy to day-to-day experience of the non-exempt
16 employees, many of which were located at various locations separate from Plaintiff. Additionally,
17 Plaintiff’s counsel also took a full day deposition of Defendant Action Urgent Care, Inc.’s Chief
18 Operating Officer in order to explore the PAGA allegations.

19 13. During the litigation, Defendants provided Plaintiff with sample data and payroll
20 records from thirty employees. Thus, Defendants cooperated with Plaintiffs’ request for sufficient
21 demographic information and documentation to allow for extrapolation of the sample data to the
22 entire group of potentially Aggrieved Employees of aggrieved employees, and pay periods. With
23 this information in hand, the Parties were able to engage in meaningful settlement discussions and
24 attend mediation.

25 14. By engaging in the investigation and evaluation of Plaintiffs’ claims, Plaintiffs’
26 counsel can opine that the Settlement, for the consideration and on the terms set forth in the
27 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of PAGA
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Members in light of all known facts and circumstances, including risk of significant delay and uncertainty associated with litigation, and various defenses posited.

MEDIATION AND SETTLEMENT

15. On September 18, 2023, the Parties attended a full day mediation session with professional neutral mediator Hon. Jamie Jacobs-May (Ret.) Judge Jacobs-May is an experienced and well-regarded wage and hour class action and PAGA mediator. She helped manage the Parties' expectations and provide a useful neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, the Parties were able to reach an agreement through a mediator's proposal. At all times, the Parties' negotiations were adversarial and non-collusive. The Parties recognized that the issues presented in the action would likely only be resolved with extensive, protracted, and expensive pretrial and trial proceedings, and that further litigation would lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. Plaintiffs took into account the risk and uncertainty of the outcome inherent in any litigation when determining whether this settlement was the correct option. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

16. The Parties settled the entirety of their dispute, including Plaintiff's individual claims, for an aggregate amount of \$275,000.00.² Under the proposed PAGA Settlement, Defendants agreed to pay a gross amount of \$50,000.00 to resolve the PAGA claim. The Settlement's key terms include: Attorneys' fees and costs not to exceed \$16,666.66 plus reimbursement for out-of-pocket expenses associated with Plaintiff's Counsel's litigation and settlement of the PAGA claims – counsel is only seeking \$10,000.00 in order to increase the amount to LWDA and aggrieved employees; Attorneys' actual costs not to exceed \$6,837.78. which Plaintiff's counsel is waiving to increase the amount to the LWDA and aggrieved employees; Actual costs of the third-party administrator Simpluris estimated at \$5,000.00; Distribution of the Net Settlement Amount of \$36,000 to the LWDA and the Aggrieved Employees per statute: 75% (approximately \$27,000.00) must be paid to the LWDA pursuant to Labor Code

² The Parties entered into a separate settlement agreement for the Plaintiff's individual claims.

1 Section 2699 *et seq.* and 25% (approximately \$9,000.00) shared by the Aggrieved Employees.
2 Each Aggrieved Employee will receive a pro rata share based on the number of payroll periods
3 they worked through the PAGA Period and said amount will be treated as 1099-MISC; There were
4 an estimated 990 PAGA members with an associated 16,428 pay periods.

5 17. The Aggrieved Employees are defined as all persons who were employed by
6 Defendants in California from September 26, 2020 through the date of Settlement Approval, with
7 principals excepted.

8 **ANALYSIS OF THE SETTLEMENT**

9 18. Here, statutory penalties under the PAGA are found primarily under Labor Code
10 Section 2699(f)(2) which imposes a penalty of \$100.00 for each aggrieved employee per pay
11 period for initial violations, and \$200.00 for each aggrieved employee per pay period for
12 subsequent violations. In *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127 (9th Cir. 2021), the Ninth
13 Circuit clarified that the higher ranger penalties of \$200.00 could only be imposed if a court or the
14 Labor Commission had notified the employer that they violated a particular Labor Code section
15 previously. Defendants have not had any prior Labor Commission notice or court order informing
16 them of prior violations at issue here, so the relevant penalty number is \$100 per aggrieved
17 employee per pay period.

18 19. Plaintiff's counsel calculated the maximum exposure on the 22 alleged violations
19 was calculated as \$100.00 per violation x total aggrieved employee pay periods of 16,428 x 22
20 potential violations = \$36,141,600.

21 20. Although the maximum exposure number was high, it was tempered number by a
22 variety of factors. Defendants advanced a number of defenses and vigorously disputed it violated
23 the Labor Code Sections alleged in the operative Complaint. Toward that end, during Plaintiff's
24 counsel's investigation, Defendants provided a number of documents, including payroll and time
25 keeping records from its time keeping software that indicated aggrieved employees were afforded
26 compliant meal and rest breaks. Additionally, various iterations of its employee handbooks and
27 other policies and procedures militated in significantly reducing Plaintiff's damages model.

1 21. Additionally, Defendants also argue that certain of Plaintiff's PAGA claims, were
2 not susceptible to proof on a representative basis because of the inherent varying nature of each
3 aggrieved employees' job functions and duties and different physical workplace, making any trial
4 plan unmanageable under *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746, 770.
5 (*Id.* at 22.) However, this case is no longer valid. In *Estrada v. Royalty Carpet Mills, Inc.* January
6 18, 2024, California Supreme Court S274340, the California Supreme Court held that a trial court
7 does not have the inherent authority to strike a PAGA as unmanageable. The California Supreme
8 Court did note however, that trial court still retain the inherent authority to place guardrails on
9 PAGA claims to prevent them from being unmanageable. Additionally, some of the violations
10 overlapped or were duplicative.

11 22. This segues into the strongest factor tempering a larger settlement amount. During
12 the course of Plaintiff's investigation, it became apparent that a huge number of the potentially
13 aggrieved employees did not work more than a few pay periods before their employment separated.
14 As a result, it was difficult to establish patterns of any business-wide systemic violations.
15 Additionally, many of the potentially aggrieved employees did return calls, or they expressed
16 disinterest in discussing their experience.

17 23. Defendants' maximum exposure is also tempered by the statutory PAGA language
18 that allows courts significant latitude to reduce civil penalties "based on the facts and
19 circumstances of a particular case" when "to do otherwise would result in an award that is unjust,
20 arbitrary and oppressive, or confiscatory." Labor Code Section 2699(e). For example, in
21 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018), the trial court was affirmed after
22 plaintiff sought \$70,000,000 in penalties which the court slashed by awarding only \$150,000.00.
23 The Court of Appeal affirmed the lower court's decision because imposing the maximum penalty
24 would be "unjust, arbitrary, and oppressive" because Starbucks made good faith attempts to
25 comply. (*Id.* at 529.) Here, Defendants could have pointed to factors that resulted in significant
26 reductions in the penalties imposed because they did demonstrate they took their obligations under
27 the Labor Code seriously by having written policies and procedures such as an employee handbook
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1 that stated that employees needed to comply with meal and rest breaks laws. Additionally, Labor
2 Code Section 2699(g)(2) does not allow for PAGA claims when it stems from violations of posting,
3 notice, agency reporting, or filing requirements. A few of the violations were posting or filing or
4 notice requirements.

5 24. Additionally, the Maximum Settlement Amount of \$50,000 for 16,428 PAGA
6 payroll periods is in line with the value on a pro rata basis with other approved PAGA settlements
7 on a payroll-by-payroll basis. For example, the court approved a PAGA settlement of \$685,000
8 for 70,000 potential PAGA payroll periods in *Casey and Love v. Pan American Group LLC*,
9 Sacramento Superior Court Case No. 34-2018-00236058 (2020).

10 25. Prior to agreeing to a settlement in principle at the mediation, Plaintiff had the
11 opportunity to review documents and data regarding Plaintiff's and aggrieved employees'
12 employment including but not limited to, employment records, handbooks, information re
13 operations and policies, time records, and wage statements, all in an effort to determine the
14 potential value and strength of the PAGA claims. Accordingly, the Parties have conducted
15 sufficient investigation and review of information to be sufficiently apprised of the nature and
16 extent of the claims asserted and to be able to enable both sides to fully evaluate the Settlement for
17 its fairness, adequacy, and reasonableness. The Parties also took to heart the arguments put forth
18 by each side at mediation, and the recommendations of the mediator, who is highly experienced in
19 mediating complex labor and employment matters. The Parties agreed this case is well-suited for
20 settlement given the legal issues relating to the PAGA claims, as well as the costs and risks to both
21 sides if the matter proceeded. The Settlement thus takes into account the strengths and weaknesses
22 of each sides' position and the uncertainty of how the case might conclude as the litigation
23 continued at trial and/or appeals.

24 26. In sum, after calculating Defendants' maximum exposure under PAGA, Plaintiff
25 then discounted that exposure for settlement purposes to account for risks of continued litigation,
26 including: (i) the strength of Defendants' defenses on the merits; (ii) the risk of losing at trial; (iii)
27 the risk that the Court would exercise its discretion under PAGA to significantly reduce the
28 maximum civil penalties available by statute; (iv) the chances of a favorable verdict being reversed

1 on appeal; and (v) the difficulties of collecting on a judgment. Taking into account all the above,
2 the Plaintiff determined a settlement of \$50,000.00 was fair, reasonable and adequate, while not
3 unjust or confiscatory.

4 27. There is another pending PAGA claims pending against the Defendant Action
5 Urgent Care, Inc. The case is in Santa Clara County Superior Court under 22CV397776 and is
6 entitled *Caraska and Rosellini v. Action Urgent Care, Inc.* It was filed on May 9, 2022.

7 **ADMINISTRATOR FEES**

8 28. As set forth in Joint Stipulation Re Settlement, the Parties agreed to retain, subject
9 to Court approval, a third-party administrator to handle administration of the Settlement. The fees
10 and expenses of the Administrator are estimated to be approximately \$5,000.00. These costs
11 include, but are not limited to preparing, printing and mailing the proposed Notice of Settlement
12 and individual settlement checks to the Aggrieved Employees, preparing 1099 tax forms, re-
13 mailing returned checks and Notices to new addresses if necessary, and handling inquiries from
14 the Aggrieved Employees. Accordingly, the Court should approve Simpluris Inc. as the
15 Administrator with fees to be paid in the amount of \$4,000 from the Gross PAGA Settlement
16 Amount. I negotiated a discount with Simpluris and it agreed to administer the settlement for
17 \$4,000 instead of the \$8,000 it normally charges for this number of employees.

18 **ATTORNEYS' FEES**

19 29. Here, as Plaintiffs' counsel, I am requesting approval for 20% of the Gross PAGA
20 Settlement Amount, or \$10,000, as fees. The PAGA Settlement contemplates fees up to \$16,666.66
21 or 33% of the Gross PAGA Settlement Amount (See PAGA Settlement Agreement at paragraph
22 17).) A common fund award of \$10,000.00 if fair and reasonable here and this amount is within
23 the range of reasonable. Although not the case here, courts have approved fee awards in excess of
24 the PAGA penalties. (See *Charles v. JP Morgan Chase Bank*, No. CGC-14-538933 (San Francisco
25 County Superior Court June 18, 2019) (awarding \$2.8 million in attorneys' fees on PAGA penalties
26 totaling \$2.7 million); *Boseman v. VXI Global Solutions, LLC*, No. BC602442 (Los Angeles
27 Superior Court January 3, 2019) (awarding plaintiff \$750,000 in attorney's fees and costs on
28

PAGA penalties totaling \$585,000); (*Monroe v. Continental Design Co., Inc.* No. RG16817667 (Alameda Superior Court June 21, 2017) (awarding plaintiff \$110,000 on PAGA penalties totaling \$90,000.00.)

30. My firm has litigated this case since it was commenced, with the possibility of an unsuccessful outcome and no fee recovery of any kind. Plaintiff's counsel propounded written discovery, noticed and took depositions, defended multiple sessions Plaintiff's deposition, conducted informal, discovery and exchange of voluminous pages of data and documents with Defendants' counsel, brought motions to compel discovery. Reviewed over a thousand pages of documents produced. The data included employment records of Plaintiff and other aggrieved employees, samplings of time sheets and payroll records, iterations of employee handbooks, agreements, internal memoranda, acknowledgments and forms, sick leave policies, COVID prevention policies, and injury prevention policies. Plaintiff's counsel undertook significant investigation and invested time reviewing and analyzing relevant documents to evaluate Plaintiff's claims, including but not limited creating statistical models for PAGA penalties. Other work included conferring with Plaintiff, meeting and conferring with Defendants' counsel, preparing for and attending an all-day mediation, creating a discovery plan and cases strategy, preparing for management conferences, getting quotes and securing a third-party administrator and reviewing and negotiating settlement agreement language and other attendant documents.

31. As a Lodestar cross-check, I the following table demonstrates some, but not all the time for the PAGA claim, which demonstrates a common fund percentage yields a more modest number than my actual billings.

DATE	ACTIVITY	TIME
August 31, 2021	Review notes of intake interview of Plaintiff and draft and upload PAGA Notice	4.5 hours
November 29, 2021	Draft PAGA portion of the Complaint	.9 hours
April 13, 2022	Prepare PAGA specific special interrogatories	.6 hours

DATE	ACTIVITY	TIME
August 14, 2022	Draft meet and confer letter to Defendant Action Urgent Care re deficiencies in PAGA special interrogatories	1.1 hours
November 8, 2022	Prepare motion to compel further responses to PAGA special interrogatories; separate statement and declaration	2.3 hours
February 13, 2023	Telephone witnesses from aggrieved employee contact list	.4 hours
February 14, 2023	Interview witnesses from aggrieved employee contact list	.5 hours
February 21, 2023	Telephone witnesses from aggrieved employee contact list	.3 hours
February 25, 2023	Interview witnesses from aggrieved employee contact list	.3 hours
February 25, 2023	Review and analyze document production from Action Urgent Care including employee handbooks and policies and procedures	4.1 hours
February 28, 2023	File amended PAGA notice	.6 hours
March 2, 2023	Draft additional RFPs for Action Urgent Care	1.9 hours
May 30, 2023	Deposition of COO of Action Urgent Care	6.5 hours
July 14, 2023	Defendant Drew Tartala deposition second session	7 hours
July 28, 2023	Review documents produce by Defendants and interview former employees	4 hours
September 4, 2023	Draft mediation brief	6.4 hours
September 18, 2023	Attend mediation	7 hours
September 28, 2023	Draft amended PAGA notice	.9 hours

DATE	ACTIVITY	TIME
October 16, 2023	Review draft settlement PAGA agreement	1 hour
November 29, 2023	Review final set of documents	2.9 hours
December 15, 2023	Draft Second Amended Complaint	2.1 hours
January 28, 2023	Commence drafting motion for PAGA settlement approval	6.8 hours
February 1, 2023	Commence drafting declaration in support of PAGA settlement approval and continue draft of PAGA settlement approval	5.1 hours
February 16, 2024	Continue revising motion for court approval	4 hours
February 20, 2024	Finalize Motion and supporting documents	4.9 hours
		85 hours

32. The aggregate of the hours was **85**. In light of the facts and circumstances, as well as the result benefitting the State of California, the Aggrieved Employees, and the Plaintiff, the number of hours was reasonable.

33. As discussed above, this case was hotly contested from go when Defendants represented to the LWDA and DIR that they either cured every violation, or had no violations. Defendants made it clear that it disputed all of Plaintiff's contentions and disputed that representative adjudication was proper for alleged misclassification allegations. Defendants raised affirmative defenses and the litigation required Plaintiff's counsel to gather, organize, and analyze voluminous documents from Defendants and other sources. Had the Parties not resolved the action at mediation, a protracted and expensive battle would have ensued en route to trial. Discovery squabbles, motion practice and costly expert and PMQ depositions would have been required. I had to bring together a synthesize a large volume of data obtained from produced by Defendants, Plaintiff and other sources.

34. My hourly rate of \$600 per hour to 85.0 hours would place a reasonable value at \$51,000– which is more than the requested amount of \$10,000.00.

35. The rate of \$600 is well within the market rates for employment and labor attorneys, and commensurate with my experience. I have been licensed to practice law since 2001. I graduated from Loyola Law School – Los Angeles in 2001. I have tried over fifty cases or arbitrations to verdict or award. After eleven years of complex business litigation and intellectual property experience on behalf of both plaintiffs and defendants, I opened a firm called Burch Dallmann LLP in 2012. There, I was involved primarily in the defense of complex patent litigation through the United States. We dissolved Burch Dallmann LLP in 2017. In 2019, I formed Shalchi Burch LLP where we began focusing on California labor and employment matters, with an emphasis on wage and hour. My firm currently have five active PAGA claims in various California Superior Courts and I strive to keep track of new developments in a rapidly changing legal landscape not just relating to PAGA, but wage and hour law generally.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 11th day of April, 2024, at Newport Beach, California.

/S/ Travis J. Burch
Travis J. Burch, Esq.

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DREW TARTALA, individually, and on
behalf of the State of California and
Aggrieved Employees, as a private attorney
general,

Plaintiff,

v.

ACTION URGENT CARE INC., a
California Corporation; LIFETIME APP
INC., a Delaware Corporation and
GENEVIEVE HISMATULLIN, an
individual,

Defendants.

CASE NO. CGC-21-596837

PAGA SETTLEMENT AGREEMENT

RECITALS

WHEREAS, Plaintiff Drew Tartala ("Plaintiff") commenced this Action on November 30, 2021, and thereafter filed the First Amended Complaint (the "Complaint") against Defendants Action Urgent Care Inc., and Lifetime App, Inc., ("Defendants") and Genevieve Hismatullin (collectively with Plaintiff, the "Parties") in the case entitled *Drew Tartala v. Action Urgent Care Inc., et al.*, Case No. CGC-21-596837 in the Superior Court of California, County of San Francisco (the "Action").

WHEREAS, the Complaint alleged the following causes of action: 1) racial discrimination under the Fair Employment and Housing Act ("FEHA"); 2) harassment directed at Plaintiff under the FEHA; 3) harassment directed at other; 4) retaliation (FEHA); 5) retaliation in violation of Labor Code 1102.5; 6) retaliation in violation of Labor Code section 98.6; 7) retaliation in violation of Labor Code section 232.5; 8) wrongful termination in violation of public policy; 9) failure to reimburse business expenses; and (10) civil penalties under Private Attorneys General Act ("PAGA").

WHEREAS, the PAGA Action is only alleged against Defendants Action Urgent Care, Inc. and Lifetime App, Inc.,

WHEREAS, on August 31, 2021, Plaintiff provided the Labor and Workforce Development Agency of Plaintiff's intent to pursue civil penalties against Defendant Action Urgent Care Inc. under PAGA. Thereafter, on February 28, 2023, Plaintiff provided the Labor and Workforce Development Agency with and amended notice of Plaintiff's intent to pursue additional civil penalties against Defendant Action Urgent Care Inc. under PAGA. Thereafter, on September 28, 2023, Plaintiff provided the Labor and Workforce Development Agency with a second amended notice of Plaintiff's intent to pursue additional civil penalties against Defendants Action Urgent Care Inc. and Lifetime App, Inc. under PAGA for alleged violations of the California Labor Code and all applicable Industrial Welfare Commission Wage Orders, including, inter alia, California Labor Code §§ 200, 201, 202, 203, 204, 207, 208, 210, 226(a)-(c), 226.3, 226.7, 227.3, 246, 248, 248.5, 510, 511, 512(a), 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1198, 1198.5 1199, 2800/2802, 3550 and 3551. (Plaintiff's three notices to the LWDA are collectively referred to herein as "Plaintiff's PAGA Notices".)

WHEREAS, Plaintiff, on behalf of himself, the LWDA, and other alleged aggrieved employees, and Defendants attended mediation on September 18, 2023, using the Honorable Jamie Jacobs-May

(Ret.) of JAMS, a highly-regarded mediator who is experienced in mediating complexing employment law cases, including PAGA claims.

WHEREAS, Plaintiff is the former Vice President of Human Resource Operations of Defendant Action Urgent Care Inc., and has extensive and intimate knowledge of Defendants Action Urgent Care Inc.'s and Lifetime App, Inc.'s policies and practices relating to wage and hour compliance in California;

WHEREAS, prior to mediation, and over the course of approximately two years of extensive litigation, the Parties exchanged significant information pertaining to Plaintiff's claims, including his PAGA allegations, Defendants' defenses thereto and the alleged aggrieved employees;

WHEREAS, at mediation, the Parties worked towards a separately negotiated, arm's-length resolution of Plaintiff's PAGA claims alleged within the Action and Plaintiff's PAGA Notices. Through further settlement discussions, and following a mediator's proposal after mediation, the Parties reached the Agreement herein as to the resolution of a claim pursuant to PAGA. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties supervised by an experienced employment law mediator. The Parties agree that the Agreement is entered into in good faith as to each Aggrieved Employee, and that the Settlement is fair, reasonable and adequate as to each Aggrieved Employee; and

WHEREAS, the Parties separately negotiated a settlement of Plaintiff's individual claims.

NOW THEREFORE, in consideration of the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth here, the Plaintiff, individually and on behalf of himself and the Aggrieved Employees and the LWDA, on the one hand, and Defendants, on the other hand, agree that a claim for civil penalties pursuant to PAGA shall be, and is finally and fully compromised and settled on the following terms and conditions.

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Drew Tartala v. Action Urgent Care Inc., et al.*, Case No. CGC-21-596837 in the Superior Court of California, County of San Francisco.

2. "Aggrieved Employees" means all persons who were employed by Defendants in the State of California at any time from September 26, 2020, through the date of Settlement Approval, except for Igor Hismatullin, Genevieve Hismatullin, Vadym Ustymenko, Nic Peterson, and Vlad Ustymenko.

3. "Court" means the Superior Court for the State of California, County of San Francisco.

4. "Gross PAGA Settlement Amount" means the settlement amount of Fifty Thousand Dollars (\$50,000) to be paid by Defendant Action Urgent Care Inc. in full satisfaction of all Settled PAGA Claims.

5. "LWDA" means the California Labor and Workforce Development Agency.

6. "PAGA Penalties Fund" means the Gross PAGA Settlement Amount less the Attorneys' Fees and Costs, and Settlement Administrator Costs.

7. "Pay Period" shall mean any bi-weekly pay period under Defendants Action Urgent Care Inc.'s and Lifetime App, Inc.'s usual payroll practices in which an Aggrieved Employee performed work for Defendants Action Urgent Care Inc.'s and Lifetime App, Inc. on at least one day. The Parties agree that, for purposes of determining Pay Periods of Aggrieved Employees under this Agreement, Defendants may also calculate Pay Periods by calculating the number of days between an Aggrieved Employee's hire date(s) (or September 26, 2020, whichever is later) and termination date(s) or the date of Settlement Approval, in the absence of a subsequent termination date based on a 360-day year (using Microsoft Excel's DATS360 function which returns the number of days between two dates based on a 360-day year (i.e., twelve 30-day months)) and dividing the result by 14 and then rounding that number up to the nearest whole number.

8. "Plaintiff's Counsel" means Travis Burch of Shalchi Burch LLP.

9. "Released Parties" means Defendants and each of their officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations, insurers, and any and all other persons, firms and corporations in which Defendants may have an interest.

10. "Settlement Approval" means when the Court has approved this Agreement with respect

1 to the Settled PAGA Claims.

2 11. "Settled PAGA Claims" means all claims, charges, complaints, liens, demands, causes
3 of action, obligations, and liabilities, whether known or unknown, for PAGA civil penalties predicated
4 on any of the alleged violations of the California Labor Code, Industrial Welfare Commission Wage
5 Orders, regulations, and/or other provisions of law that were alleged or asserted in the Action or any
6 initial and amended PAGA notice filed by Plaintiff, or that reasonably could have been asserted in the
7 Action or based any initial or amended PAGA notice filed by Plaintiff based on any facts or allegations
8 therein, including claims alleged within other PAGA notices filed subsequent to Plaintiff's August 31,
9 2021 PAGA Notice, with respect to Aggrieved Employees during the Settlement Period, to the greatest
10 extent permitted by the Court.

11 12. "Settlement Period" means September 26, 2020, through the date of Settlement
12 Approval.

13 TERMS

14 13. Amended PAGA Notice and Amended Complaint. Plaintiff shall promptly file an
15 amended PAGA Notice with the LWDA (satisfying all procedural requirements such as certified
16 mailing to Defendants and payment of any necessary filing fee(s)), alleging (with supporting facts and
17 theories) additional violations of the California Labor Code and California Industrial Welfare
18 Commission Wage Orders that were the subject of the Parties arm's-length and adversarial negotiations
19 during and after mediation, including, but not limited to, all applicable Industrial Welfare Commission
20 Wage Orders, including, inter alia, California Labor Code §§ 200, 201, 202, 203, 204, 207, 208, 210,
21 226(a)-(c), 226.3, 226.7, 227.3, 246, 248, 248.5, 510, 511, 512(a), 558, 558.1, 1174(d), 1174.5, 1194,
22 1197, 1198, 1198.5 1199, 2800/2802, 3550 and 3551. The Parties shall further stipulate to permit the
23 filing of, and Plaintiff will thereafter file, an amended complaint that amends Plaintiff's PAGA cause of
24 action to include any and all California Labor Code and California Industrial Welfare Commission Wage
25 Orders alleged within Plaintiff's amended PAGA notice.

26 14. Statute of Limitations. For purposes of this Settlement only, Defendants shall not assert,
27 whether in response to court approval of the Settled PAGA Claims or the enforcement of this
28 Agreement, an affirmative defense to any amended PAGA notice filed by Plaintiff pursuant to this

1 Agreement; however, Defendants reserve the right to raise any and all defenses to any amended PAGA
2 notice filed by Plaintiff in the event that court approval of the Settled PAGA Claims is not obtained.

3 15. Gross PAGA Settlement Amount. In consideration for Plaintiff's promises and
4 representations described in this Settlement Agreement, and subject to all of the conditions of the
5 Settlement being met, Defendant Action Urgent Care Inc. will pay Fifty Thousand Dollars (\$50,000)
6 ("Gross PAGA Settlement Amount") to settle the Settled PAGA Claims. The Gross PAGA Settlement
7 Amount includes Plaintiff's attorneys' fees, litigation costs and expenses, Settlement Administration
8 Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties
9 Fund. No portion of the Gross PAGA Settlement Amount will be retained by, or revert to, Defendants.

10 16. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees
11 and the LWDA in full satisfaction of the Settled PAGA Claims. Pursuant to PAGA, after deduction of
12 attorneys fees, costs, and administrative expenses, Seventy-Five Percent (75%) of the PAGA Penalties
13 Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all
14 Aggrieved Employees according to the following formula:

15 16(a) Defendants will calculate: (i) the total number of Pay Periods worked by
16 each Aggrieved Employee during the Settlement Period, and (ii) the total
17 number of Pay Periods worked by all Aggrieved Employees during the
18 Settlement Period.

19 16(b) To determine each Aggrieved Employee's payment from the PAGA
20 Penalties Fund, Defendants will use the following formula: Settlement
21 Payment = 25% of PAGA Penalties Fund × [Pay Periods Worked by
22 Individual Aggrieved Employee During the Settlement Period ÷ Total Pay
23 Periods Worked by All Aggrieved Employees during the Settlement
24 Period].

25 17. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
26 motion by Plaintiff's Counsel for attorneys' fees and costs not to exceed sixteen-thousand six-hundred
27 sixty-six Dollars and sixty-six cents (\$16,666.66), plus the reimbursement of all out-of-pocket costs and
28 expenses associated with Plaintiff's Counsel's litigation and settlement of the PAGA claims in the

1 Action (including expert/consultant fees, investigations costs, etc.), not to exceed six-thousand eight-
2 hundred and thirty seven dollars and seventy eight cents (\$6,837.78), both of which will be paid from the
3 Gross PAGA Settlement Amount. Any portion of the attorneys' fees and costs not awarded to Plaintiff's
4 Counsel will be added to the PAGA Penalties Fund.

5 18. Settlement Administration Costs. The Parties will retain a third-party settlement
6 administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for
7 establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to
8 Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration
9 Costs will be paid from the Gross PAGA Settlement Amount. Settlement Administration Costs are
10 capped at FiveThousand Dollars (\$5,000).

11 19. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
12 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
13 Court issue an order and judgment of Settlement Approval, approving and incorporating by reference the
14 terms and conditions of the Settlement Agreement (the "Order and Judgment") to the extent necessary to
15 effectuate this Settlement Agreement. The Parties agree to work cooperatively, in good faith, and
16 providing their best efforts to ensure this Settlement Agreement receives all necessary Court approval,
17 including, but not limited to, filing or defending against any motions, appeals, or orders that would seek
18 to invalidate this Settlement Agreement or any portion thereof.

19 20. List of Aggrieved Employees. Within fourteen (14) calendar days after entry of the
20 Order and Judgment, Defendants will provide the Settlement Administrator a complete list of all
21 Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in
22 Microsoft Office Excel or other format acceptable to the Settlement Administrator and will include each
23 Aggrieved Employees' full name; most recent mailing address and telephone number known to
24 Defendants; Social Security number; the respective number of Pay Periods for each Aggrieved
25 Employee worked during the Settlement Period; and any other relevant information needed to calculate
26 settlement payment distributions.

27 21. Funding of the Settlement. Within fourteen (14) calendar days after Defendants receive
28 notice of entry of the Order and Judgment, Defendant will deposit the Gross PAGA Settlement Amount

1 into the QSF to be established by the Settlement Administrator. Within fourteen (14) calendar days of the
2 funding of the Settlement, the Settlement Administrator will issue payments to: (a) Aggrieved
3 Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; (d) Plaintiff's Counsel;
4 and (e) itself. The Settlement Administrator, and not Defendants, will issue the appropriate tax forms for
5 all payments issued under this Settlement.

6 22. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
7 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
8 explanatory letter in a form substantially similar to that attached as **Exhibit A**. Prior to mailing, the
9 Settlement Administrator will perform a search based on the National Change of Address Database for
10 information to update and correct for any known or identifiable address changes. Any checks returned as
11 non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class
12 U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement
13 Administrator will promptly attempt to determine the correct address using a skip-trace, or other search
14 using the name, address or Social Security number of the Aggrieved Employee involved, and will then
15 perform a single re-mailing. Checks will remain negotiable for 180 days. Any un-cashed checks which
16 remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator
17 will be tendered to the State Controller's Unclaimed Property Fund. All settlement payments to
18 Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

19 23. Settled PAGA Claims. Upon entry of the Order and Judgment, Plaintiff, individually
20 and as a representative for the State of California, and all Aggrieved Employees will be forever barred
21 from pursuing against Released Parties any and all Settled PAGA Claims during the Settlement Period.
22 Aggrieved Employees, except for Plaintiff as provided for herein, will not be deemed to have released
23 any non-PAGA individual wage and hour claims by virtue of this Settlement.

24 24. No Right to Exclusion or Objections by Representative Action Members. Because this
25 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
26 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
27 Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved
28 Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court,

1 regardless of whether he or she cashes any payment received as a result of this Settlement.

2 25. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
3 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
4 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
5 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
6 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
7 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

8 26. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
9 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
10 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
11 action or right herein released and discharged.

12 27. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
13 the Settlement as provided herein, except as provided below; or (ii) the Settlement does not become final
14 for any other reason, then this Settlement Agreement, and any documents generated to bring it into
15 effect, will be null and void and the Parties will be returned to their original respective positions. A
16 request by the Court for additional brief, or a preliminary denial pending additional briefing, shall not be
17 deemed to trigger (i), above.

18 28. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
19 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
20 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
21 as may be appropriate under court rules or as set forth in this Settlement.

22 29. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
23 settlement terms as to a claim for civil penalties under PAGA. No other prior or contemporaneous
24 written or oral agreements may be deemed binding on the Parties.

25 30. Amendment or Modification. This Settlement Agreement may be amended or modified
26 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
27 Parties.

28 31. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and

1 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
2 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
3 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
4 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
5 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
6 reach agreement on the form or content of any document needed to implement the Settlement, or on any
7 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
8 may seek the assistance of the Court to resolve such disagreement.

9 32. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
10 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 33. California Law Governs. All terms of this Settlement Agreement will be governed by
12 and interpreted according to the laws of the State of California.

13 34. Execution and Counterparts. This Settlement Agreement is subject only to the execution
14 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
15 executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
16 scanned copies of the signature pages, will be deemed to be one and the same instrument.

17 35. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
18 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
19 Settlement after arm's-length and adversarial negotiations by experienced counsel and with the
20 assistance of a skilled and experienced mediator. The Parties further acknowledge that they are each
21 represented by competent counsel and that they have had an opportunity to consult with their counsel
22 regarding the fairness and reasonableness of this Settlement.

23 36. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
24 Plaintiff may appeal any reduction to the attorneys' fees and costs below the amount they request from
25 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

26 37. Invalidity of Any Provision. Before declaring any provision of this Settlement
27 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
28 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement

1 valid and enforceable.

2 38. Captions. The captions and section numbers in this Settlement Agreement are inserted
3 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
4 provisions of this Settlement Agreement.

5 39. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
6 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
7 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

8 40. Enforcement Action. In the event that one or more of the Parties institutes any legal
9 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
10 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
11 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
12 expert witness fees incurred in connection with any enforcement actions.

13 41. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
14 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
15 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
16 one of the Parties, it being recognized that, because of the arm's-length and adversarial negotiations
17 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

18 42. Representation By Counsel. The Parties acknowledge that they have been represented
19 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
20 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
21 in full.

22 43. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Settlement Agreement.

25 44. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
27 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
28 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply

1 under federal or state law.

2 45. Denial of Liability. The Parties expressly recognize that the making of this agreement
3 does not in any way constitute an admission or concession of wrongdoing on the part of Defendants.
4 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
5 discussions or communications, nor any materials prepared, exchanged, issued or used during the
6 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
7 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
8 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
9 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
10 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
11 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
12 of the Court entered into in connection therewith.

13 **READ CAREFULLY BEFORE SIGNING**

14 **PLAINTIFF**

15
16 Dated: 2023-10-16

17 Drew Tartala
Drew Tartala

18 **DEFENDANT**

19 10/17/2023
20 Dated:

21 Genevieve Hismatullin
Genevieve Hismatullin, on behalf of
22 Action Urgent Care Inc. and Lifetime App, Inc.
23
24
25
26
27
28

EXHIBIT

A

Drew Tartala v. Action Urgent Care, et al.

California Superior Court, County of San Francisco

Case No. CGC-21-596837

NOTICE OF SETTLEMENT

To: All current and former California employees of Action Urgent Care, Inc. and Lifetime App, Inc., from September 26, through [DATE OF SETTLEMENT CONFIRMATION].

First Name, Last Name

Address 1

Address 2

Re: NOTICE OF COURT APPROVED SETTLEMENT

Dear [name of allegedly Aggrieved Employee]:

Enclosed is your settlement payment from the settlement of the lawsuit titled *Drew Tartala v. Action Urgent Care Inc., et al.*, filed in the Superior Court of the State of California, County of San Francisco, Case No. CGC-21-596837.

The lawsuit was filed by Drew Tartala ("Plaintiff") against Action Urgent Care Inc., Lifetime App, Inc., and Genevieve Hismatullin ("Defendants") and included a claim pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. (commonly called "PAGA") and was brought on behalf of the State of California and all persons who worked for and/or with Action Urgent Care Inc. and Lifetime App, Inc. in California as exempt employees, and/or non-exempt employees from September 26, 2020 through the Date of Settlement [INSERT UPON SETTLEMENT CONFIRMATION] ("PAGA Members").

In this lawsuit, Plaintiff sought penalties under PAGA, and Plaintiff alleged that Defendant (1) failed to post dates and locations of pay; (2) failed to pay final pay checks at the proper location; (3) failed to pay minimum, regular, and overtime wages, (4) utilized an illegal alternative workweek schedule; (7) failed to provide compliant meal and rest periods or pay meal period premiums; (8) committed wage statement violations; (9) failed to keep accurate records; (10) made untimely payment of wages during employment, (11) made untimely payment of wages at separation; (12) committed derivative violations under Sections 558 and 558.1; (13) failed to post notice workers' compensation information; (14) failed to reimburse business expenses; (15) failed to pay unused vacation; (16) failed to post notice of and make payment of paid sick leave.

The Parties have jointly agreed that to avoid additional cost and to avoid further risks associated with the uncertainty of litigation, a settlement has been reached in the Lawsuit. Although the Court has approved the settlement in this case, the Court has made no determination on the merits of the claims in the lawsuit. Defendants deny any liability and wrongdoing of any kind associated with the alleged claims. Defendants contend that they have complied at all times with California and Federal law and that their employees have been paid all wages owed. By approving the settlement

and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that the settlement is fair, adequate, and reasonable.

You have been identified as a person who worked for Defendants from September 26, 2020, through the Date of Settlement [INSERT UPON SETTLEMENT CONFIRMATION] (“the PAGA Period”). Pursuant to PAGA, after deduction of certain amounts for attorneys’ fees, litigation expenses, settlement administration costs, 75% of the remaining settlement funds must be paid to the State of California. The other 25% of the funds are being distributed among all “Aggrieved Employees”—a group that includes you.

Based on the number of pay periods you worked from September 26, 2020 through the Date of Settlement, your individual share of the settlement is \$____. This amount is calculated based on the number of pay periods you worked for Defendants from September 26, 2020 through the Date of Settlement [INSERT UPON SETTLEMENT CONFIRMATION], relative to the total number of pay periods other individuals worked for Defendants from September 26, 2020 through the Date of Settlement [INSERT UPON SETTLEMENT CONFIRMATION].

You are receiving an IRS form 1099 for your individual share. Because this payment is for civil penalties and not wages for work you have performed, the payment will be reported on an IRS Form 1099 and no income tax has been withheld by Defendants. **You are responsible for any and all taxes that may be due as a result of the payment.**

The settlement check included with this letter is valid for 180 days. Checks not cashed within that time will be canceled and the funds will be sent to the California State Controller’s Office’s Unclaimed Property Division to be held as unclaimed funds.

As of <DATE OF COURT APPROVAL>, the date of the Court’s order approving the settlement, you are barred from ever suing Defendants and the Released Parties with respect to the Settled PAGA Claims during the PAGA Period whether or not you cash your individual share settlement check.

The Released Parties are (i) all the Defendants; and their (ii) their officers, directors, members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies, and organizations, insurers, and any and all other persons, firms, and corporations in which Defendants may have an interest.

The Settled PAGA Claims are all claims, charges, complaints, liens, demands, causes of action, obligations, and liabilities, whether known or unknown, for PAGA civil penalties predicated on any of the alleged violations of the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or any other provisions of law that were alleged or asserted in the Action or any initial and amended PAGA notice filed by Plaintiff, or that reasonably could have been asserted in the Action or based on any initial or amended PAGA notices filed by Plaintiff based on any facts or allegations therein, including claims alleged within other PAGA notices filed subsequent to Plaintiff’s August 31, 2021 PAGA Notice, with respect to Aggrieved Employees during the Settlement Period, to the greatest extent permitted by the Court.

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the Court's order and/or settlement, you should consult the "Order Granting Approval of PAGA Settlement and Judgment" which can be accessed at the following website << Administrator URL>>.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT OR THE OFFICE OF THE CLERK REGARDING THIS CASE TO ASK QUESTIONS ABOUT THE SETTLEMENT.

If you have any questions, you may call or write to the claims administrator at:

[insert settlement administrator]

[administrator address]

[administrator contact phone number]

EXHIBIT 2

SHALCHI BURCH

L L P

Travis J. Burch, Esq.
Shalchi Burch LLP
23 Corporate Plaza Drive, Suite 150
Newport Beach, CA 92660
tb@shalchiburchllp.com
(949) 359-0334

August 31, 2021

VIA CERTIFIED US MAIL

Action Urgent Care, Inc.
C/O Vladimir Skorokhod
1375 Blossom Hill West Road, Suite 49
San Jose, California 95118

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
dir.ca.gov and Division of Occupational Health and Safety

Re: Drew Tartala v. Action Urgent Care, Inc. Notice of Labor Code Violations Pursuant to Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*)

Dear Sir or Madam:

Shalchi Burch LLP represents Drew Tartala with respect to his claims against his former employer and provides this Notice of Labor Code Violations against Action Urgent Care, Inc. ("Employer"). I write on behalf of Mr. Tartala, and all of Employer's current and former non-exempt employees in California within the last year preceding this notice, who suffered at least one or more of the violations set forth herein. I additionally write on behalf of Employer's current and former current exempt employees in California within the last year preceding this notice, where the violations are not limited to non-exempt employees, who suffered one or more of the violations described herein. Thus, this provides notice of Action Urgent Care, Inc.'s violations of various Labor Code sections enumerated in California Labor Code Section 2699.5 and 2699.3. Notice is therefore provided pursuant to, and in compliance with, the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*).

If the LWDA does not intend to investigate the alleged violations, Mr. Tartala intends to file a representative action for PAGA civil penalties on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all other aggrieved employees, whether exempt or non-exempt, in the State of California. A copy of this Notice is concurrently sent via certified mail to the Employer at the address above.

The following comprise the facts and legal theories of the various labor violations committed. Mr. Tartala is an aggrieved employee as defined by California Labor Code Section 2699, subdivision (c). Employer Action Urgent Care, Inc. hired Mr. Tartala on or about August 24, 2020. He was an exempt employee initially in the role of full cycle recruiter, then VP of Human Resources Operations. He worked at the facility located at 1680 E Capitol Expressway #10, San Jose, California 95121. His employment ended on or about August 27, 2021. Throughout his employment, Mr. Tartala, and all other aggrieved employees of throughout California, were subjected to numerous violations of the California Labor Code, including sections 201, 202, 203, 204, 207, 208, 226(a), 226.3, 226.7, 510, 511, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1198.5, 1199, 2800/2802, 2810.5, 3550, 3551, 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

FAILURE TO POST DATES AND LOCATIONS OF PAY
(Labor Code Section 207)

Labor Code Section 207 holds that every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment. Here, Employer violated Section 207 because it failed to post conspicuously at the place of work, a notice of the regular pay days, and times and place of payment. Mr. Tartala and other former and current employees were similarly deprived of the information required in the posting.

FAILURE TO PAY FINAL PAY CHECK AT PROPER LOCATION AND TIME
(Labor Code Section 208)

Labor Code Section 208 requires that employers pay every employee who is discharged at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. Here, Mr. Tartala and other aggrieved employees were not paid at the time they were discharged at the place they were discharged or were not paid at the Employer's office and in some instances were paid through a Zelle smart phone app. Thus, Employer has violated Section 208.

FAILURE TO PROVIDE WAGE NOTICE
(Labor Code Section 2810.5)

Employers are required under Labor Code Section 2810.5 to provide new non-exempt employees with certain information such as rates of pay and basis thereof; whether paid by shift, hour, day or week; allowances claimed; regular payday designated by employer; the name of the

employer; the physical address of the employer; the telephone number of the employer; and the name and address of the employer's workers' compensation carrier.

Here, Mr. Tartala and other aggrieved employees did not receive the required wage notice at all upon being hired or within the time required under the statute.

FAILURE TO PAY MINIMUM WAGE, REGULAR, AND OVERTIME WAGES
(Labor Code Sections 218, 510, 1194, 1197.1, 1198 and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code Section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on the seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code Section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code Section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code Section 1199 provides that every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than \$100 or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by 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.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code Section 1197 provides that the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees

and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employees, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, \$100 for each underpaid employee for each pay period for which the employee is underpaid. For each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Pursuant to the relevant “Hours & Days of Work” section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Here, Employer violated Labor Code Sections 218, 510, 1194, 1197, 1198, 1199, and the Minimum Wages and Hours & Days of Work sections of the applicable Wage Order because they did not pay aggrieved former and current employees all overtime wages for all hours worked. For example, aggrieved employees worked more than 8 hours on certain days but were not paid overtime rates for hours worked beyond 8 hours. Employer mistakenly believed it could instill an alternative work schedule (“AWS”) of four-ten-hour days per week without incurring overtime obligations. Employer did not appear to file any documentation with the DIR or have any 2/3 vote by aggrieved employees or other required conditions precedent to implement an AWS.

In other instances, Employer has misclassified non-exempt employees as exempt when they did not meet the threshold salary requirements. This resulted in said misclassified employees not being paid overtime, not getting rest and meal breaks, and inaccurate wage statements.

Aggrieved employees were required to take medical tests, but were not paid for time incurred to take the medical tests, thus depriving them of proper overtime and minimum wages paid.

Additionally, Mr. Tartala was offered a bonus structure as part of his compensation, for which he was not paid by Employer.

Additionally, Employer has certain employees that are being misclassified as exempt, when they are actually non-exempt. They are being shorted overtime and other in other instances, a miscalculation of overtime.

Additionally, Employer pays certain employees, such as medical assistants below minimum wage during a training period.

Accordingly, Mr. Tartala now seeks civil penalties on behalf of himself and all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

ILLEGAL ALTERNATIVE WORKWEEK
(LABOR CODE SECTION 511)

In relevant part, Labor Code Section 511(a) provides that “[u]pon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.”

Here, Employer imposed a four-day-ten-hour regular workweek without daily overtime after eight hours, without following the strict specific procedures of a secret ballot election by at least two-thirds of affected employees. Aggrieved employees were injured by Employer’s failure to comply with the strictures of Section 511.

FAILURE TO PROVIDE COMPLIANT MEAL AND REST BREAKS
(Labor Code Sections 226.7, 512, 1198, and the Meal Period and Rest Period sections of the applicable IWC Wage Order)

Labor Code Section 512(a) states in relevant part that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An 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 . . .” Labor Code Section 226.7(a) states that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

The “Rest Period” section of the applicable IWC Wage Order states that 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 shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hour or major fraction thereof. If an

employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour at the employee's regular rate of compensation of each workday that the rest period is not provided.

Labor Code Section 226.7 states that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Here, Employer failed to provide aggrieved employees with meal breaks taken before the end of the fifth hour of work. For example, many medical assistants did not have lunch breaks, or timely and complete full 30 minute lunch breaks. Additionally, aggrieved employees were not provided with two – ten-minute duty-free rest breaks for every ten hours worked, or third break for work in excess of 10 hours. Employer failed to pay one hour at the employees' regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code Sections 226(a), 226.3, 1198 and the "Records" section of the applicable IWC Wage Order)

Labor Code Section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: (1) gross wages earned; (2) total hours worked by an employee, except for salaried exempt employees under Section 515 or any applicable IWC order; (3) number of piece rate units earned and any applicable piece rate units earned if employee is paid on a piece rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee was paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by employee.

Labor Code Section 226(e)(2)(A) states that an employee is deemed to suffer injury for purposes of this subdivision if the Employee fails to provide a wage statement.

Labor Code Section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee for each initial violation of Labor Code Section 226(a).

Here, Employer failed to provide compliant wage statements during aggrieved employees' employment because they failed to pay all wages due at all times during the aggrieved employees' employment, including minimum, regular, and overtime wages, and which rendered the wage statements inaccurate as to the both the applicable overtime rate and hours worked and straight

time and hours worked. It also was inaccurate as to the gross wages and net wages earned because the wage statements did not accurately reflect the correct hours worked.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code Sections 1174 and the “Records” section of the IWC Wage Orders)

Labor Code Section 1174(d) states that every person employing labor in this state shall keep at a central location in the state of at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.

Labor Code Section 1174.5 states that any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of section (d) of 1174 shall be subject to a penalty of five hundred dollars.

Moreover, the relevant Wage Order(s) obligate an employer to keep accurate information which requires paying required minimum, regular, and overtime wages and by recording accurate meal periods. Every employer is required to keep accurate information with respect to each employee including the following time records showing the beginning and end of each work period and meal periods and total hours worked.

Here, Employer failed to maintain accurate records because they do not properly record all the hours worked daily because of the off the clock work, and work done during non-compliant duty-free meal breaks.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF
EMPLOYMENT**

(Labor Code Sections 201, 202, 203, 204, 256, and 1198)

Labor Code Section 201 states that if an employer discharges an employee the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 202 states that 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 Section 203(a) states in relevant part that an if an employee willfully fails to pay without abatement or reduction in accordance with Sections 201, 201.3, 201.5, 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.

Labor Code Section 204(a) states in pertinent part all wages earned by any person in any employment are due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. The “Minimum Wages” section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code Section 256 states that the Labor Commissioner shall impose a civil penalty in amount not exceeding 30 days of pay as waiting time under the terms of Section 203.

As detailed above, the Employer failed to pay the aggrieved employees all wages due and owing to them including minimum wage, regular wage, and overtime wage within the required time during their employment and upon separation of employment.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code Sections 558, 558.1, and 1197.1)

Labor Code Section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code Section 558.1(a) states that any employer or other person acting on behalf of an employer who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation. Labor Code Section 558.1 expressly defines “employer or other person acting on behalf of an employer to include a natural person who is an owner, director, officer, or managing agent of the employer.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in the amount of \$100 for the initial violation for each pay period in which an employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer underpaid Mr. Tartala and aggrieved employees by failing to pay them with all compensation that was due and owing to them and failing to issue them premium

pay for missed meal and rest breaks under Labor Code Section 203, 226, 226.7, 1194 and the relevant Wage Orders, which results in civil penalties also under Section 558.

FAILURE TO POST REQUIRED WORKERS' COMPENSATION INFORMATION
(Labor Code Section 3550)

California Labor Code Section 3550(a) states that every employer shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice that states the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the form and content of the notice required by this section shall advise employees that all injuries should be reported to their employer. The notice shall be easily understandable. It shall be posted in both English and Spanish where there are Spanish-speaking employees. The notice shall include the following information how to get emergency treatment; events, injuries and illnesses covered by workers' compensation; and the injured employee's right to receive medical care; the rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate; to whom injuries should be reported; the existence of time limits for the employer to be notified of an occupational injury; the protections against discrimination provided pursuant to Section 132a; the Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer. Employer violated Labor Code Section 3550 by failing to post a notice where it may easily be read by employees during the workday, and one that contained the notice with the required specified information in both Spanish and English. Mr. Tartala, and other aggrieved employees, were deprived of proper compliant posting of the aforementioned requisite information in Section 3550 in Spanish and English.

FAILURE TO PROVIDE NOTICE TO EMPLOYEES OF WORKERS'
COMPENSATION INFORMATION POSTED
(Labor Code Section 3551)

Labor Code Section 3551 requires every employer to provide every employee at the time of employment, or by the end of the first pay period, a written notice of all the information contained in Labor Code Section 3550. The notice is required to be easily understandable and in English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the employee how to obtain appropriate medical care for a job injury; the role and function of the primary treating physician; and a form that the employee may use as an optional method of notifying the employer of the name of the employee's person physician or personal chiropractor. Employer violated Labor Code Section 3551 by failing to provide Mr. Tartala and other aggrieved employees, with written notice containing all of the information required under Labor Code Section 3550, failed to provide such information by the end of the first pay period, failed to provide

the information in both English and Spanish, and failed to provide notice to the employees how to obtain medical care for a job injury, what the primary treating physician's role is. Additionally, the Employer failed to provide a form that the employee could use to notify the employer of their own personal physician or chiropractor.

FAILURE TO PROVIDE SAFE AND HEALTHFUL WORKING ENVIRONMENT
(Labor Code Sections 6400, 6402, 6404, and 6407)

Labor Code Section 6400 requires employers to provide employment and a place of employment that is safe and healthful for the employees.

Labor Code Section 6402 requires that no employer shall require or permit any employee to go or be in any employment which is not safe and healthful.

Labor Code Section 6404 requires that no employer shall occupy or maintain any place of employment that is not safe and healthful.

Labor Code Section 6407 requires every employer to comply with occupational safety and health standards and all rules, regulations, and orders promulgated by Cal OSHA.

California Code of Regulations, Title 8 Section 3205 went into effect in November 2020. It requires at least the following:

Under subpart (c): That employers establish, implement and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for communicating that is readily understandable to employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for physical distancing; (7) a system and implementation of providing face coverings; (8) a system of other engineering controls, administrative controls, and personal protective equipment; (9) a system for reporting, recordkeeping and access.

Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E) the employer must keep record of all COVID-19 cases with the employee's name, contact information, occupation, location where they worked, last date at the workplace, and date of positive test.

Here, Employer failed to establish, implement, maintain and enforce a compliant written COVID-19 Prevention Program that is in a form readily understandable to employees. Moreover, they have failed to maintain records of the steps taken to implement the written COVID-19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed to contain the required sections (1) a system for communicating that is readily understandable to employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for investigating and

responding to COVID-19 cases in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for physical distancing; (7) a system and implementation of providing face coverings; (8) a system of other engineering controls, administrative controls, and personal protective equipment; (9) a system for reporting, recordkeeping and access. As a result, Employer violated Labor Code Sections 6400, 6402, and 6404, by failing to provide the aggrieved employees with a safe and healthful working environment.

**FAILURE TO PROVIDE PROPER SAFETY EQUIPMENT AND PROTECT
EMPLOYEE HEALTH AND SAFETY**
(Labor Code Section 6401, 6403 and 6406)

Labor Code Section 6401 requires that every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code Section 6403 prohibits (a) employer from failing to provide safety devices and safeguards reasonably adequate to render the employment and place of employment safe; (b) employer from failing to use methods and processes reasonably adequate to render the employment and place of employment safe; and (c) employer from failing to do any other thing reasonably necessary to protect the life, safety and health of employees.

Labor Code Section 6406 (d) prohibits employers from failing or neglecting to do everything reasonably necessary to protect the life, safety and health of employees.

California Code of Regulations, Title 8 Section 3205 went into effect in November 2020. It requires at least the following:

Under subpart (c): That employers establish, implement and maintain an effective written COVID-19 Prevention Program, that contains (1) a system for communicating that is readily understandable to employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for physical distancing; (7) a system and implementation of providing face coverings; (8) a system of other engineering controls, administrative controls, and personal protective equipment; (9) a system for reporting, recordkeeping and access.

Moreover, Section 3205 (c)(9)(C) requires the employer to maintain records of the steps taken to implement the written COVID-19 Prevention Program. Under (c)(9)(D) the employer must make the COVID-19 Prevention Program available to employees. Under (c)(9)(E) the employer must keep record of all COVID-19 cases with the employee's name, contact information, occupation, location where they worked, last date at the workplace, and date of positive test.

Here, Employer failed to establish, implement, maintain and enforce a compliant written COVID-19 Prevention Program that is in a form readily understandable to employees. Moreover, they have failed to maintain records of the steps taken to implement the written COVID-19 Prevention Program. To the extent they had a COVID-19 Prevention Program it failed to contain the required sections (1) a system for communicating that is readily understandable to employees; (2) a system for identifying and evaluating COVID-19 hazards; (3) a system for investigating and responding to COVID-19 cases in the workplace; (4) a system for the correction of COVID-19 hazards; (5) a system for training and instructing employees; (6) a system for physical distancing; (7) a system and implementation of providing face coverings; (8) a system of other engineering controls, administrative controls, and personal protective equipment; (9) a system for reporting, recordkeeping and access. As a result, Employer violated Labor Code Sections 6401, 6403, and 6406, by failing to provide the aggrieved employees with a safe and healthful working environment with the appropriate face coverings, gloves, and properly implementing a system to appropriately clean and disinfecting machinery, equipment, tools, locker rooms and door knobs, buttons and switches and areas, the clock in and clock-out areas, keyboards, and telephones, and things touched throughout the work day by the numerous employees.

FAILING TO MAINTAIN AND IMPLEMENT INJURY PREVENTION PROGRAMS
(Labor Code Section 6401.7)

Employer violated Labor Code Section 6401.7 by failing to maintain effective injury prevention programs, failing to timely correct unsafe and unhealthy conditions and practices, failing to comply with employee training obligations and record steps taken to implement the IPPs.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code Section 2802 and Tool and Equipment section of the applicable IWC Wage Order)

Labor Code Section 2802(a) provides that an employer shall indemnify its employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Under Labor Code Section 2802(c), the term necessary expenditures or losses shall include all reasonable costs, including attorneys' fees.

Section 9(b) of the applicable IWC Wage Order states in pertinent part that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

Labor Code Section 2802 prohibits employers from shifting their costs of doing business onto the employee. California Labor Code Section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." This means if the expense in question is necessary for performance of the job, the

employer must reimburse the employee 100% of the cost. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

Here, Employers failed to comply with Labor Code Section 2802 and the applicable IWC Wage Order by failing to reimburse aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of their duties. The aggrieved employees were required to use their personal cell phones to upload applications for time keeping and other Employer related requirements, including but not limited to Signal, GroupMe, and ADP.. Additionally, Employer required certain aggrieved employees to purchase scrubs and other uniforms/or equipment. Additionally, certain aggrieved employees were not reimbursed for gas or mileage went required to drive to clinics or pick up supplies and go to meetings. Finally, certain aggrieved employees were working from home, but were never compensated a reasonable amount for reasonable costs for utilities, Wi Fi and/or internet usage, or home office supplies. Additionally, Employer required tuberculosis testing and the aggrieved employees had to pay for such costs. Many aggrieved employees use their person laptops for work. Employer failed to reimburse aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

CONCLUSION

Mr. Tartala intends to bring a private civil action on behalf of himself and on behalf of former and current aggrieved employees of Employer Action Urgent Care, Inc. in California, asserting claims against them for their various Labor Code violations. In this action, Mr. Tartala will seek, among other things, the penalties and relief provided under Labor Code Section 2699 or the relevant statute of penalties are provided therein. The facts and claims herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Tartala becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Thank you for your anticipated courtesy and consideration.

Best Regards,

/S/

Travis J. Burch, Esq.

SHALCHI BURCH

L L P

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February 28, 2023

VIA CERTIFIED US MAIL

Action Urgent Care, Inc.
C/O Vladimir Skorokhod
1375 Blossom Hill West Road, Suite 49
San Jose, California 95118

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
dir.ca.gov and Division of Occupational Health and Safety

LWDA CASE NO. LWDA-CM-843059-21

Re: **Drew Tartala v. Action Urgent Care, Inc. Amended Notice of Labor Code Violations Pursuant to Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.)**

Dear Sir or Madam:

Shalchi Burch LLP represents Drew Tartala with respect to his claims against his former employer and provides this Amended Notice of Labor Code Violations against Action Urgent Care, Inc. ("Employer"). I write on behalf of Mr. Tartala, and all of Employer's current and former non-exempt employees in California within the last year preceding this notice or the original notice, who suffered at least one or more of the violations set forth herein. I additionally write on behalf of Employer's current and former current exempt employees in California within the last year preceding this notice or the original notice, where the violations are not limited to non-exempt employees, who suffered one or more of the violations described herein. Thus, this provides notice of Action Urgent Care, Inc.'s violations of various Labor Code sections enumerated in California Labor Code Section 2699.5 and 2699.3. Notice is therefore provided pursuant to, and in compliance with, the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.).

If the LWDA does not intend to investigate the alleged amended violations, Mr. Tartala intends to amend his pending representative action for PAGA civil penalties on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all other aggrieved employees, whether exempt or non-exempt, in the State of California. A copy of this Amended Notice is concurrently sent via certified mail to the Employer at the address above.

The following comprise the facts and legal theories of the various labor violations committed. Mr. Tartala is an aggrieved employee as defined by California Labor Code Section 2699, subdivision (c). Employer Action Urgent Care, Inc. hired Mr. Tartala on or about August 24, 2020. He was an exempt employee initially in the role of full cycle recruiter, then VP of Human Resources Operations. He worked at the facility located at 1680 E Capitol Expressway #10, San Jose, California 95121. His employment ended on or about August 27, 2021. Throughout his employment, Mr. Tartala, and all other aggrieved employees of throughout California, were subjected to numerous violations of the California Labor Code, including sections 201, 202, 203, 204, 207, 208, 226(a)-(c), 226.3, 226.7, 227.3, 246, 248, 248.5, 510, 511, 512(a), 558, 558.1, 1174(d), 1194, 1198, 1198.5 1199, 2800/2802, 3550 and 3551.

FAILURE TO POST DATES AND LOCATIONS OF PAY
(Labor Code Section 207)

Labor Code Section 207 holds that every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment. Here, Employer violated Section 207 because it failed to post conspicuously at the place of work, a notice of the regular pay days, and times and place of payment. Mr. Tartala and other former and current employees were similarly deprived of the information required in the posting.

FAILURE TO PAY FINAL PAY CHECK AT PROPER LOCATION AND TIME
(Labor Code Section 208)

Labor Code Section 208 requires that employers pay every employee who is discharged at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. Here, Mr. Tartala and other aggrieved employees were not paid at the time they were discharged at the place they were discharged or were not paid at the Employer's office and in some instances were- paid through a Zelle smart phone app. Thus, Employer has violated Section 208.

FAILURE TO PAY MINIMUM WAGE, REGULAR, AND OVERTIME WAGES
(Labor Code Sections 218, 510, 1194, 1197.1, 1198 and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code Section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on the seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code Section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code Section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code Section 1199 provides that every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than \$100 or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by 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.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code Section 1197 provides that the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employees, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, \$100 for each underpaid employee for each pay period for which the

employee is underpaid. For each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Pursuant to the relevant “Hours & Days of Work” section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Here, Employer violated Labor Code Sections 218, 510, 1194, 1197, 1198, 1199, and the Minimum Wages and Hours & Days of Work sections of the applicable Wage Order because they did not pay aggrieved former and current employees all overtime wages for all hours worked. For example, aggrieved employees worked more than 8 hours on certain days but were not paid overtime rates for hours worked beyond 8 hours. Employer mistakenly believed it could instill an alternative work schedule (“AWS”) for employees other than radiological (x-ray) technicians without incurring overtime obligations.

In other instances, Employer has misclassified non-exempt employees as exempt when they did not meet the threshold salary requirements. This resulted in said misclassified employees not being paid overtime, not getting rest and meal breaks, and inaccurate wage statements.

Aggrieved employees were required to take medical tests, but were not paid for time incurred to take the medical tests, thus depriving them of proper overtime and minimum wages paid. Additionally, aggrieved employees were pressured to work off the clock in order to avoid overtime. This resulted in chronic underpayment of minimum, regular, and overtime wages for non-exempt employees.

Additionally, Mr. Tartala was offered a bonus structure as part of his compensation, for which he was not paid by Employer.

Additionally, Employer has certain employees that are being misclassified as exempt, when they are actually non-exempt. They are being shorted overtime and other in other instances, a miscalculation of overtime.

Additionally, Employer pays certain employees, such as medical assistants below minimum wage during a training period.

Accordingly, Mr. Tartala now seeks civil penalties on behalf of himself and all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

ILLEGAL ALTERNATIVE WORKWEEK
(Labor Code Section 511)

In relevant part, Labor Code Section 511(a) provides that “[u]pon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.”

Here, Employer imposed a four-day-ten-hour regular workweek without daily overtime after eight hours, without following the strict specific procedures of a secret ballot election by at least two-thirds of affected employees. Aggrieved employees were injured by Employer’s failure to comply with the strictures of Section 511. Employer had other categories of employees operating under and AWS even though x-ray technicians were the only category that Employer had ever implemented an AWS.

FAILURE TO PROVIDE COMPLIANT MEAL AND REST BREAKS
(Labor Code Sections 226.7, 512, 1198, and the Meal Period and Rest Period sections of the applicable IWC Wage Order)

Labor Code Section 512(a) states in relevant part that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An 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” Labor Code Section 226.7(a) states that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

The “Rest Period” section of the applicable IWC Wage Order states that 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 shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hour or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code Section 226.7 states that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay

the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Here, Employer failed to provide aggrieved employees with meal breaks taken before the end of the fifth hour of work. For example, many medical assistants did not have lunch breaks, or timely and complete full 30-minute lunch breaks. Additionally, aggrieved employees were not provided with two – ten-minute duty-free rest breaks for every ten hours worked, or third break for work in excess of 10 hours. Employer failed to pay one hour at the employees' regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code Sections 226(a), 246, 226.3, 1198 and the "Records" section of the applicable IWC Wage Order)

Labor Code Section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: (1) gross wages earned; (2) total hours worked by an employee, except for salaried exempt employees under Section 515 or any applicable IWC order; (3) number of piece rate units earned and any applicable piece rate units earned if employee is paid on a piece rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee was paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by employee.

Labor Code Section 226(e)(2)(A) states that an employee is deemed to suffer injury for purposes of this subdivision if the Employee fails to provide a wage statement.

Labor Code Section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee for each initial violation of Labor Code Section 226(a).

Labor Code Section 246(i) requires employers to keep track of employees' accrued and used sick leave either on the employees' wage statements, or on a separate writing provided on the pay date.

Here, Employer failed to provide compliant wage statements during aggrieved employees' employment because they failed to pay all wages due at all times during the aggrieved employees' employment, including minimum, regular, and overtime wages, and which rendered the wage statements inaccurate as to the both the applicable overtime rate and hours worked and straight time and hours worked. It also was inaccurate as to the gross wages and net wages earned because the wage statements did not accurately reflect the correct hours worked. Lastly, the wage statements did not list the employees' amount of sick leave available or used.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code Sections 1174 and the "Records" section of the IWC Wage Orders)

Labor Code Section 1174(d) states that every person employing labor in this state shall keep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.

Labor Code Section 1174.5 states that any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of section (d) of 1174 shall be subject to a penalty of five hundred dollars.

Moreover, the relevant Wage Order(s) obligate an employer to keep accurate information which requires paying required minimum, regular, and overtime wages and by recording accurate meal periods. Every employer is required to keep accurate information with respect to each employee including the following time records showing the beginning and end of each work period and meal periods and total hours worked.

Here, Employer failed to maintain accurate records because they do not properly record all the hours worked daily because of the off the clock work, and work done during non-compliant duty-free meal breaks.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code Sections 201, 202, 203, 204, 256, and 1198)

Labor Code Section 201 states that if an employer discharges an employee the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 202 states that 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 Section 203(a) states in relevant part that an if an employee willfully fails to pay without abatement or reduction in accordance with Sections 201, 201.3, 201.5, 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.

Labor Code Section 204(a) states in pertinent part all wages earned by any person in any employment are due and payable twice during each calendar month on days designated in advance

by the employer as the regular paydays. The “Minimum Wages” section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code Section 256 states that the Labor Commissioner shall impose a civil penalty in amount not exceeding 30 days of pay as waiting time under the terms of Section 203.

As detailed above, the Employer failed to pay the aggrieved employees all wages due and owing to them including minimum wage, regular wage, and overtime wage within the required time during their employment and upon separation of employment.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code Sections 558, 558.1, and 1197.1)

Labor Code Section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code Section 558.1(a) states that any employer or other person acting on behalf of an employer who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation. Labor Code Section 558.1 expressly defines “employer or other person acting on behalf of an employer to include a natural person who is an owner, director, officer, or managing agent of the employer.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in the amount of \$100 for the initial violation for each pay period in which an employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer underpaid Mr. Tartala and aggrieved employees by failing to pay them with all compensation that was due and owing to them and failing to issue them premium pay for missed meal and rest breaks under Labor Code Section 203, 226, 226.7, 1194 and the relevant Wage Orders, which results in civil penalties also under Section 558.

FAILURE TO POST REQUIRED WORKERS' COMPENSATION INFORMATION
(Labor Code Section 3550)

California Labor Code Section 3550(a) states that every employer shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice that states the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the form and content of the notice required by this section shall advise employees that all injuries should be reported to their employer. The notice shall be easily understandable. It shall be posted in both English and Spanish where there are Spanish-speaking employees. The notice shall include the following information how to get emergency treatment; events, injuries and illnesses covered by workers' compensation; and the injured employee's right to receive medical care; the rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate; to whom injuries should be reported; the existence of time limits for the employer to be notified of an occupational injury; the protections against discrimination provided pursuant to Section 132a; the Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer. Employer violated Labor Code Section 3550 by failing to post a notice where it may easily be read by employees during the workday, and one that contained the notice with the required specified information in both Spanish and English. Mr. Tartala, and other aggrieved employees, were deprived of proper compliant posting of the aforementioned requisite information in Section 3550 in Spanish and English.

FAILURE TO PROVIDE NOTICE TO EMPLOYEES OF WORKERS'
COMPENSATION INFORMATION POSTED
(Labor Code Section 3551)

Labor Code Section 3551 requires every employer to provide every employee at the time of employment, or by the end of the first pay period, a written notice of all the information contained in Labor Code Section 3550. The notice is required to be easily understandable and in English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the employee how to obtain appropriate medical care for a job injury; the role and function of the primary treating physician; and a form that the employee may use as an optional method of notifying the employer of the name of the employee's person physician or personal chiropractor. Employer violated Labor Code Section 3551 by failing to provide Mr. Tartala and other aggrieved employees, with written notice containing all of the information required under Labor Code Section 3550, failed to provide such information by the end of the first pay period, failed to provide the information in both English and Spanish, and failed to provide notice to the employees how to obtain medical care for a job injury, what the primary treating physician's role is. Additionally,

the Employer failed to provide a form that the employee could use to notify the employer of their own personal physician or chiropractor.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(Labor Code Section 2802 and Tool and Equipment section of the applicable IWC Wage Order)

Labor Code Section 2802(a) provides that an employer shall indemnify its employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Under Labor Code Section 2802(c), the term necessary expenditures or losses shall include all reasonable costs, including attorneys' fees.

Section 9(b) of the applicable IWC Wage Order states in pertinent part that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

Labor Code Section 2802 prohibits employers from shifting their costs of doing business onto the employee. California Labor Code Section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." This means if the expense in question is necessary for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is also "necessary" if it occurs because the employee is following the directions given by the employer.

Here, Employers failed to comply with Labor Code Section 2802 and the applicable IWC Wage Order by failing to reimburse aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of their duties. The aggrieved employees were required to use their personal cell phones to upload applications for time keeping and other Employer related requirements, including but not limited to Signal, GroupMe, and ADP. Additionally, Employer required certain aggrieved employees to purchase scrubs and other uniforms/or equipment. Additionally, certain aggrieved employees were not reimbursed for gas or mileage went required to drive to clinics or pick up supplies and go to meetings. Finally, certain aggrieved employees were working from home, but were never compensated a reasonable amount for reasonable costs for utilities, Wi Fi and/or internet usage, or home office supplies. Additionally, Employer required tuberculosis testing and the aggrieved employees had to pay for such costs. Many aggrieved employees use their person laptops for work. Employer failed to reimburse aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

FAILURE TO PAY ACCRUED VACATION TIME
(Labor Code Section 227.3 and 203)

Labor Code Section 227.3 and Labor Code Section 203 require an employer to pay accrued but unused vacation time upon termination or separation. Here, Mr. Tartala and other aggrieved employees were deprived of their accrued vacation pay which was due and owing upon termination or separation.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code Sections 246, 248 and 248.5)

Labor Code Section 246 grants the right to employees to receive paid sick days. Specifically, California Labor Code Section 246(b) states that:

- (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.
- (2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.
- (3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, or in each 12 month period.
- (4) An employer may satisfy the accrual requirements of this section by proving not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code Section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code Section 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave that Mr. Tartala and all aggrieved employees accrued.

FAILURE TO PRODUCE WAGE STATEMENTS
(Labor Code Section 226(b) and (c))

Labor Code Section 226(b) states that an employer who receives oral or written notice to inspect or copy wage statements from an employee or former employee shall produce them no later than 21 days from the request. Here, despite repeated requests, Employer has refused to produce Mr. Tartala's wage statements.

CONCLUSION

Mr. Tartala intends amend his pending complaint on behalf of himself and on behalf of former and current aggrieved employees of Employer Action Urgent Care, Inc. in California, to add the new claims noted herein. In this action, Mr. Tartala will seek, among other things, the penalties and relief provided under Labor Code Section 2699 or the relevant statute of penalties are provided therein. The facts and claims herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Tartala becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Thank you for your anticipated courtesy and consideration.

Best Regards,

/S/
Travis J. Burch, Esq.

SHALCHI BURCH

L L P

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Newport Beach, CA 92660
tb@shalchiburchllp.com
(949) 359-0334

September 28, 2023

VIA CERTIFIED US MAIL

Action Urgent Care, Inc.
C/O Vladimir Skorokhod
1375 Blossom Hill West Road, Suite 49
San Jose, California 95118

Lifetime App, Inc.
C/O Igor Hismatullin
1432 W. San Carlos Street, Suite 10
San Jose, California, 95126

VIA ELECTRONIC FILING

California Labor and Workforce Development Agency
dir.ca.gov and Division of Occupational Health and Safety

LWDA CASE NO. LWDA-CM-843059-21

Re: Drew Tartala v. Action Urgent Care, Inc. et al. - Amended Notice of Labor Code Violations Pursuant to Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.)

Dear Sir or Madam:

Shalchi Burch LLP represents Drew Tartala with respect to his claims against his former employer and provides this Amended Notice of Labor Code Violations against Action Urgent Care, Inc. and Lifetime App, Inc. (collectively "Employer"). I write on behalf of Mr. Tartala, and all of Employer's current and former non-exempt employees in California from September 25, 2020 through the present, who suffered at least one or more of the violations set forth herein. I additionally write on behalf of Employer's current and former exempt employees in California from September 25, 2020 through the present, where the violations are not limited to non-exempt employees, who suffered one or more of the violations described herein. Thus, this notice, and the notices previously filed by Mr. Tartala provide notice of Employer's alleged violations of various

Labor Code sections enumerated in California Labor Code Section 2699.5 and 2699.3. Notice is therefore provided pursuant to, and in compliance with, the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*).

If the LWDA does not intend to investigate the alleged amended violations, Mr. Tartala intends to amend his pending representative action for PAGA civil penalties on behalf of himself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of himself and all other aggrieved employees, whether exempt or non-exempt, in the State of California. A copy of this Amended Notice is concurrently sent via certified mail to the Employer at the addresses above.

The following comprise the facts and legal theories of the various labor violations committed. Mr. Tartala is an aggrieved employee as defined by California Labor Code Section 2699, subdivision (c). Employer Action Urgent Care Inc. hired Mr. Tartala on or about August 24, 2020. During his employment with Action Urgent Care, Inc., Mr. Tartala also performed duties for Lifetime App, Inc. He was an exempt employee initially in the role of full cycle recruiter, then VP of Human Resources Operations. He worked at the facility located at 1680 E Capitol Expressway #10, San Jose, California 95121. His employment ended on or about August 27, 2021. Throughout his employment, Mr. Tartala, and all other allegedly aggrieved employees throughout California, were subjected to numerous violations of the California Labor Code, including sections 200, 201, 202, 203, 204, 207, 208, 210, 226(a)-(c), 226.3, 226.7, 227.3, 246, 248, 248.5, 510, 511, 512(a), 558, 558.1, 1174(d), 1174.5, 1194, 1197, 1198, 1198.5 1199, 2800/2802, 3550 and 3551.

FAILURE TO POST DATES AND LOCATIONS OF PAY
(Labor Code Section 207)

Labor Code Section 207 holds that every employer shall keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their places of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment. Here, Employer violated Section 207 because it failed to post conspicuously at the place of work, a notice of the regular pay days, and times and place of payment. Mr. Tartala and other former and current employees were similarly deprived of the information required in the posting.

FAILURE TO PAY FINAL PAY CHECK AT PROPER LOCATION AND TIME
(Labor Code Section 208)

Labor Code Section 208 requires that employers pay every employee who is discharged at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. Here, Mr. Tartala and other aggrieved employees were not paid at the time they were discharged at the place they were discharged or were not paid at the Employer's office and in some instances were- paid through a Zelle smart phone app. Thus, Employer has violated Section 208.

FAILURE TO PAY MINIMUM WAGE, REGULAR, AND OVERTIME WAGES
(Labor Code Sections 218, 510, 1194, 1197.1, 1198 and 1199(c) and the “Minimum Wages” and
“Hours and Days of Work” Sections of the Applicable Wage Order)

Labor Code Section 510 provides in pertinent part: “Eight hours of labor constitutes a day’s work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on the seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code Section 1194(a) states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code Section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code Section 1199 provides that every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than \$100 or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by 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.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code Section 1197 provides that the minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be

subject to a civil penalty, restitution of wages, liquidated damages payable to the employees, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, \$100 for each underpaid employee for each pay period for which the employee is underpaid. For each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Pursuant to the relevant “Hours & Days of Work” section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Here, Employer violated Labor Code Sections 218, 510, 1194, 1197, 1198, 1199, and the Minimum Wages and Hours & Days of Work sections of the applicable Wage Order because they did not pay aggrieved former and current employees all overtime wages for all hours worked. For example, aggrieved employees worked more than 8 hours on certain days but were not paid overtime rates for hours worked beyond 8 hours. Employer mistakenly believed it could instill an alternative work schedule (“AWS”) for employees other than radiological (x-ray) technicians without incurring overtime obligations.

In other instances, Employer has misclassified non-exempt employees as exempt when they did not meet the threshold salary requirements. This resulted in said misclassified employees not being paid overtime, not getting rest and meal breaks, and inaccurate wage statements.

Aggrieved employees were required to take medical tests, but were not paid for time incurred to take the medical tests, thus depriving them of proper overtime and minimum wages paid. Additionally, aggrieved employees were pressured to work off the clock in order to avoid overtime. This resulted in chronic underpayment of minimum, regular, and overtime wages for non-exempt employees.

Additionally, Mr. Tartala was offered a bonus structure as part of his compensation, for which he was not paid by Employer.

Additionally, Employer has certain employees that are being misclassified as exempt, when they are actually non-exempt. They are being shorted overtime and other in other instances, a miscalculation of overtime.

Additionally, Employer pays certain employees, such as medical assistants below minimum wage during a training period.

Accordingly, Mr. Tartala now seeks civil penalties on behalf of himself and all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

ILLEGAL ALTERNATIVE WORKWEEK
(Labor Code Section 511)

In relevant part, Labor Code Section 511(a) provides that “[u]pon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose.”

Here, Employer imposed a four-day-ten-hour regular workweek without daily overtime after eight hours, without following the strict specific procedures of a secret ballot election by at least two-thirds of affected employees. Aggrieved employees were injured by Employer’s failure to comply with the strictures of Section 511. Employer had other categories of employees operating under and AWS even though x-ray technicians were the only category that Employer had ever implemented an AWS.

FAILURE TO PROVIDE COMPLIANT MEAL AND REST BREAKS
(Labor Code Sections 226.7, 512, 1198, and the Meal Period and Rest Period sections of the applicable IWC Wage Order)

Labor Code Section 512(a) states in relevant part that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An 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 . . .” Labor Code Section 226.7(a) states that no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

The “Rest Period” section of the applicable IWC Wage Order states that 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 shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hour or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code Section 226.7 states that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Here, Employer failed to provide aggrieved employees with meal breaks taken before the end of the fifth hour of work. For example, many medical assistants did not have lunch breaks, or timely and complete full 30-minute lunch breaks. Additionally, aggrieved employees were not provided with two – ten-minute duty-free rest breaks for every ten hours worked, or third break for work in excess of 10 hours. Employer failed to pay one hour at the employees' regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code Sections 226(a), 246, 226.3, 1198 and the "Records" section of the applicable IWC Wage Order)

Labor Code Section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: (1) gross wages earned; (2) total hours worked by an employee, except for salaried exempt employees under Section 515 or any applicable IWC order; (3) number of piece rate units earned and any applicable piece rate units earned if employee is paid on a piece rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee was paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by employee.

Labor Code Section 226(e)(2)(A) states that an employee is deemed to suffer injury for purposes of this subdivision if the Employee fails to provide a wage statement.

Labor Code Section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee for each initial violation of Labor Code Section 226(a).

Labor Code Section 246(i) requires employers to keep track of employees' accrued and used sick leave either on the employees' wage statements, or on a separate writing provided on the pay date.

Here, Employer failed to provide compliant wage statements during aggrieved employees' employment because they failed to pay all wages due at all times during the aggrieved employees' employment, including minimum, regular, and overtime wages, and which rendered the wage statements inaccurate as to the both the applicable overtime rate and hours worked and straight

time and hours worked. It also was inaccurate as to the gross wages and net wages earned because the wage statements did not accurately reflect the correct hours worked. Lastly, the wage statements did not list the employees' amount of sick leave available or used.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code Sections 1174, 1174.5, and the "Records" section of the IWC Wage Orders)

Labor Code Section 1174(d) states that every person employing labor in this state shall keep at a central location in the state of at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years.

Labor Code Section 1174.5 states that any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of section (d) of 1174 shall be subject to a penalty of five hundred dollars.

Moreover, the relevant Wage Order(s) obligate an employer to keep accurate information which requires paying required minimum, regular, and overtime wages and by recording accurate meal periods. Every employer is required to keep accurate information with respect to each employee including the following time records showing the beginning and end of each work period and meal periods and total hours worked.

Here, Employer failed to maintain accurate records because they do not properly record all the hours worked daily because of the off the clock work, and work done during non-compliant duty-free meal breaks.

**FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF
EMPLOYMENT**

(Labor Code Sections 200, 201, 202, 203, 204, 210, 256, 1197, and 1198)

Labor Code Section 200(a) states "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

Labor Code Section 201 states that if an employer discharges an employee the wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 202 states that 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 Section 203(a) states in relevant part that an if an employee willfully fails to pay without abatement or reduction in accordance with Sections 201, 201.3, 201.5, 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.

Labor Code Section 204(a) states in pertinent part all wages earned by any person in any employment are due and payable twice during each calendar month on days designated in advance by the employer as the regular paydays. The “Minimum Wages” section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code Section 210(a) states in pertinent part in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty

Labor Code Section 256 states that the Labor Commissioner shall impose a civil penalty in amount not exceeding 30 days of pay as waiting time under the terms of Section 203.

As detailed above, the Employer failed to pay the aggrieved employees all wages due and owing to them including minimum wage, regular wage, and overtime wage within the required time during their employment and upon separation of employment.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code Sections 558, 558.1, and 1197.1)

Labor Code Section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code Section 558.1(a) states that any employer or other person acting on behalf of an employer who violates or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation. Labor Code Section 558.1 expressly defines “employer or other person acting on behalf of an employer to include a natural person who is an owner, director, officer, or managing agent of the employer.

Labor Code Section 1197.1 states that any employer or other person acting either individually or as an officer, agent, or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in the amount of \$100 for the initial violation for each pay period in which an employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Employer underpaid Mr. Tartala and aggrieved employees by failing to pay them with all compensation that was due and owing to them and failing to issue them premium pay for missed meal and rest breaks under Labor Code Section 203, 226, 226.7, 1194 and the relevant Wage Orders, which results in civil penalties also under Section 558.

FAILURE TO POST REQUIRED WORKERS' COMPENSATION INFORMATION
(Labor Code Section 3550)

California Labor Code Section 3550(a) states that every employer shall post and keep posted in a conspicuous location frequented by employees, and where the notice may be easily read by employees during the hours of the workday, a notice that states the name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment. Additionally, 3550(d) states that the form and content of the notice required by this section shall advise employees that all injuries should be reported to their employer. The notice shall be easily understandable. It shall be posted in both English and Spanish where there are Spanish-speaking employees. The notice shall include the following information how to get emergency treatment; events, injuries and illnesses covered by workers' compensation; and the injured employee's right to receive medical care; the rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate; to whom injuries should be reported; the existence of time limits for the employer to be notified of an occupational injury; the protections against discrimination provided pursuant to Section 132a; the Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation claims process and an injured employee's rights and obligations, including the location and telephone number of the nearest information and assistance officer. Employer violated Labor Code Section 3550 by failing to post a notice where it may easily be read by employees during the workday, and one that contained the notice with the required specified information in both Spanish and English. Mr. Tartala, and other aggrieved employees, were deprived of proper compliant posting of the aforementioned requisite information in Section 3550 in Spanish and English.

FAILURE TO PROVIDE NOTICE TO EMPLOYEES OF WORKERS'
COMPENSATION INFORMATION POSTED
(Labor Code Section 3551)

Labor Code Section 3551 requires every employer to provide every employee at the time of employment, or by the end of the first pay period, a written notice of all the information contained in Labor Code Section 3550. The notice is required to be easily understandable and in English and Spanish. In addition, Section 3551 also requires the employer to provide notice to the employee how to obtain appropriate medical care for a job injury; the role and function of the primary treating physician; and a form that the employee may use as an optional method of notifying the employer of the name of the employee's person physician or personal chiropractor. Employer violated Labor Code Section 3551 by failing to provide Mr. Tartala and other aggrieved employees, with written notice containing all of the information required under Labor Code Section 3550, failed to provide such information by the end of the first pay period, failed to provide the information in both English and Spanish, and failed to provide notice to the employees how to obtain medical care for a job injury, what the primary treating physician's role is. Additionally, the Employer failed to provide a form that the employee could use to notify the employer of their own personal physician or chiropractor.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES

(Labor Code Section 2802 and Tool and Equipment section of the applicable IWC Wage Order)

Labor Code Section 2802(a) provides that an employer shall indemnify its employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Under Labor Code Section 2802(c), the term necessary expenditures or losses shall include all reasonable costs, including attorneys' fees.

Section 9(b) of the applicable IWC Wage Order states in pertinent part that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

Labor Code Section 2802 prohibits employers from shifting their costs of doing business onto the employee. California Labor Code Section 2802 states that employers must "indemnify" an employee for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." This means if the expense in question is necessary for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is also "necessary" if it occurs because the employee is following the directions given by the employer.

Here, Employers failed to comply with Labor Code Section 2802 and the applicable IWC Wage Order by failing to reimburse aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of their duties. The aggrieved employees were required to use their personal cell phones to upload applications for time keeping and other Employer related requirements, including but not limited to Signal, GroupMe, and ADP. Additionally, Employer required certain aggrieved employees to purchase scrubs and other uniforms/or equipment. Additionally, certain aggrieved employees were not reimbursed for gas or mileage went required to drive to clinics or pick up supplies and go to meetings. Finally, certain

aggrieved employees were working from home, but were never compensated a reasonable amount for reasonable costs for utilities, Wi Fi and/or internet usage, or home office supplies. Additionally, Employer required tuberculosis testing and the aggrieved employees had to pay for such costs. Many aggrieved employees use their person laptops for work. Employer failed to reimburse aggrieved employees for the costs incurred by employees in direct consequence of the discharge of his or her duties.

FAILURE TO PAY ACCRUED VACATION TIME
(Labor Code Section 227.3 and 203)

Labor Code Section 227.3 and Labor Code Section 203 require an employer to pay accrued but unused vacation time upon termination or separation. Here, Mr. Tartala and other aggrieved employees were deprived of their accrued vacation pay which was due and owing upon termination or separation.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code Sections 246, 248 and 248.5)

Labor Code Section 246 grants the right to employees to receive paid sick days. Specifically, California Labor Code Section 246(b) states that:

- (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.
- (2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.
- (3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, or in each 12 month period.
- (4) An employer may satisfy the accrual requirements of this section by proving not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code Section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code Section 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave that Mr. Tartala and all aggrieved employees accrued.

FAILURE TO PRODUCE WAGE STATEMENTS
(Labor Code Section 226(b) and (c))

Labor Code Section 226(b) states that an employer who receives oral or written notice to inspect or copy wage statements from an employee or former employee shall produce them no later than 21 days from the request. Here, despite repeated requests, Employer has refused to produce Mr. Tartala's wage statements.

CONCLUSION

Mr. Tartala intends to amend his pending complaint on behalf of himself and on behalf of former and current aggrieved employees of Employer in California, to add the new claims noted herein. In this action, Mr. Tartala will seek, among other things, the penalties and relief provided under Labor Code Section 2699 or the relevant statute of penalties are provided therein. The facts and claims herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Tartala becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint.

Thank you for your anticipated courtesy and consideration.

Best Regards,

/S/
Travis J. Burch, Esq.

STATE OF CALIFORNIA, COUNTY OF ORANGE

On **April 11, 2024**, I served the foregoing document(s) described as **DECLARATION OF TRAVIS J. BURCH, ESQ. AND EXHIBITS IN SUPPORT OF PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR COURT APPROVAL OF THE PARTIES' PAGA SETTLEMENT** on the interested parties in this action by emailing the persons as set forth below:

Attorney for Defendants Action Urgent
Care, Inc. and Genevieve Hismatullin

Telephone: (408) 286-9800
Facsimile: (408) 998-4790
Email: ebellwfronto@hopkinscarley.com
Email: mmanoukian@hopkinscarley.com

[] **(BY FACSIMILE)** I caused such document to be transmitted by facsimile to the offices of the addressee where the facsimile . Upon completion of the said facsimile transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

BY: /s/ Travis J. Burch
 TRAVIS J. BURCH