

CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS

This Confidential Settlement Agreement and Mutual General Release of All Claims ("Settlement Agreement") is entered into by and between Dena Palmer ("Plaintiff") and eTail Pet Inc. ("eTail") and Berenice Giannini ("Giannini") (collectively, "Defendants"). The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendants, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant eTail. Plaintiff was employed by Defendant eTail from November 11, 2019 through April 6, 2020;

(b) On May 26, 2020, pursuant to the Private Attorneys General Act ("PAGA"), Plaintiff filed a claim notice with the California Labor and Workforce Development Agency ("LWDA"), Case No. LWDA-CM-791254-20 ("PAGA Claim Notice"). Plaintiff named both eTail and Giannini as the employers/responsible parties in the PAGA Claim Notice;

(c) On June 5, 2020, Plaintiff brought a charge of discrimination and retaliation against Defendants with the California Department of Fair Employment and Housing ("DFEH"), DFEH Case No.: 202006-10342305 ("DFEH Complaint"). At Plaintiff's request, the DFEH investigation into the DFEH Complaint was closed and a Right-To-Sue Notice was issued by the DFEH on June 5, 2020;

(d) On August 4, 2020, Plaintiff brought an action arising out of Plaintiff's employment with Defendants and the termination of that employment, which is pending as *Dena Palmer v. eTail Pet, Inc., a Delaware corporation, Berenice Giannini, an individual, and DOES 1-20*, Los Angeles Superior Court Case No. 20STCV29415 (the "Action"). In the Action, Plaintiff asserts claims for (1) failure to pay minimum wage; (2) failure to pay overtime wages; (3) failure to pay for missed meal periods; (4) failure to pay for missed rest periods; (5) unlawful commission chargebacks; (6) failure to timely pay wages due; (7) failure to reimburse employee expenses; (8) failure to provide personnel file; (9) failure to provide accurate wage statements; (10) failure to maintain employment records; (11) failure to pay wages at termination; (12) retaliation; (13) individual and representative PAGA penalties; (14) unfair or unlawful business practices; and (15) wrongful termination in violation of public policy. Plaintiff prays for special, general, liquidated, and punitive damages, penalties, attorneys' fees, interest, and costs;

(e) After engaging in months of written discovery, meeting and conferring, and anticipating multiple motions to compel, the Parties agreed to attend mediation before the Honorable Leo Papas (Ret.). The Parties' mediation with Judge Papas on February 25, 2021 lasted 14 hours but, at its conclusion, the Parties remained significantly apart in their settlement positions. After additional post-mediation dialogue with all Parties, on March 8, 2021, Judge Papas made a Mediator's Proposal, which both Parties accepted on March 10, 2021. A true and correct copy of the Mediator's Proposal signed by all Parties is attached hereto as

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Exhibit A. By the terms of the Mediator's Proposal, the Parties agreed to prepare and execute this long-form Settlement Agreement, reflecting the terms and conditions the Parties had accepted.

(f) There has been no determination on the merits of the Action but, in order to avoid additional significant cost and the uncertainty of litigation, the Parties, and each of them, desire to resolve any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Plaintiff-Released Parties (as defined in Section 7(a) below) as of the date of execution of this Settlement Agreement.

2. **No Admission of Wrongdoing.** The Parties, and each of them, agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Plaintiff-Released Parties, the Giannini-Released Parties, and/or the eTail-Released Parties, of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration/Indemnification for Tax Consequences.**

(a) In consideration for signing this Settlement Agreement and complying with its terms, and provided Plaintiff does not subsequently revoke this Settlement Agreement within the seven (7) day revocation period described in Section 17(f) below, Plaintiff shall be paid the total gross sum of SIX HUNDRED AND SIXTY THOUSAND DOLLARS AND ZERO CENTS (\$660,000.00), which will be paid on behalf of the Plaintiff-Released Parties as follows:

(1) as compensation for alleged lost and unpaid wages, the gross sum of FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$50,000.00), less lawful deductions pursuant to a W4 from Plaintiff, made payable to "Dena Palmer," said amount to be reported by eTail on an IRS Form W-2;

(2) the sum of SIX HUNDRED AND TEN THOUSAND DOLLARS AND ZERO CENTS (\$610,000.00), made payable to "Workplace Legal Attorney Trust Account," said amount to be reported on an IRS Form 1099, which is comprised of the following components:

i. as compensation for Plaintiff's individual PAGA claim, THIRTEEN THOUSAND DOLLARS AND ZERO CENTS (\$13,000.00) ("PAGA Payment"), which, subject to Court approval, shall be allocated as follows: FOUR-THOUSAND, TWO-HUNDRED AND NINETY DOLLARS AND ZERO CENTS (\$4,290.00), or thirty-three percent (33%), will be paid to Workplace Legal, a Professional Law Corporation ("Plaintiff's Counsel") for attorneys' fees and costs incurred in recovering the PAGA Payment to Plaintiff. Of the remaining EIGHT-THOUSAND, SEVEN-HUNDRED AND TEN DOLLARS, AND ZERO CENTS (\$8,710.00), seventy-five percent (75%), or SIX-THOUSAND, FIVE-HUNDRED AND THIRTY-TWO DOLLARS AND FIFTY CENTS (\$6,532.50), shall be paid to the LWDA for civil penalties pursuant to PAGA, and twenty-five percent (25%), or TWO-

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THOUSAND, ONE-HUNDRED AND SEVENTY-SEVEN DOLLARS AND FIFTY CENTS (\$2,177.50), shall be paid to Plaintiff as penalties recovered for her individual PAGA claims.

ii. as compensation for all of Plaintiff's other alleged claims, including her claims for retaliation and wrongful termination in violation of public policy, and the emotional distress, pain and suffering and other general damages flowing therefrom, and as compensation for Plaintiff's attorneys' fees, costs, and interest allegedly owing, the remaining FIVE-HUNDRED, NINETY-SEVEN THOUSAND DOLLARS AND ZERO CENTS (\$597,000.00).

(b) The Parties, and each of them, acknowledge that there is a good faith dispute regarding Plaintiff's alleged entitlement to any unpaid wages and other damages, individual PAGA penalties, and attorneys' fees and costs, and that the consideration set forth in Section 3(a) above includes a good faith, reasonable compromise, and settlement regarding all such claims.

(c) Plaintiff agrees to indemnify and hold the Plaintiff-Released Parties harmless for the amount of any taxes, penalties, or interest that may be assessed by any governmental tax authority against any of the Plaintiff-Released Parties in connection with such governmental authority's determination that Defendants or any of the other Plaintiff-Released Parties was required to, but failed to, withhold or report the correct amount of income or employment taxes from the payments made to Plaintiff or Plaintiff's Counsel pursuant to Section 3(a) of this Settlement Agreement. Plaintiff agrees that Plaintiff shall indemnify the Plaintiff-Released Parties for the full amount of such liability within thirty (30) days after receipt of notice from Defendants or any of the other Plaintiff-Released Parties of the assessment of such taxes, penalties, or interest.

4. **No Consideration Absent Execution of this Settlement Agreement.** Plaintiff understands and agrees that Plaintiff would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement and the fulfillment of the promises contained herein.

5. **Settlement Approval Procedure.**

(a) The Parties, and each of them, and their respective counsel shall take all necessary steps to implement this settlement, including any steps that may be requested by the Court relating to the approval of this settlement, and shall otherwise use their respective best efforts to obtain Court approval of this settlement and to implement this settlement.

(b) As soon as practicable after this Settlement Agreement has been executed by all Parties, Plaintiff shall submit a motion to the Court for approval of the settlement pursuant to Labor Code section 2699(l)(2). Defendants, and each of them, agree that they will provide a Statement of Non-Opposition and/or Declaration in Support (to be drafted by Plaintiff's Counsel and approved by Defendants' counsel) certifying that they do not object to or

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contest any of the allocations in Section 3(a) above, including but not limited to the PAGA Payment, so long as each is consistent with this Settlement Agreement.

6. Disbursal of Settlement Funds/Dismissal of Action.

(a) Provided Plaintiff does not revoke this Settlement Agreement within the allotted 7-day period, Buchalter APC (“Defendants’ Counsel”) shall deliver two checks, in the amounts and payable as described in Sections 3(a)(1) and 3(a)(2) above, to Workplace Legal’s Managing Shareholder Jeffrey S. Sloan, Esq. at 179 Ripley Street, San Francisco, California 94110, within thirty (30) calendar days from the date Defendants receive the following: (i) the Settlement Agreement fully executed by Plaintiff; (ii) an updated Employee’s Withholding Allowance Certificate (IRS Form W-4) for Plaintiff; and (iii) fully-executed Requests for the Taxpayer Identification Number and Certification (IRS Form W-9) for both Plaintiff and Plaintiff’s Counsel. In the event that Defendants are required to deliver the checks described in Sections 3(a)(1) and 3(a)(2) above before the Court has approved the settlement, Plaintiff’s Counsel will hold the check payable to Plaintiff, uncashed, and will deposit the other check into the Workplace Legal Attorney Trust Account. If, thereafter, for any reason the Court does not approve the Parties’ settlement, and if the Parties cannot thereafter agree to an allocation that the Court will approve, then within five days after receipt of the Court’s order denying the settlement, Plaintiff’s Counsel shall return the uncashed check made payable to Plaintiff and a second check to repay Defendants in full for the amount set forth in Section 3(a)(2), above.

(b) No more than five Court days after the Court approves the settlement **and** Defendants’ settlement checks both clear (meaning they are received in Plaintiff’s and Plaintiff’s Counsel’s accounts), Plaintiff shall file with the Court: (1) a fully-executed Request for Dismissal with prejudice of the Action as to Plaintiff’s individual claims, including her individual claim for PAGA penalties; and (2) a fully-executed Request for Dismissal without prejudice as to Plaintiff’s claim for PAGA penalties in her representative capacity on behalf of other aggrieved employees, as that term is defined in Labor Code section 2699(c).

(c) No Party shall claim to be the prevailing party in the Action.

7. Plaintiff’s Release of Claims.

(a) **Claims Being Released.** Plaintiff, on behalf of herself individually and her agents, insurers, affiliates, attorneys, and assigns (the “Plaintiff-Releasing Parties”), fully and forever releases Giannini and eTail, and each of them, as well as each of their members, owners, employees, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (the “Plaintiff-Released Parties”), from any and all claims, lawsuits, liabilities, demands, and obligations, both known and unknown, arising from or in any way related to events, acts, or omissions occurring prior to the time Plaintiff signs this Settlement Agreement. This release includes, but is not limited to, the following: (i) all claims arising from or related to, directly or indirectly, Plaintiff’s recruitment to, employment with,

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and/or termination from Giannini and/or eTail; (ii) all claims for wages, compensation, overtime, premium pay, reimbursements, or benefits owed by Giannini and/or eTail, including but not limited to claims for wages, back pay, overtime, missed meal period pay, missed rest period pay, bonuses, commissions, vacation pay, expense or loss reimbursements, severance pay, and fringe benefits; (iii) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (iv) all tort claims, including claims for fraud, defamation, emotional distress, invasion of privacy, and discharge in violation of public policy; (v) all federal, state, and local statutory claims, including but not limited to claims for fraud, discrimination, harassment, retaliation, and/or attorneys' fees; (vi) all other claims arising under any state, federal, or municipal law, statute, constitution, and/or regulation in effect in every jurisdiction in which Plaintiff was employed, as originally drafted and as amended, including but not limited to Title VII of the Civil Rights Act of 1964 ("Title VII"), the Civil Rights Act of 1991, the Age Discrimination in Employment Act ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the Americans with Disabilities Act ("ADA"), the federal Equal Pay Act, the Genetic Information Nondiscrimination Act ("GINA"), the Family and Medical Leave Act ("FMLA"), the Fair Labor Standards Act ("FLSA"), the California Fair Employment and Housing Act ("FEHA"), the California Family Rights Act ("CFRA"), the California Private Attorney General Act ("PAGA"), the California Equal Pay Act, the California Fair Pay Act, the California Labor Code, the Wage Orders of the California Department of Industrial Relations, the California Civil Code, the California Business & Professions Code, and the California Constitution; and (vii) all claims alleging violation of federal and/or state common law rights.

(b) **Claims Not Released.** Plaintiff is not waiving any rights she may have to: (i) Plaintiff's own vested accrued employee benefits under eTail's health, welfare, or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under Labor Code sections 132a and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; (iv) enforce this Settlement Agreement; or (v) challenge the validity of this Settlement Agreement.

(c) **Government Agencies.** Nothing in this Settlement Agreement prohibits or prevents Plaintiff from filing a charge with or participating, testifying, or assisting in any investigation, hearing, action, or other proceeding before any federal, state, or local government agency (*e.g.*, EEOC, DFEH, NLRB, SEC, *etc.*), nor does anything in this Settlement Agreement preclude, prohibit, or otherwise limit, in any way, Plaintiff's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. Moreover, nothing in this Settlement Agreement prohibits or prevents Plaintiff from testifying in any administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment on the part of Defendants, or either of them, or any agents or employees of Defendants, when Plaintiff has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature. However, to the maximum extent permitted by law and expressly excluding Plaintiff's participation in any federal whistleblower programs, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

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(d) **Collective/Class Action Waiver.** If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective, or multi-party action or proceeding based on such a claim in which either Defendant, or any of the other Plaintiff-Released Parties identified in this Settlement Agreement, is a party.

8. **Giannini's Release of Claims.** Giannini, on behalf of herself individually and her agents, insurers, affiliates, attorneys, and assigns (the "Giannini-Releasing Parties"), fully and forever releases Plaintiff and her agents, insurers, affiliates, attorneys, and assigns (the "Giannini-Released Parties") from any and all claims, lawsuits, liabilities, demands, and obligations, both known and unknown, arising from or in any way related to events, acts, or omissions occurring prior to the time Giannini signs this Settlement Agreement. This release includes, but is not limited to, the following: (i) all claims arising from or related to, directly or indirectly, Plaintiff's recruitment to, employment with, and/or termination from Giannini and/or eTail (ii) all claims for breach of contract and breach of the implied covenant of good faith and fair dealing; (iii) all tort claims, including claims for negligence, fraud, misrepresentation, defamation, slander, libel, conversion, misappropriation, breach of the duty of loyalty, and/or breach of fiduciary duty; (iv) all federal, state, and local statutory claims; (v) all other claims arising under any state, federal, or municipal law, statute, and/or regulation in effect in every jurisdiction in which Plaintiff was employed; and (vi) all claims alleging violation of federal and/or state common law rights.

9. **eTail's Release of Claims.** eTail, on behalf of itself and its members, owners, officers, directors, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (the "eTail-Releasing Parties"), fully and forever releases Plaintiff and her agents, insurers, affiliates, attorneys, and assigns (the "eTail-Released Parties") from any and all claims, lawsuits, liabilities, demands, and obligations, both known and unknown, arising from or in any way related to events, acts, or omissions occurring prior to the time eTail signs this Settlement Agreement. This release includes, but is not limited to, the following: (i) all claims arising from or related to, directly or indirectly, Plaintiff's recruitment to, employment with, and/or termination from Giannini and/or eTail (ii) all claims for breach of contract and breach of the implied covenant of good faith and fair dealing; (iii) all tort claims, including claims for negligence, fraud, misrepresentation, defamation, slander, libel, conversion, misappropriation, breach of the duty of loyalty, and/or breach of fiduciary duty; (iv) all federal, state, and local statutory claims; (v) all other claims arising under any state, federal, or municipal law, statute, and/or regulation in effect in every jurisdiction in which Plaintiff was employed; and (vi) all claims alleging violation of federal and/or state common law rights.

10. **Mutual Waiver of California Civil Code section 1542.** To effect a full and complete mutual general release as described above, the Parties, and each of them, expressly waive and relinquish all rights and benefits of section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Plaintiff-Released Parties, the Giannini-Released Parties, and the eTail-Released Parties, the Parties, and each of them, expressly acknowledge this Settlement Agreement is intended to include in its effect, without limitation, all claims the Parties, and each of them, do not know or suspect to exist in the Parties' favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. The Parties, and each of them, warrant that they have read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that the Parties have consulted with or had the opportunity to consult with counsel of the Parties' choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that the Parties, and each of them, understand this Settlement Agreement and the section 1542 waiver, and so the Parties, and each of them, freely and knowingly enter into this Settlement Agreement. The Parties, and each of them, further acknowledge that the Parties, and each of them, later may discover facts different from or in addition to those the Parties now know or believe to be true regarding the matters released or described in this Settlement Agreement, and even so the Parties, and each of them, agree that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. The Parties, and each of them, expressly assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to the Parties relating thereto.

11. **No Pending Claims or Lawsuits.** Each Party represents and warrants that she/it has not initiated or filed, nor is she/it currently talking to counsel or otherwise contemplating initiating or filing, any claim, complaint, charge, lawsuit, or arbitration against any other Party and/or any of the Plaintiff-Released Parties, the Giannini-Released Parties, and/or the eTail-Released Parties. Each Party further represents and warrants that she/it will not initiate or file against any claim, complaint, charge, lawsuit, or arbitration that has been released pursuant to this Settlement Agreement.

12. **Acknowledgements and Affirmations.**

(a) Plaintiff further affirms that Plaintiff has been paid or has received all compensation, wages, bonuses, commissions, and benefits which are due and payable as of the date of execution of this Settlement Agreement, except as alleged in the Action and which claims are expressly released in Section 7(a) above. Plaintiff also affirms that Plaintiff has been reimbursed for all expenses necessarily incurred by Plaintiff in following Defendants' directions or incurred in performing Plaintiff's duties during Plaintiff's employment with Giannini and/or eTail.

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(b) Plaintiff further affirms that Plaintiff has no known workplace injuries or occupational diseases and that Plaintiff has been granted or has not been denied any leave to which Plaintiff was entitled under the Family and Medical Leave Act, the California Family Rights Act, or disability accommodation laws.

(c) Plaintiff also affirms that Plaintiff has not been retaliated against for reporting any allegations of wrongdoing by Defendants or any of eTail's officers, directors, or employees including, but not limited to, allegations of corporate fraud, except as alleged in the Action and which claims are expressly released in Section 7(a) above.

(d) Plaintiff further affirms that all of Defendants' decisions regarding Plaintiff's pay and benefits through the date Plaintiff's employment relationship with Defendants ended were not discriminatory based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental or physical disability, medical condition, age, pregnancy, denial of medical and family care leave, pregnancy disability leave, or any other classification protected by law.

(e) Plaintiff affirms that Medicare has no interest in the payment under this Settlement Agreement. Nonetheless, if the Centers for Medicare & Medicaid Services (the "CMS") (this term includes any related agency representing Medicare's interests) determines that Medicare has an interest in the payment to Plaintiff under this Settlement Agreement, Plaintiff agrees to indemnify, defend, and hold the Plaintiff-Released Parties harmless from any action by the CMS relating to medical expenses of Plaintiff. Plaintiff agrees to reasonably cooperate with the Plaintiff-Released Parties upon request with respect to (i) any information needed to satisfy the reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, and (ii) any claim the CMS may make and for which Plaintiff is required to indemnify the Plaintiff-Released Parties under this Section. Furthermore, Plaintiff agrees to waive any and all future actions against the Plaintiff-Released Parties for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

13. Limited Disclosure.

(a) The Parties, and each of them, agree that they will not publicize or disclose or cause or knowingly permit or authorize the publicizing or disclosure of the contents of this Settlement Agreement, including the amount paid in settlement, the contents of the negotiations leading up to this Settlement Agreement, and/or the basis for any claims or allegations which were or could have been made against the Plaintiff-Released Parties, the Giannini-Released Parties, and/or the eTail-Released Parties which concern and are within the scope of this Settlement Agreement, except as set forth in Sections 13(c) – 13(e) below, (hereafter collectively referred to as "Confidential Information") to any person, firm, organization, or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of the non-disclosing Party or Parties. Each Party acknowledges her/its intention that the provisions of this Section 13 create no liability for disclosures made: (i) prior to the disclosing Party's execution of this Settlement Agreement; (ii) by persons from public information released prior to the disclosing Party's execution of this

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Settlement Agreement; (iii) pursuant to Sections 20(b) or 20(c) below to enforce the terms of this Settlement Agreement; (iv) in order to seek Court approval of the settlement pursuant to California Labor Code section 2699(l); (v) as otherwise compelled by valid subpoena, court order, or other operation of law; or (vi) pursuant to a modification to this Section 13 that has been agreed upon in writing and signed by all affected Parties. The Parties, and each of them, further acknowledge that no disclosures shall be made to any publication or reporting service regarding settlements and verdicts.

(b) The foregoing notwithstanding, the Parties, and each of them, acknowledge the confidentiality provisions of this Section 13 constitute a material inducement for each Party to enter into this Settlement Agreement and represent that she/it has not directly or indirectly disclosed any Confidential Information to any third-party not authorized in Section 13(a) prior to her/its execution of this Settlement Agreement.

(c) Plaintiff is permitted to disclose Confidential Information to Plaintiff's immediate family members, significant other(s), health care providers, tax advisors, financial advisors, insurance carriers, and attorneys with whom Plaintiff chooses to consult regarding Plaintiff's consideration of this Settlement Agreement. However, each such person to whom Plaintiff discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Plaintiff of Section 13(a) above. Plaintiff also is permitted to disclose Confidential Information to any federal, state, or local government agency. In response to inquiries from third-parties concerning the status of this dispute or which would require the disclosure of Confidential Information, Plaintiff only will state that the dispute has been resolved and that the terms are confidential.

(d) Giannini is permitted to disclose Confidential Information to Giannini's immediate family members, significant other(s), health care providers, tax advisors, financial advisors, insurance carriers, and attorneys with whom Giannini chooses to consult regarding Giannini's consideration of this Settlement Agreement. However, each such person to whom Giannini discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Giannini of Section 13(a) above. Giannini also is permitted to disclose Confidential Information to any federal, state, or local government agency. In response to inquiries from third-parties concerning the status of this dispute or which would require the disclosure of Confidential Information, Giannini only will state that the dispute has been resolved and that the terms are confidential.

(e) eTail, including its members, owners, officers, directors, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns, is permitted to disclose Confidential Information only those within the organization with a need to know such Confidential Information, as well as tax advisors, financial advisors, insurance carriers, and attorneys with whom eTail chooses to consult regarding its consideration of this Settlement Agreement. However, each such person to whom eTail discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of

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Confidential Information by any such person so informed shall constitute a breach by eTail of Section 13(a) above. eTail also is permitted to disclose Confidential Information to any federal, state, or local government agency. In response to inquiries from third-parties concerning the status of this dispute or which would require the disclosure of Confidential Information, eTail only will state that the dispute has been resolved and that the terms are confidential.

(f) It is agreed that if any Party breaches of the provisions of this Section 13, it would be impractical or extremely difficult to fix actual damages to the non-breaching Party or Parties. Therefore, the Parties, and each of them, agree that in the event of a provable breach, the prevailing Party shall be paid as liquidated damages, and not as penalty, the sum of FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00), in addition to any and all legal and equitable remedies available, including but not limited to injunctive relief.

(g) Any alleged violation of this Section 13 shall be presented to the Court to determine whether a breach has occurred and to assess 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 Settlement Agreement.

14. **Non-Disparagement.** Plaintiff agrees that Plaintiff (i) will not make any comment or statement to any person or entity that disparages Defendants or any of Defendant eTail's past, current, or future employees, representatives, independent contractors, parent companies, subsidiaries, divisions, or affiliates, and (ii) will not advise or encourage any person or entity to bring a claim against Defendants, or any of Defendant eTail's parent companies, subsidiaries, divisions, or affiliates, or any of their employees, provided, however, that nothing in this provision will prevent Plaintiff from testifying truthfully in response to legal process.

Defendant Giannini agrees that she will not make any comment or statement to any person or entity that disparages Plaintiff.

Defendant eTail agrees to instruct all persons currently employed as a Director or in any position above a Director at eTail to not make any comment or statement to any person or entity that disparages Plaintiff.

For purposes of this Settlement Agreement, the term "disparages" means written, electronic, or oral comments or statements that adversely affect the employment, business, or reputation of either party or entity.

15. **Company Property/Information**

(a) Plaintiff affirms that she has returned all of Defendant eTail's documents and property, including, but without limitation, any and all services work, notes, reports, files, memoranda, records, cardkey passes, door and file keys, safe combinations, laptop computer, computer access codes, disks and instructional or personnel manuals, and other

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physical or personal property that Plaintiff received or prepared or helped to prepare in connection with Plaintiff's employment with Defendant eTail ("Company Property").

(b) Plaintiff acknowledges and agrees that in the course of Plaintiff's employment with Defendant eTail, Plaintiff acquired: (i) confidential information including without limitation information received by Defendant eTail from third-parties, under confidential conditions; (ii) other technical, product, business, financial, or development information from Defendant eTail, the use or disclosure of which reasonably might be construed to be contrary to the interest of Defendant eTail; or (iii) any other proprietary information or data, including but not limited to customer lists, which Plaintiff may have acquired during Plaintiff's employment (hereafter collectively referred to as "Company Information"). Plaintiff understands and agrees that such Company Information was disclosed to Plaintiff in confidence and for use only by Defendant eTail. Plaintiff understands and agrees that Plaintiff: (i) will keep such Company Information confidential at all times, (ii) will not disclose or communicate Company Information to any third-party, and (iii) will not make use of Company Information on Plaintiff's own behalf, or on behalf of any third-party. In view of the nature of Plaintiff's employment and the nature of Company Information Plaintiff received during the course of Plaintiff's employment, Plaintiff agrees that any unauthorized disclosure to third-parties of Company Information or other violation, or threatened violation, of this Settlement Agreement would cause irreparable damage to the confidential or trade secret status of Company Information and to Defendant eTail, and that, therefore, Defendant eTail, and each person constituting Defendant eTail hereunder, shall be entitled to an injunction prohibiting Plaintiff from any such disclosure, attempted disclosure, violation, or threatened violation. This provision supersedes and replaces the Proprietary Information and Confidentiality Agreement Plaintiff signed on November 10, 2019 as a condition of her employment with Defendants.

(c) The undertakings set forth in this Section 15(b) shall survive the termination of this Settlement Agreement or other arrangements contained in this Settlement Agreement.

16. **Job References.** Plaintiff shall direct all individuals inquiring about Plaintiff's employment with eTail to eTail's Human Resources Department, which will follow eTail's policy by responding with only Plaintiff's last position and dates of employment, except that this provision shall not apply to any request from a prospective employer who provides a release signed by Plaintiff pursuant to the Fair Credit Reporting Act or any state counterpart.

17. **Consideration and Revocation Periods – Notice.**

(a) Plaintiff acknowledges that Plaintiff already has attained the age of forty (40) and understands that this is a full release of all existing claims whether currently known or unknown including, but not limited to, claims for age discrimination under the Age Discrimination in Employment Act.

(b) Plaintiff further acknowledges that Plaintiff has been advised to consult with an attorney of Plaintiff's own choosing before signing this Settlement Agreement, in

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which Plaintiff waives important rights, including those under the Age Discrimination in Employment Act.

(c) By executing this Settlement Agreement, Plaintiff also acknowledges that Plaintiff has been afforded at least twenty-one (21) calendar days to consider the meaning and effect of this Settlement Agreement and to discuss the contents and meaning of this Settlement Agreement, as well as the alternatives to signing this Settlement Agreement, with an attorney of Plaintiff's choosing, and has done so. Plaintiff agrees that the twenty-one (21) day consideration period began on the date this Settlement Agreement was first delivered to Plaintiff, and that changes to the terms of this Settlement Agreement (whether material or not) shall not restart the twenty-one day consideration period.

(d) Plaintiff understands that the releases contained in this Settlement Agreement do not extend to any rights or claims that Plaintiff has under the Age Discrimination in Employment Act that first arise after execution of this Settlement Agreement.

(e) If Plaintiff signs this Settlement Agreement before the twenty-one (21) day consideration period expires, the seven (7) day revocation period (described in Section 17(f) below) immediately shall begin. If Plaintiff signs this Settlement Agreement before the twenty-one (21) day consideration period expires, Plaintiff agrees that Plaintiff knowingly and voluntarily has accepted the shortening of the twenty-one (21) day consideration period and that Defendants have not promised Plaintiff anything or made any representations that are not contained in this Settlement Agreement. In addition, if Plaintiff signs this Settlement Agreement before the twenty-one (21) day consideration period expires, Plaintiff acknowledges and affirms that Defendants have not threatened to withdraw or alter the offer contained in this Settlement Agreement prior to the expiration of the twenty-one (21) day consideration period.

(f) Plaintiff may revoke this Settlement Agreement for a period of seven (7) calendar days following the date Plaintiff executes this Settlement Agreement. Any revocation during this period must be submitted in writing and state, "I hereby revoke my acceptance of our Settlement Agreement and General Release of All Claims." The revocation must be mailed to Tracy Warren, Buchalter APC, 655 West Broadway, Suite 1625, San Diego, CA 92101, and postmarked within seven (7) calendar days after Plaintiff's execution of this Settlement Agreement. The foregoing notwithstanding, this Settlement Agreement shall not become effective and enforceable until the seven (7) day revocation period has expired.

18. **No Transfer/Assignment of Claims.** Each Party warrants and represents that she/it has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement.

19. **Liens and Attorneys' Fees/Indemnification.** Plaintiff agrees that she is solely responsible for the satisfaction of any assignment or lien to any lien holder in the present action and will indemnify and hold the Plaintiff-Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes, or attorneys' fees that may be imposed against or incurred by any of the Plaintiff-Released Parties as a result of the actions of any lien

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holder or any lien claimant or any taxing authority or any court in relation to any interest which any third-party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff under this Settlement Agreement. Each Party solely is responsible for any fees and costs she/it has incurred including, but not limited to, fees for attorneys, consultants, and expert witnesses. Plaintiff acknowledges that none of the Plaintiff-Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action including, but not limited to, fees charged or to be charged by Judge Leo Papas, Judicate West, for services rendered as the mediator of this dispute, beyond the amount to be paid by Defendants in Section 3(a) above.

20. **Execution of Documents.** The Parties, and each of them, agree to act in good faith to prepare, execute, and file any documents or stipulations reasonably required to perform the covenants herein, to satisfy the conditions herein, or to give full force and effect to this Settlement Agreement, including documents required to obtain Court approval of the settlement and dismissal of the PAGA and other claims.

21. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary, or supplement the terms of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party may institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. However, the Party instituting such an action must take steps to file this Settlement Agreement or any documents setting forth the terms of this Settlement Agreement with the court under seal. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing party in that action shall be entitled to recover reasonable attorneys' fees.

(c) It is the intent of the Parties, and each of them, pursuant to Evidence Code sections 1122(a)(1) and 1123, that all of the terms of this Settlement Agreement shall be admissible and may be disclosed under seal to a court of law and shall be enforceable and binding upon them in a court of law.

22. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement Agreement, to supervise all notices, the administration of the settlement, and to hear and adjudicate any dispute arising from or related to the settlement. The Parties, and each of them, agree that the Court has jurisdiction over the settlement and this Settlement Agreement pursuant to California Code of Civil Procedure, Section 664.6.

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23. **Amendment.** This Settlement Agreement may not be modified, altered, or changed, except in writing and signed by the Parties, and each of them, wherein specific reference is made to this Settlement Agreement.

24. **Miscellaneous.**

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties, and each of them, and their respective counsel. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties, and each of them, prepared it jointly.

(d) If any Party fails to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

25. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement between the Parties, and fully supersedes any prior agreements or understandings between the Parties. Each Party acknowledges that she/it has not relied on any representations, promises, or agreements of any kind made in connection with her/its decision to accept this Settlement Agreement, except for those set forth in this Settlement Agreement.

PLAINTIFF UNDERSTANDS AND ACKNOWLEDGES THAT PLAINTIFF HAS AT LEAST TWENTY-ONE (21) CALENDAR DAYS TO REVIEW THIS SETTLEMENT AGREEMENT PRIOR TO EXECUTION OF THIS SETTLEMENT AGREEMENT. PLAINTIFF FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS SETTLEMENT AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) CALENDAR DAY CONSIDERATION PERIOD.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS PLAINTIFF HAS

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**OR MIGHT HAVE AGAINST THE GIANNINI-RELEASED PARTIES AND/OR THE
ETAIL-RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS
SETTLEMENT AGREEMENT.**

**IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily
executed this Settlement Agreement as of the date set forth below:**

Executed on _____, 2021

DENA PALMER

Executed on March 29, 2021

BERENICE GIANNINI

ETAIL PET, INC.

Executed on March 29, 2021

By: _____
BERENICE GIANNINI
Chief Executive Officer

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**OR MIGHT HAVE AGAINST THE GIANNINI-RELEASED PARTIES AND/OR THE
ETAIL-RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS
SETTLEMENT AGREEMENT.**

**IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily
executed this Settlement Agreement as of the date set forth below:**

Executed on 3/29, 2021

Dena Palmer

Dena Palmer (Mar 29, 2021 19:58 PDT)

DENA PALMER

Executed on _____, 2021

BERENICE GIANNINI

ETAIL PET, INC.

Executed on _____, 2021

By:

BERENICE GIANNINI

Chief Executive Officer