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

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

12 Plaintiffs,

13 v.

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

16 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. 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

VENUE AND JURISDICTION

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

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

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

PROCEDURAL ALLEGATIONS

10 14. Plaintiff Hoyle Zuta filed a PAGA Notice with the Labor and Workforce
11 Development Agency (“LWDA”) via its online filing system on July 15, 2019, with a copy
12 provided to Defendant via certified mail. *See* Exhibit A. She paid the LWDA the required \$75
13 filing fee. At least 65 days elapsed after the filing of the PAGA Notice and Ms. Hoyle Zuta’s
14 original complaint in this case, and during that time, the LWDA did not provide Ms. Hoyle Zuta
15 with notice that the LWDA intended (or did not intend) to investigate the alleged violations.
16

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

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

25 17. Plaintiff Hoyle Zuta filed a complaint with the Department of Fair Employment and
26 Housing (“DFEH”) against Defendant for discrimination, harassment, and retaliation on July 18,
27 2019. She obtained a notice of Right-to-Sue on the same date.
28

1 18. Plaintiff Reyes Castro filed a complaint with the DFEH against Defendant for
2 discrimination on December 6, 2019. She obtained a notice of Right-to-Sue on the same date.

3 **FACTS**

4 **I. FPH's Business Model and Misclassification Scheme**

5 19. FPH's Vets and Vet Assistants travel to customers' homes to provide pets with
6 routine or sick-visits, and FPH also offers real-time pet health advice through an online chat
7 function. FPH charges customers a subscription fee on a monthly basis (\$50) with an annual
8 commitment (\$600 per year).

9 20. FPH was founded in the Bay Area in 2015 by Eric Palm, Robert Trimble, and Zubin
10 Bhattay. According to an interview with FPH's CEO (Mr. Bhattay), as of Summer 2019, FPH had
11 done between 60,000 and 70,000 consultations. FPH recently advertised on Facebook that pet
12 owners with questions can "chat with a Fuzzy vet online any time for free." Its website states "our
13 team is available every day between 9am and 8pm." Its investors include Matrix Partners, Eniac
14 Ventures, SV Angel, FJ Labs, Precursor Ventures, and Crosscut Ventures. These investors' roles in
15 the decisions giving rise to the allegations in this Complaint, if any, are currently unknown to
16 Plaintiffs. Upon information and belief, FPH until recently employed about 30 employees in the
17 San Francisco Bay Area. FPH recently expanded its operations to the New York City area. In
18 Spring 2020, FPH laid off a significant portion of its workforce and changed its business model
19 away from a focus on in-home visits. A number of the Vet Assistants who were laid off signed
20 releases as part of severance agreements. During the Class Period, FPH had 20 Vet Assistants who
21 have not signed such releases.

22 21. To provide its services in California, FPH employs several categories of workers,
23 including: veterinarians ("Vets") who make home visits to care for pets; "Vet Assistants" who
24 accompany Vets on home visits, make home visits pursuant to virtual supervision by Vets, or
25 perform office work such as data entry and preparation of discharge instructions; and customer
26 service ("Member Experience") workers and other office staff.

27 22. Although these all of these positions are part of the day-to-day service that FPH
28 provides to customers, FPH has misclassified workers in each of these positions as independent

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 98. Plaintiffs are entitled to recover attorneys' fees, costs, and interest under Cal. Labor
2 Code § 1194(a).

3 **SECOND CAUSE OF ACTION**

4 **Failure to Pay Minimum Wage for All Hours Worked**
5 **Cal. Lab. Code §§ 1194, 1194.2, 1197, IWC Wage Order 4**
6 **On Behalf of Both Plaintiffs and the Class**

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

9 100. Because Defendant misclassified Plaintiffs and the Class, they did not receive at
10 least minimum wage for certain hours worked. Among other things, while classified as
11 independent contractors, they did not record or receive payment for time worked during meal
12 periods and worked in the evenings. Under California Labor Code § 1197 and Wage Order 4,
13 payment of less than the minimum wage is unlawful.

14 101. Under Labor Code Section 1194, Plaintiffs and the Class are entitled to recover the
15 balance of their unpaid compensation. They seek back wages owed for their unpaid work in an
16 amount to be proved at trial.

17 102. Under California Labor Code § 1194.2, Plaintiffs and the Class are entitled to
18 recover liquidated damages in the amount of such underpaid wages.

19 103. To the extent that discovery reveals that the Doe defendants caused this violation,
20 Plaintiffs will amend to assert a claim against them under Labor Code §§ 558.1 and 1197.1, *inter*
21 *alia*.

22 104. Plaintiffs are entitled to recover attorneys' fees, costs, and interest under Cal. Labor
23 Code § 1194(a).

24 **THIRD CAUSE OF ACTION**

25 **Failure to Provide Meal and Rest Periods**
26 **Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order 4**
27 **On Behalf of Both Plaintiffs and the Class**

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

106. Because Defendant misclassified Plaintiffs and the Class as independent contractors

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.
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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.”

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

3 **(g) Failure to Maintain Accurate Payroll Records**

4 163. Under Labor Code §§ 1174(d) and 1174.5, Defendant was required to maintain
5 accurate payroll records for the members of the PAGA Pool. Defendant has failed to maintain
6 records of, among other things, the hours worked and applicable rates of pay for members of the
7 PAGA Pool. Labor Code § 1174.5 provides a civil penalty of \$500 for violations of section
8 1174(d). Plaintiffs seek to recover such penalties with respect to the PAGA Pool under Labor Code
9 § 2699 and 2699.3 in an amount to be proved at trial.

10 **ELEVENTH CAUSE OF ACTION**

11 **Discrimination Based on Sex**
12 **Cal. Gov't Code § 12940(a)**
13 **On Behalf of Plaintiff Hoyle Zuta**

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

16 165. FEHA prohibits discrimination on the basis of sex. Cal. Gov't Code § 12940(a).

17 166. Defendant has, and at the time of the alleged violations had, at least five employees
18 in California, and was therefore covered by FEHA's anti-discrimination provisions.

19 167. Plaintiff Hoyle Zuta suffered an adverse action when Defendant terminated her
20 employment. She also suffered an adverse action when her request for a promotion was denied.

21 168. Based on the facts alleged above, Plaintiff Hoyle Zuta's gender was a substantial
22 motivating factor for the adverse actions she suffered.

23 169. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Ms.
24 Hoyle Zuta has suffered losses in earnings and other employment benefits.

25 170. As a direct, foreseeable, and proximate result of Defendant's actions, Plaintiff Hoyle
26 Zuta has suffered emotional distress damages in an amount to be proven at trial.

27 171. Plaintiff Hoyle Zuta is entitled to recover punitive damages from Defendant in an
28 amount according to proof. In committing the acts described above, Defendant was guilty of
despicable conduct that subjected Ms. Hoyle Zuta to cruel and unjust hardship in disregard of her

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;

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- 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: February 11, 2020

JHAVERI-WEEKS LAW

By: 

William C. Jhaveri-Weeks

Attorney for Plaintiffs and the Proposed Class

EXHIBIT A

JHAVERI-WEEKS LAW

351 CALIFORNIA STREET SUITE 700
SAN FRANCISCO, CA 94105

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July 15, 2019

Private Attorneys General Act – Online Filing

Attn. PAGA Administrator

Re: Labor Code Private Attorney General Act Notice by Erika Hoyle, former employee of Fuzzy Pet Health, Inc.

Dear Sir or Madam:

I represent aggrieved employee Erika Hoyle (hereinafter “Aggrieved Plaintiff”). This letter constitutes notice to the employer and the Labor and Workforce Development Agency (“LWDA”) of violations of the Labor Code, pursuant to Labor Code section 2699.3. The violations described herein were committed against Aggrieved Plaintiff and other current and former workers hired by Fuzzy Pet Health, Inc. (previously known as Petchi, Inc.). In addition, persons or entities who caused violations of the Labor Code with respect to Fuzzy Pet Health, Inc.’s workers are liable pursuant to Labor Code sections 558 and 1197.1. This includes other entities or individuals whose identities or role in the violations are not currently known to Aggrieved Plaintiff. Fuzzy Pet Health, Inc. and other persons who violated or caused violations shall be referred to collectively as “Defendants.” Together, the Aggrieved Plaintiff and other current or former non-exempt workers on whose behalf this notice is given will be referred to as the “PAGA Pool.”

Fuzzy Pet Health is a small but growing start-up that has engaged in a scheme of classifying many of its workers as independent contractors when such workers were in fact employees. In particular, Defendants engaged in a practice of treating new employees, including Aggrieved Plaintiff, as independent contractors, and later converting them to employees with no change in duties. In addition, Defendants have engaged in a scheme of classifying employees as exempt when such employees are non-exempt. As a result of such schemes, and in other respects, Defendants have committed the broad range of Labor Code violations described below.

Aggrieved Plaintiff hereby provides notice to the LWDA of the claims alleged in this letter, including violations of sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as discussed in more detail below.

The Employer

Fuzzy Pet Health, Inc. (“FPH”) is a Delaware Corporation with its principal place of business in San Francisco, California. FPH is registered with the California Secretary of State. FPH is attempting to “disrupt” the traditional business of veterinary care for household pets. The concept behind FPH is that FPH’s veterinarians will travel to customers’ homes to provide pets with routine or sick-visits, and FPH will provide pet health advice through an online chat function. For such services, FPH charges customers a subscription fee on a monthly basis (\$50 per month) or annual basis (\$540 per year). It also currently advertises on Facebook that pet owners with questions can “chat with a Fuzzy vet online any time for free.”

FPH was founded in the Bay Area in 2015 by Eric Palm, Robert Trimble, and Zubin Bhattay. According to its website, FPH has provided 7,000+ in-home visits, exchanged 30,000+ messages with pet owners for “health advice and aid,” and treated 4,000+ pets. Its investors include Matrix Partners, Eniac Ventures, SV Angel, FJ Labs, Precursor Ventures, and Crosscut Ventures. Altogether, upon information and belief, FPH currently has approximately 30 employees in the San Francisco Bay Area. FPH recently expanded its operations to the New York City area.

To provide its services in California, FPH employs several categories of workers, including: veterinarians (“vets”) who make home visits to care for pets; “vet assistants” who accompany vets on home visits, make home visits pursuant to virtual supervision by vets, or perform office work such as data entry and preparation of discharge instructions; and customer service (“member experience”) workers and other office staff. Although these all of these positions are part of the day-to-day service that FPH provides to customers, FPH has miscategorized workers in each of these positions as independent contractors. FPH has used the independent contractor designation as an “introductory” classification while it tests out new employees. When FPH “converts” such workers to employees, it classifies virtually all of them, if not all of them, as “exempt” employees, even though they do not (with the exception of the vets) qualify for any exemption. FPH urges such misclassified employees to work at least six days per week, requires them to work in the evenings and on weekends, and does not provide them with the overtime pay or meal and rest breaks to which they are entitled. FPH also fails to reimburse its employees’ business expenses.

Aggrieved Plaintiff and the PAGA Pool

a. Aggrieved Plaintiff’s Experience

Erika Hoyle worked at Fuzzy Pet Health Inc. from approximately June 28, 2017 through August 21, 2018. Although some Labor Code violations Defendants committed with respect to Ms. Hoyle occurred outside of the one-year statute of limitations for PAGA, many occurred within the limitations period. Violations occurring to Ms. Hoyle both inside and outside of the limitations period occurred to other members of the PAGA Pool within the limitations period (and continue to occur).

i. Working at FPH as an “Independent Contractor” from June 2017 to February 2018.

Ms. Hoyle was initially hired as a vet assistant in what FPH called an “independent contractor” role. Her duties consisted of accompanying vets on in-home visits to service customers’ pets, and then performing related administrative work at home (*e.g.*, completing discharge instruction paperwork or entering customer tracking information into FPH’s records). In July 2017, FPH also began requiring Ms. Hoyle to do “chat work” – responding to customer requests for advice via internet chat discussions. She often worked more than 8 hours in a day.

Starting in September 2017, FPH began assigning Ms. Hoyle to a mix of office assistant work and home visits, and increased her schedule to four days per week, although she performed some work for FPH every day of the week. Her office assistant work consisted of “customer success” – *e.g.*, answering phone calls from customers about scheduling appointments, responding to email or chat inquiries from customers or potential customers, performing rote tasks needed to ensure that customer visits were scheduled correctly, gathering information that vets needed for each visit, and entering data from visits. In December 2017, Ms. Hoyle began working Monday through Friday at FPH’s office (occasionally working from home). In the evenings, she would continue working at home on tasks such as providing routine information about customer visits and schedules to workers handling the night shift, answering chats from customers, and doing data entry. She often worked more than 8 hours per day. She had to do similar work during weekends.

Throughout her time as an “independent contractor” for FPH, Ms. Hoyle recorded her time on a simple excel spreadsheet, and periodically submitted her hours to be paid. FPH often failed timely to pay Ms. Hoyle. Because her night and weekend work included an intermittent stream of work in small amounts, and because she had not been instructed to record such time, she did not always submit her time for such tasks. Likewise, she often deducted time for her meal times, even if she worked or was on call during her meal periods. She did not receive rest periods in which she was relieved of her duties. FPH was on notice of the time she worked during evenings and on weekends, because she used the Company’s slack messaging system and chat system to perform such work for the Company. FPH was aware that Ms. Hoyle was not afforded meal breaks, because she worked through meal times in plain sight in the office. FPH never told her she could take meal or rest breaks.

Ms. Hoyle’s time as an “independent contractor” lasted until February 2018. Throughout that time, she was not an independent contractor under the applicable legal tests. With respect to the ABC test that applies to the Wage Orders, FPH failed to meet all three prongs of the test with respect to Ms. Hoyle: first, Ms. Hoyle was not free from the control or direction of FPH – rather, FPH instructed her what to do and how to do it, like a classic employee; second, Ms. Hoyle did not perform work outside the usual course of FPH’s business – she performed the work that made up FPH’s business; and third, she was not engaged in an independently established trade – she was working as an entry-level vet assistant and office worker for FPH. With respect to the common law (*Borello*) economic realities test that applies to the Labor Code, Ms. Hoyle also was an employee, not an independent contractor. For example, FPH controlled the work Ms. Hoyle did and the manner in which it was done; she was not performing services distinct from FPH’s business; her work was part of the regular business of FPH; her employer provided her

with office space and access to its software programs to perform her work; she did not invest in equipment, have a special skill, or have an opportunity for profit or loss; the working relationship was ongoing for the better part of a year, and FPH paid her an hourly rate, like an employee.

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

ii. Working at FPH as an "Exempt" Employee from February 2018 to August 20, 2018.

In February 2018, the Company re-classified Ms. Hoyle as an "exempt" employee, rather than an independent contractor. There was no change in her duties. She was to be paid an annual salary of \$50,000. She was given the job title Veterinary Operations Associate. She no longer was told or required to track her working time, so she did not do so. She was not told she could take meal or rest breaks, so she did not do so. By the time of her reclassification, she was doing vet assistant visits only approximately once per month. She continued to spend the bulk of her time doing rote office work that was a routine part of providing services to FPH's customers. For example, she called clients to ask questions when veterinarians needed information. She called vet hospitals to get records when veterinarians needed them for customer files. She answered routine customer service and scheduling calls from customers or potential customers. She performed a rote task of receiving vets' monthly availability and inputting it into FPH's scheduling software to generate an automatic schedule of customer visits for each vet. When vets had trouble locating customers, she would be tasked with trying to track down the customers.

Ms. Hoyle's supervisor, Patricia Li, could overrule any tentative scheduling decisions she made, and Ms. Li closely supervised her work. Ms. Li's title was Veterinary Support Manager. Ms. Li, in turn, reported to the Head of Veterinary Services. In May 2018, FPH hired a new employee who became Ms. Hoyle's manager – Alex Aguilera, whose title was Head of Operations (at that time, Ms. Li's title became Operations Manager and she began reporting to Mr. Aguilera). Mr. Aguilera changed Ms. Hoyle's title to Healthcare Operations Specialist, with no change in her duties. Any decisions of consequence to the Company were made at a level above Ms. Hoyle. She did not fall within any of the exemptions in Wage Order 4 (or any other applicable Wage Order). Her work involved small, day-to-day minutia, not "management policies or general business operations" of FPH. She did not regularly or customarily exercise discretion and independent judgment, and the limited decisions she was permitted to make in the course of her day were not about matters of significance to the Company. She did not perform work along specialized or technical lines requiring special training, experience, or knowledge. She worked under close supervision, not "general supervision," and she did not execute "special

assignments and tasks” – rather, she executed rote tasks under close supervision. She had no one reporting to her, supervised no one, and did not hire, fire, or discipline any other employee.

During the time she was classified as an “employee,” Ms. Hoyle worked long hours – often more than 12 hours per day, and typically multiple hours of work on Saturdays and on Sundays. She continued not to receive meal breaks or rest breaks, and although she was provided with a laptop with which to work from home, she continued to incur business phone expenses and home internet expenses for which she was not reimbursed.

FPH terminated Ms. Hoyle on August 21, 2018. FPH did not provide her final paycheck until 10 days later.

Within the one-year period prior to the submission of this letter, Defendant misclassified Ms. Hoyle as exempt, deprived her of meal and rest breaks and premiums for missed breaks, deprived her of overtime wages, failed to pay her for all hours worked, failed to reimburse her for the use of her personal cellular phone and home internet, provided her with inaccurate wage statements, and failed to pay her all wages due at the time of her discharge.

b. Vet Assistants

The PAGA Pool also consists of vet assistants who, like Ms. Hoyle, were either misclassified as independent contractors, or misclassified as exempt employees. Some vet assistants spent all of their time making home visits to FPH clients, either with a vet (*e.g.*, to help hold the pet while the vet performs procedures, take notes, etc.) or under the virtual supervision of a vet, and then completing paperwork pertaining to those visits (as described in the description of Ms. Hoyle’s experience, above, which is incorporated here to the extent vet assistants had the same experience). Other vet assistants spent most of their time in the office doing paperwork related to the home visits: preparing customers’ discharge instruction paperwork, doing data entry to update customer records based upon visits, ordering medications based on visits, and the like.

Vet assistants do not meet the ABC test or the *Borello* test for independent contractors. They are carrying out the very business of FPH, they are under the control and direction of FPH, they are paid based on their hours, they have no potential for profit or loss, and they use the Company’s tools and software to perform their work. On home visits, they wear FPH t-shirts. They work for the Company on an ongoing, indefinite basis, like employees, not for a single isolated assignment, like an independent contractor. Ms. Hoyle is informed and believes that some vet assistants were classified as independent contractors within the past year.

Vet assistants also do not meet the test for any exemption under Wage Order 4 (or any other Wage Order). The position is an entry-level one – vet assistants have not undergone any training that would qualify them for the professional exemption. They do not have a management role or supervise anyone, and therefore do not qualify for the executive exemption. They do not perform work that relates directly to the management policies or general business operations of FPH, as required for the administrative exemption; rather, they carry out the day-to-day routine service of FPH. They operate under close supervision of vets, and they do not exercise independent judgment or discretion with respect to matters of significance. At least one vet

assistant was only a part-time employee. Yet FPH misclassified some of its vet assistants as exempt.

Upon information and belief, vet assistants work more than 8 hours in a day and 40 hours in a week without overtime compensation; they are not afforded meal or rest breaks, nor premiums for missed breaks. They do not receive compliant wage statements. Upon information and belief, they are not reimbursed (or fully reimbursed) for their travel expenses or the use of their personal cell phones or home internet connections to conduct FPH's business. Upon information and belief, FPH has misclassified numerous vet assistants during the past year as independent contractors and/or exempt employees, all of whom are part of the PAGA Pool. (To the extent vet assistants were sometimes called "vet technicians," the latter are included in the PAGA Pool.)

c. Vets

FPH has classified some of its vets as independent contractors and, upon information and belief, this practice has continued into the past year. FPH fails the ABC test with respect to such vets: among other things, the vets do not perform work that is outside the usual course of FPH's business – rather, they are the core of FPH's business. FPH also fails the *Borello* test with respect to such vets: FPH controls the work done and the manner and means in which it is done, because FPH supervises the tasks done by the vets, the prices charged, the services available, the keeping of records, the relationship with the customer, and many other aspects of the work being performed; the vets are not engaged in an occupation distinct from that of FPH; the vets have no opportunity for profit or loss depending on their managerial skill, the services performed by the vets for FPH are on a prolonged, indefinite basis, as opposed to isolated engagements; and vets use the Company's equipment and wear FPH t-shirts during home visits. The vets whom FPH classified as independent contractors during the past year are part of the PAGA Pool.

d. "Member Experience" Employees and Other Low-Level Office Workers

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

Such employees are also not properly classified as exempt. They do not supervise anyone or otherwise have managerial responsibilities, as would be required to satisfy the executive exemption. They lack any course of specialized training that would qualify them for the professional exemption. And they do not perform work that relates directly to the management policies or general business operations of FPH, as required for the administrative exemption; rather, they carry out the day-to-day routine office tasks that go into serving FPH's customers. They operate under close supervision of FPH's management team, and they do not exercise independent judgment or discretion with respect to matters of significance.

To the extent that FPH has treated Member Experience or other low-level office assistants as independent contractors or exempt employees within the past year, they are part of the PAGA Pool.

Labor Code Violations

a. Willful Misclassification as an Independent Contractor

Under Labor Code § 226.8, it is unlawful “for any person or employer” to engage in “willful misclassification of an individual as an independent contractor.” Defendants have violated this provision, and are therefore liable under Labor Code § 226.8 for civil penalties of between \$5,000 and \$15,000 per violation. Because this misclassification took the form of a pattern or practice, Defendants are liable under Labor Code § 226.8 for civil penalties of \$10,000 to \$25,000 per violation. Aggrieved Plaintiff seeks such penalties on behalf of the PAGA Pool and the State under Labor Code § 2698 *et seq.*

b. Unlawful Failure to Pay All Wages Owed

Defendants have violated and continue to violate Labor Code sections 200, 204, 210, 510, 558, 1194, 1198 because they fail to compensate for all hours worked, including failing to pay at least minimum wage for all hours worked, and fail to compensate for hours worked at the required overtime rates. Defendants systematically deny compensation at the applicable rates by misclassifying them as independent contractors and/or exempt employees.

Aggrieved Plaintiff therefore seeks penalties on behalf of the PAGA Pool and the state pursuant to Labor Code sections 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq.*

c. Unlawful Failure to Provide Meal and Rest Periods or to Provide Pay Premiums for Missed Rest and Meal Periods

Defendants have violated and continue to violate Labor Code sections 226.7 and 512 because they fail to provide the requisite rest breaks and meal periods and to pay premium compensation due to employees for missed rest breaks and meal periods. Such meal and rest periods as may be taken are interrupted, shorter than the required period, and/or require employees to remain on-call. Defendants fail to pay premiums in lieu of missed meal and rest periods.

As a result, Defendants are liable for civil penalties and wages pursuant to California Labor Code sections 558 and 2698 *et seq.*

d. Unlawful Failure to Furnish Compliant Wage Statements

Defendants have violated and continue to violate Labor Code section 226 because they willfully fail to furnish wage statements that accurately show all the items required by Labor Code section 226(a). Defendants’ misclassification of the PAGA Pool has resulted in the failure to include such information as the total hours worked by the employees, all applicable hourly rates in effect and the hours worked at each rate. It has also resulted in the failure by Defendants

to keep the records required by section 226(a). As a result, Defendants are liable for civil penalties pursuant to California Labor Code sections 226.3 and 2698 *et seq.*

e. Unlawful Failure to Maintain Accurate Payroll Records

Defendants are required to maintain accurate payroll records pursuant to Labor Code sections 1174 and 1174.5. For the reasons discussed above, Defendants failed to keep accurate payroll records showing total hours worked daily, straight and overtime hours worked each day and week, accurate start and end of work periods and meal periods, all true applicable rates of pay and all rest break and meal period premiums owed and their corresponding rates.

Defendants are therefore liable for civil penalties pursuant to California Labor Code sections 1174.5 and 2698 *et seq.*

f. Unlawful Failure to Pay Wages Due Upon Termination

Defendants have violated California Labor Code sections 201 and 202 by willfully failing to pay all compensation due and owing to all former members of the PAGA Pool, including the Aggrieved Plaintiff, timely upon the termination of the employment relationship. This includes compensation for all hours worked, overtime pay, and meal and rest period premium wages, which was not paid as a result of Defendants' misclassification of the PAGA Pool. It also includes the late payment of Ms. Hoyle's final paycheck, which was ten days late.

Pursuant to sections 203, 256, and 1197.1 of the Labor Code, former workers are entitled to recover up to 30 days of wages due to the Defendants' "willful" failure to comply with the statutory requirements of sections 201 and 202. Additionally, because Defendants violated California Labor Code sections 201, 202 and 203 of the Labor Code, they are liable for civil penalties under Labor Code sections 203, 256, and 2698 *et seq.*

g. Failure to Reimburse Business Expenses

Labor Code 2802 requires employers to indemnify their employees for all necessary expenditures incurred in direct consequence of the discharge of their duties. Member of the PAGA Pool were required to use their personal vehicles, personal cell phones, and home internet connections to discharge their duties, but were not reimbursed. Therefore, Defendants are liable for civil penalties under Labor Code § 2698 *et seq.*

* * *

Aggrieved Plaintiff seeks penalties on behalf of the PAGA Pool and the State for the violations described herein. She invites the LWDA to take any action it deems appropriate

Very truly yours,



William C. Jhaveri-Weeks

cc (via certified mail, return receipt requested):

Fuzzy Pet Health, Inc.
Attn: Zubin Betthay
115 10th Street
San Francisco, CA 94103

Fuzzy Pet Health, Inc.
C/O Corpnet, Inc. as Agent for Service of Process
31416 Agoura Rd. Ste. 118
Westlake Village, CA 91361

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fuzzy Pet Health, Inc.
Attn: Zubin Bethany
115 10th Street
San Francisco, CA 94103



9590 9402 3283 7196 8150 36

2. Article Number (Transfer from service label)

7005 2570 0000 6907 6840

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

7-16-19

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fuzzy Pet Health, Inc
C/O Cornneb, Inc. as Agent for Service of Process
31416 Agoura Rd. Ste. 118
Westlake Village CA 91361



9590 9402 3283 7196 8150 67

Number (Transfer from service label)

7005 2570 0000 6907 6864

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

EXHIBIT B

JHAVERI-WEEKS LAW

351 CALIFORNIA STREET SUITE 700
SAN FRANCISCO, CA 94105

TELEPHONE: (415) 723-2803
FACSIMILE: (415) 367-1439
WJW@JHAVERIWEEKS.COM

November 4, 2019

Private Attorneys General Act – Online Filing

Attn. PAGA Administrator

Re: Labor Code Private Attorney General Act Notice by Nicole Reyes Castro, former employee of Fuzzy Pet Health, Inc.

Dear Sir or Madam:

I represent aggrieved employee Nicole Reyes Castro (hereinafter “Aggrieved Plaintiff”). This letter constitutes notice to the employer and the Labor and Workforce Development Agency (“LWDA”) of violations of the Labor Code, pursuant to Labor Code section 2699.3. This notice concerns violations against Aggrieved Plaintiff and other current and former workers hired by Fuzzy Pet Health, Inc. (previously known as Petchi, Inc.). In addition, persons or entities who caused violations of the Labor Code with respect to Fuzzy Pet Health, Inc.’s workers are liable pursuant to Labor Code sections 558 and 1197.1. This includes other entities or individuals whose identities or role in the violations are not currently known to Aggrieved Plaintiff. Fuzzy Pet Health, Inc. and other persons who violated or caused violations shall be referred to collectively as “Defendants.” Together, the Aggrieved Plaintiff and other current or former non-exempt workers on whose behalf this notice is given will be referred to as the “PAGA Pool.”

This PAGA Notice is related to a prior PAGA Notice filed by additional aggrieved plaintiff Erika Hoyle (Case No. LWDA-CM-718352-19). Ms. Reyes Castro complains of the same violations on behalf of the PAGA Pool that were subject to Ms. Hoyle’s complaint, and therefore, Ms. Reyes Castro incorporates that complaint by reference and attaches it as Exhibit A. Ms. Hoyle has filed a lawsuit asserting the PAGA claims that were set forth in her Notice (*Erika Hoyle Zuta v. Fuzzy Pet Health, Inc.*, CGC-19-579373 (San Francisco Superior Court), a copy of which has been submitted to the LWDA. Ms. Reyes Castro plans to seek leave to amend that case to include her PAGA claims, on behalf of herself and other aggrieved employees, once the PAGA notice period elapses.

Fuzzy Pet Health is a small but growing start-up that has engaged in a scheme of classifying many of its workers as independent contractors when such workers were in fact employees. In particular, Defendants engaged in a practice of treating new employees, including Aggrieved Plaintiff, as independent contractors, and later converting them to employees with no change in duties. In addition, Defendants have engaged in a scheme of classifying employees as

exempt when such employees are non-exempt. With respect to Aggrieved Plaintiff, not only did her duties not satisfy the test for an exemption, but she was paid less than the minimum salary required for exempt employees. As a result of such schemes, and in other respects, Defendants have committed the broad range of Labor Code violations described below.

Aggrieved Plaintiff hereby provides notice to the LWDA of the claims alleged in this letter, including violations of sections 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as discussed in more detail below.

The Employer

Fuzzy Pet Health, Inc. (“FPH”) is a Delaware Corporation with its principal place of business in San Francisco, California. FPH is registered with the California Secretary of State. FPH is attempting to “disrupt” the traditional business of veterinary care for household pets. The concept behind FPH is that FPH’s veterinarians will travel to customers’ homes to provide pets with routine or sick-visits, and FPH will provide pet health advice through an online chat function. For such services, FPH charges customers a subscription fee on a monthly basis (\$50 per month) or annual basis (\$540 per year).

FPH was founded in the Bay Area in 2015 by Eric Palm, Robert Trimble, and Zubin Bhattay. According to its website, FPH has provided 7,000+ in-home visits, exchanged 30,000+ messages with pet owners for “health advice and aid,” and treated 4,000+ pets. Its investors include Matrix Partners, Eniac Ventures, SV Angel, FJ Labs, Precursor Ventures, and Crosscut Ventures. Altogether, upon information and belief, FPH currently has approximately 30 employees in the San Francisco Bay Area. FPH recently expanded its operations to the New York City area.

To provide its services in California, FPH employs several categories of workers, including: veterinarians (“vets”) who make home visits to care for pets; “vet assistants” who accompany vets on home visits, make home visits pursuant to virtual supervision by vets, or perform office work such as data entry and preparation of discharge instructions; and customer service (“member experience”) workers and other office staff. Although these all of these positions are part of the day-to-day service that FPH provides to customers, FPH has miscategorized workers in each of these positions as independent contractors. FPH has used the independent contractor designation as an “introductory” classification while it tests out new employees. When FPH “converts” such workers to employees, it classifies virtually all of them, if not all of them, as “exempt” employees, even though they do not (with the possible exception of the vets) qualify for any exemption because their duties do not qualify and/or they are not paid the required minimum salary. Some of them, like Aggrieved Plaintiff, earned too little to satisfy the minimum salary requirement for the exemption. FPH urges such misclassified employees to work at least six days per week, requires them to work in the evenings and on weekends, and does not provide them with the overtime pay or meal and rest breaks to which they are entitled. FPH also fails to reimburse, or fully reimburse, its employees’ business expenses.

Aggrieved Plaintiff and the PAGA Pool**a. Aggrieved Plaintiff's Experience**

Nicole Reyes Castro worked at Fuzzy Pet Health Inc. from late March 2018 through September 3, 2019.

i. Working at FPH as an "Independent Contractor" from March-September/October 2018.

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

She often worked 10 or more hours in a day. Her first appointment was generally at 9:00 a.m., and her last appointment could last until 7:30 or 8:00 p.m. Sometimes 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, there were 7-8 appointments, but sometimes there were as many as 11, and sometimes there were multiple pets per appointment (indeed, some clients had a large number of pets), which would lengthen the appointment. If she had a gap between appointments, she would go into the FPH office and perform work, such as preparing fecal kits, requesting records, and going over emails. She was told that her compensable time started when she got to her first appointment or to the office (whichever was first), even though she sometimes had to drive an hour or more to get to the first appointment. She was told that her compensable time ended at the end of her last appointment, even though she was required to go home and complete paperwork documenting the day's visits. Her paperwork at home took a minimum of one hour, and often two hours depending on the number of appointments she had had. She performed this at-home work for free for FPH. She was also required to respond to messages on Slack on her off-days or in the evenings – this work was also simply unpaid.

Throughout her time as an "independent contractor" for FPH, Ms. Reyes Castro recorded her time and periodically submitted her hours to be paid. Because she had been instructed not to record time worked after the last appointment, she generally did not submit her time or receive payment for such tasks. Likewise, she often deducted time for her meal times, even if she worked or was on call during her meal periods. At various points, the company's time-keeping system would automatically deduct sixty minutes of time for her meal periods, even though she

did not take them. When she was an independent contractor, she would sometimes correct the inaccurate meal breaks, but even when her only lunch break was grabbing food and eating in the car between appointments, she would record a 30-minute unpaid lunch break. She did not receive rest periods in which she was relieved of her duties. FPH was on notice of the time she worked during evenings, because it was a general subject of complaint among vets and vet assistants. FPH was on notice that Ms. Reyes Castro was not afforded meal breaks, because she was not told that she could take meal breaks, and her appointments were often scheduled so that the only meal she and the vet accompanying her could take would be to buy food to go (or bring snacks from home) and eat in the car on the way to the next appointment. She was also tracked by gps at various points in her employment through on of the company's time-keeping apps, which it required her to download onto her personal phone.

Ms. Reyes Castro's time as an "independent contractor" lasted until about September or October 2018 (her offer letter stated that her employment would be effective September 1, but she continued to be paid on an hourly basis until some time in October). Throughout that time, she was not an independent contractor under the applicable legal tests. With respect to the ABC test that applies to the Wage Orders, FPH failed to meet all three prongs of the test with respect to Ms. Reyes Castro: first, Ms. Reyes Castro was not free from the control or direction of FPH – rather, FPH instructed her what to do and how to do it, like a classic employee; second, Ms. Reyes Castro did not perform work outside the usual course of FPH's business – she performed the work that made up FPH's business; and third, she was not engaged in an independently established trade – she was working as an entry-level vet assistant and office worker for FPH. With respect to the common law (*Borello*) economic realities test that applies to the Labor Code, Ms. Reyes Castro also was an employee, not an independent contractor. For example, FPH controlled the work she did and the manner in which it was done; she was not performing services distinct from FPH's business; her work was part of the regular business of FPH; her employer provided her with office space for the tasks that had to be done in the office, equipment for treating pets, and its software programs to perform her work; she did not invest in equipment, have a special skill, or have an opportunity for profit or loss; the working relationship was ongoing for six months, and FPH paid her an hourly rate, like an employee.

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

ii. Working at FPH as an "Exempt" Employee from September/October 2018 to September 3, 2019.

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

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

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

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

FPH terminated Ms. Reyes Castro on September 3, 2019. She was not fully paid upon termination, but was told to come back the following day to pick up her final paycheck.

Within the one-year period prior to the submission of this letter, Defendant misclassified Ms. Reyes Castro as exempt, deprived her of meal and rest breaks and premiums for missed breaks, deprived her of overtime wages, failed to pay her for all hours worked, failed to reimburse her for the use of her personal cellular phone and home internet, provided her with inaccurate wage statements, and failed to pay her all wages due at the time of her discharge.

b. Vet Assistants

The PAGA Pool also consists of vet assistants who, like Ms. Reyes Castro, were either misclassified as independent contractors, or misclassified as exempt employees. Some vet assistants spent all of their time making home visits to FPH clients, either with a vet (*e.g.*, to help hold the pet while the vet performs procedures, take notes, etc.) or under the virtual supervision of a vet, and then completing paperwork pertaining to those visits (as described in the description of Ms. Reyes Castro's experience, above, which is incorporated here). Other vet assistants spent most of their time in the office doing paperwork related to the home visits: preparing customers'

discharge instruction paperwork, doing data entry to update customer records based upon visits, ordering medications based on visits, and the like.

Vet assistants do not meet the ABC test or the *Borello* test for independent contractors. They are carrying out the very business of FPH, they are under the control and direction of FPH, they are paid based on their hours, they have no potential for profit or loss, and they use the Company's tools and software to perform their work. On home visits, they must wear FPH t-shirts. They work for the Company on an ongoing, indefinite basis, like employees, not for a single isolated assignment, like an independent contractor. Ms. Reyes Castro is informed and believes that some vet assistants were classified as independent contractors within the past year.

Vet assistants also do not meet the test for any exemption under Wage Order 4 (or any other Wage Order). The position is an entry-level one – vet assistants have not undergone any training that would qualify them for the professional exemption (Ms. Reyes Castro's only relevant prior experience or training, for example, was working as a call center employee at the SPCA), and are not licensed. They do not have a management role or supervise anyone, and therefore do not qualify for the executive exemption. They do not perform work that relates directly to the management policies or general business operations of FPH, as required for the administrative exemption; rather, they carry out the day-to-day routine service of FPH. They operate under close supervision of vets, and they do not exercise independent judgment or discretion with respect to matters of significance. At least one vet assistant was only a part-time employee. At least one vet assistant (Ms. Reyes Castro) was paid a salary too low to qualify for exemption. Yet FPH misclassified its vet assistants as exempt.

Upon information and belief, vet assistants work more than 8 hours in a day and 40 hours in a week without overtime compensation; they are not afforded meal or rest breaks, nor premiums for missed breaks. They do not receive compliant wage statements. Upon information and belief, they are not reimbursed (or fully reimbursed) for their travel expenses or the use of their personal cell phones or home internet connections to conduct FPH's business. Upon information and belief, FPH has misclassified numerous vet assistants during the past year as independent contractors and/or exempt employees, all of whom are part of the PAGA Pool. (To the extent vet assistants were sometimes called "vet technicians," the latter are included in the PAGA Pool.)

c. Vets

FPH has classified some of its vets as independent contractors and, upon information and belief, this practice has continued into the past year. FPH fails the ABC test with respect to such vets: among other things, the vets do not perform work that is outside the usual course of FPH's business – rather, they are the core of FPH's business. FPH also fails the *Borello* test with respect to such vets: FPH controls the work done and the manner and means in which it is done, because FPH supervises the tasks done by the vets, the prices charged, the services available, the keeping of records, the relationship with the customer, and many other aspects of the work being performed; the vets are not engaged in an occupation distinct from that of FPH; the vets have no opportunity for profit or loss depending on their managerial skill, the services performed by the vets for FPH are on a prolonged, indefinite basis, as opposed to isolated engagements; and vets

use the Company's equipment and must wear FPH shirts during home visits. The vets whom FPH classified as independent contractors during the past year are part of the PAGA Pool.

d. "Member Experience" Employees and Other Low-Level Office Workers

FPH has employed Member Experience workers to be the primary points of contact with customers. Among other things, such workers sent (until fall of 2018) welcome packages to new customers, order medications, and respond to most customer communications, including online "chat" inquiries. Some Member Experience workers spend long days simply answering customer chats under the supervision of a vet. FPH has misclassified such workers as independent contractors and/or exempt employees. Such employees' work is completely under the control of FPH, and the work they perform for FPH is one and the same with FPH's work – they are not engaged in any separate business. For those and other reasons, they are employees, not independent contractors.

Such employees are also not properly classified as exempt. They do not supervise anyone or otherwise have managerial responsibilities, as would be required to satisfy the executive exemption. They lack any course of specialized training that would qualify them for the professional exemption. And they do not perform work that relates directly to the management policies or general business operations of FPH, as required for the administrative exemption; rather, they carry out the day-to-day routine office tasks that go into serving FPH's customers. They operate under close supervision of FPH's management team, and they do not exercise independent judgment or discretion with respect to matters of significance.

To the extent that FPH has treated Member Experience or other low-level office assistants as independent contractors or exempt employees within the past year, they are part of the PAGA Pool.

Labor Code Violations

a. Willful Misclassification as an Independent Contractor

Under Labor Code § 226.8, it is unlawful "for any person or employer" to engage in "willful misclassification of an individual as an independent contractor." Defendants have violated this provision, and are therefore liable under Labor Code § 226.8 for civil penalties of between \$5,000 and \$15,000 per violation. Because this misclassification took the form of a pattern or practice, Defendants are liable under Labor Code § 226.8 for civil penalties of \$10,000 to \$25,000 per violation. Aggrieved Plaintiff seeks such penalties on behalf of the PAGA Pool and the State under Labor Code § 2698 *et seq.*

b. Unlawful Failure to Pay All Wages Owed

Defendants have violated and continue to violate Labor Code sections 200, 204, 210, 510, 558, 1194, 1198 because they fail to compensate for all hours worked, including failing to pay at least minimum wage for all hours worked, and fail to compensate for hours worked at the required overtime rates. Defendants systematically deny compensation at the applicable rates by misclassifying them as independent contractors and/or exempt employees.

Aggrieved Plaintiff therefore seeks penalties on behalf of the PAGA Pool and the state pursuant to Labor Code sections 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq.*

c. Unlawful Failure to Provide Meal and Rest Periods or to Provide Pay Premiums for Missed Rest and Meal Periods

Defendants have violated and continue to violate Labor Code sections 226.7 and 512 because they fail to provide the requisite rest breaks and meal periods and to pay premium compensation due to PAGA Pool members for missed rest breaks and meal periods. Such meal and rest periods as may be taken are interrupted, shorter than the required period, and/or require employees to remain on-call. Defendants fail to pay premiums in lieu of missed meal and rest periods.

As a result, Defendants are liable for civil penalties and wages pursuant to California Labor Code sections 558 and 2698 *et seq.*

d. Unlawful Failure to Furnish Compliant Wage Statements

Defendants have violated and continue to violate Labor Code section 226 because they willfully fail to furnish wage statements that accurately show all the items required by Labor Code section 226(a). Defendants' misclassification of the PAGA Pool has resulted in the failure to include such information as the total hours worked by the employees, all applicable hourly rates in effect and the hours worked at each rate. It has also resulted in the failure by Defendants to keep the records required by section 226(a). As a result, Defendants are liable for civil penalties pursuant to California Labor Code sections 226.3 and 2698 *et seq.*

e. Unlawful Failure to Maintain Accurate Payroll Records

Defendants are required to maintain accurate payroll records pursuant to Labor Code sections 1174 and 1174.5. For the reasons discussed above, Defendants failed to keep accurate payroll records showing total hours worked daily, straight and overtime hours worked each day and week, accurate start and end of work periods and meal periods, all true applicable rates of pay and all rest break and meal period premiums owed and their corresponding rates.

Defendants are therefore liable for civil penalties pursuant to California Labor Code sections 1174.5 and 2698 *et seq.*

f. Unlawful Failure to Pay Wages Due Upon Termination

Defendants have violated California Labor Code sections 201 and 202 by willfully failing to pay all compensation due and owing to all former members of the PAGA Pool, including the Aggrieved Plaintiff, timely upon the termination of the employment relationship. This includes compensation for all hours worked, overtime pay, and meal and rest period premium wages, which was not paid as a result of Defendants' misclassification of the PAGA Pool.

Pursuant to sections 203, 256, and 1197.1 of the Labor Code, former workers are entitled to recover up to 30 days of wages due to the Defendants' "willful" failure to comply with the

statutory requirements of sections 201 and 202. Additionally, because Defendants violated California Labor Code sections 201, 202 and 203 of the Labor Code, they are liable for civil penalties under Labor Code sections 203, 256, and 2698 *et seq.*

g. Failure to Reimburse Business Expenses

Labor Code 2802 requires employers to indemnify their employees for all necessary expenditures incurred in direct consequence of the discharge of their duties. Member of the PAGA Pool were required to use their personal vehicles, personal cell phones, and home internet connections to discharge their duties, but were not reimbursed or fully reimbursed. Therefore, Defendants are liable for civil penalties under Labor Code § 2698 *et seq.*

* * *

Aggrieved Plaintiff seeks penalties on behalf of the PAGA Pool and the State for the violations described herein. She invites the LWDA to take any action it deems appropriate


Very truly yours,



William C. Jhaveri-Weeks

cc (via certified mail, return receipt requested):

Audrey Gee
David Marchiano
Brown, Gee & Wenger LLP
200 Pringle Ave. Suite 400
Walnut Creek, CA 94596
Counsel for Fuzzy Pet Health, Inc.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY														
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>Rachel Alexander</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>														
<p>1. Article Addressed to:</p> <p><i>Audrey Gee David Marchiano Brown, Gee, & Wenger LLP 200 Pringle Ave. Suite 400 Walnut Creek, CA 94596</i></p>	<p>B. Received by (Printed Name) C. Date of Delivery <i>Rachel Alexander</i></p>														
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<p>2. Article Number (Transfer from service label) 7018 0680 0001 3290 7930</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Mail Restricted Delivery (over \$500)	
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PROOF OF SERVICE

I, William Jhaveri-Weeks, am counsel of record for Plaintiff in this matter and am a member in good standing of the California Bar. My business address is 351 California Street, Suite 700, San Francisco, CA 94104. On the date of signature below, I served the following documents:

SECOND AMENDED COMPLAINT FOR DAMAGES AND CIVIL PENALTIES

on the Defendant by causing a true copy thereof to be distributed Defendant's counsel of record:

Audrey Gee
David Marchiano
Brown Gee & Wenger LLP
200 Pringle Avenue, Suite 400
Walnut Creek, CA 94596
agee@bgwcounsel.com
dmarchiano@bgwcounsel.com

By E-Mail or Electronic Transmission: I caused a true and correct copy of the aforementioned documents to be transmitted to the above individuals via eService by File and ServeXpress. I also directly sent a copy by email.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 11, 2021, at San Francisco, CA.



William C. Jhaveri-Weeks