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Attorneys for Plaintiff
DENA PALMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

DENA PALMER, an individual

Plaintiff,

v.

ETAIL PET, INC., a Delaware corporation,
BERENICE GIANNINI, an individual, and
DOES 1 through 20, inclusive,

Defendants.

Case No. 20STCV29415

**DECLARATION OF KATHLEEN M.
PRATT, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION SEEKING
COURT APPROVAL OF PAGA
SETTLEMENT**

Date: April 23, 2021

Time: 8:30 a.m.

Department: 32

Before the Honorable Daniel S. Murphy

Reservation No. 176742073468

I, Kathleen M. Pratt, Esq. hereby declare as follows:

1. I am an attorney at law, duly admitted to practice before all the courts of California, and I am Senior Counsel with Workplace Legal, APLC, counsel for Plaintiff in the above-captioned matter

(herein, “Plaintiff’s Counsel”). This Declaration is made in support of Plaintiff’s Motion Seeking Court Approval of PAGA Settlement. If called as a witness, I could and would testify based on my own personal knowledge on the matters set forth herein.

2. On May 26, 2020, Plaintiff’s counsel filed a PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) on Plaintiff’s behalf, detailing various Labor Code violations that Plaintiff alleged Defendants eTail Pet, Inc. and Berenice Giannini (herein, “Defendants”) had committed as well as the “facts and theories” supporting those violations. (Collectively herein, Plaintiff and Defendants are referred to as the “Parties.”) The LWDA assigned Case No. LWDA-CM-791254-20 to Plaintiff’s PAGA claims. Plaintiff’s PAGA claim notice was served by certified mail on Defendants on May 27, 2020, and thereafter Plaintiff’s counsel paid the \$75 filing fee required by the PAGA statute. The 65-day time for the LWDA to investigate and/or prosecute Plaintiff’s PAGA claims expired on July 30, 2021, without the LWDA indicating any wish to investigate and/or prosecute.

3. On August 4, 2020, Plaintiff’s counsel filed Plaintiff’s Complaint for Damages in Los Angeles Superior Court (Case No. 20STCV29415, herein, the “Action”) alleging 15 separate causes of action against Defendants arising out of her employment. Plaintiff’s claims included wrongful termination in violation of public policy and retaliation (entitling Plaintiff to compensatory damages, punitive damages, and attorneys’ fees, as well as a \$10,000 statutory penalty); unlawful or unfair business practices in violation of Business and Professions Code §17200; and numerous Labor Code violations that Plaintiff had personally suffered during her employment by Defendants (failure to pay minimum wage, failure to pay overtime wages, failure to pay for missed meal and rest periods, unlawful commission chargebacks, failure to pay wages timely when due, failure to reimburse expenses, failure to provide accurate wage statements, failure to provide personnel file, failure to maintain employment records, and failure to pay wages upon termination), all of which entitled Plaintiff to back-due wages, penalties, and attorneys’ fees and costs. In her fourteenth cause of action, Plaintiff also pled both individual and representative claims under California’s Private Attorneys’ General Act (“PAGA”). As required by PAGA, Plaintiff’s counsel uploaded to the LWDA website a copy of Plaintiff’s August 4, 2020 Complaint.

1 4. Defendants answered Plaintiff's Complaint on September 28, 2020, denying all claims
2 and putting forward numerous affirmative defenses.

3 5. The Parties vigorously litigated the Action for nearly six months. Defendants prepared
4 and propounded third-party employment records subpoenas to Plaintiff's former employers. Plaintiff
5 objected strenuously to these subpoenas and threatened to move to quash unless Defendants either
6 significantly limited the scope of the subpoenas or withdrew them altogether. Defendants ultimately
7 withdrew the subpoenas. Plaintiff's counsel prepared and propounded ten sets of written discovery (five
8 sets on each Defendant), including form interrogatories (two sets per Defendant), special interrogatories,
9 requests for admission, and demands for production of documents. Drafting these ten sets of discovery
10 was a massive amount of work, requiring re-review of the entire file, researching the elements and facts
11 required to prove all of Plaintiff's 15 causes of action, and researching the elements necessary to prove
12 Plaintiff's alter-ego claim against Defendant Berenice Giannini.

13 6. Defendants initially responded to Plaintiff's ten sets of written discovery with nothing
14 more than wholesale objections. After Plaintiff threatened motions to compel, Defendants later
15 supplemented their responses – but again, the supplemental responses were woefully inadequate and
16 incomplete, and Defendants produced very few documents responsive to Plaintiff's numerous demands.
17 After heated and extensive meeting and conferring, including on the issue of electronically stored
18 information ("ESI") to which Plaintiff was entitled, it was clear that Defendants intended to stonewall.
19 Plaintiff requested that Defendants participate in an Informal Discovery Conference with the Court, to
20 attempt to sort the discovery disputes out, but Defendants refused to stipulate to do so. Thus, Plaintiff's
21 counsel began preparing ten separate motions to compel further discovery responses and requests for
22 sanctions against Defendants and Defendants' counsel. Just before those motions were filed, and on the
23 eve of the Parties' initial Case Management Conference, the Parties agreed to participate in early
mediation before the Hon. Leo Papas (Ret.) of Judicate West ("Judge Papas").

24 7. As a condition of participating in the February 25, 2021 mediation, Plaintiff's counsel
25 insisted that Defendants produce certain additional key information so that Plaintiff's counsel and
26 Plaintiff could (a) evaluate the strength and weaknesses of Plaintiff's claims and Defendants' defenses;
27 and (b) properly determine the value of Plaintiff's 15 causes of action. Without this information,

Plaintiff's counsel would be unable either to engage in meaningful settlement negotiations or to advise Plaintiff as to any settlement proposed by Defendants. Among other things, Plaintiff's counsel demanded emails and other documents relating to Plaintiff's ongoing and repeated complaints that Defendants were not paying her properly or accounting accurately for her commission wages, emails showing that Defendants decided to terminate Plaintiff mere days after Plaintiff complained again about pay practices and her commissions, documents outlining the duties, responsibilities, and compensation for Plaintiff's position and others in that same position, and titles and pay rates for other of Defendants' employees who had been classified as "exempt" and/or who received commissions. Defendants' counsel produced 142 pages of the requested information to Plaintiff's counsel thirty days prior to the mediation date, so Plaintiff's counsel had ample time to review and analyze all of it.

8. As part of the pre-mediation information exchange, Defendants also produced declarations from four of Defendants' former employees who had been employed during what would have been the relevant one-year period prior to when Plaintiff filed her PAGA Claim Notice with the Labor and Workforce Development Agency ("LWDA"), or the "PAGA Period." Each of these former employees – who would have been deemed "aggrieved employees" since they had also worked for Defendants during the PAGA Period – stated that they had not worked overtime, had been paid for all hours worked, had been properly provided expense reimbursements, had been provided all meal and/or rest breaks to which they were entitled, received all commissions they had earned, believed that Defendants had not committed any violation of the Labor Code against them, had never been discriminated or retaliated against, and attesting that they had no interest in participating in any PAGA representative action. True and correct copies of these declarations are attached hereto as **Exhibit A**.

9. In preparation for the February 25, 2021 mediation before Judge Papas, Plaintiff's counsel did extensive damages analyses for each of Plaintiff's individual claims. On Plaintiff's wrongful termination in violation of public policy claim **alone**, Plaintiff's damages of past and future economic loss, past and future non-economic loss, and steeply-discounted punitive damages totaled well in excess of **\$800,000**. Plaintiff's individual claims for retaliation and violations of numerous Labor Code provisions entitled her to recover an additional **\$442,332** in wages, civil and statutory penalties, and attorneys' fees and costs. Plaintiff's individual PAGA penalties were approximately **\$83,000**. Were

this case to proceed to trial, Defendants faced liability to Plaintiff and her attorneys of more than **\$1.25 million** on Plaintiff's individual claims alone.

10. In preparation for the mediation, Plaintiff's counsel submitted to Judge Papas a 54-page Confidential Mediation Brief, attaching 166 pages of documents as exhibits. I am informed and believe that Defendants' counsel also prepared and submitted a confidential mediation brief to Judge Papas in advance of the mediation. The Parties and their respective counsel, as well as a representative of Defendants' EPLI insurance carrier, all attended the mediation, which was conducted by Zoom on February 25, 2021.

11. The mediation with Judge Papas lasted 14.5 hours. At conclusion of the day, the Parties remained hundreds of thousands of dollars apart in their settlement positions. Consequently, Judge Papas ended the Zoom mediation for the day, but indicated his wish to continue the momentum. Confidential discussions between each side and Judge Papas continued after the mediation, eventually culminating in Judge Papas making a Mediator Proposal on Monday, March 8, 2021. On Wednesday March 10, 2021, all Parties accepted the Mediator Proposal, effectively resolving all of Plaintiff's claims. A true and correct copy of the fully executed Mediator Proposal is attached hereto as **Exhibit B**.

12. Per the terms of the Mediator Proposal, Defendants were to prepare a long form settlement agreement consistent with the Mediator Proposal and provide it to Plaintiff within one week. On March 17, 2021, Defendants' counsel forwarded a draft Settlement Agreement to Plaintiff's counsel. Plaintiff's counsel reviewed and revised the long form Settlement Agreement and returned it to Defendants' counsel on March 23, 2021. On March 29, 2021, Defendants approved all changes, and all Parties executed the Settlement Agreement. A true and correct copy of the fully executed long form Settlement Agreement and Mutual General Release is attached hereto as **Exhibit C**.

13. Both the Mediator Proposal and the Settlement Agreement made clear that the settlement sums being paid to Plaintiff were in settlement of all of Plaintiff's individual claims – including Plaintiff's individual PAGA claim – but that no monies were being paid for other aggrieved employees. See Exhibit B and Exhibit C. Consequently, the Parties are requesting dismissal **with** prejudice of all of Plaintiff's individual claims, but requesting dismissal **without** prejudice of the PAGA claim as to other aggrieved employees. See Exhibit C, paragraph 6(b).

14. Per the terms of the Parties' Settlement Agreement, the gross settlement sum of \$660,000 is to be distributed as follows:

\$50,000 – Compensation for alleged lost and unpaid wages

\$13,000 – Compensation for Plaintiff's individual PAGA claim, to be allocated \$4,290 (33%) to Plaintiff's counsel for attorneys' fees and costs on Plaintiff's individual PAGA claim, \$6,532.50 (75% of the \$8,710 remaining PAGA payment) to the LWDA for civil penalties pursuant to PAGA, and \$2,177.50 (25% of the \$8,710 remaining PAGA payment) to Plaintiff for civil penalties pursuant to PAGA.

\$597,000 – Compensation for all of Plaintiff's other damages, including for retaliation, wrongful termination in violation of public policy, emotional distress, pain and suffering and other general damages, and for Plaintiff's attorneys' fees, costs and interest.

See **Exhibit C**, paragraph 3(a).

15. The amount allocated from the gross settlement to Plaintiff's individual PAGA penalties – \$13,000 – is approximately 15% of what Plaintiff's counsel calculated Plaintiff's individual PAGA penalties were worth. In light of all of the risks, costs, and uncertainties, the Parties jointly determined that the proper valuation of Plaintiff's individual PAGA claim is **not** the maximum amount she could get on her best day in Court, but rather is \$13,000. As stated in both the Settlement Agreement and in paragraph 13 above, the LWDA will receive \$6,532.50 of this amount (75% of the \$8170 remaining after deduction of Plaintiff's counsel's 33% attorneys' fees). The Settlement Agreement will **not** operate as a bar to any other employee who hereafter wishes to sue Defendants (or either of them) for his/her PAGA claims (or any other claim). As a result, the Parties feel that their settlement is in the best interests of Plaintiff, the State of California and the LWDA, and Defendants, and that it is fair, reasonable, and adequate under the totality of the circumstances.

16. Per the terms of the Parties' Settlement Agreement, Defendants have provided a Statement of Non-Opposition in support of this Motion, certifying that they do not object to or contest any of the allocations of the settlement sums, including the PAGA Payment. A true and correct copy of Defendants' Statement of Non-Opposition is attached hereto as **Exhibit D**.

17. The Parties in the Action are represented by competent and highly experienced counsel who favor settlement. Plaintiff's counsel – Workplace Legal, APLC, and its Managing Shareholder

Jeffrey S. Sloan, Senior Counsel Kathleen M. Pratt, and Senior Counsel Megan L. Lewis – have cumulative decades of experience specializing in employment law, representing both plaintiffs and defendants in state and federal court cases involving wrongful termination, discrimination, harassment, retaliation, and wage/hour matters, including PAGA individual and representative actions. Defendants’ counsel – Buchalter, APC, and its shareholder Tracy Warren, Senior Counsel Michelle Meek, and Attorney Matthew Drenan – also have cumulative decades of experience in employment law matters, representing defendants in state and federal court cases involving wrongful termination, discrimination, harassment, retaliation, and wage/hour matters, including PAGA individual and representative actions.

18. Pursuant to California Labor Code §2699(1)(2), Plaintiff’s counsel submitted the Settlement Agreement (attached hereto as **Exhibit C**) to the LWDA via the LWDA’s online submission portal on Monday, March 29, 2021. As of this date, there has been no response from the LWDA. Also pursuant to California Labor Code §2699(1)(2), Plaintiff’s counsel submitted to the LWDA via the LWDA’s online submission portal the Notice of Motion and Motion for an Order Approving PAGA Settlement, Memorandum of Points and Authorities in Support, this Declaration, and [Proposed] Order Approving PAGA Settlement at the same time as these papers were submitted to this Court for review and approval.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 31, 2021 in Huntington Beach, California.



KATHLEEN M. PRATT, ESQ.

Exhibit A

DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would competently testify to the matters described herein.

2. I worked as a sales representative for eTail Pet, Inc. ("eTail Pet") from January 6, 2020 to May 22, 2020. My job duties included building leads and prospects as well as cultivating clients with brick and mortar pet stores.

3. During my entire time working for eTail Pet, I worked about 40 hours per week. There were a few times that I had demo booked on Saturdays. I was paid for all time I worked for eTail Pet.

4. During the time I worked for eTail Pet, I understood that I would earn commissions and residuals for individual client locations when I both conducted the demonstration and collected payment for the same location.

5. eTail Pet sometimes paid small prizes called SPIFFS for reaching weekly or periodic sales goals. Sometimes we could earn a SPIFF if we booked the first demo of the day. Another way to earn a SPIFF is if we made four demos in one day. I earned less than \$300 in SPIFFS during my employment with eTail Pet.

6. eTail Pet paid me for all hours worked. eTail Pet paid me all monies I was owed every week at first then it switched to every two weeks. I am not seeking any additional payments from eTail Pet.

7. I did not seek reimbursement for any business expenses from eTail Pet. I was asked to purchase food for the group one time and I was immediately reimbursed for that expense. After COVID hit, we were provided with extra expense reimbursements.

8. During my entire employment with eTail Pet, I was completely free to take breaks and meals whenever I wanted to. No other person pressured me or directed me not to take breaks as I saw fit. There wasn't a formal break schedule and I got to choose when to take my breaks. I would let someone know if I was going on a break.

9. I suffered no injury due to the wage statements I received, and I never made any complaint that I believed the wage statements contained errors or omissions to anyone at eTail Pet.

10. I am not and have never been an aggrieved employee of eTail Pet. eTail Pet did not commit any violations of the Labor Code against me during my time working for eTail Pet.

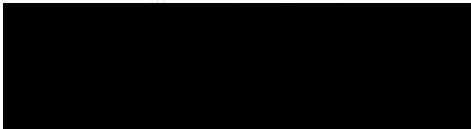
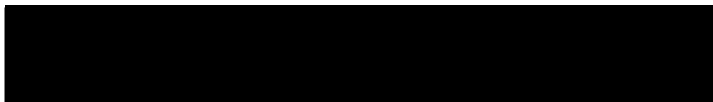
11. I do not intend to participate in any lawsuit against eTail Pet seeking payment related to any of the work I performed for eTail Pet, or for any penalties or damages in any way connected to my employment with eTail Pet.

12. eTail Pet has never retaliated or discriminated against me, and I am not aware of any employees or former employees who eTail Pet has retaliated or discriminated against on account of disability, protected medical leave, or otherwise.

13. On October 8, 2020, I was interviewed by telephone by Shianna Andersack, Director of Revenue for eTail Pet. A paralegal from eTail Pet's attorneys' office was also on the call. Ms. Andersack briefly explained to me the allegations contained in a pending representative action against eTail Pet. She explained that a former employee is suing eTail Pet and arguing that eTail Pet improperly classified its sales personnel, and that she was seeking compensation for unpaid wages, overtime wages, missed lunch and rest breaks, failure to reimburse business expenses, and other penalties. Ms. Andersack told me that based on my work history, I may be an aggrieved employee in the pending litigation and that aggrieved employees could potentially be entitled to money. She informed me that the purpose of meeting with me was to gather evidence for eTail Pet, which may limit my right to relief in the representative action. Ms. Andersack also told me that my participation in the interview was completely voluntary, and that I could hang up at any time for any reasons, and that my status with eTail Pet would not be affected in any way. I agreed to discuss my experiences with Ms. Andersack.

14. At the conclusion of the call, Ms. Andersack asked whether I might be willing to sign a declaration confirming the information I shared. She informed me that signing a declaration was also completely voluntary, and that I could freely choose to either sign or not sign a declaration without facing any positive or negative consequences from eTail Pet. I understand that I had the option of participating in the interview and did not feel pressured to participate or sign this Declaration. I was not offered anything, monetary or otherwise, in exchange for participating in the interview or signing this Declaration. I was read a draft copy of this Declaration after the telephone call and an opportunity to make any corrections, changes, or edits I wanted. I was also reminded that I could still choose not to sign it. Therefore, this Declaration reflects all corrections, changes, or edits I may have requested, is being signed by my own choice, and its contents are true to the best of my personal knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 31 day of October 2020 in Marina del Rey, California.



DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would competently testify to the matters described herein.

2. I worked as a sales representative for eTail Pet, Inc. ("eTail Pet") for about three months in 2020. I worked as a customer service representative/sales associate. My job duties entailed calling people, making sales, and getting people to use the ecommerce platform. I would also follow up with potential customers, get credit card information, and make notes in the CRM for others to review and follow up if needed.

3. During my entire time working for eTail Pet, I was paid for all time I worked. We would have a "wake up" call around 7:15 a.m. and a "wrap up" call around 4:05 p.m. I worked Monday through Friday. I didn't have to track my time worked, but ensured I met my goals and quotas in a timely fashion. I made sure to get the job done, whatever it took. I never worked overtime.

4. eTail Pet sometimes paid small prizes called SPIFFS for reaching weekly or periodic sales goals. I did not earn any SPIFFS during my employment with eTail Pet.

5. eTail Pet paid me for all hours worked. eTail Pet paid me all monies I was owed every week. It was really nice to see the email that my pay was submitted and the money show up in my account the next week. I am not seeking any additional payments from eTail Pet.

6. I did not seek reimbursement for any business expenses from eTail Pet, and I did not incur any business expenses while working for eTail Pet. If I would have had any expenses I would have submitted them for reimbursement.

7. During my entire employment with eTail Pet, I was completely free to take breaks and meals whenever I wanted to. No other person pressured me or directed me not to take breaks as I saw fit. A manager at eTail Pet would sometimes tell me to take a break every now and then to make sure I didn't get burned out, but I chose when to take them based on my own schedule. I generally took about four breaks per day including my lunch and rest breaks.

8. I suffered no injury due to the wage statements I received, and I never made any complaint that I believed the wage statements contained errors or omissions to anyone at eTail Pet.

9. I am not and have never been an aggrieved employee of eTail Pet. eTail Pet did not commit any violations of the Labor Code against me during my time working for eTail Pet.

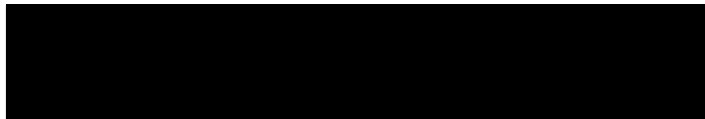
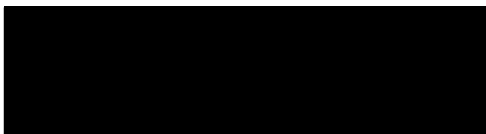
10. I do not intend to participate in any lawsuit against eTail Pet seeking payment related to any of the work I performed for eTail Pet, or for any penalties or damages in any way connected to my employment with eTail Pet.

11. eTail Pet has never retaliated or discriminated against me, and I am not aware of any employees or former employees who eTail Pet has retaliated or discriminated against on account of disability, protected medical leave, or otherwise.

12. On September 30, 2020, I was interviewed by telephone by Shianna Andersack, Director of Revenue for eTail Pet. A paralegal from eTail Pet's attorneys' office was also on the call. Ms. Andersack briefly explained to me the allegations contained in a pending representative action against eTail Pet. She explained that a former employee is suing eTail Pet and arguing that eTail Pet improperly classified its sales personnel, and that she was seeking compensation for unpaid wages, overtime wages, missed lunch and rest breaks, failure to reimburse business expenses, and other penalties. Ms. Andersack told me that based on my work history, I may be an aggrieved employee in the pending litigation and that aggrieved employees could potentially be entitled to money. She informed me that the purpose of meeting with me was to gather evidence for eTail Pet, which may limit my right to relief in the representative action. Ms. Andersack also told me that my participation in the interview was completely voluntary, and that I could hang up at any time for any reasons, and that my status with eTail Pet would not be affected in any way. I agreed to discuss my experiences with Ms. Andersack.

13. At the conclusion of the call, Ms. Andersack asked whether I might be willing to sign a declaration confirming the information I shared. She informed me that signing a declaration was also completely voluntary, and that I could freely choose to either sign or not sign a declaration without facing any positive or negative consequences from eTail Pet. I understand that I had the option of participating in the interview and did not feel pressured to participate or sign this Declaration. I was not offered anything, monetary or otherwise, in exchange for participating in the interview or signing this Declaration. I was read a draft copy of this Declaration after the telephone call and an opportunity to make any corrections, changes, or edits I wanted. I was also reminded that I could still choose not to sign it. Therefore, this Declaration reflects all corrections, changes, or edits I may have requested, is being signed by my own choice, and its contents are true to the best of my personal knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 19 day of October 2020 in culver city, California



DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would competently testify to the matters described herein.

2. I worked as a sales representative for eTail Pet, Inc. ("eTail Pet") for about one month starting on August 4, 2019. I conducted cold and warm sales calls to try to get as many demos booked as I could in the hopes that the demos would turn into customers. I have experience in customer service and retail which helped me do my job at eTail Pet.

3. During my entire time working for eTail Pet, I always worked fewer than 8 hours per day, and fewer than 40 hours per week. I was paid for all time I worked for eTail Pet. I would log into the system and send a text or computer message to let eTail Pet know that I was starting work that day. At the end of my shift, I would send another message memorializing all of the calls and demos I did for that day, which would act as a clock out for the day.

4. eTail Pet paid me for all hours worked. eTail Pet paid me all monies I was owed every two weeks. I am not seeking any additional payments from eTail Pet.

5. I did not seek reimbursement for any business expenses from eTail Pet, and I did not incur any business expenses while working for eTail Pet.

6. During my entire employment with eTail Pet, I was completely free to take breaks and meals whenever I wanted to. No other person pressured me or directed me not to take breaks as I saw fit. I chose when to take my two 15-minute breaks and one 30-minute lunch break. Since the team was small we would all talk about when we wanted to take our breaks to ensure there was always coverage at any given time. During orientation we were told we could not work for more than four hours without taking a break.

7. I suffered no injury due to the wage statements I received, and I never made any complaint that I believed the wage statements contained errors or omissions to anyone at eTail Pet.

8. I am not and have never been an aggrieved employee of eTail Pet. eTail Pet did not commit any violations of the Labor Code against me during my time working for eTail Pet.

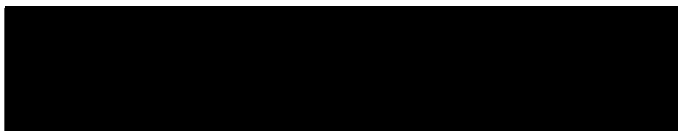
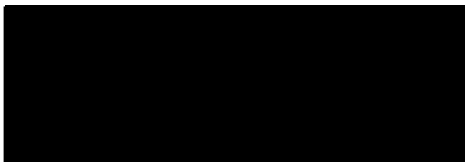
9. I do not intend to participate in any lawsuit against eTail Pet seeking payment related to any of the work I performed for eTail Pet, or for any penalties or damages in any way connected to my employment with eTail Pet.

10. eTail Pet has never retaliated or discriminated against me, and I am not aware of any employees or former employees who eTail Pet has retaliated or discriminated against on account of disability, protected medical leave, or otherwise.

11. On September 23, 2020, I was interviewed by telephone by Shianna Andersack, Director of Revenue for eTail Pet. A paralegal from eTail Pet's attorneys' office was also on the call. Ms. Andersack briefly explained to me the allegations contained in a pending representative action against eTail Pet. She explained that a former employee is suing eTail Pet and arguing that eTail Pet improperly classified its sales personnel, and that she was seeking compensation for unpaid wages, overtime wages, missed lunch and rest breaks, failure to reimburse business expenses, and other penalties. Ms. Andersack told me that based on my work history, I may be an aggrieved employee in the pending litigation and that aggrieved employees could potentially be entitled to money. She informed me that the purpose of meeting with me was to gather evidence for eTail Pet, which may limit my right to relief in the representative action. Ms. Andersack also told me that my participation in the interview was completely voluntary, and that I could hang up at any time for any reasons, and that my status with eTail Pet would not be affected in any way. I agreed to discuss my experiences with Ms. Andersack.

12. At the conclusion of the call, Ms. Andersack asked whether I might be willing to sign a declaration confirming the information I shared. She informed me that signing a declaration was also completely voluntary, and that I could freely choose to either sign or not sign a declaration without facing any positive or negative consequences from eTail Pet. I understand that I had the option of participating in the interview and did not feel pressured to participate or sign this Declaration. I was not offered anything, monetary or otherwise, in exchange for participating in the interview or signing this Declaration. I was read a draft copy of this Declaration after the telephone call and an opportunity to make any corrections, changes, or edits I wanted. I was also reminded that I could still choose not to sign it. Therefore, this Declaration reflects all corrections, changes, or edits I may have requested, is being signed by my own choice, and its contents are true to the best of my personal knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 22 day of October 2020 in Washington, Pennsylvania, California.



DECLARATION OF [REDACTED]

I, [REDACTED] declare:

1. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would competently testify to the matters described herein.

2. I worked as a sales representative for eTail Pet, Inc. ("eTail Pet") for about 4-5 months. I made cold calls and turned them into "warm" calls where we could schedule another representative to demo the products and close the sale. I did not perform demos or close sales myself.

3. During my entire time working for eTail Pet, I always worked fewer than 8 hours per day, and fewer than 40 hours per week. I was paid for all time I worked for eTail Pet.

4. eTail Pet paid me an hourly rate for all hours worked. eTail Pet paid me all monies I was owed every week. I am not seeking any additional payments from eTail Pet.

5. I did not seek reimbursement for any business expenses from eTail Pet, and I did not incur any business expenses while working for eTail Pet.

6. During my entire employment with eTail Pet, I was completely free to take breaks and meals whenever I wanted to. No other person pressured me or directed me not to take breaks as I saw fit. I chose when to take my breaks based on how long I worked that day. I usually took a 30-minute lunch break that I clocked out for.

7. I suffered no injury due to the wage statements I received, and I never made any complaint that I believed the wage statements contained errors or omissions to anyone at eTail Pet.

8. I am not and have never been an aggrieved employee of eTail Pet. eTail Pet did not commit any violations of the Labor Code against me during my time working for eTail Pet.

9. I do not intend to participate in any lawsuit against eTail Pet seeking payment related to any of the work I performed for eTail Pet, or for any penalties or damages in any way connected to my employment with eTail Pet.

10. eTail Pet has never retaliated or discriminated against me, and I am not aware of any employees or former employees who eTail Pet has retaliated or discriminated against on account of disability, protected medical leave, or otherwise.

11. On September 21, 2020, I was interviewed by telephone by Shianna Andersack, Director of Revenue for eTail Pet. A paralegal from eTail Pet's attorneys' office was also on the call. Ms. Andersack briefly explained to me the allegations contained in a pending representative action against eTail Pet. She explained that a former employee is suing eTail Pet and arguing that eTail Pet improperly classified its sales personnel, and that she was seeking compensation for unpaid wages, overtime wages, missed lunch and rest breaks, failure to reimburse business expenses, and other penalties. Ms. Andersack told me that based on my work history, I may be an aggrieved

employee in the pending litigation and that aggrieved employees could potentially be entitled to money. She informed me that the purpose of meeting with me was to gather evidence for eTail Pet, which may limit my right to relief in the representative action. Ms. Andersack also told me that my participation in the interview was completely voluntary, and that I could hang up at any time for any reasons, and that my status with eTail Pet would not be affected in any way. I agreed to discuss my experiences with Ms. Andersack.

12. At the conclusion of the call, Ms. Andersack asked whether I might be willing to sign a declaration confirming the information I shared. She informed me that signing a declaration was also completely voluntary, and that I could freely choose to either sign or not sign a declaration without facing any positive or negative consequences from eTail Pet. I understand that I had the option of participating in the interview and did not feel pressured to participate or sign this Declaration. I was not offered anything, monetary or otherwise, in exchange for participating in the interview or signing this Declaration. I was read a draft copy of this Declaration after the telephone call and an opportunity to make any corrections, changes, or edits I wanted. I was also reminded that I could still choose not to sign it. Therefore, this Declaration reflects all corrections, changes, or edits I may have requested, is being signed by my own choice, and its contents are true to the best of my personal knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this 22 day of October 2020 in Hollywood, California.

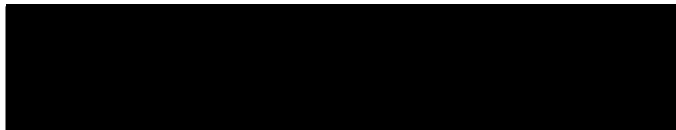
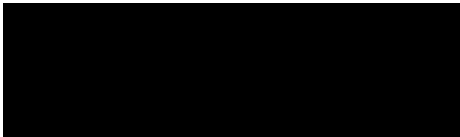


Exhibit B

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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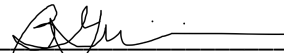
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Berenice Giannini, CEO

Print Name and authority

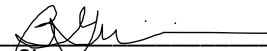

Signature

03/09/21

Date

Berenice Giannini, Individual

Print Name and authority


Signature

03/09/21

Date

Print Name and authority

Signature

Date

Exhibit C

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 2

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-

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 3

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 4

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,

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 5

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.

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 6

(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:

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 7

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.

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 8

(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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 9

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 10

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 11

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 12

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 13

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.

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 14

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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**

Page 15

**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

**CONFIDENTIAL SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASE OF ALL CLAIMS**
Page 15

**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

Exhibit D

1 BUCHALTER
A Professional Corporation
2 TRACY A. WARREN (SBN: 228013)
MICHELLE K. MEEK (SBN: 259993)
3 MATTHEW T. DRENAN (SBN: 302477)
655 West Broadway, Suite 1625
4 San Diego, CA 92101
Telephone: 619.219.5335
5 Email: twarren@buchalter.com
mmEEK@buchalter.com
6 mdrenan@buchalter.com

7 Attorneys for Defendants
8 ETAIL PET, INC. and BERENICE GIANNINI

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 **UNLIMITED JURISDICTION**

12 DENA PALMER, an individual

13 Plaintiff,

14 vs.

15 ETAIL PET, INC., a Delaware corporation,
BERENICE GIANNINI, an individual, and
DOES 1 through 20, inclusive,

16 Defendants.
17
18
19
20

Reservation No. 176742073468

CASE NO. 20STCV29415

**STATEMENT OF NON-OPPOSITION
BY DEFENDANTS ETAIL PET, INC.
AND BERENICE GIANNINI TO
PLAINTIFF'S MOTION SEEKING
COURT APPROVAL OF PAGA
SETTLEMENT**

Complaint Filed: August 4, 2020

Date: April 23, 2021

Time: 8:30 a.m.

Department: 32

Before the Honorable Daniel S. Murphy

1 Defendants ETAIL PET, INC and BERENICE GIANNINI, and each of them, do not oppose
2 Plaintiff's Motion Seeking Court Approval of PAGA Settlement, which Plaintiff filed with the
3 Court on March 31, 2021 and which is set for hearing on April 23, 2021 at 8:30 a.m. Defendants,
4 and each of them, continue to deny liability for any of the claims alleged in Plaintiff's Complaint
5 in this action. Nonetheless, Defendants, and each of them, feel that the Parties' settlement is in the
6 best interests of Plaintiff, the State of California and the LWDA, and Defendants, and that it is fair,
7 reasonable, and adequate under the totality of the circumstances. Defendants therefore request that
8 the Court grant Plaintiff's Motion Seeking Court Approval of PAGA Settlement.

9 DATED: March 31, 2021

BUCHALTER
A Professional Corporation

11 By: _____


12 TRACY A. WARREN
13 MICHELLE K. MEEK
14 MATTHEW T. DRENAN

15 Attorneys for Defendants
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