



FILED
San Francisco County Superior Court

FEB 10 2021

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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

Plaintiffs,

v.

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

Defendants

Case No. CGC-19-579373

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS,
COLLECTIVE, AND
REPRESENTATIVE ACTION
SETTLEMENT**

This matter is before the Court on Plaintiffs' unopposed Motion for an Order Granting Preliminary Approval of Class, Collective, and Representative Action Settlement based on a Settlement Agreement in the above-titled case. The Settlement Agreement is attached to the Supplemental Declaration of William C. Jhaveri-Weeks in Support of Plaintiffs' Preliminary Approval Motion, dated January 25, 2021 as **Exhibit A** thereto. The motion, having been fully considered by the Court, and it appearing to the Court upon preliminary examination that the settlement is within the range of reasonableness, and that a hearing should and will be held after notice to the Class to confirm that the Settlement Agreement is fair, adequate and reasonable, and to determine whether a judgment should be entered in this action thereon,

1 IT IS HEREBY ORDERED THAT:

2 1. This Order hereby incorporates by reference the definitions in the Settlement
3 Agreement, and all terms used herein shall have the same meaning as set forth in the
4 Settlement Agreement.

5 2. The Court grants the Parties' joint request to file the Second Amended
6 Complaint ("SAC"), attached as **Exhibit F** to the Settlement Agreement. Plaintiffs shall file
7 the SAC no later than three court days after notice of entry of this Order. The deadline for
8 Defendant to file a responsive pleading is stayed pending final approval of this Settlement.

9 3. The Court preliminarily approves the Settlement Agreement and finds that it
10 is within the range of reasonableness as to the Class and Defendant, and is the product of
11 intensive, informed, good faith, arm's length negotiations between the parties that were
12 conducted with the ongoing involvement of Judge Harold Kahn in his capacity as mediator.
13 The settlement appears to be fair, adequate, and reasonable to the Class when balanced
14 against the probable outcome of further litigation relating to class certification, liability and
15 penalties issues, potential appeals of rulings, and the potential inability of Defendant to
16 continue litigation through trial and appeal due to its financial state. The settlement falls
17 within the range of reasonableness, and appears to be presumptively valid, subject to any
18 objections that may be addressed at the final hearing.

19 4. The Court certifies, effective upon filing of the SAC, a provisional class for
20 purposes of this settlement only defined as: "all persons who were employed by Defendant
21 in the State of California as Veterinary Assistants during the Class Period, which is the
22 period of time beginning September 29, 2015 through to the preliminary approval date, and
23 who have not signed a release of claims."

24 5. For settlement purposes only, the proposed Settlement Class meets the
25 requirements for certification under C.C.P. § 382. Specifically, for settlement purposes: (1)
26 the proposed Settlement Class is numerous and ascertainable; (2) there are predominant
27 common questions of law or fact; (3) Plaintiffs' claims are typical of the claims of the
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1 members of the proposed Settlement Class; and (4) a class action is superior to other
2 methods to efficiently adjudicate this controversy through settlement.

3 6. The Court finds that the Class Members are also “similarly situated” for
4 purposes of certifying a collective action for settlement purposes under the Federal Fair
5 Labor Standards Act, 29 U.S.C. § 216(b).

6 7. For settlement purposes only, Erika Hoyle Zuta and Nicole Reyes Castro are
7 appointed as class representatives. The Court preliminary finds that Erika Hoyle Zuta and
8 Nicole Reyes Castro will adequately represent the Settlement Class in accordance with
9 C.C.P. § 382 for settlement purposes.

10 8. For settlement purposes only, the law firm Jhaveri-Weeks Law is designated
11 as Class Counsel. The Court preliminarily finds that Class Counsel will represent the
12 interests of the Settlement Class fairly and adequately in accordance with C.C.P. § 382 for
13 settlement purposes.

14 9. The Court appoints Phoenix, Inc. as Settlement Administrator.

15 10. The Notice is approved as to form and content. A copy of the approved
16 Notice is attached hereto as Exhibit 1.

17 11. The proposed plan for distributing the Notice set forth in the Settlement
18 Agreement at § 11 meets the requirements of due process and constitutes the best notice
19 practicable under the circumstances.

20 12. The Procedures set forth in the Settlement Agreement at §§ 13 – 15 for
21 disputing workweeks, objecting to and requesting exclusion from the proposed settlement
22 are approved.

23 13. The Final Approval Hearing is set for June 30, 2021 at 9:15 a.m. in
24 Department 304 of the Superior Court of California, County of San Francisco, located at 400
25 McAllister Street, San Francisco, California 94102. At the Final Approval hearing, the
26 Court will consider whether the Settlement Agreement is fair, whether Class Counsel’s
27 application for fees and costs should be approved, whether Plaintiffs’ requests for service
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1 awards should be approved, whether the proposed cy pres beneficiary is appropriate, and
2 any other matters that the Court deems appropriate.

3 14. The following dates are set:

4 Event	Triggering Event
5 Defendant to Provide Class Contact 6 Information to the Claims 7 Administrator	20 Calendar days from entry of preliminary approval order
8 Notice to be Distributed	35 Calendar days from entry of preliminary approval order
9 Deadline for Class Members to 10 Submit an Objection	60 days from distribution of notice
11 Deadline to Request Exclusion from 12 Class	60 days from distribution of notice
13 Deadline for Class Members to 14 challenge the number of workweeks 15 in their Notice	60 days from distribution of notice

16 15. The Court may change the date of the Final Approval hearing without further
17 notice to the Settlement Class.

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19 **IT IS SO ORDERED.**

20 Date: February 9, 2021

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22 Hon. Anne-Christine Massullo
23 Judge of the Superior Court
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Exhibit 1

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

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

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

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

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

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

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

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

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

	Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in Department 304 of San Francisco County Superior Court, located at 400 McAllister St, San Francisco, CA 94102.
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The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at **[REDACTED]**.m. on **[REDACTED]**, in Department 304 of the San Francisco County Superior Court, located at 400 McAllister St, San Francisco, CA 94102. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

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

What Is This Case About?

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

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

Questions? Contact the Settlement Claims Administrator toll free at 1-800-[REDACTED]****

Summary of the Settlement Terms

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

Distribution to Class Members

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

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

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

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

Tax Reporting

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

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

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

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

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

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

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

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

Option 2 – Opt Out of the Settlement

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

Phoenix Class Action Administration, Inc.

[insert address]

Email: info@phoenixclassaction.com

Facsimile: (949) 209-2503

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

Option 3 – File an Objection to the Settlement

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

Final Fairness Hearing

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

No Retaliation

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

Change of Address

Questions? Contact the Settlement Claims Administrator toll free at 1-800-[REDACTED]****

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

Additional Information

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

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

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

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

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

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

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 10, 2021, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: February 10, 2021

T. Michael Yuen, Clerk

By: 

DANIAL LEMIRE, Deputy Clerk