

CONFIDENTIAL MEDIATOR PROPOSAL

Dena Palmer

v

eTail Pet, Inc

Berenice Giannini

LASC 20STCV29415

March 8, 2021

Response deadline: 4:30 p.m., Pacific Time, Wednesday, March 10, 2021

At the end of our mediation on February 25, 2021, the parties were far apart -- too far, in my estimation, to have warranted further extension of the mediation session in an effort to reach a solution. While I often make a Mediator's Proposal to try to bridge the gap under circumstances where the parties are at an impasse, it is very difficult to do so when the differences are as those which existed between the parties at the end of our mediation session. At the time, it seemed that the sides were entrenched in their respective views of the settlement value and unwilling to adjust. Since then, while the parties have not had any formal settlement exchanges, each side has engaged in a dialog with me in an effort to see if resolution can be reached. I believe that exchange has been productive enough that there is value in now making a Mediator's Proposal.

In addition, during the mediation and in our recent dialog I have obtained each side's Oh By The Ways – those non-monetary considerations that sometimes cause settlement discussions to fail at the last minute. I believe the fact that the parties can reach a consensus on settlement conditions suggests that both sides have established some common ground. That will make the final details of an agreement proceed more smoothly. So, given the foregoing, I am sending this proposal consistent with my interpretation and evaluation of the case and the result of our discussions.

Before providing the settlement figure, I would like to reiterate what I said at the outset of the mediation – I believe the decision to enter into the mediation process is enlightened and acknowledges the sensitivity of the issues. While there is clearly a great deal of emotion involved, I want to commend everyone for the courteous and gracious manner in which the discussions were conducted. I also want to thank everyone for their expression of confidence in me by continuing to accept my relentless and persistent intrusions, calls and emails. I appreciate your allowing me to continue to help with resolution of this emotionally charged matter.

I also think it is important to note that this is the best and most opportune time for settlement to happen – the best window for resolution that you will have. Any further delays will result in activities that would inhibit any possibility of settlement. That, in turn, will lead to an escalation of both emotion and principle and each party will expend more and exponentially higher amounts to receive nothing greater in later settlement value. In fact, quite the opposite may occur – a pyrrhic victory in which expense outweighs any advantage gained. Resolution now eliminates risk and permits everyone to move on to more productive endeavors. If this proposal is accepted, it will end the dispute, to say nothing about the significant savings of economic, physical and emotional time and expense.

After my discussions with each of you and taking into consideration everything I have seen and heard I believe I understand your legal and damage positions. Based upon all of what has occurred to date I am proposing a settlement figure that I believe will resolve this dispute. I wish to make it clear that my settlement figure is **not** based upon what I think is fair or unfair, right or wrong, or good or bad. This settlement proposal is not based on what I believe a judge or jury might award at a trial, or how any trial judge might rule on legal or evidentiary issues. **The settlement figure is based strictly upon what I believe will settle the dispute.** I do not believe it is a number that will cause joy to either side, but it will accomplish its task.

We discussed the most important Oh By The Ways – the non-economic considerations -- and the parties have indicated a willingness to abide by the following terms. So, if the parties accept this proposal, you agree the document sets forth the material points of the settlement terms and serves as a memorandum of understanding which is binding on the parties and is admissible pursuant to California Evidence Code §1123 and enforceable by motion of any party pursuant to CCP §664.6.

Global Settlement. This settlement is intended to be global, encompassing all claims between the parties and includes a waiver by plaintiff of any class action representation.

Full Settlement and Dismissal with Prejudice. The Mediator's Proposal amount is in full and complete settlement of all plaintiff's individual PAGA and employment related claims, causes of action, known or unknown, as to all parties, and is in consideration for a full and complete dismissal, with prejudice, of all personal PAGA and individual claims, causes of action as to all parties and includes mutual, general releases by all parties to each other of all claims and any other terms described in this Mediator's Proposal. If this Mediator's Proposal is accepted, plaintiff will move to dismiss the PAGA claims for which she is representing any aggrieved employees of defendant and plaintiff's counsel will provide separate language outside of any formal documentation regarding representation of others.

1542. Each party waives application of California Civil Code §1542:

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

Payment of Fees and Costs. Each party will bear its own attorney's fees, costs and expenses.

Preparation of Documents. A long form settlement agreement including releases shall be prepared by counsel for the defendant and provided for signature within 7 calendar days of acceptance of this proposal. All parties agree to expedite review and signature of the long form settlement agreement.

No Admission of Liability. The parties, without admitting any liability or wrongdoing with reference to their dispute or any other matter, agree to settle this matter as set forth in this Mediator's Proposal.

Company Information. Plaintiff represents she has no company

Good Faith. All parties agree to act in good faith to create, complete and execute all documents necessary to effectuate this agreement.

Mutual Releases. Except for the aggrieved PAGA employees, representation of whom by plaintiff will be dismissed, without prejudice, with approval by the court, the parties agree to mutual and general releases as to each other, and any of their parents, subsidiaries, divisions, affiliated corporations, and entities, trustees, directors, officers, shareholders, predecessors, successors, insurance or other agents, partners, attorneys, heirs, assigns, executors, employees and administrators, as to any and all known or unknown, suspected or unsuspected claims, demands, costs, contracts, liabilities, actions and causes of action of every nature, whether in law or in equity arising from and which were brought or could have been brought in the action.

Motion to Enforce. If any action to enforce this Mediator's Proposal or the final agreement between the parties becomes necessary, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Use of Copy. A copy of this document can be used for all purposes for which an original would otherwise be available.

Successors. This Mediator's Proposal is binding upon the parties, and their heirs, representatives, executors, administrators, successors, insurers, and assigns, and shall inure to the benefit of each and all of those released, and to their heirs, representatives, executors, administrators, successors, and assignees.

Counterparts. This and any final agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one document.

Applicable Law. The provisions of this or the final agreement shall be governed by and construed in accordance with the laws of the State of California.

Tax Liability. Plaintiff further agrees to indemnify and hold defendant harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against defendant for any amounts claimed due on account of this agreement or pursuant to claims made under any federal or state tax laws, and any costs, expenses or damages sustained by defendant by reason of any such claims, including any amounts paid by defendant as taxes, deficiencies, levies, assessments, fines, penalties, interest or otherwise.

No Reliance. Plaintiff is not relying on any representations other than those set forth in this Mediator's Proposal.

Non-disclosure. Plaintiff hereby represents she does not have in her possession or control any confidential information or trade secrets that have been acquired by reason of her employment with defendant, including but not limited to, confidential information or trade secrets belonging to or relating to defendant, its customers and vendors or proprietary processes or procedures of defendant, its customers and vendors. Proprietary processes and procedures means all information which is known or intended to be known only to employees of defendant or others in a confidential relationship with defendant which relates to business matters.

Payment and Allocation of Settlement Funds. As set forth above, the parties agree to expedite preparation and execution of the long form settlement agreement. Defendant agrees that the settlement funds will be paid within 30 calendar days after signature of plaintiff on the long form agreement and compliance with any applicable ADEA provisions. Of the settlement funds, \$50,000.00 will be allocated to wages and the remainder payable in one check to Workplace Legal Attorney Trust Account. Plaintiff's counsel will provide defendant with the amount of fees/costs, a tax identification number/W9 in connection with payment, and any other necessary payee information. The parties will agree on what portion of the settlement fund will be allocated to plaintiff's personal PAGA claims.

ADEA. Compliance with the 7-day ADEA waiver provision will be addressed in and part of the long form settlement documentation.

Settlement Disposition. If this proposal is accepted, the parties will promptly notify the Court of this settlement and jointly stipulate to an appropriate continuance of all dates for a sufficient amount of time to permit all necessary documents to be prepared and executed. The parties agree that a minimum of 45 (forty-five) days is reasonable.

Retained Jurisdiction. The parties will request the court to retain jurisdiction to enforce the terms and conditions of this settlement which will be reflected in the long form settlement agreement.

Non-Disparagement. The parties agree that they will not engage in any conduct that is injurious to the reputation or interests of either party or party's entity, including, but not limited to disparaging

(or inducing or encouraging others to disparage) either party or their entity. For purposes of this agreement, the term “disparage” means written, electronic, or oral comments or statements that adversely affect the employment, business or reputation of either party or their entity.

Confidentiality. The terms, but not the fact of settlement, are confidential and except for following 4 exceptions, defendant (and its affiliates) and plaintiff may only say that the case is settled, and the terms are confidential. The parties may discuss terms:

1. With their immediate family members (so long as advised and abide by of the confidentiality) or significant others; within the defendant by only those with a need to know;
2. With attorneys, tax advisors, financial advisors, insurance carriers, or any government agency, entity or person so long as advised of the confidentiality and disclosure is reasonably required by the law;
3. If there's a valid subpoena or court order for testimony at trial, discovery or deposition so long as all other affected parties receive reasonable notice and opportunity to object;
4. If a modification to the confidentiality is agreed upon in writing and signed by the parties affected.

The parties acknowledge and understand that this confidentiality provision is a material condition, consideration and covenant of this Agreement and that violation shall constitute a default and material breach. The parties acknowledge and agree that the time and expense involved in proving in any forum the actual damage or loss suffered by a party for a breach of any of the terms of this confidentiality provision make any such breach appropriately subject to liquidated damages. Accordingly, instead of requiring any proof of damages or losses, the parties agree that as liquidated damages for each single incident of a provable breach of the provisions of the above paragraph, the prevailing party shall be paid \$5,000.00 in addition to any and all legal and equitable remedies available, including, but not limited to, injunctive relief.

Any alleged violation shall be presented to the Court, with the Court being requested and accepting retention of jurisdiction and thus having authority to evaluate and, ultimately, assess whether a breach has occurred and any associated penalties, sanctions, costs and attorneys’ fees to the prevailing party but with the foregoing \$5,000.00 per violation as the agreed upon minimum. Any breach of this confidentiality provision, or the payment of liquidated damages, shall not affect the continuing validity or enforceability of this agreement.

No Other Material Terms. While there may be additional, minor, usual and customary settlement provisions, there are no other material terms (deal breakers) beyond those which are described in this Stipulation for Settlement and the lack of any specificity in that regard will not prevent the parties from being bound by its terms.

Party Document. The parties agree that the terms in this Mediator’s Proposal were created from a discussion with the mediator and the document was put together by the mediator for the parties

from that exchange. The amount, but not the terms, is the mediator's decision and the parties do not intend nor do the parties consider the terms as those of the mediator. By signing the Mediator's Proposal, the parties agree they are adopting each of its terms and language as their own.

In this case, the settlement number is reflective of the litigation risks and expenses for each side, is consistent with the respective evaluations of the parties, and is reflective of the extensive and intense analysis and effort expended by both sides. It necessarily takes out of the equation any adverse judicial rulings, an extraordinarily high or low jury verdict or the risks on appeal --- but it does reflect compromise.

The settlement figure is: **\$660,000.00 (Six hundred sixty thousand dollars)**
payable to plaintiff, Dena Palmer, by defendant, eTail Pet, Inc..

To accept, each **PARTY** must reply to the cover email message with a signed copy of this proposal by 4:30 p.m., Pacific Time, WEDNESDAY, MARCH 10, 2021.

PLEASE NOTE: THIS PROPOSAL MUST BE SIGNED BY THE CLIENT (NOT THE ATTORNEY) FOR IT TO BE EFFECTIVE AND BINDING UNLESS THE CLIENT HAS PROVIDED EXPRESS AUTHORIZATION FOR COUNSEL TO SIGN.

I will not entertain any modifications or changes to this proposal and will not look at ANY response until I have received a response from all parties. Your emails to me accepting the proposal will constitute valid electronic signatures creating an enforceable agreement as to the proposal and may be shared by me with the other parties, if necessary, for any party to enforce the agreement. I will notify the parties whether the case has settled or not settled. *If the case does not settle, no party will be entitled to know what any other party decided.* If responses are in the affirmative, the parties will need to coordinate the timing and preparation of final settlement documentation.

Dena Palmer	<u><i>Dena Palmer</i></u>	Mar 9, 2021
Print Name and authority	Signature	Date

_____	_____	_____
Print Name and authority	Signature	Date

_____	_____	_____
Print Name and authority	Signature	Date

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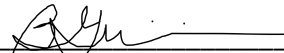
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Berenice Giannini, CEO

Print Name and authority

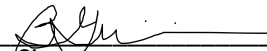

Signature

03/09/21

Date

Berenice Giannini, Individual

Print Name and authority


Signature

03/09/21

Date

Print Name and authority

Signature

Date