

1 WILLIAM C. JHAVERI-WEEKS (SBN 289984)  
2 **JHAVERI-WEEKS LAW**  
3 351 California Street, Suite 700  
4 San Francisco, CA 94104  
5 Telephone: (415) 723-2803  
6 Facsimile: (415) 367-1439  
7 Email: wjw@jhaveriweeks.com  
8 Attorney for Plaintiffs  
9 ERIKA HOYLE ZUTA et al.

7 AUDREY A. GEE / CA SB# 180988  
8 DAVID M. MARCHIANO / CA SB# 264809  
9 MARISSA R. BOYD / CA SB# 319255  
10 **BROWN, GEE & WENGER LLP**  
11 200 Pringle Avenue, Suite 400  
12 Walnut Creek CA 94596  
13 Telephone: (925) 943-5000  
14 Facsimile: (925) 933-2100  
15 agee@bgwcounsel.com  
16 dmarchiano@bgwcounsel.com  
17 mboyd@bgwcounsel.com  
18 Attorneys for Defendant  
19 FUZZY PET HEALTH INC.

16  
17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

18 **COUNTY OF SAN FRANCISCO**

19 ERIKA HOYLE ZUTA et al.,

20  
21 Plaintiffs,

22 v.

23 FUZZY PET HEALTH, INC. and DOES 1  
24 through 10, inclusive,

25 Defendants.  
26

**CASE NO. CGC-19-579373**

**CLASS, COLLECTIVE, AND  
REPRESENTATIVE ACTION  
SETTLEMENT AGREEMENT**

1 This agreement to settle class, collective, and representative claims, as well as additional individual  
2 claims of the two named plaintiffs (“**Settlement Agreement**”) is made and entered into between Plaintiffs  
3 Erika Hoyle Zuta and Nicole Reyes Castro (“**Plaintiffs**” or “**Class Representatives**”) on the one hand,  
4 both individually and on behalf of the Settlement Class (as defined below) and the State of California, by  
5 and through Jhaveri-Weeks Law (“**Class Counsel**”), and Defendant Fuzzy Pet Health, Inc. (“**Defendant**”  
6 or “**FPH**”) on the other hand, subject to the approval of the Court, as provided below. This Settlement  
7 Agreement is intended by Plaintiffs and Defendant to fully, finally, and forever resolve, discharge, and  
8 settle the Action (as defined below) and Released Claims (as defined below), upon and subject to the terms  
9 and conditions hereof, as follows:

10 **1. Definitions.**

11 As used herein, for the purposes of this Settlement Agreement only, the following terms will be  
12 defined as set forth below:

13 **1.1 “Action”** refers to the civil action entitled *Erika Hoyle Zuta et al. v. Fuzzy Pet Health Inc.*,  
14 (San Francisco County Superior Court Case No. CGC-19-579373).

15 **1.2 “Claims”** means any and all claims, demands, actions, causes of action, obligations, debts,  
16 damages, losses, loss of service, liens, liabilities, penalties, costs, expenses, attorneys’ fees, of every kind  
17 and nature whatsoever, in law or in equity, known or unknown, contingent or accrued.

18 **1.3 “Class Counsel”** refers to the attorney of record for the Class Representatives, *i.e.*, William  
19 Jhaveri-Weeks of Jhaveri-Weeks Law.

20 **1.4 “Class Member”** refers to all current or former employees who are or were employed as  
21 Veterinary Assistants for Defendant in California during the Class Period who have not released their  
22 claims for a severance payment. The twenty Class Members are identified on **Exhibit C**, hereto.

23 **1.5 “Class Notice”** refers to the form of direct-mail notices substantially in the form attached as  
24 “**Exhibit A**,” as may be modified by the Court.

25 **1.6 “Class Period”** means September 29, 2015 through the date of the Court’s order granting  
26 Preliminary Approval.

27 **1.7 “Complaint”** refers to the operative Second Amended Complaint in this Action, and any  
28 Complaints subsequently filed in this Action.

1           **1.8 “Court”** refers to the California Superior Court for the County of San Francisco.

2           **1.9 “Defendant”** means Fuzzy Pet Health, Inc. or its predecessor entities.

3           **1.10 “Final Approval Hearing”** refers to the hearing at which the Court will make a final  
4 determination whether the terms of the Settlement are fair, reasonable, and adequate for the Class and  
5 Collective meet all applicable requirements for approval.

6           **1.11 “Final Approval Order”** refers to the final order by the Court approving the Settlement  
7 following the Final Approval Hearing and entering final judgment.

8           **1.12 “Final Effective Date”** refers to the date the Final Approval Order is entered if no objections  
9 to the Settlement are filed. If objections are filed and overruled, and no appeal of the Final Approval  
10 Order is filed, then the Final Effective Date will be sixty (60) calendar days following date the Final  
11 Approval Order is signed. If an appeal is taken from the Final Approval Order, then the Final Effective  
12 Date will be twenty (20) calendar days after the appeal is withdrawn or after an appellate decision  
13 affirming the Final Approval Order becomes final.

14           **1.13 “Gross Settlement Amount”** (also referred to herein as “GSA”) refers to the maximum  
15 settlement payment of two hundred and fifty thousand dollars (\$250,000) Defendant will be obligated to  
16 make, except that Defendant shall bear, in addition, all employer-side payroll tax payments due and  
17 payable to federal and state tax authorities as a result of this Settlement. The GSA includes all payments  
18 made to Settlement Class Members, Service Award payments to Class Representatives, all Settlement  
19 Administration Costs, the PAGA Award, and attorneys’ fees and litigation costs and expenses to Class  
20 Counsel as approved by the Court, as well as the Named Plaintiffs’ Non-Class Claims.

21           **1.14 “Named Plaintiffs’ Non-Class Claims”** refers to the individual claims of Erika Hoyle Zuta  
22 for discrimination, harassment, and retaliation on the basis of sex, the individual claim of Nicole Reyes  
23 Castro for discrimination on the basis of disability, and the claims of both plaintiffs for retaliation for  
24 complaining about wage and hour violations and penalties under the Private Attorneys General Act  
25 (“PAGA”).

26           **1.15 “Net Settlement Amount”** (also referred to herein as “NSA”) is the GSA minus Court-  
27 approved attorney’s fees and litigation costs, Settlement Administration Costs, Court-approved  
28 Enhancement Award, the LWDA’s share of the amount of the GSA allocated to PAGA, the award to

1 PAGA-Only Members, and the Named Plaintiffs' Non-Class Claims. The NSA is the maximum amount  
2 that will be available for distribution to Settlement Class Members.

3 **1.16 "PAGA Allocation"** refers to the Ten Thousand Dollars (\$10,000) set aside for PAGA  
4 penalties, with Two Thousand Five Hundred Dollars (\$2,500) paid to the PAGA Pool Members, and the  
5 remaining Seven Thousand Five Hundred Dollars (\$7,500) payable to the Labor and Workforce  
6 Development Agency.

7 **1.17 The "PAGA Period"** is July 15, 2018 up through the date of the Court's order granting  
8 Preliminary Approval.

9 **1.18 "PAGA-Pool Members"** are those individuals who were Veterinarian Assistants,  
10 Veterinarians classified as independent contractors, and certain low-level office workers classified as  
11 exempt from overtime. The 47 PAGA Pool Members are identified on **Exhibit D**.

12 **1.19 "PAGA-Only Members"** are the 28 individuals on Exhibit D who are PAGA-Pool Members  
13 but not Class Members, as identified on **Exhibit E**.

14 **1.20 "PAGA-Only Members' Award"** refers to the individuals shares that will be paid to PAGA-  
15 Only Members out of the \$2,500 employee-share of the \$10,000 PAGA Allocation.

16 **1.21 "PAGA Payment Letter"** refers to the letter that will accompany payments to PAGA-Only  
17 Members if the settlement is approved, attached as **Exhibit B**.

18 **1.22 "Parties"** are Plaintiffs and Defendant.

19 **1.23 "Released Claims," "Released Class Claims," and "Released PAGA Claims"** are those  
20 defined in Section 17, below.

21 **1.24 "Released Parties"** include Fuzzy Pet Health, Inc., Petchi, Inc., and each of its respective  
22 affiliates, parent companies, subsidiaries, shareholders, officers (including, but not limited to, Zubin  
23 Bhattay and Eric Palm), officials, partners, directors, members, owners, servants, employees, employers,  
24 agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal  
25 representatives, successors and assigns, past, present, and future, and all persons acting under, by, through,  
26 or in concert with any of them.

27 **1.25 "Request for Exclusion"** refers to a request to be excluded from the Settlement, which must  
28 be made in writing in conformity with the requirements set forth in the Class Notice, the Court's order

1 granting preliminary approval, and herein, and mailed (or emailed or faxed) to the Administrator and  
2 postmarked (or, in the case of email or fax, sent) on or before the Response Deadline.

3         **1.26 “Response Deadline”** refers to a date that is sixty (60) calendar days after the date that the  
4 Class Notice is mailed to Class Members and is the deadline by which Class Members’ Requests for  
5 Exclusion, disputes regarding Credits, and/or objections must be postmarked (or, in the case of email or  
6 fax, sent) in order to be timely.

7         **1.27 “Enhancement Award”** refers to a monetary award to each Plaintiff, in an amount not to  
8 exceed Five Thousand Dollars (\$5,000) each, or other lesser amount as approved by the Court, for their  
9 services as Class Representatives as described in Section 6, below, to be paid for from the Gross  
10 Settlement Amount, subject to approval by the Court, as described below.

11         **1.28 “Settlement Administrator”** refers to Phoenix Class Action Administration Services, the  
12 third-party administrator mutually selected by the parties, subject to approval by the Court, to perform the  
13 notice, claims administration, and distribution functions further described in this Settlement Agreement.

14         **1.29 “Settlement Administration Costs”** refers to the costs and expenses of the administrator, to  
15 perform its tasks and duties as provided by this Settlement Agreement. These costs will be paid out of the  
16 GSA, in an amount not to exceed Five Thousand Dollars (\$5,000).

17         **1.30 “Settlement Class Member”** refers to Class Members who do not request exclusion from  
18 the Settlement pursuant to Section 13, below.

19         **1.31 “Settlement Payment”** refers to the amount paid to Settlement Class Member.

20         **1.32 “Workweeks”** means the number of weeks a member of the Settlement Class worked for  
21 Defendant as a Veterinary Assistant calculated by the Settlement Administrator, by counting the number  
22 of days spent by a Class Member in the Veterinarian Assistant position, between the start and end dates  
23 in that position, and dividing by seven days, for those members who provided continuous service to  
24 Defendant. For breaks in service greater than one month, the Settlement Administrator shall not count  
25 such break in service in the number of weeks worked.

26         **2. Procedural History and Recitals.**

27         **2.1** On September 19, 2019, Plaintiff Erika Hoyle Zuta filed an action alleging individual  
28 discrimination, harassment, and retaliation claims in violation of the Fair Employment and Housing Act

1 (“FEHA”) Cal. Gov. Code § 12940(a), (h), and (j), as well as Labor Code violation claims against  
2 Defendant for its (a) Failure to pay overtime as required under Labor Code §§ 510, 1194, 1198 and IWC  
3 Wage Order 4-2001; (b) failure to pay minimum wage under Labor Code §§ 1194, 1194.2, 1197, 1197.1,  
4 and IWC Wage Order 4-2001; (c) failure to provide meal and rest periods under Labor Code §§ 226.7,  
5 512, and IWC Wage Order No. 4; (d) failure to reimburse business expenses under Labor Code § 2802;  
6 (e) waiting time penalties under Labor Code § 203; and (f) PAGA Penalties under Labor Code §§ 2699 *et*  
7 *seq.*

8           **2.2** On January 17, 2020, Plaintiff filed a First Amended Complaint, adding Nicole Reyes Castro  
9 as a named plaintiff, adding a claim by Ms. Castro for discrimination based on disability in violation of  
10 Cal. Gov. Code § 12940(h), and adding claims for (a) retaliation for disclosing wage and hour violations  
11 under Labor Code § 1102.5(b) and (b) inaccurate wage statements under Labor Code § 226(a). Ms. Castro  
12 also asserted a cause of action for PAGA penalties under Labor Code §§ 2699 *et seq.*

13           **2.3** On January 22, 2020, the Parties participated in a mediation session with the Honorable  
14 Harold Kahn, a sitting San Francisco Superior Court judge. The parties were unable to reach an agreement  
15 on that date. With the assistance of Judge Kahn, the Parties continued settlement discussions for several  
16 weeks after the mediation until they reached an impasse. Thereafter, they resumed discovery, which  
17 proceeded with delays caused by COVID-19.

18           **2.4** The parties then reengaged in mediation and settlement discussions, with the continued  
19 assistance of Judge Kahn. Over the course of months of continued mediation and settlement negotiations,  
20 Defendant provided three different sworn declarations describing its financial state and agreed to provide  
21 an independent CPA confirmation of its finances. The Parties reached a settlement agreement in principle  
22 on September 14, 2020.

23           **2.5** The Parties jointly represent that this is a fair, reasonable, and adequate settlement and have  
24 arrived at this Settlement through prolonged arm’s-length negotiations, taking into account all relevant  
25 factors, present and potential.

26           **2.6** This Agreement is entered into solely for the purpose of compromising highly disputed  
27 Claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of  
28 liability or wrongdoing. Defendant makes no admission of liability or wrongdoing by virtue of entering

1 into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class  
2 certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any  
3 unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the  
4 Claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action.  
5 This Settlement, and Plaintiff's and Defendant's willingness to settle the Action, will have no bearing on,  
6 and will not be admissible in connection with, any litigation between the parties (other than in connection  
7 with this Settlement). Plaintiffs, likewise, reserve the right to amend the complaint to remove their class  
8 and FLSA claims if settlement approval is not granted.

9       **2.7** Class Counsel represents that he has thoroughly investigated the Claims alleged against  
10 Defendant in the Action. Class Counsel represents that he has conducted his own investigation into the  
11 underlying facts, events, and issues related to the subject matter of this Action. Class Counsel represents  
12 that he has undertaken an extensive analysis of the legal principles applicable to the Claims asserted  
13 against Defendant, and the potential defenses thereto. Both the Class Representatives and Defendant have  
14 had an opportunity to evaluate their respective positions on the merits of the Claims asserted.

15       **2.8** Class Counsel has also engaged in intensive arm's-length negotiations with counsel for  
16 Defendant with a view toward achieving substantial benefits for the Class while avoiding the risk of  
17 Defendant becoming insolvent, as well as the cost, delay and uncertainty of further litigation, trial, and  
18 appellate review.

19       **2.9** As a consequence of said negotiations, and of Class Counsel's investigation, analysis and  
20 discovery, Plaintiffs and Class Counsel determined to enter into this Settlement Agreement on the terms  
21 and conditions hereinafter set forth, believing such Settlement to be fair, reasonable, and adequate and in  
22 the best interests of Plaintiffs and the other members of the Class. Plaintiffs and Class Counsel have  
23 determined to execute this Settlement Agreement and urge approval by the Court of the Settlement after  
24 considering (a) Defendant's financial resources and potential inability to survive litigation through trial  
25 and appeal and satisfaction of a judgment; (b) the factual and legal defenses available to Defendant to the  
26 claims asserted in the Action; (c) the potential difficulties Plaintiffs and Class Members would encounter  
27 in establishing class certification and/or the elements of their claims; (d) the substantial benefits made  
28 available to Class Members pursuant to the Settlement; (e) the fact that the Settlement ensures that Class

1 Members will receive relief in the most expeditious and efficient manner practicable, and thus much  
2 sooner than would be possible were the claims to be litigated successfully through trial and appeal; and  
3 (f) the fact that the Settlement allows persons who would otherwise fall within the definition of the Class,  
4 if they so desire, to opt out of the Action and individually pursue any Released Claims that he or she may  
5 have.

6 **2.10** As set forth above, without admitting any wrongdoing or liability, Defendant is willing to  
7 agree to the terms of the Settlement in order to settle, compromise, and fully resolve the Action and  
8 Released Claims (as defined below).

9 **3. Limitation on Effect of Settlement and No Admission of Liability.**

10 Defendant denies any and all Claims alleged in this Action and denies any and all liability,  
11 including any liability for alleged misclassification of independent contractors and/or employees, alleged  
12 failure to pay overtime compensation and minimum wage, or any alleged wage or bonus payment,  
13 expenses, or wage and hour or similar violation, or failure to provide meal or rest breaks or meal break  
14 premiums. This Settlement Agreement shall not be construed as an admission by Defendant or any of the  
15 Released Parties of any fault, liability or wrongdoing, which Defendant expressly denies. Defendant  
16 asserts that it was in compliance with all Federal and State laws. The Settlement will not constitute, in  
17 this or any other proceeding, an admission of any kind by Defendant, including without limitation, that  
18 certification of a class is appropriate or proper or that Plaintiffs could establish any of the requisite  
19 elements for class treatment of any of the Claims in the Action. In the event that the Settlement is not  
20 finally approved, or the Settlement is otherwise terminated, and any class and representative action,  
21 which were certified for settlement purposes only, shall be vacated, and shall be of no force or effect  
22 whatsoever and shall not be admissible nor construed as an admission or concession of any kind by the  
23 Parties, in whole or part, and Defendant expressly reserves all rights to challenge certification of a class  
24 on all available grounds.

25 **4. Establishment of the GSA and Allocation Among Named Plaintiffs' Non-Class Claims**  
26 **and Class and Representative Claims.**

27 This Settlement will be made on a non-claims-made basis and will be non-reversionary. Under no  
28 circumstances will any of the GSA revert to Defendant. Defendant shall pay a total of no more than the



1 GSA, which will cover payment by Defendant pursuant to this Settlement Agreement, to the Plaintiffs in  
2 settlement of their individual, non-class claims; to PAGA Members and the LWDA; to Settlement Class  
3 Members; Settlement Administration Costs; attorneys' fees and litigation costs to Class Counsel; and  
4 Service Awards to Plaintiffs, except that Defendant shall pay, in addition, all employer-side payroll tax  
5 payments (e.g., FICA, FUTA, etc.) due and payable to federal and state tax authorities as a result of this  
6 Settlement.

7 The GSA will be paid in two phases. First, within fourteen (14) calendar days after the Final  
8 Effective Date of this Settlement Agreement, Defendant will deposit money into an account, through the  
9 Settlement Administrator, in an amount equal to 55% of the GSA (\$137,500), plus Defendant's portion  
10 of payroll taxes in connection with the wages portion of that payment. Nine months later, as set forth  
11 below, Defendant will deposit money into an account, through the Settlement Administrator, in an amount  
12 equal to the remaining 45% of the GSA (\$112,500), plus Defendant's portion of payroll taxes in  
13 connection with the wages portion of that payment.

14 Before this case included class claims, it included only the individual FEHA and Labor Code claims  
15 of the two Named Plaintiffs, and a representative PAGA claim. As part of this Settlement, Plaintiff Hoyle  
16 Zuta will be settling her non-Class claims for discrimination, harassment, and retaliation on the basis of  
17 sex, as well as her claim for wrongful termination in retaliation for her alleged complaints about wage and  
18 hour violations underlying this case. In settlement of those individual, non-class claims, and subject to  
19 Court approval, from the GSA of \$250,000, Ms. Hoyle will be allocated a gross settlement payment of  
20 \$65,000. Plaintiff Reyes Castro will be settling and releasing her non-Class claims for discrimination  
21 based on disability, as well as her claim for wrongful termination in retaliation for her alleged complaints  
22 about wage and hour violations underlying this case. In settlement of those individual, non-Class claims,  
23 and subject to Court approval, Ms. Castro will be allocated a gross settlement payment of \$35,000. The  
24 remaining \$150,000 of the GSA will be allocated to the class and representative claims. Defendants do  
25 not object to the foregoing allocations.

26 The Named Plaintiffs agreed to add class claims to this case, at the cost of reducing the expected  
27 value of their individual Labor Code claims, for the benefit of the Class Members – *i.e.*, to give the Class  
28 Members the option of receiving a significant settlement payment or, if they prefer, opting out. If the

1 Court does not grant preliminary and/or final approval of the proposed Settlement and the allocations  
2 herein, the Parties agree that Plaintiffs shall have the right to delete the Class claims from the operative  
3 complaint, and to move forward in this case with only individual and PAGA claims, as set forth below.

4 **5. Attorneys' Fees and Costs.**

5 Plaintiffs will seek Court approval of an award of one-third of the GSA as attorneys' fees, or  
6 \$83,333.33. With respect to the portion of the GSA allocated to Plaintiffs' Non-Class Individual Claims  
7 (\$100,000), Plaintiffs and Class Counsel have agreed to a one-third contingency fee payment. Likewise,  
8 with respect to the portion of the GSA allocated to the Class and Representative claims (\$150,000),  
9 Plaintiffs will ask the Court to approve an attorneys' fee award of one-third (\$50,000), for a total of  
10 \$83,333.33 in attorneys' fees. Plaintiffs will also seek reimbursement of actual out-of-pocket litigation  
11 costs of up to \$4,000, which will be allocated proportionately to the Named Plaintiffs' Non-Class Claims  
12 and the class claims. Defendant does not oppose Class Counsel's request for attorneys' fees and costs in  
13 these amounts. With respect to the portion of attorneys' fees and costs allocated to the Class and  
14 Representative claims, the terms of this Settlement Agreement will not be abrogated and will continue in  
15 full force even if the Court awards a lower amount of attorneys' fees or costs than requested by Class  
16 Counsel. If the Court approves only a lower percentage attorneys' fee award with respect to the portion  
17 of the GSA allocated to Class/Representative claims, any unapproved amount of attorneys' fees and  
18 litigation costs will be added to the NSA and be distributed to the Settlement Class Members.

19 **6. Enhancement Award.**

20 Class Counsel shall request an Enhancement Award of Five Thousand Dollars (\$5,000) from the  
21 GSA for each Plaintiff. The Enhancement Award is to compensate each Plaintiff for the time each Plaintiff  
22 spent litigating and negotiating the claims on behalf of the class. It also is, in part, recognition of the Class  
23 Representatives' decision to add class claims despite the fact that doing so reduced the anticipated value  
24 of their own individual Labor Code violation claims.

25 **7. PAGA Allocation**

26 Subject to Court approval, \$10,000 shall be attributed to Plaintiff's claims under PAGA. The  
27 Settlement Administrator shall apportion and distribute the \$10,000 payment as follows: (a) \$7,500 shall  
28 be paid to the LWDA as its 75% share of the settlement of civil penalties for PAGA claims; and (b) \$2,500

1 shall be distributed to PAGA Pool Members. The \$2,500 shall be divided equally among the 47 PAGA  
2 Members.

3 **8. Costs of Settlement Administration.**

4 The Parties estimate that the costs and expenses of administration of the settlement will not exceed  
5 \$5,000.

6 **9. Distribution of Settlement Proceeds.**

7 **9.1.1** This settlement is a “non-claims-made” settlement.

8 **9.1.2** Each Settlement Class Member will be paid a portion of the NSA in accordance with the  
9 following formula: First, each Class Member who is also a PAGA member will receive an equal share of  
10 the \$2,500 PAGA Allocation (\$53.19). Then, each Settlement Class Member’s potential share of the  
11 remainder of the NSA will be calculated by dividing the number of Workweeks worked by the Settlement  
12 Class Member during the Class Period as a Veterinarian Assistant by all the Workweeks worked by  
13 Settlement Class Members as Veterinarian Assistants in California during the Class Period, and then  
14 multiplying the resulting figure by the remainder of the NSA.

15 **9.1.3** The amount distributed to Settlement Class Members, plus all required employee-side  
16 withholdings, shall not exceed the NSA.

17 **9.1.4** If a Class Member timely and validly submits a Request for Exclusion, as set forth herein,  
18 his or her share will return to the NSA and will be distributed to the remaining Settlement Class Members.

19 **9.2** Payments to Class Members pursuant to this Settlement Agreement will not be construed as  
20 compensation for purposes of determining eligibility for or benefit calculations of any health and welfare  
21 benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including,  
22 without limitation, all plans, subject to Employee Retirement Income Security Act (“ERISA”). The  
23 Parties agree these payments do not represent any modification of any employee’s previously-credited  
24 hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare  
25 benefit plan, or other program or policy.

26 **9.3** Within fourteen (14) calendar days after the Final Effective Date of this Settlement  
27 Agreement Defendant will deposit money into an account, through the Settlement Administrator, in an  
28

1 amount equal to the first 55% of the GSA (\$137,500), plus Defendant's portion of payroll taxes in  
2 connection with the wages portion of that payment.

3       **9.4** Within twenty (20) calendar days of the Final Effective Date, the Settlement Administrator  
4 will pay the PAGA-Only Members' payments, and PAGA payments of any opt-outs (\$53.19 each),  
5 accompanied by the PAGA Payment Letter. From the remaining portion of the NSA, the Settlement  
6 Administrator will pay the proportionate first installment (approximately 54.8%) of each of: the Class  
7 Members' settlement shares; the Named Plaintiffs' Non-Class Claims payments; attorney's fees, costs,  
8 enhancement payments, and administration costs, as approved by the Court. The checks to Class Members  
9 will bear language stating: "By negotiating this check, you are opting in to *Hoyle Zuta v. Fuzzy Pet Health*,  
10 CGC-19-579373 for the purpose of settling FLSA Claims, as stated in the Settlement Notice."

11       **9.5** Within nine months of the Final Effective Date, Defendant will deposit the remaining second  
12 installment 45% of the GSA (\$112,500) into an account, through the Settlement Administrator, plus  
13 Defendant's portion of payroll taxes in connection with the wages portion of that payment.

14       **9.6** Within seven (7) calendar days of receipt of the second installment, the Settlement  
15 Administrator will pay the proportionate second installment (approximately 45.2%) of each of: the Class  
16 Members' settlement shares; the Named Plaintiffs' Non-Class Claims payments; attorney's fees, costs,  
17 enhancement payments, and administration costs, as approved by the Court.

18       **9.7** Class Member Payment Checks and PAGA-Only Member checks that are not cashed within  
19 one hundred and eighty (180) calendar days from the date of issuance by the Settlement Administrator  
20 will be cancelled. Class Members and PAGA-Only Members whose checks are not timely cashed and  
21 which are cancelled, will be deemed to have irrevocably waived any right in or claim to any payment  
22 under the Settlement, but the settlement and release of Class Members' Released Class Claims (except for  
23 FLSA Claims, which require an affirmative Opt-In) will remain binding upon them, and the settlement  
24 and release of PAGA-Only Members' PAGA-Only Release will remain binding upon Plaintiffs and the  
25 State. The value of the cancelled Class Member Payment checks from the first distribution will be  
26 reallocated among participating Class Members in the second distribution. The value of the cancelled  
27 Class Member Payment checks from the second distribution will be transmitted in conformity with  
28

1 California Civil Procedure Code section 384, as follows: one-hundred percent (100%) to the non-profit  
2 organization Bay Area Legal Aid.

3 **9.8** Neither Plaintiffs, Class Counsel, nor Defendant shall bear any liability for lost or stolen  
4 checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own  
5 acts of omission or commission, the same is true for the Settlement Administrator.

6 **10. Tax Treatment.**

7 **10.1** Tax Treatment of Class Member Payments: one-third of each Settlement Payment will be  
8 allocated as wages and reported on an IRS Form W-2; and two-thirds will be allocated as penalties and  
9 interest and reported, if required, on an IRS Form 1099.

10 **10.2** Employer's Portion of Payroll Taxes: Defendant shall pay the employer's portion of payroll  
11 taxes with respect to the wage portion of the GSA separately and in addition to the GSA.

12 **10.3** Tax Treatment of Service Award: Plaintiffs will receive an IRS Form 1099 for their  
13 individual Service Awards and will be responsible for payment of any taxes owing on said amount.

14 **10.4** Tax Treatment of Named Plaintiffs' Non-Class Claim Payments: Of the net payments to the  
15 named plaintiffs for their non-class claims, one-third will be treated as wage loss, and two-thirds will be  
16 treated as non-wage damages (emotional distress and interest).

17 **10.5** Tax Treatment of Attorneys' Fees and Cost Award: Class Counsel will receive an IRS Form  
18 1099 for any amount awarded to Class Counsel in the form of attorneys' fees or costs and will be  
19 responsible for payment of any taxes owing on said amount.

20 **10.6** No Tax Advice: Neither Plaintiffs nor Defendant, nor the parties' attorneys, shall give or are  
21 giving any tax advice in connection with the settlement or any payments to be made pursuant to this  
22 settlement. Each Settlement Class Member agrees to indemnify, and hold harmless the Released Parties  
23 from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his  
24 or her share of taxes, interest, fees, or penalties owed.

25 **11. Notice Administration.**

26 **11.1.1** Within twenty (20) calendar days of the later of the Preliminary Approval Order or  
27 court approval of settlement notice to the class Defendant shall provide the Settlement Administrator with  
28 the following information ("Class Data List"):

1 (a) the names, employment identification number, last known addresses, last known telephone  
2 numbers, last known email addresses, and Social Security numbers of each Class Member and each  
3 PAGA-Only Member;

4 (b) the start and end dates so the Settlement Administrator can calculate the total number of  
5 Workweeks each Class Member worked as a Veterinary Assistant for Defendant during the Class Period.

6 **11.1.2** Upon its receipt of the Class Data List, the Settlement Administrator shall access the  
7 National Change of Address (“NCOA”) Database, and update the addresses contained therein.

8 **11.1.3** Within thirty-five (35) days of the later of the Preliminary Approval Order or court  
9 approval of settlement notice to the class, the Settlement Administrator shall provide the Class Notice by  
10 bulk first class mail, forwarding requested, and also by email (if an email address is known), to the Class  
11 Members at the addresses identified through the process described above.

12 **11.1.4** As to any mailed Class Notices that are returned as undeliverable, or where the  
13 NCOA Database indicates that the last known address of any Class Member is invalid or otherwise  
14 undeliverable, the Settlement Administrator will perform a skip trace procedure and re-mail all returned,  
15 undelivered mail within five (5) calendar days of the date on which the Settlement Administrator is  
16 informed that a Class Notice is undeliverable or otherwise invalid.

17 **11.1.5** The Parties will not be responsible for nor have any liability in connection with the  
18 provision of Class Member data to the Settlement Administrator, outside of the obligations set forth in the  
19 Settlement Agreement. The Settlement Administrator and all those working through, in concert with, or  
20 on behalf of the Settlement Administrator, shall be obligated to take all reasonable steps to maintain the  
21 confidentiality of Class Member information and to carry out the other duties enumerated in the Settlement  
22 Agreement, including calculating each Class Member’s potential share of the Settlement.

23 **11.1.6** The Settlement Administrator shall provide Defendant’s counsel and Class Counsel  
24 with weekly summary reports, including the total number of Class Notices that were returned as  
25 undeliverable, the total number of objections, and disputes regarding workweeks, and/or Requests for  
26 Exclusion. The Settlement Administrator shall maintain records of its work, which will be available for  
27 inspection upon request by the Parties’ counsel.  
28

1           **11.1.7**       If the Settlement Administrator is unable to find a deliverable address for a Class  
2 Member despite taking the foregoing steps, Defendant agrees that the Settlement Administrator may  
3 provide the last known phone number and/or email address of the Class Member to Class Counsel for the  
4 sole purpose of attempting to contact the Class Member and obtain a current mailing address.

5           **12. Class Notice and Notification of Workweeks.**

6           **12.1**       The Class Notice will be a pre-printed notice, in substantially the form attached hereto as  
7 **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class  
8 Notice, the Class Notice will state the number of Workweeks that the Class Member worked as a  
9 Veterinarian Assistant in California during the Class Period for Defendant, as calculated by the Settlement  
10 Administrator, and the estimated minimum payment the Class Member is expected to receive assuming  
11 full participation of all Settlement Class Members.

12           **13. Request for Exclusion.**

13           **13.1** Any Class Member may elect to opt out of the Settlement by submitting a written Request  
14 for Exclusion from the Settlement to the Settlement Administrator, postmarked no later than the Response  
15 Deadline if sent by mail (or sent by the Response Deadline if sent by email or fax). The Request for  
16 Exclusion must contain the following: the Class Member's full name, signature, address and last four  
17 digits of his or her social security number, and a clear statement that he or she seeks to be excluded from  
18 the Settlement. If sent by email, the only signature required will be the inclusion of the sender's name in  
19 the body of the email. The Settlement Administrator shall immediately send all Requests for Exclusion  
20 to Defendant's counsel and Class Counsel. A Class Member who fails to comply with the opt out  
21 procedure set forth herein on or before the Response Deadline will not be excluded and will instead be  
22 bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.

23           **13.2** Any Class Member who elects to opt out of the Class in the manner and within the time limits  
24 specified above and in the Class Notice: (1) will not have any rights under the Settlement Agreement; (2)  
25 will not be entitled to receive any compensation under the Settlement Agreement; (3) will not have  
26 standing to submit any objection to the Settlement Agreement; and (4) will not be bound by the Settlement  
27 Agreement. However, such Class Member will still receive a PAGA payment, and the state's PAGA  
28 claim on behalf of that individual shall be released.

1           **13.3** Except for persons who elect to opt out of the Settlement in the manner and within the time  
2 limits specified above, in the Preliminary Approval Order, and in the Class Notice, all Class Members  
3 will be deemed to be within the Class for all purposes under this Settlement Agreement, will be bound by  
4 the terms and conditions of this Settlement Agreement, including all orders issued pursuant thereto.

5           **13.4** If the Settlement Agreement is given final approval, it will operate as a full, complete, and  
6 final release of all the Released Class Claims of the Class Representatives and all Settlement Class  
7 Members. However, those Class Members who do not affirmatively opt into the case by negotiating (e.g.,  
8 depositing) their settlement check will not release their Fair Labor Standards Act claims.

9           **14. Objections.**

10           Any Class Member who does not request exclusion from the Settlement may object to the  
11 Settlement Agreement by sending the Settlement Administrator (by mail, e-mail, or facsimile), not later  
12 than the Response Deadline, a written statement objecting to the Settlement. The written objection must  
13 contain: the Class Member's full name, address, last four digits of his or her social security number, the  
14 case name and number of the Action, and a clear statement of the basis for his or her objection. The  
15 Settlement Administrator shall immediately send all objections to counsel for Defendant and Class  
16 Counsel.

17           Counsel for the Parties shall file any responses to any objections at the time the Motion for Final  
18 Approval is filed. Class Members may, prior to the Final Approval Hearing, withdraw their objections or  
19 opt out requests in a writing to the Settlement Administrator, which may then be filed with the Court.

20           All Parties and their counsel will not seek to solicit or otherwise encourage any Class Member to  
21 submit an opt out request or objection, nor encourage any Class Member to appeal from the final judgment.

22           **15. Resolution of Disputes.**

23           If a Class Member timely disputes the number of workweeks listed on his or her Class Notice, the  
24 dispute will be submitted to the Settlement Administrator, who will examine the records and either verify  
25 the calculation or provide a corrected calculation. Disputes must be in writing that is submitted to the  
26 Settlement Administrator, postmarked on or before the Response Deadline if sent by mail (and sent by the  
27 Response Deadline if sent by email or fax). The dispute must contain: Class Member's full name, address,  
28 signature, and last four digits of his or her Social Security number; and any facts supporting the Class



1 Member's dispute, along with any supporting materials confirming that the workweeks attributed to him  
2 or her are incorrect. The Settlement Administrator's determination of disputes will be final and non-  
3 appealable. The Parties will provide the Court with a full accounting of any disputes in connection with  
4 final approval.

5 **16. Non-Materiality of Attorneys' Fees, Costs and Enhancement Awards.**

6 Any denial or reduction in amount by the Court of the application for attorneys' fees and litigation  
7 costs, Enhancement Awards, and/or Settlement Administration Costs will in no way affect the validity the  
8 remainder of this Settlement Agreement, or give rise to a right to abrogate this Settlement Agreement.

9 **17. Released Claims**

10 **17.1 Released Class Claims:** Each member of the Settlement Class releases Released Parties  
11 from any and all Claims that were or could have been pled based on the facts alleged in the operative  
12 Complaint from September 19, 2015 up through the Response Deadline ("**Released Class Claims**"). The  
13 Released Class Claims include, but are not limited to, any and all Claims alleged in the operative complaint  
14 in the Action or that could have been alleged under state or federal law based upon the facts alleged  
15 therein, including known and unknown Claims relating to any alleged misclassification of workers,  
16 independent contractors, and/or employees, failure to pay overtime, failure to pay minimum wage, failure  
17 to pay all wages owed, failure to provide meal periods or meal period violation wages, failure to provide  
18 rest periods or rest period violation wages, failure to pay wages upon ending employment, failure to  
19 provide timely and compliant itemized or accurate wage statements, failure to maintain accurate records,  
20 failure to reimburse or indemnify for necessary business expenses or expenditures, waiting time penalties,  
21 engaging in unfair and unlawful business practices under California Business and Professions Code  
22 section 17200, failure to pay overtime and minimum wage in violation of the Fair Labor Standards Act,  
23 29 U.S.C., §207, and statutory and/or civil penalty Claims, whether based on the Fair Labor Standards  
24 Act (including, but not limited to, FLSA violations pursuant to 29 U.S.C. § 207), California Wage Orders  
25 (including, but not limited to, IWC Wage Order 4), the California Labor Code, including, but not limited  
26 to, Sections 201, 202, 203, 204, 218.5, 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 256, 510, 512, 558,  
27 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2698 et seq. ("PAGA"), the  
28 California Business & Professions Code §§ 17200 et seq., other penalties, related tort, contract, liquidated,

1 and punitive damages Claims, Claims for interest, attorneys’ fees, litigation and other costs, expenses,  
2 restitution, and equitable and declaratory relief. For the avoidance of doubt, the Released Class Claims  
3 do not include wrongful termination, harassment, or discrimination claims.

4       **17.2 PAGA Release:** The settlement will release the Claims for PAGA penalties described in the  
5 Named Plaintiffs’ PAGA Notices and operative Complaint that may be sought on behalf of the PAGA  
6 Members in any representative PAGA Action brought on behalf of the state or the PAGA Members from  
7 July 15, 2018 up through the Response Deadline (“**Released PAGA Claims**”). These claims are for  
8 PAGA penalties based on the facts stated in the Complaint and PAGA notices and premised on violations  
9 of Labor Code §§ 200-204, 210, 226(a), 226.3, 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1194,  
10 1194.2, 1197, 1197.1, 1198, and 2802.

11       **17.3 Named Plaintiffs’ General Release:** In addition to the Released Class Claims and Released  
12 PAGA Claims, the Named Plaintiffs shall be bound by a complete and general release of any and all  
13 Claims under any and all applicable federal and state laws and/or regulations (including, but not limited  
14 to, Named Plaintiffs’ Non-Class Claims in the operative Complaint), as to Released Parties, and shall also  
15 be bound by a California Civil Code section 1542 release and waiver of all Claims known and unknown,  
16 without exception, except as may be prohibited by law, such as Claims for workers’ compensation  
17 benefits. California Civil Code section 1542 reads as follows:

18           “A general release does not extend to claims that the creditor or releasing party does not know or  
19 suspect to exist in his or her favor at the time of executing the release and that, if known by him  
20 or her, would have materially affected his or her settlement with the debtor or released party.”

21       **18. Application for Preliminary Approval.**

22       **18.1** After the Parties’ execution of this Settlement Agreement, Plaintiffs shall file a motion for  
23 preliminary approval of the Settlement (sharing a draft with defense counsel five days in advance of filing,  
24 and considering defense counsel’s comments in good faith), requesting a Preliminary Approval Order that  
25 contains the following provisions:

26           **18.1.1**       preliminarily approving the Settlement Agreement and its terms;

27           **18.1.2**       preliminarily approving and certifying the Class for settlement purposes only;

1           **18.1.3**        approving the form of the Class Notice, and finding that the proposed method of  
2 disseminating the Class Notice meets the requirements of due process and is the best notice practicable  
3 under the circumstances;

4           **18.1.4**        establishing the procedures and the deadline by which Settlement Class Members  
5 may assert objections to the Settlement, seek exclusion from the Settlement, and/or dispute their  
6 Settlement Shares; and

7           **18.1.5**        setting a date for the Final Approval Hearing.

8           **18.2** Counsel for Defendant will be given an opportunity to review and comment on the motion  
9 for preliminary approval of the Settlement five days prior to its being filed with the Court, and such  
10 comments will be implemented in good faith to the extent reasonable. Class Counsel shall send a draft of  
11 the motion for preliminary approval to Counsel for Defendant within a week of the Settlement Agreement  
12 being finalized, and then shall make best efforts to file the motion 5 business days after that.

13           **19. Final Approval Order and Final Judgment.**

14           **19.1** If the Settlement is preliminarily approved by the Court, the Parties shall thereafter request  
15 that the Court enter an order granting final approval of the Settlement and judgment based thereon (“Final  
16 Approval Order and Judgment”), which includes the following provisions:

17           **19.1.1**        confirming certification of the Class for settlement purposes only;

18           **19.1.2**        finding that the dissemination of the Class Notice in the form and manner ordered by  
19 the Court was accomplished as directed, met the requirements of due process; and

20           **19.1.3**        finally approving the Settlement Agreement and the Settlement as fair, reasonable  
21 and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

22           **19.1.4**        approving the settlement of PAGA and FLSA claims;

23           **19.1.5**        directing the Parties to implement the terms of the Settlement Agreement;

24           **19.1.6**        releasing and discharging the Released Parties from any and all liability with respect  
25 to the Released Claims as hereinabove provided;

26           **19.1.7**        resolving and settling all the Released Claims by the Class Representatives and all  
27 Settlement Class Members and PAGA-Only Members, as herein above provided;

1           **19.1.8**       awarding reasonable attorneys’ fees and litigation costs to Class Counsel as  
2 determined by the Court;

3           **19.1.9**       awarding Enhancement Awards to the Class Representatives as determined by the  
4 Court;

5           **19.1.10**     awarding Settlement Administration Costs to the Settlement Administrator as  
6 determined by the Court;

7           **19.1.11**     approving the allocation of PAGA Penalties to the LWDA;

8           **19.1.12**     entering final judgment on the Complaint; and

9           **19.1.13**     preserving continuing and exclusive jurisdiction over all matters related to the  
10 administration and consummation of the terms of this Settlement and enforcement of the Judgment.

11           **19.2** Counsel for Defendant will be given an opportunity to review and comment on the motion  
12 for final approval of the Settlement five days prior to its being filed with the Court, and such comments  
13 will be implemented in good faith to the extent reasonable.

14           **20. Effect of Settlement Not Being Final.**

15           In the event that the Settlement does not become final, then the Settlement Agreement will become  
16 null and void, and all negotiations, proceedings, and statements relating thereto will be without prejudice  
17 as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors  
18 will be deemed to have reverted to their respective positions in the Action as of the date and time  
19 immediately prior to the execution of this Settlement Agreement. If the Court does not approve either  
20 preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects  
21 a material change to the Parties’ settlement, the Parties shall work together in good faith to address any  
22 concerns raised by the Court and propose a revised Settlement for the Court’s approval within 30 days. If  
23 the settlement is not approved as resubmitted or if the parties are not able to reach another agreement, then  
24 either party may void this agreement.

25           **21. Amendment to the Complaint.**

26           The Parties agree to jointly request the Court to permit the filing of the Second Amended  
27 Complaint attached hereto as Exhibit F.

1 The Parties will jointly determine whether to seek such permission prior to hearing on the preliminary  
2 approval motion, or at the time of hearing of the preliminary approval motion.

3 **22. Withdrawal from Settlement Based on Failure to Provide Independent CPA**  
4 **Declaration.**

5 If Defendant fails to provide Class Counsel with a declaration from a disinterested CPA or similar  
6 professional that verifies that Defendant's most recent confidential declaration is true and represents an  
7 accurate depiction of Defendant's material state, Plaintiffs have the option to void the settlement.  
8 Defendant shall provide such declaration no later than four weeks from the execution of the MOU – *i.e.*,  
9 by October 12, 2020.

10 **23. Withdrawal from Settlement Based on Requests for Exclusion.**

11 Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement in the  
12 event that ten percent (10%) or more of the Class Members opt out (*i.e.*, two or more class members).  
13 Defendant must provide written notice to Class Counsel of its withdrawal within fifteen (15) calendar  
14 days of the Response Deadline. All signatories and their counsel agree not to encourage opt-outs. Class  
15 Counsel and Defendant specifically agree not to solicit opt-outs, directly or indirectly, through any means.  
16 If Defendant exercises this right, it shall be solely responsible for the costs incurred for settlement  
17 administration up to the date of nullification.

18 **24. Escalator Clause.**

19 If Defendant discovers and seeks to include additional Settlement Class members beyond those set  
20 forth on Exhibit C, the portion of the Gross Settlement Amount allocated to Class Claims (\$150,000) will  
21 be increased proportionately for each additional Settlement Class Member. For example, if the number  
22 of Settlement Class members increases by one (from twenty to twenty-one, or 5%), the portion of the  
23 Gross Settlement Amount allocated to Class claims shall be increased by five percent (5%) (*i.e.*, \$7,500),  
24 and the calculations set forth throughout this document shall be adjusted accordingly.

25 **25. No Admissions. Defendant's Denials of Wrongdoing and No Admission of Liability.**

26 The Parties understand and agree that this Settlement Agreement is the result of a good faith  
27 compromise settlement of disputed Claims, and no part of this Settlement Agreement, or any conduct or  
28 written or oral statements made in connection with this Settlement and this Settlement Agreement,

1 including the Memorandum of Understanding, whether or not the Settlement is finally approved and/or  
2 consummated, or the negotiations leading to the Settlement Agreement, or any document filed in support  
3 thereof, should be construed as an admission or concession of any kind by Defendant or any of the  
4 Released Parties.

5 Nothing in this Settlement Agreement or all related documents shall be construed or deemed to be  
6 an admission by Defendant or any of the Released Parties of any fault, liability, culpability, negligence,  
7 wrongdoing, toward any other Party, or any other person, or the truth of any factual allegations or the  
8 merits or Claims in the Action, including but not limited to claims for unpaid wages, expenses, or any  
9 compensation, violations of meal or rest breaks, or any associated penalties. Defendant specifically  
10 disclaims any liability, culpability, negligence, or wrongdoing toward the Settlement Class members, or  
11 any other person. Defendant has entered into this Settlement Agreement with the intention to avoid further  
12 disputes and litigation with the attendant inconvenience, expense, risk and contingencies. Nothing herein  
13 shall constitute an admission by Defendant that the Action was properly brought as a class or collective  
14 or representative matter, other than for settlement purposes. To the contrary, Defendant has denied and  
15 continues to deny each and every single material factual allegation and all Claims. The settlement of this  
16 Action and the negotiation and execution of this Settlement Agreement, and all acts performed or  
17 documents executed are not and shall not be deemed to be, and may not be used as an admission or  
18 evidence of any wrongdoing or liability on the part of Defendant and shall not be or may not be used as  
19 any admission or evidence of any fault or omission on the part of Defendant or any of the Released Parties  
20 in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

21 **26. Avoidance of Undue Publicity.**

22 Ms. Reyes Castro and Class Counsel agree that they will not publicize this case and/or the fact,  
23 amount of terms of the settlement, or the names of Defendant or its officers associated with the claims in  
24 the operative complaint/this settlement, through any mass media, including any social media, websites, or  
25 the press (press releases, contact with a member of the press, or press conferences), except as provided  
26 for by the Settlement Agreement for purposes of effectuating notice of the settlement to class members.  
27 Ms. Hoyle Zuta makes the same representation and agreement but with respect to the amount of the  
28 settlement only (both her individual allocation and the overall amount). If Ms. Reyes Castro and her

1 counsel are contacted by media about the settlement, they will respond only that the case has been  
2 resolved. Nothing in this paragraph shall prevent Class Counsel from communicating with the settlement  
3 class members, the LWDA, the DLSE, or the court in which the Action is pending, as may be required to  
4 carry out the terms of this settlement and/or fulfill their ethical responsibilities under the Settlement and  
5 to their respective clients. Class Counsel may also list this case in future declarations identifying cases in  
6 which Class Counsel was appointed Class Counsel (if the Court so appoints him).

7 **27. Construction.**

8 This Settlement Agreement was entered into after substantial good faith, arm's-length negotiations  
9 between the Parties. This Settlement Agreement has been entered into without any coercion and under no  
10 duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement  
11 Agreement so that it will not be deemed to have been prepared or drafted by one party or another.

12 **28. Due Authority of Attorneys.**

13 Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties hereto  
14 warrants and represents that he or she has been duly authorized and empowered to execute this Settlement  
15 Agreement on behalf of each such respective Party and to bind them to the terms hereof. The parties also  
16 warrant that this Agreement is entered into knowingly and willingly and there is no fraud, duress, or undue  
17 influence.

18 **29. Entire Agreement.**

19 This Settlement Agreement (including Exhibits hereto) sets forth the entire agreement of the  
20 Parties with respect to its subject matter and supersedes any and all other prior agreements and all  
21 negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding  
22 the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties,  
23 promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any  
24 of the Parties that are not embodied or incorporated by reference herein. Except as otherwise set forth in  
25 this Agreement, any notice, order, judgment, or other exhibit that requires approval of the Court must be  
26 approved without material alteration that substantially changes or increases the cost of compliance with  
27 this Settlement Agreement in order for this Settlement Agreement to become effective. Before invoking  
28

1 this provision to challenge the effectiveness of this Settlement Agreement, the invoking party shall consult  
2 with, and if necessary mediate in good faith with, the other party in an effort to resolve any such challenge.

3 **30. Severability.**

4 Should any court declare or determine any provision of this Settlement Agreement to be illegal or  
5 invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal  
6 or invalid part, term, or provision shall be deemed not to be a part of this Settlement Agreement.

7 **31. Modification or Amendment.**

8 This Settlement Agreement may not be modified or amended except in a writing signed by all  
9 signatories hereto or their attorneys or their successors in interest.

10 **32. Successors.**

11 This Settlement Agreement will be binding upon and inure to the benefit of the Parties hereto and  
12 their respective heirs, executors, administrators, successors and assigns, and upon any corporation,  
13 partnership or other entity into or with which any Party hereto may merge, combine, or consolidate.

14 **33. Counterparts.**

15 This Settlement Agreement may be executed in counterparts, each of which will be deemed an  
16 original, and all of which together will constitute one and the same instrument.

17 **34. Waivers.**

18 The waiver by any Party of any breach of this Settlement Agreement will not be deemed or  
19 construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this  
20 Settlement Agreement.

21 **35. Governing Law.**

22 This Settlement Agreement will be governed by and construed, enforced, and administered in  
23 accordance with the internal laws of the State of California.

24 **36. Enforcement of Agreement**

25 This Agreement is enforceable under California Code of Civil Procedure Section 664.6 (and  
26 admissible for enforcement purposes). The Parties expressly agree that they will first attempt to resolve  
27 any dispute under this Agreement through non-binding mediation in good faith with Judge Harold Kahn,  
28 pending his availability, or another mutually agreeable mediator if he is not available. If the Parties cannot



1 resolve the dispute through mediation, the Parties agree that the San Francisco County Superior Court  
2 shall retain jurisdiction to enforce this Agreement.

3 **37. Headings.**

4 The headings contained in this Settlement Agreement are for convenience and reference purposes  
5 only, and will not be given weight in its construction.

6  
7 **IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on**  
8 **behalf of the Parties, as follows:**

9  
10 **Plaintiffs and Proposed Class Representatives**

11 Dated: Jan 22, 2021, 2021 By: *Erika Hoyle Zuta*  
12 Erika Hoyle Zuta (Jan 22, 2021 14:45 PST)  
Erika Hoyle Zuta

13 Dated: Jan 22, 2021, 2021 By: *Nicole Reyes Castro*  
14 Nicole Reyes Castro (Jan 22, 2021 14:26 PST)  
Nicole Reyes Castro

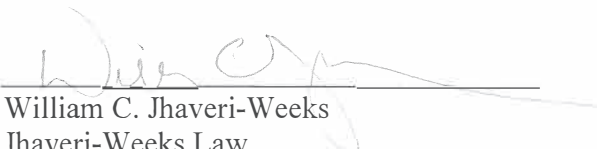
15  
16 **Fuzzy Pet Health, Inc.**

17 Dated: 1/22/2021, 2021 By:   
18 215B9D3918C0427...  
Name: **Zubin Bhattay**  
Title: **CO-FOUNDER & CEO**

19 On behalf of Defendant

20 **APPROVED AS TO FORM:**

21 **Counsel for Plaintiffs and**  
22 **Proposed Class Counsel**

23 Dated: 1/22/21, 2021 By:   
24 William C. Jhaveri-Weeks  
25 Jhaveri-Weeks Law

26 **Counsel for Defendant**

27 Dated: January 22, 2021 By: *David M. Marchiano*  
28 David Marchiano

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

# NOTICE OF PROPOSED CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL

*Hoyle Zuta et al. v. Fuzzy Pet Health, Inc.*

(California Superior Court, County of San Francisco, Case No. CGC-19-579373)

**As a current or former Veterinary Assistant for Fuzzy Pet Health, Inc. in California who has not signed a release, you are entitled to receive money from a class action settlement.**

**Please read this Notice carefully. This Notice relates to a proposed settlement of class, collective, and representative action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund. Your expected payment amount is on Page 3.**

You have received this Notice because the records of Fuzzy Pet Health, Inc. (“Defendant” or “FPH”) show you are a “Class Member,” and therefore entitled to a payment from this class action settlement. Class Members are all Veterinary Assistants (“Vet Assistants” or “VAs”) who worked for FPH in California at any time from September 29, 2015 through [DATE of order granting preliminary approval], and who have not signed a release of claims. **If you cash the settlement check, you will also “opt in” to the case for purposes of asserting and releasing your claims under the federal Fair Labor Standards Act (“FLSA”).**

- The settlement resolves a class, collective, and representative action, *Hoyle Zuta et al. v. Fuzzy Pet Health, Inc.* (the “Lawsuit”), which alleges Defendant willfully misclassified its workers as independent contractors and/or exempt employees; failed to pay Class Members overtime and minimum wages, failed to provide meal and rest periods, failed to reimburse for necessary business expenses, failed to pay all wages due at time of discharge, failed to provide accurate and timely wage statements, failed to maintain employment records, failed to pay waiting time penalties and meal and rest period premium pay, engaged in unlawful and/or unfair business practices. The case also involves non-class claims, including discrimination and retaliation claims brought by the two named plaintiffs, and representative claims under the Private Attorneys General Act (“PAGA”). The class and collective action claims in this lawsuit are brought under Federal and California State laws.
- On [REDACTED], the San Francisco County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. FPH denies the claims in the Lawsuit and contends that it fully complied with all applicable laws.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment (except your share of PAGA Penalties), and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Class Action Administration Services, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**

	Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in Department 304 of San Francisco County Superior Court, located at 400 McAllister St, San Francisco, CA 94102.
--	--

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [REDACTED].m. on [REDACTED], in Department 304 of the San Francisco County Superior Court, located at 400 McAllister St, San Francisco, CA 94102. You are not required to attend the Hearing, but you are welcome to do so.

**Why Am I Receiving This Notice?**

Defendant’s records show that you currently work, or previously worked, for Defendant in California as a Vet Assistant at some point between September 29, 2015 and [DATE OF PRELIMINARY APPROVAL] (“Class Period”), and that you have not signed a release of claims (e.g., as part of a severance package). You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

**What Is This Case About?**

Erika Hoyle Zuta and Nicole Reyes Castro worked as Vet Assistants for FPH in California. They are the “Plaintiffs” in this case and are suing on behalf of themselves and Class Members for FPH’s alleged willful misclassification of workers as independent contractors and/or exempt employees, failure to pay Class Members overtime and minimum wages, provide meal and rest periods, reimburse for necessary business expenses, pay all wages due at time of discharge, provide accurate and timely wage statements, maintain employment records, pay waiting time penalties and meal and rest period premium pay, and for alleged unlawful and/or unfair business practices. The case also involves non-class claims brought by Ms. Hoyle Zuta and Ms. Reyes Castro, including discrimination and retaliation claims. It also includes representative claims under the Private Attorneys General Act (“PAGA”) for alleged Labor Code violations. The case also includes claims under the Fair Labor Standards Act (“FLSA”) for unpaid overtime and minimum wage violations.

FPH denies all of the allegations made by Plaintiffs and denies that it violated any law. The Court has made no ruling on the merits of Plaintiffs’ claims. The Court has only preliminarily approved this Class, Collective, and Representative Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**

## Summary of the Settlement Terms

Plaintiffs and FPH have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$250,000. The Gross Settlement includes a gross allocation of \$150,000 to the Settlement and PAGA Class, and a gross allocation of \$100,000 to the individual plaintiffs for their non-class claims. The cost of attorney's fees and litigation costs will be shared proportionately among the individual and class claims. From the portion of the Gross Settlement Amount of \$150,000 allocated to the class and PAGA claims, the following will be deducted: (1) Administration Costs up to \$5,000; (2) a service payment of up to \$5,000 to each Plaintiff for pursuing this case on behalf of the Class; (3) up to \$50,000 in attorneys' fees and up to \$2,400 to reimburse litigation costs advanced by Class Counsel; (4) a PAGA payment to the State of California for Private Attorneys General Act ("PAGA") penalties in the amount of \$7,500; and (6) a payment of \$2,500 that will be divided equally among the 47 PAGA class members (which includes Class Members who worked for FPH any time between July 15, 2018 and [Preliminary Approval Date] (the "PAGA Period"). After deducting these sums, a total of approximately \$72,600 will be available for distribution among approximately 20 Class Members ("Net Settlement Amount"). In addition to the Gross Settlement, Defendant will bear all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

## Distribution to Class Members

Class Members who do not opt out will receive a pro-rata payment based on the number of workweeks they worked as Vet Assistants during the Class Period. They will also receive their share of the PAGA allocation if they worked during the PAGA Period (even if they opt out of the class settlement). All Settlement Award determinations will be based on Defendant's records for Class Members. Defendant's records indicate that you worked approximately <<Workweeks>> Workweeks as a Vet Assistant during the Class Period. **Based on these records, your estimated payment as a Class Member (including your share of PAGA penalties) would be \$<<Estimated Award>>.** If you believe this information is incorrect, and you wish to dispute it, you must send a dispute to the Settlement Administrator by either mail [INSERT ADDRESS], email ([info@phoenixclassaction.com](mailto:info@phoenixclassaction.com)) or facsimile (949-209-2503) no later than **RESPONSE DEADLINE**. To do so, send a letter, email, or fax to the Settlement Administrator explaining the basis for your dispute and attach documentation you have that you contend establishes the dates you contend to have worked for Defendant as a Veterinary Assistant. You must include your full name, address, last four digits of your social security, and signature (including your name in your email will count as a signature). Unless you present convincing evidence proving you worked more Workweeks than shown by Defendant's records, your Settlement Award will be determined based on Defendant's records. Any disputes must be postmarked by [INSERT DATE], and should be mailed, emailed, or faxed to the contact information stated earlier in this paragraph. The Settlement Administrator will notify you of the decision on the dispute, and the Settlement Administrator's decision is final.

If the Court grants final approval of the settlement, **payment will be mailed to you in two installments:** the first installment will be mailed approximately 20 days after the Court grants final approval (if objections or appeals are filed, that mailing may be delayed, as explained in the Settlement Agreement). **The second installment will be mailed 9 months after the first.**

**It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award. See below regarding updating your address.**

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**

## Tax Reporting

One-third of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; one-third will be allocated as penalties and reported on IRS Form 1099; and one-third will be allocated as interest and reported on IRS Form 1099 if required. Please consult a tax advisor regarding the tax consequences of your Settlement Award. This notice is not intended to provide legal or tax advice on your Settlement Share.

## Your Options Under the Settlement

### **Option 1 – *Do Nothing and Receive Your Payment***

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. By cashing the check, you will also “opt in” to the case and release your claims under the FLSA. **In other words, if you are a Class Member, you do not need to take any action to receive the settlement payment set forth above.**

Class Members who do not submit a valid and timely opt out (pursuant to Option 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had. However, you will only release your FLSA claims if you “opt in” by cashing your check.

“Released Claims” means any and all Claims alleged in the operative complaint in the Action or that could have been alleged under state or federal law based upon the facts alleged therein, including known and unknown Claims relating to any alleged misclassification of workers, independent contractors, and/or employees, failure to pay overtime, failure to pay minimum wage, failure to pay all wages owed, failure to provide meal periods or meal period violation wages, failure to provide rest periods or rest period violation wages, failure to pay wages upon ending employment, failure to provide timely and compliant itemized or accurate wage statements, failure to maintain accurate records, failure to reimburse or indemnify for necessary business expenses or expenditures, waiting time penalties, engaging in unfair and unlawful business practices under California Business and Professions Code section 17200, failure to pay overtime and minimum wage in violation of the Fair Labor Standards Act, 29 U.S.C., §207, and statutory and/or civil penalty Claims, whether based on the Fair Labor Standards Act (including, but not limited to, FLSA violations pursuant to 29 U.S.C. § 207), California Wage Orders (including, but not limited to, IWC Wage Order 4), the California Labor Code, including, but not limited to, Sections 201, 202, 203, 204, 218.5, 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 256, 510, 512, 558, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and 2698 et seq. (“PAGA”), the California Business & Professions Code §§ 17200 et seq., other penalties, related tort, contract, liquidated, and punitive damages Claims, Claims for interest, attorneys’ fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The release covers the period from September 19, 2015 through [RESPONSE DEADLINE].

“Class Period” means the period from September 19, 2015 through [date of Preliminary Approval].

“Released Parties” means Fuzzy Pet Health, Inc., Petchi, Inc., and each of its respective affiliates, parent companies, subsidiaries, shareholders, officers (including, but not limited to, Zubin Bhattay and Eric Palm), officials, partners, directors, members, owners, servants, employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives, accountants, executors, personal representatives, successors and assigns, past, present, and future, and all persons acting under, by, through, or in concert with any of them.

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**

## **Option 2 – Opt Out of the Settlement**

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail, e-mail or facsimile, to the address, email address, or facsimile number below.

**Phoenix Class Action Administration, Inc.**

**[insert address]**

Email: [info@phoenixclassaction.com](mailto:info@phoenixclassaction.com)

Facsimile: (949) 209-2503

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than **[RESPONSE DEADLINE]**. If you exclude yourself from the Settlement then you will get no payment except your share of PAGA penalties, and you will retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. Even if you opt out of the settlement, the claims brought for PAGA penalties on your behalf will be released if the settlement is approved by the Court.

## **Option 3 – File an Objection to the Settlement**

If you wish to object to the Settlement you may file an objection in writing stating why you object to the Settlement. Your objection must provide your full name, address, and telephone number, the last four digits of your Social Security Number, the case number and name, and your reasons why you think the Court should not approve the Settlement. You may object to any aspect of the settlement, including the overall amount, the PAGA allocation, the attorneys' fee award, and the plaintiffs' service awards. Your objection must be mailed, emailed, or faxed to the Administrator no later than **[RESPONSE DEADLINE]**. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

### **Final Fairness Hearing**

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for [REDACTED] at [REDACTED].m. in Department 304 of San Francisco County Superior Court, located at 400 McAllister St, San Francisco, CA 94102, and discuss your objections with the Court and the Parties. You may also retain an attorney to represent you at the Hearing at your own expense. The purpose of the Final Fairness Hearing is for the Court to consider any objections to the settlement and to make a final decision about whether to approve the settlement, the attorneys' fee award, the requested reimbursement of litigation costs, and the plaintiffs' service awards.

### **No Retaliation**

**Can FPH Retaliate Against Me for Participating in this Lawsuit?** No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with FPH or future work or employment with FPH. It is unlawful for FPH to take any adverse action against you as a result of your participation in this Lawsuit. In fact, FPH encourages you to participate in this Settlement.

### **Change of Address**

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**



If your address changes, you may inform the Claims Administrator of your new address even after the deadline for objecting/opting out. Because the settlement payment will be made **in two payments nine months apart, it is important that you inform the Claims Administrator of a change of address.** You can contact the Claims Administrator by phone ([phone number]), email ([info@phoenixclassaction.com](mailto:info@phoenixclassaction.com)) or facsimile (949-209-2503) to update your address.

### **Additional Information**

This Notice of Class Action Settlement is only a summary of this case and the Settlement. A copy of the Settlement Agreement, the Court's Order granting preliminary approval of the Settlement Agreement, and other key documents related to the settlement can be found at [case-specific website URL]. If the Court grants Final Approval of the Settlement and enters notice of judgment, those documents will also be posted on the website. For a more detailed statement of the matters involved in this case and the Settlement, you may call the Settlement Administrator at [PHONE NUMBER], or contact Class Counsel at:

JHAVERI-WEEKS LAW  
William Jhaveri-Weeks (SBN 289984)  
[wjw@jhaveriweeks.com](mailto:wjw@jhaveriweeks.com)  
351 California Street, Suite 700  
San Francisco, CA 94104  
Tel. (415) 723-2803  
Fax (415) 367-1439

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of San Francisco County Superior Court, located at 400 McAllister St., San Francisco, CA 94102, during regular business hours of each court day, or may be viewed through the Court's website at <https://sfsuperiorcourt.org/online-services>. To access these documents online, visit the preceding link, choose "case query," and enter the following case number: CGC-19-579373. You will then see all documents that have been filed in the case in chronological order. The Court's Order granting preliminary approval of the settlement agreement is available (filing date: [DATE]). The operative complaint, which includes the PAGA Notices, is also available (filing date: [DATE]). The Settlement Agreement was filed on [DATE] as Exhibit A to the Supplemental Declaration of William C. Jhaveri-Weeks in Support of Motion for Preliminary Approval of Class, Collective, and Representative Action Settlement.

All inquiries by Class Members regarding this Notice of Class, Collective, and Representative Action Settlement and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,  
FUZZY PET HEALTH, OR FUZZY PET HEALTH'S ATTORNEYS WITH INQUIRIES.**

**Questions? Contact the Settlement Claims Administrator toll free at 1-800-XXX-XXXX**

# EXHIBIT B

[Settlement Administrator Letterhead]

[Name]

[Address]

**Re: Civil Penalty Payment to You Pursuant to California Labor Code Private Attorneys General Act (PAGA) in *Hoyle Zuta et al. v. Fuzzy Pet Health, Inc.*, San Francisco Superior Court Case Number CGC-19-579373**

Dear [name]:

Enclosed, please find a check in the amount of \$53.19, which represents your share of the employee portion of civil penalties paid by Fuzzy Pet Health, Inc. (“FPH”) as part of the settlement of alleged Labor Code violations in the lawsuit *Hoyle Zuta et al. v. Fuzzy Pet Health, Inc.*, Case Number CGC-19-579373, filed in San Francisco Superior Court on September 19, 2019. The Court approved the settlement on [Final Approval Date].

The case included individual claims by two named plaintiffs, a class action claim on behalf of twenty Veterinary Assistants who did not sign releases when departing FPH, and a Private Attorneys General (“PAGA”) claim on behalf of 47 FPH employees/contractors, including you.

The full amount of the settlement was \$250,000, of which \$150,000 was allocated to the class and PAGA claims. From the latter amount, \$50,000 was deducted for attorneys’ fees, up to \$2,400 was deducted for costs, up to \$5,000 was deducted for settlement administration costs, and up to \$5,000 was deducted for a class representative service award to the two plaintiffs (up to \$10,000 total). From the remaining amount, \$10,000 was allocated to the settlement of claims for civil penalties under PAGA. Under PAGA, Cal. Labor Code § 2699 et seq., 75% of the PAGA allocation is being paid to the State of California, and 25% is being distributed in equal amounts to the 47 aggrieved employees, including you.

As part of the settlement, the claims for PAGA penalties made on behalf of the State of California, including claims for penalties resulting from alleged violations of the Labor Code experienced by you, were released, meaning that these same penalty claims cannot be brought again for the period covered by the PAGA settlement (July 15, 2018 to [Response deadline]). In broad terms, the PAGA claims that were released consisted of claims for allegedly misclassifying workers as independent contractors or exempt employees, failing to pay overtime and/or minimum wage, failing to provide meal and rest breaks, failing to pay for all hours worked, failing to reimburse necessary business expenses, failing to provide accurate wage statements, and failing to timely pay all wages owed upon discharge from employment. The relevant statutory sections for which PAGA Penalty claims were released are California Labor Code §§ 200-204, 210, 226(a), 226.3, 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802. The PAGA portion of the settlement (*i.e.*, the portion that pertains to you) did *not* release claims for the underlying Labor Code violations or any other

claims you might have against FPH; it only released the aforementioned claims for PAGA penalties.

For more information, you can view all documents filed in this case by visiting the Court's website at <https://sfsuperiorcourt.org/online-services>, choosing "case query," and entering the case number CGC-19-579373. The Settlement Agreement was filed on [DATE] as Exhibit A to the Supplemental Declaration of William C. Jhaveri-Weeks in Support of Motion for Preliminary Approval of Class, Collective, and Representative Action Settlement." The operative Complaint, which contains the PAGA claims that have been released was filed on [DATE], and the two PAGA Notices, which also contain PAGA the claims that have been released, are Exhibits A and B to the operative complaint.

You are free to deposit the enclosed check without taking any other action in connection with this case.

Sincerely,

[Settlement Administrator]

# EXHIBIT C

## Class Members / FLSA Collective:

1. Amanda Ramos
2. Cheyenne Padilla
3. Cody Matthes
4. Crystal Mateo
5. Elise Martin
6. Erika Hoyle Zuta
7. Ianna Willson
8. Lisa Shaw
9. Luana Deng
10. Mariko Kawaguchi
11. Melissa Sembrano
12. Michele Zelaya
13. Nicole Castro
14. Raquel Ramos
15. Raymond Whitham
16. Victoria Tobin
17. Hunter Lux
18. Yvette Goslawski
19. Asia Lewis
20. Arica Nader

# EXHIBIT D

## PAGA Pool Members:

1. Amy Enriquez (Kemp)
2. Miriam Moreno
3. Sarah Jenkins
4. Amanda Ramos
5. Ammy Joseph
6. Ana Wemiz
7. Anna Cardenas
8. Annalee Belcher
9. Brandi Garrity
10. Cheyenne Padilla
11. Cody Matthes
12. Crystal Mateo
13. Elise Martin
14. Erika Hoyle Zuta
15. Ianna Willson
16. Ivana Satre
17. Jazminn Fisher
18. Julia Camargo Amaral
19. Laura Lamb
20. Lisa Shaw
21. Luana Deng
22. Lucretia Samuel
23. Mariko Kawaguchi
24. Megan Trujillo
25. Melissa Sembrano
26. Michele Zelaya
27. Nicole Castro
28. Olga Sanchez
29. Raquel Ramos
30. Raymond Whitham
31. Rebecca Sid
32. Renee Jou
33. Victoria Tobin
34. Dr. Gina Henriksen
35. Carly Smith
36. Dr. Jessica Wong
37. Dr. Emily Wilson

38. Dr. Debra Chen
39. Dr Amy Lightstone
40. Dr Kirsten Jensen
41. Dr Sarah Daniel
42. Dr MarkBen Paulino
43. Anna DeVincenzi
44. Hunter Lux
45. Alan Go
46. Yvette Goslawski
47. Arica Nader

# EXHIBIT E

PAGA-Only Members (*i.e.*, individuals in the PAGA Pool, but not in the Class)

1. Amy Enriquez (Kemp)
2. Miriam Moreno
3. Sarah Jenkins
4. Ammy Joseph
5. Ana Wemiz
6. Anna Cardenas
7. Annalee Belcher
8. Brandi Garrity
9. Ivana Satre
10. Jazminn Fisher
11. Julia Camargo Amaral
12. Laura Lamb
13. Lucretia Samuel
14. Megan Trujillo
15. Olga Sanchez
16. Rebecca Sid
17. Renee Jou
18. Dr. Gina Henriksen
19. Carly Smith
20. Dr. Jessica Wong
21. Dr. Emily Wilson
22. Dr. Debra Chen
23. Dr Amy Lightstone
24. Dr Kirsten Jensen
25. Dr Sarah Daniel
26. Dr MarkBen Paulino
27. Anna DeVincenzi
28. Alan Go



# EXHIBIT F

1 WILLIAM C. JHAVERI-WEEKS (SBN 289984)  
2 **JHAVERI-WEEKS LAW**  
3 351 California Street, Suite 700  
4 San Francisco, CA 94104  
5 Telephone: (415) 723-2803  
6 Facsimile: (415) 367-1439  
7 Email: wjw@jhaveriweeks.com

8 *Attorney for Plaintiffs and Proposed Class*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

ERIKA HOYLE ZUTA and NICOLE  
REYES CASTRO, individually and on  
behalf of others similarly situated,

Plaintiffs,

v.

FUZZY PET HEALTH, INC. and DOES 1  
through 10, inclusive,

Defendants.

**SECOND AMENDED COMPLAINT FOR  
DAMAGES AND CIVIL PENALTIES  
UNLIMITED CIVIL**

**Case No. CGC-19-579373**

- (1) Failure to Pay Overtime, Cal. Lab. Code §§ 510, 1194, 1198, IWC Wage Order 4**
- (2) Failure to Pay Minimum Wage, Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1, IWC Wage Order 4**
- (3) Failure to Provide Meal and Rest Periods, Cal. Lab. Code §§ 226.7, 512, IWC Wage Order 4**
- (4) Failure to Reimburse Business Expenses, Cal. Lab. Code § 2802**
- (5) Waiting Time Penalties, Cal. Labor Code §§ 201, 203**
- (6) Retaliation for Disclosing Wage and Hour Violations, Cal. Lab. Code § 1102.5(b)**
- (7) Inaccurate Wage Statements, Cal. Lab. Code § 226(a)**
- (8) FLSA Violations, 29 U.S.C. § 207**
- (9) Unfair Competition, Bus. Prof. Code § 17200**
- (10) PAGA Penalties, Cal. Lab. Code § 2699**
- (11) Discrimination Based on Sex, Cal. Gov't Code § 12940(a)**
- (12) Harassment Based on Sex, Cal. Gov't Code § 12940(j)**
- (13) Retaliation for Opposing Discrimination, Cal. Gov't Code § 12940(h)**
- (14) Discrimination Based on Disability, Cal. Gov't Code § 12940(a)**

**JURY TRIAL DEMANDED**

1 Plaintiffs Erika Hoyle Zuta and Nicole Reyes Castro complain and allege as follows:

2 **INTRODUCTION**

3 1. This action includes individual claims, as well as collective and class action claims  
4 under California Code of Civil Procedure § 382 and the federal Fair Labor Standards Act, seeking  
5 damages, interest, and other equitable relief, including restitution on behalf of plaintiffs and others  
6 who worked as Veterinary Assistants for Defendant at any time from four years prior to the filing  
7 of this action through to trial (the “Class Period”), and who have not signed releases in exchange  
8 for severance payments. Defendant Fuzzy Pet Health, Inc. (“FPH”) is a San Francisco start-up  
9 attempting to “disrupt” the veterinary care business by providing in-home pet care and real-time pet  
10 health advice via online chat. Both Plaintiffs began working for FPH as Vet Assistants, with Ms.  
11 Hoyle Zuta eventually transitioning to an office support role. As Vet Assistants, Plaintiffs were  
12 employees of FPH, but the Company misclassified them both as independent contractors. Once  
13 Ms. Hoyle Zuta shifted to an office support role, the Company continued to misclassify her as an  
14 independent contractor. After six months of misclassifying her, and after she asked to be paid as an  
15 employee, the Company converted her to an employee without any corresponding change in duties.  
16 However, the Company classified her as exempt from overtime pay requirements and other wage-  
17 law protections, even though she did not meet the test for any exemption. Likewise, after Ms.  
18 Reyes Castro worked approximately five months as an “independent contractor” Vet Assistant, the  
19 Company reclassified her as an “exempt” employee without changing her duties. In addition, her  
20 salary as an employee was less than the minimum salary required for an employee to qualify for an  
21 exemption under California law.

22 2. Such misclassification was part of a scheme of FPH’s: it hired new workers as  
23 “independent contractors” even though they were classic employees, later converting some of them  
24 to (exempt) employees without any change in duties. One former veterinarian working for FPH  
25 complained on the job-reviewing site glassdoor.com: “They keep you as contract as long as they  
26 can, and as soon as you want benefits, they start laying off and hiring new temps.” The CEO of  
27 FPH, Zubin Bhattay, posted a response: “Hi there, Zubin here... we are committed to building the  
28 right culture in the company. In alignment with that goal, temps or contractors are not transitioned

1 to employees within our company if they do not hit our company standard in performance or  
2 culture fit.” See [www.glassdoor.com/Reviews/Fuzzy-Reviews-E1318759](http://www.glassdoor.com/Reviews/Fuzzy-Reviews-E1318759). Plaintiffs were not  
3 isolated examples, but part of a pattern and practice. The California Labor Code has a term for this:  
4 willful misclassification as an independent contractor.

5 3. During Plaintiffs’ time at the Company, they were not aware of a single worker who  
6 was classified as a non-exempt employee – FPH evaded its legal obligations of paying overtime,  
7 providing breaks, and tracking workers’ time by misclassifying them as either independent  
8 contractors or exempt employees. FPH also failed to reimburse workers for their business  
9 expenses, such as driving to client appointments in personal vehicles and using personal phones to  
10 download and use an app that allowed them to answer chat inquiries from FPH customers.

11 4. The violations described herein were committed against Plaintiffs and other current  
12 and former workers hired by FPH. Plaintiffs bring this action on behalf of themselves to recover  
13 for the Labor Code violations they experienced. They also bring a claim under the Private  
14 Attorneys General Act (“PAGA”), Cal. Lab. Code 2698 *et seq.*, as representatives of the State of  
15 California to recover PAGA penalties for Labor Code violations committed against Plaintiffs and  
16 other current or former workers who suffered the violations described herein (together, Plaintiffs  
17 and such others are referred to as the “PAGA Pool”).

18 5. FPH terminated Ms. Hoyle Zuta in August 2018 after she repeatedly complained  
19 about the misogynistic culture at FPH, and about wage violations (such as being required to work  
20 off the clock). During her time there, she was subjected to a pattern of sex-based harassment that  
21 included being grabbed by the genitals by a male co-worker, . Ms. Hoyle Zuta’s direct boss used  
22 the words “pussy” and “knitting circle” as gendered insults. Ms. Hoyle Zuta heard about male  
23 leadership joking about paying women less than men and using sexually inappropriate language in  
24 leadership meetings. Her male boss repeatedly interrupted her in meetings in ways that he did not  
25 treat male colleagues. Although her work performance was excellent, Ms. Hoyle Zuta’s boss, about  
26 whose conduct she had complained, terminated her in retaliation for her complaints. As a result,  
27 FPH is liable to Ms. Hoyle Zuta for discrimination, harassment, and retaliation in violation of  
28 California’s Fair Employment and Housing Act (“FEHA”), Cal. Gov’t Code § 12940. It is also

1 liable for retaliating against Ms. Hoyle Zuta by terminating her as a result of her complaints about  
2 wage and hour violations.

3 6. FPH terminated Ms. Reyes Castro on September 3, 2019. Shortly before she was  
4 terminated, Ms. Reyes Castro complained repeatedly about not receiving meal breaks. She also  
5 informed FPH that her doctor had instructed her not to lift more than 5 pounds for some time due to  
6 a shoulder injury. FPH terminated Mr. Reyes Castro because of her complaints about meal period  
7 violations and FPH's perception that she had a disability that would require accommodation.

### 8 PARTIES

9 7. Ms. Hoyle Zuta is a resident of Alameda County in the State of California. She  
10 worked for Defendant from June 2017 until her termination on August 21, 2018. She worked at  
11 Defendant's office in San Francisco, California, and also made home visits to Defendant's  
12 customers throughout San Francisco and the surrounding area. In addition to her own individual  
13 Labor Code claims, she brings PAGA claims in her capacity as a representative of the State of  
14 California, seeking penalties for violations of the Labor Code committed against the PAGA Pool.

15 8. Ms. Reyes Castro is a resident of San Mateo County in the State of California. She  
16 worked for Defendant from late March 2018 until September 3, 2019. She worked at Defendant's  
17 office in San Francisco, California, and also made home visits to Defendant's customers throughout  
18 San Francisco and the surrounding area. In addition to her own individual Labor Code claims, she  
19 brings PAGA claims in her representative capacity as a representative of the State of California,  
20 seeking penalties for violations of the Labor Code committed against the PAGA Pool.

21 9. Defendant FPH is a Delaware Corporation with its principal place of business in San  
22 Francisco, California. FPH is registered with the California Secretary of State.

23 10. The Doe defendants include individuals and/or entities, such as venture capital firms  
24 that advised Defendant, who caused or are otherwise liable for Labor Code violations alleged  
25 herein. The facts that will establish which Doe defendants share liability with FPH are not yet  
26 known to Plaintiffs. When Plaintiffs learn such information, Plaintiffs will promptly amend the  
27 Complaint accordingly.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VENUE AND JURISDICTION**

11. Venue is proper in this Court under California Code of Civil Procedure § 395.5 because Plaintiffs’ employment was performed in this county and because the legal violations alleged herein took place in this county. This Court has jurisdiction to adjudicate Plaintiffs’ claims under the Fair Employment and Housing Act pursuant to California Government Code § 12965(b).

12. This Court has general jurisdiction to adjudicate this unlimited civil case, in which the total amount in controversy, exclusive of interest and costs, exceeds \$25,000.

13. This Court has personal jurisdiction over Defendant because Defendant employed Plaintiffs at Defendant’s principal place of business located in this county, and because Defendant’s acts allegedly giving rise to liability occurred in this county.

**PROCEDURAL ALLEGATIONS**

14. Plaintiff Hoyle Zuta filed a PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) via its online filing system on July 15, 2019, with a copy provided to Defendant via certified mail. *See* Exhibit A. She paid the LWDA the required \$75 filing fee. At least 65 days elapsed after the filing of the PAGA Notice and Ms. Hoyle Zuta’s original complaint in this case, and during that time, the LWDA did not provide Ms. Hoyle Zuta with notice that the LWDA intended (or did not intend) to investigate the alleged violations.

15. Plaintiff Reyes Castro filed a PAGA Notice with the LWDA via its online filing system on November 4, 2019, with a copy provided to Defendant via certified mail. *See* Exhibit B. She paid the LWDA the required \$75 filing fee. At least 65 days have elapsed between the filing of the PAGA Notice and the filing of this First Amended Complaint, and during that time, the LWDA did not provide Ms. Reyes Castro notice that the LWDA intended (or did not intend) to investigate the alleged violations.

16. The period from July 15, 2018 (one year prior to the filing of the first PAGA notice) up through the date of trial in this action is referred to herein as the “PAGA Period.”

17. Plaintiff Hoyle Zuta filed a complaint with the Department of Fair Employment and Housing (“DFEH”) against Defendant for discrimination, harassment, and retaliation on July 18, 2019. She obtained a notice of Right-to-Sue on the same date.



1 contractors. When FPH occasionally “converts” such workers to employees, it classifies virtually  
2 all of them, if not all of them, as “exempt” employees, even though they do not (with the possible  
3 exception of some Vets) qualify for any exemption.

4 23. FPH urges such misclassified employees to work at least six days per week, and  
5 requires them to work in the evenings and on weekends. FPH does not provide them with overtime  
6 pay or meal and rest breaks. FPH also shifts certain costs of doing business to its workers by  
7 failing to reimburse them for business expenses it requires them to bear.

## 8 II. Facts Related to Wage and Hour Violations

### 9 A. Violations Against Plaintiff Hoyle Zuta

10 24. Ms. Hoyle Zuta was initially hired as a Vet Assistant on about June 28, 2017, in  
11 what FPH treated as an “independent contractor” role. Her duties consisted of accompanying Vets  
12 on in-home visits to service customers’ pets, and then performing related administrative work (*e.g.*,  
13 completing discharge instruction paperwork or entering customer tracking information into FPH’s  
14 records). In July 2017, FPH also began requiring Ms. Hoyle Zuta to do “chat work” – *i.e.*,  
15 responding to customer requests for advice via internet chat discussions. In her first two months,  
16 she was typically scheduled to work two or three days per week, and often worked more than 8  
17 hours on those days.

18 25. Starting in September 2017, FPH began assigning Ms. Hoyle Zuta to a mix of home  
19 visits and office assistant work, and increased her schedule to four days per week, although in  
20 reality she began performing some work for FPH every day of the week. Her office assistant work  
21 consisted of “customer success” – *e.g.*, answering phone calls from customers about scheduling  
22 appointments, responding to email or chat inquiries from customers or potential customers,  
23 performing rote tasks needed to ensure that customer visits were scheduled correctly, gathering  
24 information that Vets routinely needed for each visit, and entering data pertaining to visits after the  
25 visits were completed. She often worked more than 8 hours per day.

26 26. In December 2017, Ms. Hoyle Zuta began working Monday through Friday at FPH’s  
27 office (occasionally working from home). In the evenings, she would continue working at home on  
28 tasks such as providing routine information about customer visits and schedules to workers



1 handling the night shift, answering chats from customers, and doing data entry. She often worked  
2 more than 8 hours per day. She had to do similar work during weekends.

3 27. Throughout her time as an “independent contractor” for FPH, Ms. Hoyle Zuta  
4 recorded her time on a simple excel spreadsheet, and periodically submitted her hours to be paid.  
5 FPH often failed timely to pay Ms. Hoyle Zuta.

6 28. Because her night and weekend work included an intermittent stream of work in  
7 small amounts, and because she had not been instructed to record such time, she did not always  
8 submit her time for such tasks. Likewise, she often deducted time for her meal times, even if she  
9 worked or was on call during meal times. She did not receive meal or rest periods in which she was  
10 relieved of her duties. In addition, although FPH actually scheduled Ms. Hoyle Zuta (and others) to  
11 be on “chat duty” on certain evenings and weekends, and although she was required to respond to  
12 any chat within 3 minutes, thus preventing her from doing anything that would make such a  
13 response impossible (such as having dinner with a friend, going to a movie, going to the gym, etc.),  
14 FPH refused to pay Ms. Hoyle Zuta for any time other than the actual time responding to chats.  
15 She complained about this to her supervisor, Robert Trimble, and sent him a summary of California  
16 law on “on-call” time, along with links to legal authorities. Mr. Trimble forwarded the email to  
17 Eric Palm. Eventually, the system was changed. Ms. Hoyle Zuta was never compensated for the  
18 unpaid on-call work she had done.

19 29. FPH was on notice of the time Ms. Hoyle Zuta worked during evenings and on  
20 weekends, because she used the Company’s slack messaging system and chat system to perform  
21 such work for the Company. FPH was aware that Ms. Hoyle Zuta was not afforded meal breaks,  
22 because she worked through meal times in plain sight in the office. FPH never told her she could  
23 take meal or rest breaks.

24 30. Ms. Hoyle Zuta’s time as a misclassified “independent contractor” lasted until  
25 February 2018. Throughout that time, Ms. Hoyle Zuta was not free from the control or direction of  
26 FPH – rather, FPH instructed her what to do and how to do it, like a classic employee. Throughout  
27 that time, Ms. Hoyle Zuta did not perform work outside the usual course of FPH’s business – she  
28 performed the work that made up FPH’s business. Throughout that time, she was not engaged in an

1 independently established trade – she was working as an entry-level Vet Assistant and office  
2 worker for FPH.

3 31. FPH controlled the work Ms. Hoyle Zuta did and the manner in which it was done.  
4 She was not performing services distinct from FPH’s business; her work was part of the regular  
5 business of FPH. FPH provided her with office space and access to its software programs to  
6 perform her work. She did not invest in equipment, have a special skill, or have an opportunity for  
7 profit or loss. The working relationship was ongoing and indefinite, and FPH paid her an hourly  
8 rate, like an employee.

9 32. While classified as an independent contractor, Ms. Hoyle Zuta used her own car for  
10 home visits from time to time and was not reimbursed. The FPH employment handbook,  
11 implemented in April 2018, states that parking will be reimbursed (up to \$15) between visits for  
12 certain employees, but does not provide for reimbursement of mileage. She was required to use her  
13 own phone extensively for work purposes, and was required to download an app onto her phone so  
14 she could take customer calls on her personal phone, but she was not reimbursed for her phone or  
15 phone service costs. She was instructed to bring her own computer to use to work while in FPH’s  
16 office as well as from home in the evenings, but was not reimbursed for the cost of providing a  
17 computer or a home internet connection to carry out the Company’s business.

18 33. Ms. Hoyle Zuta complained about being classified as an independent contractor, and  
19 eventually, in February 2018, the Company re-classified her as an “exempt” employee, rather than  
20 an independent contractor. There was no change in her duties. She was to be paid an annual salary  
21 of \$50,000. She was given the job title Veterinary Operations Associate. She also complained that  
22 she had been misclassified as an independent contractor to an investigator retained by FPH to  
23 investigate an incident when Ms. Hoyle Zuta was sexually assaulted by a co-worker.

24 34. Ms. Hoyle Zuta no longer was told or required to track her working time, so she did  
25 not do so. She was not told she could take meal or rest breaks, so she did not do so. By the time of  
26 her reclassification, she was doing Vet Assistant visits only approximately once per month. She  
27 continued to spend the bulk of her time doing rote office work that was a routine part of providing  
28 services to FPH’s customers.

1           35.     For example, Ms. Hoyle Zuta called clients to ask questions when vets needed  
2 information. She called vet hospitals to get records when Vets needed them for customer files. She  
3 answered routine customer service and scheduling calls from customers or potential customers.  
4 She performed a rote task of receiving Vets' monthly availability and inputting it into FPH's  
5 scheduling software to generate an automatic schedule of customer visits for each Vet. When Vets  
6 had trouble making phone contact with customers, she would be tasked with trying to track down  
7 the customers.

8           36.     Ms. Hoyle Zuta's supervisor, Patricia Li, closely supervised her work, and could  
9 overrule any tentative scheduling decisions she made. Ms. Li's title was Veterinary Support  
10 Manager. Ms. Li, in turn, reported to the Head of Veterinary Services.

11          37.     In May 2018, FPH hired a new employee who became Ms. Hoyle Zuta's manager –  
12 Alex Aguilera, whose title was Head of Operations (at that time, Ms. Li's title became Operations  
13 Manager and she began reporting to Mr. Aguilera). Mr. Aguilera changed Ms. Hoyle Zuta's title to  
14 Healthcare Operations Specialist, with no change in her duties.

15          38.     Any decisions of consequence to the Company were made at a level above Ms.  
16 Hoyle Zuta. She did not fall within any of the exemptions in Wage Order 4 (or any other applicable  
17 Wage Order). Her work involved small, day-to-day minutia, not "management policies or general  
18 business operations" of FPH. She did not regularly or customarily exercise discretion and  
19 independent judgment, and the limited decisions she was permitted to make in the course of her day  
20 were not about matters of significance to the Company. She did not perform work along  
21 specialized or technical lines requiring special training, experience, or knowledge. She worked  
22 under close supervision, not "general supervision," and she did not execute "special assignments  
23 and tasks" – rather, she executed rote tasks under close supervision. She spent the majority of her  
24 time, if not all of her time, on low-level, non-exempt tasks. She had no one reporting to her,  
25 supervised no one, and did not hire, fire, or discipline any other employee.

26          39.     During the time she was classified as an "employee," Ms. Hoyle Zuta worked long  
27 hours – often more than 12 hours per day, and typically multiple hours of work on Saturdays and on  
28 Sundays. She continued not to receive meal breaks or rest breaks, and although she was provided

1 with a laptop with which to work from home, she continued to incur business phone expenses and  
2 home internet expenses for which she was not reimbursed.

3 40. FPH terminated Ms. Hoyle Zuta on August 21, 2018. FPH did not provide her with  
4 her final paycheck until 10 days later. The termination was motivated by Ms. Hoyle Zuta's  
5 complaints of wage-and-hour violations, discussed above, as well as her complaints about gender-  
6 based discrimination and harassment, discussed below.

7 **B. Violations Against Plaintiff Reyes Castro**

8 41. Ms. Reyes Castro was initially hired as a vet assistant in what FPH called an  
9 "independent contractor" role. Her duties consisted of accompanying vets on in-home visits to  
10 service customers' pets, and then performing related administrative work at home (*e.g.*, completing  
11 discharge instruction paperwork or entering customer tracking information into FPH's records).  
12 She would also do work in the office, including some of the required paperwork and "spinning  
13 down" samples collected from patients to be submitted for analysis. She was told exactly what  
14 tasks to do and how to do them. She was supervised by the vet accompanying her. She and the vet  
15 would gather the medical history of the patient, talk about any issues the pet was having, and  
16 discuss the pet's diet and activity level. She was tasked with recording this information and  
17 submitting it for FPH's record-keeping activities. She would then get vaccines ready and take  
18 photos of the labels (and upload them with her personal phone to FPH's records system). She  
19 would hold the pet while the vet did a physical exam and administered vaccines. Then they would  
20 talk to the client about how to spot an allergic reaction from the vaccine and would discuss the  
21 scheduling of the next appointment. Ms. Hoyle Zuta performed the same general set of tasks under  
22 the same supervision when she was a Vet Assistant.

23 42. Ms. Reyes Castro often worked 10 or more hours in a day. Her first appointment  
24 was generally at 9:00 a.m., and her last appointment could last until 7:30 or 8:00 p.m. Sometimes  
25 she would get home at 9:00 p.m., and then work until 11:00 p.m. – a 14-hour day. In a normal day,  
26 there were 7-8 appointments, but sometimes there were as many as 11, and sometimes there were  
27 multiple pets per appointment (indeed, some clients had a large number of pets), which would  
28 lengthen the appointment. If she had a gap between appointments, she would go into the FPH

1 office and perform work, such as preparing fecal kits, requesting records, and going over emails.  
2 She was told that her compensable time started when she got to her first appointment or to the  
3 office (whichever was first), even though she sometimes had to drive an hour or more to get to the  
4 first appointment. She was told that her compensable time ended at the end of her last appointment,  
5 even though she was required to go home and complete paperwork documenting the day's visits.  
6 Her paperwork at home took a minimum of one hour, and often two hours depending on the  
7 number of appointments she had had. She performed this at-home work for free for FPH. She was  
8 also required to respond to messages on Slack on her off-days or in the evenings – this work was  
9 also simply unpaid.

10 43. Throughout her time as an “independent contractor” for FPH, Ms. Reyes Castro  
11 recorded her time and periodically submitted her hours to be paid. Because she had been instructed  
12 not to record time worked after the last appointment, she generally did not submit her time or  
13 receive payment for such tasks. Likewise, she often deducted time for her meal times, even if she  
14 worked or was on call during her meal periods. At various points, the company's time-keeping  
15 system would automatically deduct sixty minutes of time for her meal periods, even though she did  
16 not take them. When she was an independent contractor, she would sometimes correct the  
17 inaccurate meal breaks, but even when her only lunch break was grabbing food and eating in the car  
18 between appointments, she would record a 30-minute unpaid lunch break. She did not receive rest  
19 periods in which she was relieved of her duties. FPH was on notice of the time she worked during  
20 evenings, because it was a general subject of complaint among vets and vet assistants. FPH was on  
21 notice that Ms. Reyes Castro was not afforded meal breaks, because she was not told that she could  
22 take meal breaks, and her appointments were often scheduled so that the only meal she and the vet  
23 accompanying her could take would be to buy food to go (or bring snacks from home) and eat in  
24 the car on the way to the next appointment. She was also tracked by GPS at various points in her  
25 employment through one of the company's time-keeping apps, which it required her to download  
26 onto her personal phone.

27 44. Ms. Reyes Castro's time as an “independent contractor” lasted until about  
28 September or October 2018 (her offer letter stated that her “employment” would begin effective

1 September 1, but she continued to be paid on an hourly basis until some time in October).  
2 Throughout that time, she was not an independent contractor under the applicable legal tests. With  
3 respect to the “ABC test,” FPH failed to meet all three prongs of the test with respect to Ms. Reyes  
4 Castro (as with Mr. Hoyle Zuta): first, Ms. Reyes Castro was not free from the control or direction  
5 of FPH – rather, FPH instructed her what to do and how to do it, like a classic employee; second,  
6 Ms. Reyes Castro did not perform work outside the usual course of FPH’s business – she performed  
7 the work that made up FPH’s business; and third, she was not engaged in an independently  
8 established trade – she was working as an entry-level vet assistant and office worker for FPH. With  
9 respect to the common law (*Borello*) economic realities test, to the extent it applies, Ms. Reyes  
10 Castro also was an employee, not an independent contractor. For example, FPH controlled the  
11 work she did and the manner in which it was done; she was not performing services distinct from  
12 FPH’s business; her work was part of the regular business of FPH; her employer provided her with  
13 office space for the tasks that had to be done in the office, equipment for treating pets, and its  
14 software programs to perform her work; she did not invest in equipment, have a special skill, or  
15 have an opportunity for profit or loss; the working relationship was ongoing for six months, and  
16 FPH paid her an hourly rate, like an employee.

17 45. While classified as an independent contractor, Ms. Reyes Castro was required to use  
18 her own phone extensively for work purposes, and was required to download apps onto her phone  
19 to track her time and to upload patients’ medical records, but she was not fully reimbursed for her  
20 phone or phone service costs. Her use was so extensive that she had to upgrade her phone plan to  
21 have unlimited data, paying over \$100/month. She used her own computer to work from home in  
22 the evenings, but was not reimbursed for the cost of providing a computer or an internet connection  
23 to carry out the Company’s business from home.

24 46. In September 2018, the Company re-classified Ms. Reyes Castro as an “exempt”  
25 employee, rather than an independent contractor. There was no change in her duties. She was to be  
26 paid an annual salary of \$42,000, as stated in her offer letter, which was less than the minimum  
27 salary required for an exempt employee at that time. She was given the job title Veterinary  
28 Assistant – the same title she had previously had. She was not told she could take legally-mandated

1 meal or rest breaks, so she did not do so. She continued to perform the same tasks outlined above,  
2 and continued to work through meal and rest breaks and to work overtime hours without receiving  
3 overtime compensation. At first, the company provided her with wage statements that showed her  
4 still being paid on an hourly basis as an independent contractor. The salary kicked in at some point  
5 in late 2018. In 2019, the Company increased her annual salary to \$45,500, which was still less  
6 than the minimum salary basis required for exempt employees.

7 47. When she became an employee, Ms. Reyes Castro was typically scheduled to work  
8 Monday through Thursday, ten hours per day. She would sometimes be told to pick up an extra day  
9 on the weekends (with no additional compensation). Just as when she was an independent  
10 contractor, she was required to perform paperwork at home each evening from the day's  
11 appointments, and she was sometimes required to go into the office to spin down and submit  
12 samples or do office work between appointments. She was told to use an app to clock in and out,  
13 even though she was not paid hourly. She was told that she could not clock in for any work she did  
14 at home. In addition, one app the company used would automatically clock her out for a sixty-  
15 minute lunch whether she took lunch or not. But because the amount she was clocked in or out did  
16 not affect her pay as an employee, which was a fixed amount per pay period, she did not protest the  
17 fact that she was working time "off the clock." Just as when she was an independent contractor,  
18 she was not told that she was entitled to meal or rest breaks, and she was generally not able to take  
19 such breaks given her load of patient appointments.

20 48. Ms. Reyes Castro continued to have to use her personal cell phone in the same  
21 manner described above. At some point, she was told that if she submitted a copy of her cell-phone  
22 bill each month, she would be reimbursed \$20 per month. She received some reimbursement  
23 payments after submitting her cellphone bills, but she was not fully reimbursed for the costs she  
24 bore for the Company, including the cost of upgrading her phone plan so she could use her phone  
25 extensively every day to do the Company's work on the Company's mandatory apps.

26 49. Ms. Reyes Castro complained to multiple supervisors, including Elise Martin,  
27 Meline Joaris, and Patti Li, about not being able to take a meal break at all on some days, about  
28 having to eat in the car between appointments, and about having to work more than 5 hours without

1 a meal break. She also complained about the long days she was being required to work. Ms. Reyes  
2 Castro's complaints were made known to Robert Trimble. Some of the complaints occurred shortly  
3 before she was terminated.

4 50. FPH terminated Ms. Reyes Castro on September 3, 2019. She was not fully paid  
5 upon termination, but was told to come back the following day to pick up her final paycheck. The  
6 termination was motivated by Ms. Reyes Castro's complaints of wage-and-hour violations, as well  
7 as her request for reasonable accommodations, discussed below.

### 8 **C. Violations Against Vet Assistants**

9 51. The proposed Class and Collective consist of Vet Assistants who worked for FPH  
10 during the Class Period, who did not sign releases of their claims in exchange for a severance  
11 payment. Such Vet Assistants are also members of the PAGA Pool. Like Plaintiffs, FPH's Vet  
12 Assistants were either misclassified as independent contractors or misclassified as exempt  
13 employees during the Class and PAGA Period. Some Vet Assistants spent their time making home  
14 visits to FPH clients, either with a Vet (*e.g.*, to help hold the pet while the Vet performs procedures,  
15 take notes, etc.) or under the virtual supervision of a Vet, and then completing paperwork pertaining  
16 to those visits (as described in the description of Plaintiffs' experience, above).

17 52. Other Vet Assistants spent most of their time in the office doing paperwork related  
18 to the home visits: preparing customers' discharge instruction paperwork, doing data entry to  
19 update customer records based upon visits, ordering medications based on visits, and the like.  
20 Regardless of whether they did more office work or more home visits, the type of tasks they did,  
21 the requirements for the job, and the level of independent judgment and discretion afforded to them  
22 were very similar.

23 53. Vet Assistants do not meet any relevant test for independent contractors. They are  
24 carrying out the very business of FPH, they are under the control and direction of FPH, they are  
25 paid based on their hours, they have no potential for profit or loss, and they use the Company's  
26 tools and software to perform their work. On home visits, they wear FPH t-shirts. They work for  
27 the Company on an ongoing, indefinite basis carrying out the Company's business, like classic  
28 employees; they do not perform a single, isolated service for the Company that is separate from the



1 Company's business, like an independent contractor would. Plaintiffs are informed and believe that  
2 other Vet Assistants in addition to Ms. Reyes Castro were classified as independent contractors  
3 during the PAGA Period.

4 54. Vet Assistants also do not meet the test for any exemption under California or  
5 federal law. The position is an entry-level one – Vet Assistants have not undergone training that  
6 would qualify them for the professional exemption. They do not have a management role or  
7 supervise anyone, and do not qualify for the executive exemption. They do not perform work that  
8 relates directly to the management policies or general business operations of FPH, as required for  
9 the administrative exemption; rather, they carry out the day-to-day routine service of FPH. They  
10 operate under close supervision of Vets, and they do not exercise independent judgment or  
11 discretion with respect to matters of significance. At least one Vet Assistant was only a part-time  
12 employee. Yet FPH misclassified some of its Vet Assistants as exempt.

13 55. Upon information and belief, Vet Assistants worked more than 8 hours in a day and  
14 40 hours in a week without overtime compensation; they were not afforded meal or rest breaks, nor  
15 premiums for missed breaks. They did not receive compliant wage statements that stated, among  
16 other things, their hours worked and the hourly rates at which such hours were paid. Upon  
17 information and belief, they were not reimbursed (or fully reimbursed) for their travel expenses or  
18 the use of their personal cell phones or home internet connections to conduct FPH's business. All  
19 Vet Assistants working for FPH during the PAGA Period are part of the PAGA Pool. (To the  
20 extent Vet Assistants were sometimes called "vet technicians" or "vet techs," those employees are  
21 referred to herein as Vet Assistants and are included in the Class and PAGA Pool.)

### 22 **C. Violations Against Vets**

23 56. FPH has classified some of its Vets as independent contractors and, upon  
24 information and belief, this practice has continued during the PAGA Period. In addition, Vets were  
25 not reimbursed for business expenses, including the use of personal vehicles and personal cell  
26 phones for conducting FPH business.

27 57. FPH Vets are not, and were not, independent contractors. Among other things, they  
28 do not perform work that is outside the usual course of FPH's business – rather, they are the core of

1 FPH's business. FPH controls the work done and the manner and means in which it is done,  
2 because FPH supervises the tasks done by the Vets, the prices charged, the services available, the  
3 keeping of records, the relationship with the customer, and many other aspects of the work being  
4 performed. The Vets are not engaged in an occupation distinct from that of FPH. The Vets have  
5 no opportunity for profit or loss depending on their managerial skill. The Vets wear FPH t-shirts on  
6 client visits. They use the Company's equipment. The services performed by the Vets for FPH are  
7 on a prolonged, indefinite basis, as opposed to an isolated engagement. The Vets whom FPH  
8 classified as independent contractors at any point between the year are part of the PAGA Pool, as  
9 are any Vets who were not reimbursed for use of their personal phones and/or vehicles to conduct  
10 FPH's business.

11 58. With respect to Vets who were classified as employees, they were improperly  
12 classified as exempt to the extent that they were not paid on a salary basis at a level that met the  
13 minimum salary requirement for exemption under California law.

14 **D. Violations Against "Member Experience" Employees and Other Low-Level Office**  
15 **Workers**

16 59. FPH has employed Member Experience workers to be the primary points of contact  
17 with customers. Among other things, such workers send welcome packages to new customers,  
18 order medications, and respond to most customer communications, including online "chat"  
19 inquiries. FPH has misclassified such workers as independent contractors and/or exempt  
20 employees. Such employees' work is completely under the control of FPH, and the work they  
21 perform for FPH is one and the same with FPH's work – they are not engaged in any separate  
22 business. For those and other reasons, they are employees, not independent contractors.

23 60. Such employees are also not properly classified as exempt. They do not supervise  
24 anyone or have managerial responsibilities required to satisfy the executive exemption. They lack  
25 any course of specialized training that would qualify them for the professional exemption. And  
26 they do not perform work that relates directly to the management policies or general business  
27 operations of FPH, as required for the administrative exemption; rather, they carry out the day-to-  
28 day routine office tasks that go into serving FPH's customers. They operate under close

1 supervision of FPH’s management team, and they do not exercise independent judgment or  
2 discretion with respect to matters of significance.

3 61. To the extent that FPH has treated Member Experience or other low-level office  
4 assistants as independent contractors or exempt employees within the PAGA Period, or has failed  
5 to reimburse them for business expenses such as the use of personal phones to respond to customer  
6 chat inquiries, they are part of the PAGA Pool.

### 7 **III. Facts Related to FEHA Violations.**

#### 8 **A. FEHA Violations Against Ms. Hoyle Zuta**

9 62. During her time at FPH, Ms. Hoyle Zuta was subjected to an ongoing pattern of  
10 derogatory gender-based comments and conduct, either by supervisors or with their knowledge.  
11 The following is a non-exhaustive list of such experiences.

12 63. In February 2018, a Department Head insisted that Ms. Hoyle Zuta and another  
13 female colleague “rage” (*i.e.*, drink alcohol excessively and have a party) at the home of Ms. Hoyle  
14 Zuta’s supervisor at the time (Robert Trimble) after work hours. At the house, Ms. Hoyle Zuta and  
15 her female colleague were sexually assaulted by a male co-worker who was inebriated.  
16 Specifically, the male co-worker grabbed Ms. Hoyle Zuta’s genitals without her consent. She  
17 reported this to the CEO the following business day. The Company retained an outside  
18 investigator, and Ms. Hoyle Zuta eventually learned from co-workers that the assailant had later  
19 voluntarily left the Company.

20 64. This warning appeared to be a reference to the fact that the company put on work  
21 events at which inebriation and sexually explicit behavior were the norm. Sexually explicit and  
22 offensive comments were tolerated by other members of company leadership at such events (*e.g.*,  
23 joking about slipping drugs in people’s drinks, and other sexual innuendo).

24 65. After Ms. Hoyle Zuta was sexually assaulted, no satisfactory action was taken by  
25 Company leadership to address what had happened. Indeed, the business day after the assault, Ms.  
26 Hoyle Zuta’s female colleague and fellow victim was sent to work with the assailant by a manager  
27 who was aware of what had occurred.

28 66. Other gender-based behavior contributed to creating a hostile environment for Ms.

1 Hoyle Zuta and other women at FPH. On approximately July 20, 2018, Ms. Hoyle Zuta's  
2 immediate boss at the time, Alex Aguilera, commented that he "didn't want to look like a pussy" in  
3 his interactions with Company leadership. About the same time, in response to a female  
4 subordinate's proposal for regular meetings to discuss challenges employees were facing, he said he  
5 did not want the (nearly all female) team he supervised to resemble a "knitting circle." These  
6 gendered insults were offensive to Ms. Hoyle Zuta. She made a complaint about the misogynistic  
7 culture at the Company on about July 20, 2018. She reported Mr. Aguilera's "pussy" and "knitting  
8 circle" comments to FPH's Member Services Manager and Head of Marketing, and she was told  
9 that they informed the CEO. She is not aware of any action being taken in response to Mr.  
10 Aguilera's comments or her complaint.

11 67. As another example, in about June 2018, FPH's Head of Engineering, Ben Kruger,  
12 joked to a job applicant (a friend of Ms. Hoyle Zuta's) during an interview that he had a history of  
13 paying women less than men, but that he had stopped doing so because his wife had scolded him.  
14 The job applicant informed Ms. Hoyle Zuta of this comment, and Ms. Hoyle Zuta informed the  
15 CEO about it.

16 68. Ms. Hoyle Zuta also heard from a colleague (the Head of Marketing) that Mr.  
17 Kruger had stated in a leadership meeting that the same job applicant had not wanted to take a job  
18 with FPH because "someone had been blowing smoke up her ass." The fact that one of the  
19 company's leadership was speaking about women in a sexually explicit, offensive way in a  
20 leadership meeting without consequence was offensive to Ms. Hoyle Zuta and contributed to  
21 creating a hostile work environment for her. The Head of Marketing also conveyed to Ms. Hoyle  
22 Zuta that she was upset that this comment had been made during a leadership meeting.

23 69. Ms. Hoyle Zuta also learned that Mr. Kruger had made other inappropriate gender-  
24 based comments to a female employee, Agustina Sarcedote, who wrote an email to the management  
25 team complaining in early July 2018. Ms. Hoyle Zuta is not aware of any action having been taken  
26 against Mr. Kruger in response. The knowledge that the Company was continuing to fail to make  
27 appropriate, effective responses to complaints of gender-based comments contributed to creating a  
28 hostile work environment for Ms. Hoyle Zuta.

1           70.     Mr. Kruger also had a practice of staring at Ms. Hoyle Zuta’s breasts. He did this so  
2 consistently that Ms. Hoyle Zuta mentioned to two members of Company leadership that Mr.  
3 Kruger never looked her in the eyes when he talked to her, implying that his eyes were instead  
4 focused on her breasts. This conduct by Mr. Kruger continued from when he joined the Company  
5 in May or June 2018 until the end of Ms. Hoyle Zuta’s employment on August 21, 2018. Ms.  
6 Hoyle Zuta is not aware of any action being taken against Mr. Kruger in response.

7           71.     Ms. Hoyle Zuta heard from female colleagues that the Company’s COO had  
8 commented that the all-female Membership Experience team was no longer allowed to make  
9 comments via Slack (the company’s internal messaging system) about problems they identified  
10 with the engineering work that Mr. Kruger’s team had conducted. Ms. Hoyle Zuta complained to  
11 management (Robert Trimble) about the gendered nature of this comment and other similar  
12 comments by Mr. Kruger.

13           72.     At one point, Ms. Hoyle Zuta told her male boss (Mr. Aguilera, at that time) that she  
14 had met certain targets she had been told she needed to meet to be eligible for promotion. His  
15 response was to laugh at her and to call a performance-review document from her prior (female)  
16 manager laying out goals for promotion “ridiculous.” She believes he treated her this way because  
17 she is a woman – he did not treat male colleagues in the same hurtful and disrespectful way.

18           73.     Similarly, Mr. Aguilera would attempt to take credit for her work and ideas without  
19 attribution, and he would interrupt her in meetings and attempt to “clarify” her comments  
20 unnecessarily or inaccurately – he did not treat males the same way. In about July 2018, Ms. Hoyle  
21 Zuta pointed out to Mr. Aguilera that he was repeatedly interrupting and undermining her in front  
22 of their colleagues, and asked him to alter his behavior. Yet the foregoing type of disparate  
23 offensive behavior continued up to Ms. Hoyle Zuta’s final days at the Company in late August  
24 2018.

25           74.     Mr. Aguilera made other insulting comments about women. He complained that one  
26 of the women who had been promoted before he had arrived at the company had been promoted  
27 prematurely and was not fit to have been promoted. In contrast, the great majority of the candidates  
28 he interviewed and favored or supported for management roles to supervise the existing female

1 team were men.

2 75. Managers and employees of FPH engaged in and tolerated inappropriate behavior  
3 toward women. Upon information and belief, in April 2018, a member of FPH's board of directors  
4 was apprised of such conduct, but FPH's board did not take appropriate corrective measures.

5 76. In general, the organization of FPH consists of male decision-makers presiding over  
6 teams of female subordinates. Based on the foregoing specific examples, along with similar  
7 conduct, this organizational characteristic contributed to the existence and tolerance of gender-  
8 based hostile conduct.

9 77. On August 21, 2018, Mr. Aguilera terminated Ms. Hoyle Zuta. Her multiple  
10 complaints about his and other male managers' hostile gender-based behavior caused Mr. Aguilera  
11 to terminate her. Throughout her time at the company, she was subjected to objectively and  
12 subjectively hostile gender-based behavior. She was passed over for a promotion for which she  
13 was qualified and denied work opportunities because she was a woman. And she was terminated  
14 discriminatorily because she was a woman and because she opposed the unlawful conduct she was  
15 experiencing.

16 **B. FEHA Violations Against Ms. Reyes Castro**

17 78. In early August 2019, Ms. Castro Reyes hurt her shoulder while lifting the heavy  
18 backpack that she carried to appointments. She went to see her doctor, who instructed her to  
19 "lift/carry/push/pull no more than 5 pounds" at work or at home from August 13, to August 31,  
20 2019. The note stated that if the "modified activity is not accommodated by the employer then this  
21 patient is considered temporarily and totally disabled from their regular work for the designated  
22 time and a separate off work order is not required."

23 79. Ms. Castro Reyes provided a copy of the note to her manager, Pattie Li, at FPH on  
24 August 15, 2019. Near the end of August, Ms. Castro Reyes was still experiencing pain in her  
25 shoulder, and she informed Ms. Li that she anticipated needing an extension.

26 80. On September 3, 2019, FPH terminated Ms. Castro Reyes. The reasons she was  
27 given for the termination were pretextual. In reality, FPH terminated Ms. Castro Reyes because of  
28 what it perceived as a disability that would require accommodation, as well as her complaints about

1 wage and hour violations, discussed above.

2 **CLASS ACTION ALLEGATIONS**

3 81. Plaintiffs bring this class action pursuant to Cal. Civ. Pro. Code § 382 on behalf of  
4 the Class of Vet Assistants. Upon information and belief, there are 20 Class Members, making  
5 joinder of all members impractical.

6 82. Plaintiffs' California Labor Code wage-and-hour violation claims are typical of the  
7 claims of the members of the Class because they were Vet Assistants performing the same role and  
8 being compensated the same way as Class Members. Like Class Members, both Plaintiffs were  
9 allegedly misclassified as independent contractors and exempt employees while working in the Vet  
10 Assistant role.

11 83. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs  
12 have no conflict of interest with any member of the Class. Plaintiffs have retained competent and  
13 experienced counsel in complex class action litigation. Plaintiffs' counsel has the expertise and  
14 financial resources to adequately represent the interests of the Class. Although Plaintiffs have  
15 individual (non-class) claims, these claims do not create a conflict, and Plaintiffs have added class  
16 claims to this case for the purpose of benefitting Class Members, even though doing so undercuts  
17 their ability to fully recover on their own Labor Code claims.

18 84. Common questions of law and fact exist as to all members of the Class and  
19 predominate over any questions solely affecting individual members of the Class. Among the  
20 questions of law and fact common to the Plaintiffs and the Class are the following:

- 21 a. Whether the duties of Vet Assistants qualify for independent contractor status under  
22 the California Labor Code.
- 23 b. Whether the duties of Vet Assistants qualify for exempt status under the Wage  
24 Orders.
- 25 c. Whether Defendant maintained policies and/or practices that prevented or impeded  
26 Class Members from taking compliant rest periods during the Class Period;
- 27 d. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12  
28 by failing to pay one hour of premium pay to each member of the Class for each day  
that a compliant rest period was not provided;

- 1 e. Whether Defendant violated Labor Code §§ 226(a) and 226.2(a) by failing to issue  
2 itemized wage statements to Plaintiffs and Class Members;  
3 f. Whether Defendant's violation of Labor Code § 226(a) was knowing and  
4 intentional;  
5 g. Whether Plaintiffs and Class Members suffered injury for the purposes of Labor  
6 Code § 226(e);  
7 h. Whether Defendant violated Labor Code § 203 by failing to pay Class Members for  
8 all of their wages due to them upon separation of their employment;  
9 i. Whether these violations constitute unfair, unlawful, and fraudulent business  
10 practices, in violation of UCL;  
11 j. Whether Plaintiff and Class Members are entitled to restitution under Bus. & Prof.  
12 Code § 17200 *et seq.* for uncompensated wages, and unpaid premium pay; and  
13 k. The proper formula(s) for calculating damages, interest, and restitution owed to  
14 Plaintiffs and the Class Members.

15 85. Class action treatment is superior to any alternative to ensure the fair and efficient  
16 adjudication of the controversy alleged herein. Such treatment will permit a large number of  
17 similarly situated persons to prosecute their common claims in a single forum simultaneously,  
18 efficiently, and without duplication of effort and expense that numerous individual actions would  
19 entail. No difficulties are likely to be encountered in the management of this class action that  
20 would preclude its maintenance as a class action, and no superior alternative exists for the fair and  
21 efficient adjudication of this controversy. Class Members are readily identifiable from Defendant's  
22 employee rosters and/or payroll records.

23 86. Defendant's actions are generally applicable to the entire Class. Prosecution of  
24 separate actions by individual members of each Class creates the risk of inconsistent or varying  
25 adjudications of the issues presented herein, which, in turn, would establish incompatible standards  
26 of conduct for Defendant.

27 87. Because joinder of all members is impractical, a class action is superior to other  
28 available methods for the fair and efficient adjudication of this controversy. Furthermore, the  
amounts at stake for many members of each Class, while substantial, may not be sufficient to  
enable them to maintain separate suits against Defendant.



1 **COLLECTIVE ACTION ALLEGATIONS**

2 88. Plaintiffs bring this claim on behalf of themselves and other employees similarly  
3 situated as authorized under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:  
4 All persons employed as Vet Assistants by Defendant in the three years prior to the filing of this  
5 action through trial who have not signed releases of their claims.

6 89. Defendant suffered and permitted Plaintiffs and the Collective to work more than  
7 forty hours per week without appropriate overtime compensation.

8 90. Upon information and belief, the failure to pay overtime was knowing and  
9 intentional.

10 91. The members of the Collective are not covered by any exemption under the FLSA.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Pay Overtime**  
13 **Cal. Lab. Code §§ 510, 1194, 1198, IWC Wage Order 4**  
14 **On Behalf of Both Plaintiffs and the Class**

15 92. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
16 Complaint as if fully set forth herein.

17 93. Under Labor Code §§ 510(a) and 1198 and IWC Wage Order 4, FPH was required  
18 to pay Plaintiffs and the Class overtime wages for any work in excess of eight hours in a day and 40  
19 hours in a week.

20 94. Both Plaintiffs and the Class often worked more than 8 hours in a day or 40 hours in  
21 a week, but because FPH misclassified them, as independent contractors and as exempt employees,  
22 FPH never paid them overtime wages.

23 95. When classified as employees, Plaintiffs and the Class did not fall within any  
24 exemption to the overtime laws.

25 96. Under Labor Code Section 1194, Plaintiffs and the Class are entitled to recover the  
26 unpaid balance of the full amount of overtime compensation owed. They seek back wages owed  
27 for their overtime work in an amount to be proved at trial.

28 97. To the extent that discovery reveals that the Doe defendants caused this violation,  
Plaintiffs will amend to assert a claim against them under Labor Code § 558.1, *inter alia*.



1 and exempt employees, Defendant did not provide them with, or authorize or instruct them to take,  
2 meal or rest periods.

3 107. Throughout their time working at FPH, Plaintiffs and the Class regularly worked in  
4 excess of five hours a day without being afforded or taking the uninterrupted meal period of at least  
5 thirty minutes required by Labor Code §§ 226.7, 512 and Wage Order 4. Plaintiffs and the Class  
6 worked in excess of ten hours a day for FPH without being afforded or taking a second half-hour  
7 uninterrupted meal period.

8 108. FPH is liable to Plaintiffs and the Class for an additional hour of pay at their regular  
9 rate of compensation for each workday in which they did not receive a required meal break.

10 109. Throughout their time working at FPH, Plaintiffs and the Class regularly worked  
11 more than three and one-half hours in a day without being authorized or permitted to take a ten-  
12 minute rest period, as required by IWC Wage Order 4 and Labor Code 226.7, or more than six or  
13 ten hours in a day without being authorized or permitted to take the additional rest periods required  
14 by those provisions. They did not receive rest periods of ten minutes per four hours (or major  
15 fraction thereof) worked in which they were relieved from all duties.

16 110. FPH is liable to Plaintiffs and the Class for an additional hour of pay at their regular  
17 rate of compensation for each workday in which they did not receive a required rest break, plus  
18 interest.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Reimburse Business Expenses**

21 **Cal. Lab. Code § 2802**

22 **On Behalf of Both Plaintiffs and the Class**

23 111. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
24 Complaint as if fully set forth herein.

25 112. Throughout their time working for FPH, Plaintiffs and the Class were required to  
26 pay for various necessary expenditures in direct consequence of the discharge of their duties, but  
27 FPH did not indemnify them for those expenditures as required by California Labor Code § 2802.  
28 These include costs of driving a personal vehicle to client visits; costs of providing and using a  
personal cell phone for work purposes, as evidenced by the requirement that Plaintiffs and the Class

1 download an “app” to be used to answer chat inquiries from FPH clients and to enter certain time  
2 entries; costs of providing a personal computer to use for work purposes; and costs of providing an  
3 internet connection to work from home in the evenings and on weekends.

4 113. Under California Labor Code § 2802, Plaintiffs and the Class are owed  
5 reimbursement of the foregoing expenses plus interest and attorneys’ fees and costs.

6 **FIFTH CAUSE OF ACTION**

7 **Waiting Time Penalties**  
8 **Cal. Lab. Code §§ 201, 203**  
9 **On Behalf of Both Plaintiffs and the Class**

10 114. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
11 Complaint as if fully set forth herein.

12 115. Under California Labor Code § 201(a), because FPH terminated Ms. Hoyle Zuta on  
13 August 21, 2018, FPH was required to pay her all earned and unpaid wages “immediately.” FPH  
14 did not provide Plaintiff Hoyle Zuta with her final paycheck for 10 days. FPH terminated Ms.  
15 Reyes Castro on September 3, 2019, but required her to come in the following day to receive her  
16 final pay. In addition, FPH still has not paid Plaintiffs and the Class the wages it owes them as a  
17 result of misclassifying them, as set forth in this Complaint.

18 116. Under California Labor Code § 203(a), Plaintiffs and the Class are owed waiting  
19 time penalties in the amount of one day’s wages for each day that their final pay was late, up to  
20 thirty days.

21 **SIXTH CAUSE OF ACTION**

22 **Retaliation for Disclosing Wage and Hour Violations**  
23 **Cal. Lab. Code § 1102.5(b)**  
24 **On Behalf of Both Plaintiffs Individually**

25 117. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
26 Complaint as if fully set forth herein.

27 118. Under Labor Code § 1102.5(b), “[a]n employer ... shall not retaliate against an  
28 employee for disclosing information ... to a person with authority over the employee ... who has the  
authority to investigate, discover, or correct the violation or noncompliance.”

119. Plaintiff Hoyle Zuta disclosed to supervisors that FPH’s unpaid chat work policy

1 was a violation of state labor laws. She specifically sent to supervisors provisions of law supporting  
2 her disclosure that the policy of not paying workers while requiring them to be available to respond  
3 to “chats” within three minutes was unlawful. These supervisors had authority over Ms. Hoyle Zuta,  
4 as well as authority to correct the violations. She also complained to a company investigator that  
5 she had been misclassified as an independent contractor. The investigator had the authority to  
6 “investigate” and to “discover” this non-compliance and bring it to the Company’s attention for  
7 correction. As a result of making these complaints, Plaintiff Hoyle Zuta was terminated.

8 120. Plaintiff Reyes Castro disclosed to three supervisors that she was not receiving meal  
9 periods. These individuals all had authority over her, as well as authority to investigate and  
10 discovery the illegality of FPH’s failure to provide Ms. Reyes Castro with legally required meal  
11 periods. These complaints caused FPH to terminate her.

12 **SEVENTH CAUSE OF ACTION**

13 **Failure to Provide Accurate Wage Statements**  
14 **Cal. Lab. Code § 226(a)**  
15 **On Behalf of Plaintiff Reyes Castro and the Class**

16 121. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
17 Complaint as if fully set forth herein.

18 122. Because FPH misclassified Plaintiffs and the Class, it failed to provide them with  
19 wage statements containing the information required by Labor Code § 226(a). Among other things,  
20 FPH did not provide wage statements accurately setting forth the hours worked and applicable rates  
21 of pay.

22 123. The failure to include this information was “knowing and intentional” under Labor  
23 Code § 226(e) because it was the result of an intentional decision to classify Plaintiffs as exempt.  
24 Plaintiffs were “injured” for purposes § 226(e) because they could not promptly and easily  
25 determine from the wage statements alone their actual hours worked or accurate hourly rates of pay,  
26 among other things.

27 124. Under Labor Code § 226(e), Plaintiff Reyes Castro and all Class Members within  
28 the one-year statute of limitations are entitled to recover fifty dollars (\$50) for the initial pay period  
in which a violation occurred and one hundred dollars (\$100) for each violation in a subsequent pay

1 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an  
2 award of costs and reasonable attorney’s fees.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Pay Overtime and Minimum Wage in Violation of the FLSA**  
5 **29 U.S.C. § 207**  
6 **On Behalf of Both Plaintiffs and the Collective**

7 125. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this Complaint  
8 as if fully set forth herein.

9 126. Plaintiffs consent to be parties to this action pursuant to 29 U.S.C. § 219(b).

10 127. At all relevant times, Defendant has been an “employer” engaged in interstate  
11 commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29  
12 U.S.C. § 203. At all relevant times, Defendant has employed employees, including Plaintiffs and the  
13 Collective. Upon information and belief, Defendant has had gross operating revenues in excess of  
14 \$500,000.

15 128. The FLSA requires each covered employer, such as Defendant, to compensate all  
16 non-exempt employees at a rate of not less than one-and-one-half times the regular rate of pay for  
17 work performed in excess of forty hours per week, and to pay at least minimum wage for all hours  
18 worked.

19 129. Plaintiffs and the Collective worked more than 40 hours per week without receiving  
20 overtime, and Plaintiffs and the Collective worked as independent contractors without being paid for  
21 all hours worked.

22 130. Defendant failed to keep required records of hours worked by Plaintiffs and the  
23 Collective.

24 131. Defendant’s conduct has been willful under 29 U.S.C. § 255(a).

25 132. Plaintiffs’ seek damages in the amount of their unpaid overtime and minimum wages,  
26 as well as liquidated damages, from three years prior to the filing of this action through trial, plus  
27 attorneys’ fees and costs.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NINTH CAUSE OF ACTION**

**Unfair Competition  
Cal. Bus. & Prof. Code § 17200  
On Behalf of Both Plaintiffs and the Class**

133. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

134. Section 17200 of the California Business & Professions Code prohibits unfair competition through unlawful acts. The foregoing acts by Defendant were unlawful under the Labor Code provisions cited herein. Plaintiffs and the Class are therefore entitled to restitution of overtime earnings and other unpaid wages and premiums that Defendant has improperly withheld during the period commencing four years prior to the filing of this action.

**TENTH CAUSE OF ACTION**

**PAGA Penalties  
Cal. Lab. Code §§ 2699 *et seq.*  
On Behalf of Both Plaintiffs and the PAGA Pool**

135. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

136. Plaintiffs brings this cause of action on a representative basis on behalf of the State of California with respect to Labor Code violations Defendant committed against the members of the PAGA Pool. Plaintiffs are aggrieved employees because within the PAGA Period, they suffered one or more Labor Code violations, including but not limited to: denial of overtime wages and breaks, failure to pay all wages due at discharge, inaccurate wage statements, failure to maintain employment records, and failure to reimburse business expenses.

137. Under PAGA, Plaintiffs seek to collect civil penalties for the Labor Code violations suffered by the PAGA Pool as alleged in this Complaint, as well as attorneys' fees and costs under Cal. Labor Code § 2699(g). To the extent that discovery reveals the identity of Doe defendants who are liable for civil penalties to be collected through PAGA, Plaintiffs will amend the complaint to seek PAGA penalties from them under Labor Code §§ 226.8, 558, 558.1, 1197.1, and 2699, *inter alia*.

**(a) Willful Misclassification as an Independent Contractor**

138. Under Labor Code § 226.8, it is unlawful "for any person or employer" to engage in

1 “willful misclassification of an individual as an independent contractor.” Defendant has violated  
2 this provision.

3 139. As alleged above, FPH’s Vet Assistants (also known as vet techs) and Vets do not  
4 meet the test for independent contractors under the Wage Orders or the common law test. They are  
5 part of FPH’s core business, are under FPH’s control in all aspects of the tasks they carry out for  
6 FPH, are paid like employees, are scheduled like employees, and are required to dress in FPH  
7 uniforms like employees, among other relevant facts indicating an employment relationship.

8 140. As alleged above, FPH’s Member Experience workers and other low-level office  
9 workers do not meet the test for independent contractors under the Wage Orders or the common  
10 law test. They are part of FPH’s core business, are under FPH’s control in all aspects of the tasks  
11 they carry out for FPH, are paid like employees, are scheduled like employees, and work in FPH’s  
12 office on an indefinite basis like employees, among other relevant facts indicating an employment  
13 relationship.

14 141. FPH and Doe Defendants knowingly and willfully misclassified members of the  
15 PAGA Pool as independent contractors in a scheme to circumvent the requirements of the Labor  
16 Code. FPH’s CEO has publicly stated that the Company starts workers out as independent  
17 contractors, and rewards them with employee status only if they meet performance and “cultural  
18 fit” targets. In so doing, Defendant has saved money and effort by willfully denying workers basic  
19 protections guaranteed by the California Labor Code. Defendant has also denied the public fisc  
20 payroll taxes, and has shirked other obligations in a way that short-changed the public and  
21 competitors.

22 142. Therefore, Defendant is liable under Labor Code § 226.8 for civil penalties.  
23 Because this misclassification took the form of a pattern or practice, Defendant is liable under for  
24 civil penalties of \$10,000 to \$25,000 per violation. *See* Labor Code § 226.8. Plaintiffs seek such  
25 penalties with respect to the PAGA Pool under Labor Code §§ 2699 and 2699.3 in an amount to be  
26 proved at trial.

27 **(b) Failure to Pay All Wages Owed**

28 143. As alleged above, members of the PAGA Pool were misclassified as either



1 independent contractors or exempt employees, and therefore did not receive overtime pay when  
2 they worked more than eight hours in a day or forty hours in a week, as required by Labor Code  
3 §§ 510 and 1198 (incorporating the Wage Orders).

4 144. Members of the PAGA Pool worked more than eight hours in a day or forty hours in  
5 a week. As noted above, FPH encouraged employees to work six days per week without overtime  
6 pay.

7 145. Defendant also failed to pay members of the PAGA Pool at least minimum wage for  
8 certain time worked in violation of Labor Code § 1197 and the Wage Order(s). For example,  
9 certain work in the evenings or during working meal periods worked by employees misclassified as  
10 independent contractors was uncompensated.

11 146. Under Labor Code § 558, “[a]ny employer or other person acting on behalf of an  
12 employer who violates, or causes to be violated, a section of this chapter or any provision  
13 regulating hours and days of work in any [IWC Wage Order] shall be subject to a civil penalty of”  
14 \$50 for any initial, and \$100 for each subsequent violation, “for each underpaid employee for each  
15 pay period for which the employee was underpaid ....” Cal. Lab. Code § 558(a).

16 147. Under Labor Code § 1197.1(a), any “employer or other person acting either  
17 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to  
18 any employee a wage less than the minimum fixed by an applicable state or local law, or by an  
19 order of the commission, shall be subject to a civil penalty... as follows: (1) For any initial  
20 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee  
21 for each pay period for which the employee is underpaid... (2) For each subsequent violation for  
22 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each  
23 pay period for which the employee is underpaid regardless of whether the initial violation is  
24 intentionally committed.”

25 148. Plaintiffs seek to recover such penalties with respect to the PAGA Pool under Labor  
26 Code § 2699 and 2699.3 in an amount to be proved at trial.

27 **(c) Failure to Provide Meal and Rest Breaks**

28 149. As alleged above, because Defendant misclassified members of the PAGA Pool as

1 independent contractors and/or exempt employees, Defendant did not provide them with meal or  
2 rest periods in violation of California Labor Code §§ 226.7 (incorporating the IWC Wage Orders)  
3 and 512.

4 150. Defendant failed to authorize or permit members of the PAGA Pool to take the  
5 breaks mandated by the aforementioned Labor Code sections or, in the alternative, to pay missed  
6 break premiums to the members of the PAGA Pool.

7 151. Outside of PAGA, the Labor Code does not provide a specific civil penalty for  
8 violating the meal and rest breaks provisions. Therefore, PAGA’s default civil penalty under  
9 § 2699(f) applies: “one hundred dollars (\$100) for each aggrieved employee per pay period for the  
10 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for  
11 each subsequent violation.”

12 152. Plaintiffs seek to recover such penalties with respect to the PAGA Pool under Labor  
13 Code § 2699 and 2699.3 in an amount to be proved at trial.

14 **(d) Failure to Reimburse Business Expenses**

15 153. As alleged above, Defendant has failed to reimburse members of the PAGA Pool for  
16 necessary business expenses incurred in the course of their employment, including use of personal  
17 vehicles, personal cell phones, and home internet connections to conduct FPH’s business.

18 154. Outside of PAGA, the Labor Code does not provide a specific civil penalty for  
19 violating the meal and rest breaks provisions. Therefore, PAGA’s default civil penalty under  
20 § 2699(f) applies: “one hundred dollars (\$100) for each aggrieved employee per pay period for the  
21 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for  
22 each subsequent violation.”

23 155. Plaintiffs seek to recover such penalties with respect to the PAGA Pool under Labor  
24 Code § 2699 and 2699.3 in an amount to be proved at trial.

25 **(e) Late Payment of Wages at Termination**

26 156. As alleged above, Defendant has failed to pay members of the PAGA Pool overtime  
27 wages, among other wages due, and has therefore violated Labor Code § 201 with respect to  
28 members of the PAGA Pool who were terminated during the PAGA Period and Labor Code § 202

1 with respect to members of the PAGA Pool who resigned during the PAGA Period.

2 157. Defendant also paid Plaintiff Hoyle Zuta her final paycheck 10 days after  
3 terminating her, not “immediately,” and required Plaintiff Reyes Castro to pick up her final check  
4 the day after Defendant terminated her. To the extent that Defendant engaged in the same practice  
5 for other members of the PAGA Pool, Plaintiffs seek civil penalties on their behalf.

6 158. Outside of PAGA, the Labor Code does not provide a specific civil penalty for  
7 violating sections 201 and 202 (the penalty provided by Section 203 is a statutory penalty, not a  
8 civil penalty collectible through PAGA). Therefore, PAGA’s default civil penalty under § 2699(f)  
9 applies to such violations: “one hundred dollars (\$100) for each aggrieved employee per pay  
10 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay  
11 period for each subsequent violation.”

12 159. Plaintiffs seek to recover such penalties with respect to the PAGA Pool under Labor  
13 Code § 2699 and 2699.3 in an amount to be proved at trial.

14 **(f) Failure to Furnish Accurate Wage Statements**

15 160. Under Labor Code § 226(a), FPH was required to furnish members of the PAGA  
16 Pool with semimonthly wage statements providing specific information, including the number of  
17 hours worked and the applicable rates of pay for such hours. Because Defendant misclassified the  
18 members of the PAGA Pool, Defendant did not provide such wage statements. As a result,  
19 members of the PAGA Pool were injured by, among other things, not being able to determine  
20 whether they were being paid for all hours worked at the appropriate hourly rates.

21 161. Under Labor Code § 226.3, any employer who violates Section 226(a) is subject to a  
22 civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for  
23 each violation in a subsequent citation, for which the employer fails to keep the records required in  
24 Section 226(a). In the alternative, to the extent that such civil penalties do not apply to Defendant’s  
25 failure to provide the required information on the PAGA Pool’s wage statements, PAGA’s default  
26 civil penalty under § 2699(f) applies: “one hundred dollars (\$100) for each aggrieved employee per  
27 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per  
28 pay period for each subsequent violation.”



1 rights, and/or that was carried on by the Defendant with a willful and conscious disregard of her  
2 rights, or that otherwise met the standard for punitive damages set forth in California Civil Code  
3 § 3294.

4 **TWELFTH CAUSE OF ACTION**

5 **Harassment Based on Sex**  
6 **Cal. Gov't Code § 12940(j)**  
7 **On Behalf of Plaintiff Hoyle Zuta**

8 172. Plaintiffs hereby incorporates by reference the foregoing paragraphs of this  
9 Complaint as if fully set forth herein.

10 173. FEHA prohibits harassment on the basis of sex. Cal. Gov't Code § 12940(j).

11 174. As alleged above, Plaintiff Hoyle Zuta experienced numerous acts of harassment  
12 based on gender. The harassment was severe and pervaded her workplace. A reasonable person in  
13 her position would have considered the work environment to be hostile and abusive as a result of  
14 the harassment. Plaintiff Hoyle Zuta subjectively considered the work environment hostile and  
15 abusive, as evidenced by, for example, her repeated complaints.

16 175. Rather than correct the unlawful conduct or otherwise step in to protect Ms. Hoyle  
17 Zuta, Defendant took no effective action and, instead, allowed her to be terminated by one of the  
18 harassers about whom she had complained.

19 176. As a direct, foreseeable, and proximate result of Defendant's harassment, conducted  
20 through its supervisors and ratified by the Company's top leadership, Plaintiff Hoyle Zuta suffered  
21 emotional distress damages in an amount to be proven at trial.

22 177. Plaintiff Hoyle Zuta is entitled to recover punitive damages from Defendant in an  
23 amount according to proof. In committing the acts described above, Defendant was guilty of  
24 despicable conduct that subjected her to cruel and unjust hardship in disregard of her rights, and/or  
25 that was carried on by the Defendant with a willful and conscious disregard of her rights, or that  
26 otherwise met the standard for punitive damages set forth in California Civil Code § 3294.  
27  
28

**THIRTEENTH CAUSE OF ACTION**

**Retaliation  
Cal. Gov't Code § 12940(h)  
On Behalf of Plaintiff Hoyle Zuta**

1  
2  
3 178. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
4 Complaint as if fully set forth herein.

5 179. FEHA makes it an unlawful employment practice for an employer to discharge or  
6 otherwise discriminate against any person because the person has opposed practices forbidden by  
7 FEHA. Cal. Gov't Code § 12940(h).

8 180. Plaintiff Hoyle Zuta engaged in protected activity when she complained on  
9 numerous occasions about improper gender-based conduct, as described above.

10 181. Plaintiff Hoyle Zuta's complaints were a substantial motivating reason for the  
11 decision to terminate Plaintiff.

12 182. As a direct, foreseeable, and proximate result of Defendant's retaliation, Plaintiff  
13 Hoyle Zuta has suffered losses in earnings and other employment benefits, as well as emotional  
14 distress damages in an amount to be proven at trial.

15 183. Plaintiff Hoyle Zuta is entitled to recover punitive damages from Defendant in an  
16 amount according to proof. In committing the acts described above, Defendant was guilty of  
17 despicable conduct that subjected Plaintiff Hoyle Zuta to cruel and unjust hardship in disregard of  
18 her rights, and/or that was carried on by the Defendant with a willful and conscious disregard of her  
19 rights, or that otherwise met the standard for punitive damages set forth in California Civil Code  
20 § 3294.

21  
22 **FOURTEENTH CAUSE OF ACTION**

**Discrimination Based on Disability  
Cal. Gov't Code § 12940(a)  
On Behalf of Plaintiff Reyes Castro**

23  
24 184. Plaintiffs hereby incorporate by reference the foregoing paragraphs of this  
25 Complaint as if fully set forth herein.

26 185. FEHA prohibits discrimination on the basis of physical disability. Cal. Gov't Code  
27 § 12940(a).

28 186. Plaintiff Reyes Castro suffered an adverse action when Defendant terminated her

1 employment shortly after she presented a doctor's note limiting the physical activities she could  
2 perform.

3 187. Based on the facts alleged above, Plaintiff Reyes Castro's perceived disability was a  
4 substantial motivating factor for the adverse action she suffered.

5 188. As a direct, foreseeable, and proximate result of Defendant's unlawful actions,  
6 Plaintiff Reyes Castro has suffered losses in earnings and other employment benefits.

7 189. As a direct, foreseeable, and proximate result of Defendant's actions, Plaintiff Reyes  
8 Castro has suffered emotional distress damages in an amount to be proven at trial.

9 190. Plaintiff Reyes Castro is entitled to recover punitive damages from Defendant in an  
10 amount according to proof. In committing the acts described above, Defendant was guilty of  
11 despicable conduct that subjected Plaintiff Reyes Castro to cruel and unjust hardship in disregard of  
12 her rights, and/or that was carried on by the Defendant with a willful and conscious disregard of her  
13 rights, or that otherwise met the standard for punitive damages set forth in California Civil Code  
14 § 3294.

### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

17 1. For an Order that the class claims in this action may proceed and be maintained as a  
18 class action, with the Class defined as stated in this Complaint, and with Plaintiffs and their counsel  
19 designated as representatives of the class and class counsel, respectively;

20 2. For an Order that the case Collective be certified under FLSA Section 216(b);

21 3. For all damages, reimbursement, back wages, liquidated damages, penalties, interest,  
22 attorneys' fees, costs, and other relief afforded by the Labor Code and FLSA provisions asserted  
23 herein, to the Class, Collective, and Plaintiffs, as applicable;

24 4. For compensatory damages under FEHA, including but not limited to, lost back pay,  
25 plus interest, lost fringe benefits and future lost earnings and fringe benefits, and damages for  
26 emotional distress and pain and suffering, according to proof allowed by law;

27 5. For civil penalties arising from Labor Code violations against the PAGA Pool,  
28 attorneys' fees, and costs under PAGA;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 6. For punitive damages allowed by law in connection with Plaintiffs’ FEHA claims;
- 7. For an award of costs of suit and reasonable attorney’s fees pursuant to FEHA;
- 8. For an award of attorneys’ fees and costs under any other applicable provision of law, including Cal. Code Civ. Proc. § 1021.5;
- 9. For a finding that Defendant violated the UCL and an award of restitution to the Class in the amount of unpaid wages, unreimbursed expenses, and any other amounts due pursuant to the allegations above;
- 10. For an award of pre-judgment and post-judgment interest; and
- 11. For such further legal and equitable relief as the Court deems just and proper.

DATED: \_\_\_\_\_, 2020

JHAVERI-WEEKS LAW

By: \_\_\_\_\_  
William C. Jhaveri-Weeks

*Attorney for Plaintiffs and the Proposed Class*