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Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

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Attorneys for Plaintiff,
ERICKA DOMINGUEZ
on behalf of herself and all others
similarly situated and all
aggrieved employees, and the State of CA

BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ERICKA DOMINGUEZ, on behalf of
herself and all others similarly situated and
all aggrieved employees, and the State of
CA,

Plaintiffs,

vs.

COMMUNITY VETERINARY CLINICS,
LLC, dba VIP PETCARE, a Delaware
LLC, PET IQ, INC., a Delaware
Corporation, VIP PETCARE HOLDINGS,
INC., a California corporation; and DOES
1-50, inclusive,

Defendants.

Case No.: **20STCV34601**

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT:**

- 1. FAILURE TO PAY FOR ALL
HOURS WORKED**
- 2. MISCALCULATION OF
OVERTIME WAGES**
- 3. WAITING TIME PENALTIES**
- 4. FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS**
- 5. FAILURE TO REIMBURSE
BUSINESS EXPENSES**
- 6. FAILURE TO FURNISH
ACCURATE WAGE STATEMENTS**
- 7. UNLAWFUL BUSINESS
PRACTICES, BUS & PROF CODE
§17200**
- 8. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF
2004, CAL. LABOR CODE §2698 et seq.**

JURY TRIAL DEMANDED

1
2 Plaintiff ERICKA DOMINGUEZ brings this Class and PAGA representative
3 action complaint on behalf of herself, all others similarly situated, all aggrieved
4 employees, and the State of California as a Private Attorneys General, and alleges as
5 follows:
6

7 NATURE OF THE ACTION

8

9 1. This is an employment class and representative action on behalf of over 400
10 hourly, non-exempt employees against their employer for violations of numerous wage
11 and hour laws. Plaintiff brings this employment class action complaint on behalf of
12 herself, and all others similarly situated, all aggrieved employees, and as a Private
13 Attorney General for the State of California, against Defendants PET IQ, INC., and
14 COMMUNITY VETERINARY CLINICS, LLC dba VIP PETCARE, VIP PETCARE
15 HOLDINGS, INC., and Does 1-50 (collectively "Defendants").

16 2. In this Complaint, Plaintiff alleges that Defendants are liable for (1) failing to
17 pay for all hours worked, including overtime hours worked; (2) failing to include
18 nondiscretionary bonuses in the regular rate of pay to calculate overtime and penalty pay;
19 (3) failing to timely pay all wages owed; (4) failing to provide rest breaks; (5) failing to
20 reimburse for required business expenses; (6) failing to provide accurate wage statements
21 and maintain accurate payroll records; and engaged in (7) unlawful and unfair business
22 practices, and are liable for (8) penalties under the Private Attorneys General Act
23 ("PAGA"), Labor Code §2698 et seq.

24 3. The class claims in this action are brought pursuant to Code of Civil Procedure
25 ("CCP") § 382, seeking recovery for unpaid wages, including overtime wages, statutory
26 and waiting time penalties, injunctive and other equitable relief, interest, and reasonable
27 attorneys' fees and costs. Pursuant to both the class action and representative action
28 procedures provided for under California law, Plaintiff, on behalf of herself and proposed

1 Class members and aggrieved employees (also referred to as "Class"), also seeks injunctive
2 relief and restitution of all benefits Defendants have received from their unlawful actions
3 as alleged herein.

4 4. Plaintiff provided notice of her claims pursuant to §2698 *et. seq.*, to the Labor
5 and Workforce and Development Agency ("LWDA") as illustrated by the attached Exhibit.
6 The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day
7 notice period required by §2699.3(a)(2)(B).

8 5. The "Class Period" is designated as the four-year period prior to the filing of this
9 Complaint through the date of final disposition of this action. From the start of the Class
10 Period through the present, Defendants have on many occasions ignored and violated
11 California wage and hour laws in their business as more fully set forth below.

12 6. The "PAGA Period" is defined herein commences one year prior to the date of
13 filing the PAGA Notice letter with the LWDA.

14 7. Defendants have on many occasions treated its employees in California in such a
15 way as to violate California's laws governing conditions of employment and payment of
16 wages owed. Plaintiff asserts that Defendants have knowingly and with conscious
17 disregard of the law refused to pay members of the putative Classes and aggrieved
18 employees' wages owed, including overtime wages. Given that Plaintiff and Class
19 members worked shifts of varying hours, the amount of wages owed to them for underpaid
20 overtime also necessarily varies. Defendants have violated numerous Labor Code
21 provisions, as set forth herein. Class members and aggrieved employees and aggrieved
22 employees are owed back pay, reimbursement, plus interest and/or premiums and penalties
23 under Business and Professions Code section 17203 to compensate Class members and
24 aggrieved employees and aggrieved employees for the delay in receiving wages due.

25 8. Defendants, by and through their actions, have engaged in unfair competition,
26 requiring restitution to persons affected and disgorgement of profits so obtained.

27 ///

28 ///

THE PARTIES

9. Plaintiff ERICKA DOMINGUEZ is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants from 2012 through December of 2019.

10. Defendants PET IQ, INC., is a Delaware corporation doing business in California with the capacity to sue and to be sued and doing business in the county of Los Angeles, State of California.

11. VIP PETCARE HOLDINGS, INC., is a California corporation doing business in California with the capacity to sue and to be sued and doing business in the county of Los Angeles, State of California.

12. COMMUNITY VETERINARY CLINICS, LLC, dba VIP PETCARE ("VIP PETCARE"), is a Delaware limited liability company doing business in California with the capacity to sue and to be sued, and doing business in the county of Los Angeles, State of California. Although VIP PETCARE is formed in Delaware, its domicile and principle place of business is California, where all assets, employees, and revenue are located. California is the place of VIP PETCARE's nerve center, and where its officers conduct the LLC's important business.

13. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

14. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other

1 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
2 hereto, and the acts of each Defendant is legally attributable to the other Defendants.

4 **JURISDICTION AND VENUE**

5 15. Venue is proper in this judicial district because Defendants conduct business in
6 this county and each defendant has legal obligations to Plaintiff and many of the
7 aggrieved employees in this case that arose in this county.

8 16. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional
9 limits of the Superior Court and will be established according to proof at trial. Based on
10 information, investigation and analysis, Plaintiff alleges that the amount in controversy,
11 including claims for monetary damages, penalties and attorney's fees is more than
12 twenty-five thousand dollars (\$25,000).

13 17. The California Superior Court has jurisdiction in this matter because Plaintiff
14 is a resident of California and Defendants are incorporated in and/or qualified to do
15 business in California and regularly conduct business in California. Venue is proper in
16 California Superior Court because defendant VIP PET CARE is domiciled in California.
17 Further, there is no federal question at issue as the claims herein are based solely on
18 California law.

19 **CLASS AND PAGA REPRESENTATIVE ACTION ALLEGATIONS**

20 18. During the Class and PAGA Periods, Defendants committed various violations
21 of the California Labor Code, the UCL and IWC Wage Order 7, as alleged below in more
22 detail. Defendants have a pattern of enforcing multiple policies that violate state law
23 which are intended to increase its own profits to the detriment of its employees.

24 19. Defendants employed, upon information and belief, more than 400 current and
25 former non-exempt employees (hereafter "Class members and aggrieved employees" or
26 collectively "the Class") during the Class Period.

27 20. Upon information and belief, all putative Classes and aggrieved employees are
28 non-exempt and paid on an hourly basis – not on a salary basis.

1 21. Plaintiff alleges that Defendants are liable for frequently (1) failing to pay for
2 all hours worked, including overtime hours worked; (2) failing to include
3 nondiscretionary bonuses in the regular rate of pay to calculate overtime and penalty pay;
4 (3) failing to timely pay all wages owed; (4) failing to provide rest breaks; (5) failing to
5 reimburse for required business expenses; (6) failing to provide accurate wage statements
6 and maintain accurate payroll records; and engaged in (7) unlawful and unfair business
7 practices, and are liable for (8) penalties under the Private Attorneys General Act
8 (“PAGA”), Labor Code §2698 et seq.

9 22. Failure to Pay for all hours worked. Unpaid Hours Worked, Including
10 Overtime Hours Worked. Section 2(K) of Wage Order 4 defines “hours worked” as “the
11 time during which an employee is subject to the control of an employer, and includes all
12 the time the employee is suffered or permitted to work, whether or not required to do so.”
13 Defendants have been engaged in many unlawful employment practices which from time
14 to time resulted in underpayment for hours worked as more fully set forth below.

15 A. **Failure to pay all wages at correct rate of pay.** On many occasions,
16 Defendants failed to properly and timely include pay increases in
17 paychecks. Plaintiff, the putative Classes, and aggrieved employees
18 received numerous checks throughout their employment wherein the
19 income earned is identified as miscellaneous pay, which was back-pay
20 that was missed as a result of Defendants’ failure to timely implement
21 and adjust pay owed.

22 B. **Miscalculation of overtime rate of pay.** Defendants have a pattern of
23 issuing nondiscretionary bonuses to Plaintiff, the Class, and aggrieved
24 employees and often failing to include bonuses when calculating the
25 regular rate of pay for purposes of calculating overtime due. It is well
26 established that non-discretionary bonuses retroactively increase the
27 employee’s “regular rate” of pay for purposes of calculating overtime.
28 Labor Code §207. The “regular rate” is calculated by dividing the hours

worked in a week by all the compensation worked for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804, 807.)

C. Plaintiff, the putative Classes, and aggrieved employees received quarterly nondiscretionary bonuses which must be factored into the average rate of pay for purposes of calculating overtime. Plaintiff's paystub, below, indicates that Plaintiff's regular rate of pay is \$18.58 per hour and overtime is \$27.87 (1.5 x \$18.58). The same paystub, however, also indicates that she had received bonuses ("Rig Bonus") in

COMMUNITY VETERINARY CLINICS, LLC
5813 SKYLANE BLVD
WINDSOR, CA 95492
800 427-7973

Period Beginning: 10/18/2019
Period Ending: 11/01/2019
Pay Date: 11/07/2019

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 1

ERICKA DOMINGUEZ

Social Security Number: XXX-XX-8834

Earnings	rate	hours	this period	year to date	Other Benefits and Information	this period	total to date
Regular	18.5800	32.00	594.56	7,675.55	Ca Paid Sick		1.52
Overtime	27.8700	12.52	348.93	4,551.60			
Meal Penalty	18.5800	1.00	18.58	185.80			
Ca Paid Sick				529.16			
Rig Bonus				514.64			
Gross Pay			\$962.07	14,690.43			

Deductions	Statutory	Other	year to date
Federal Income Tax	-66.44		1,085.45
Social Security Tax	-59.65		910.81
Medicare Tax	-13.85		213.01
CA State Income Tax	-7.99		193.12
CA SUI/SDI Tax	-9.62		146.90
		401K	572.23
			-38.48*
Net Pay			\$765.94
Checking			-765.94
Net Check			\$0.00

Important Notes
YOUR COMPANY'S PHONE NUMBER IS 800-427-7973

BASIS OF PAY: HOURLY

AS A REMINDER, IT IS YOUR RESPONSIBILITY TO PROPERLY REPORT YOUR HOURS WORKED.

PLEASE MAKE SURE YOU ARE CHECKING YOUR HOURS & PAY ACCURACY.

SHOULD YOU FIND ANY ERRORS, NOTIFY YOUR MANAGER IMMEDIATELY.

* Excluded from federal taxable wages
Your federal taxable wages this period are \$923.59

the amount of \$514.64 under the column marked "year to date."
Bonuses are not included in the regular rate of pay for purposes of calculating overtime.

1 D. Defendants failed to make any adjustments to overtime rates to
2 incorporate the nondiscretionary bonuses, and this failure is reflected in
3 Plaintiff, the Class, and aggrieved employees' paystubs. When
4 employees like Plaintiff and her coworkers earning near minimum wage
5 do not receive payment for all hours worked, including as a result of
6 Defendants' practice of miscalculating overtime owed, the result is that
7 many employees are earning less than the statutory minimum wages for
8 all hours worked in violation of Labor Code §§1197. 1197.1, 1199, and
9 Wage Order 4-2001 §4. Defendants have been engaged in many
10 unlawful employment practices which resulted in frequent failure to pay
11 minimum wage for all hours worked each pay period.

12 E. **Miscalculation of rest break penalty rate of pay.** Defendants
13 miscalculate meal and rest break penalty wages by excluding the
14 nondiscretionary bonuses mentioned above in the regular rate of pay for
15 purposes of penalty wages calculations. Pursuant to Labor Code §226.7,
16 Defendants are required to pay "one additional hour of pay at the
17 employee's regular rate of compensation for each workday that the meal
18 or rest or recovery period is not provided." However, when Defendants
19 paid penalty wages, Defendants frequently paid only the base rate of
20 pay, failing to add nondiscretionary bonuses as required for calculating
21 the "regular rate of pay."

22 F. Plaintiff, the putative Classes, and aggrieved employees were not paid
23 for all hours worked, including overtime hours worked because of
24 Defendants' pattern of failing to accurately pay wages. Because the
25 number of hours worked, breaks missed, and rates of pay varied by
26 employee, the amount of regular rate and overtime pay owed to each
27 employee also varies.
28

1 G. The California Supreme Court has rejected the *de minimis* argument
2 frequently echoed by employers, confirming that employees are entitled
3 to payment for all hours (and minutes) worked. Such pay must be paid
4 timely pursuant to §204. (*Troester v. Starbucks Corp.* (2018) 5 Cal.5th
5 829, 846, citing *See's Candy*, 210 Cal.App.4th at p.907.)

6 23. Failure to timely pay wages owed. Defendant failed to timely pay wages owed
7 by often failing to pay wages due upon separation as well as often failing to pay wages
8 owed twice per month.

9 24. At all times relevant hereto, Labor Code Section 201 provided that, if an
10 employer such as Defendants discharged an employee such as a member of the Class, the
11 wages earned and unpaid at the time of discharge were due and payable immediately.
12 Furthermore, Labor Code Sections 202 provided that, if an employee such as a member
13 of the PAGA representative class voluntarily left his or her employment, the wages
14 earned and unpaid must be paid by the employer within seventy-two (72) hours
15 thereafter, unless the employee has given seventy-two (72) hours previous notice of his or
16 he intention to leave, in which case the employee is entitled to receive his or her wages
17 immediately at the time of quitting.

18 25. At all times relevant hereto, Defendants willfully failed to pay former
19 employees all of their earned and unpaid wages, either at the time of their discharge or
20 within seventy-two (72) hours of their quitting. By failing to comply with California
21 labor laws governing the payment of all hours worked and other penalties and damages as
22 set forth above, Defendants from time to time underpaid the actual amount of regular
23 hours and overtime hours worked by separated employees. These unpaid amounts were
24 still owing to former employees when they ended their employment with Defendants
25 pursuant to Labor Code §§ 203 and 227.3.

26 26. At all times relevant hereto, Labor Code Section 203 provided that, if
27 employers such as Defendants willfully fail to pay any wages of an employee who is
28 discharged or who quits, the wages of the employee shall continue as a penalty from the

1 due date thereof at the same rate until paid or until an action therefore is commenced, but
2 the wages shall not continue for more than thirty (30) days. Accordingly, employees who
3 were discharged or who quit during the relevant time period are entitled to receive their
4 wages for each day they were not paid, at their regular rate of pay, up to a maximum of
5 thirty (30) days.

6 27. Failure to pay wages owed twice per month. Defendants were required to pay
7 Plaintiff, the putative Classes, and aggrieved employees' wages earned twice during each
8 calendar month pursuant to Labor Code §204(a). Defendants from time to time failed to
9 pay wages earned to employees because of Defendants' failure to properly calculate and
10 pay overtime wages as set forth above. As a result of these practices, aggrieved
11 employees from time to time were underpaid for hours worked, including overtime and
12 penalty wages, and this underpayment resulted in a failure to pay wages owed twice per
13 month resulting in liability under Labor Code §210 for a violation of §204.

14 28. Rest period violations. Defendants have engaged in a pattern of failing to
15 provide employees with off-duty rest periods as required by California law. Plaintiff
16 reports that she and her coworkers were frequently forced to miss their rest breaks as a
17 result of Defendants' staffing and business practices. When breaks were missed,
18 Defendants failed to pay Plaintiff, the putative Classes, and aggrieved employees all
19 premium compensation (one hour of pay at the employee's regular rate of pay for missed
20 or untimely rest periods) mandated by Labor Code §226.7(b) for these missed rest
21 periods.

22 29. Failure to reimburse for required business expenses. California Labor Code §
23 2802(a) provides, in pertinent part, that "[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or his or her obedience to the directions
26 of the employer."

27 A. Plaintiff, the putative Classes, and aggrieved employees were often
28 required to use their personal cell phones for work related

1 communications, although Defendants did not reimburse them in any
2 way for the expense of their personal cell phone use as required by the
3 Labor Code. Notably, employees are required to clock-in and out
4 numerous times during the day when they switch locations or job
5 functions. This requires employees to utilize their personal phones
6 numerous times per day for the sole purpose of serving their employers.

7 30. Wage statement violations. Derivative of the claims alleged above, the
8 statements provided to Plaintiff, the putative Classes, and aggrieved employees from time
9 to time have not accurately reflected actual gross wages earned, including overtime, and
10 total hours worked. Such failures caused injury to Plaintiff, the putative Classes, and
11 aggrieved employees by, among other things, impeding them from knowing the total
12 hours worked and the amount of wages to which they are and were entitled, nor the
13 accurate rate of overtime pay they were entitled to.

14 31. Unlawful business practices. Based upon the above allegations, Defendants
15 have engaged in unfair competition.

16 32. Plaintiff brings this action on behalf of herself, and all other persons similarly
17 situated, to recover from Defendants for failure to comply with California wage and hour
18 laws, and for claims under Business and Professions Code § 17200.

19 33. This action has been brought and may properly be maintained as a class action
20 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed classes
21 are ascertainable and there is a well-defined community of interest. Plaintiff is among in
22 excess of 400 employees who have been similarly injured by Defendants' unlawful
23 employment policies and practices.

24 34. The "Relevant Class Period" or proposed "Class Period" as defined herein
25 commences four years prior to the date of filing this Complaint.

26 35. The "PAGA Period" is defined herein commences one year prior to the date of
27 filing the PAGA Notice letter with the LWDA.
28

1 36. The PAGA Class, also referred to herein as “aggrieved employees”: “All
2 current and former hourly, non-exempt employees of Defendants in California, at any
3 time from one year prior to the filing of the PAGA Notice letter with the LWDA until the
4 resolution of this matter.” Plaintiff reserves the right to amend or modify the definition of
5 aggrieved employees with respect to the issues or in any other way.

6 37. Plaintiff brings this action on his behalf and as a class action under Cal. Code
7 of Civil Procedure §382 on behalf of the following defined groups:

8 Proposed Classes:

9 A. All persons who are employed or have been employed by Defendants in the
10 State of California as hourly, non-exempt workers during the period of the relevant
11 statute of limitations, who received a pay increase during their employment with
12 Defendants. (“Underpaid Wages Class”)

13 B. All persons who are employed or have been employed by Defendants in the
14 State of California as hourly, non-exempt workers during the period of the relevant
15 statute of limitations, who worked one or more shifts in excess of eight (8) hours.
16 (“Overtime Class”)

17 C. All persons who are employed or have been employed by Defendants in the
18 State of California as hourly, non-exempt workers during the period of the relevant
19 statute of limitations, who worked one or more shifts in excess of four (4) hours. (“Rest
20 Break Class”)

21 D. All persons who are employed or have been employed by Defendants in the
22 State of California as hourly, non-exempt workers during the period of the relevant
23 statute of limitations, who received used their personal cell phone for work purposes.
24 (“Business Expense Class”)

25 E. All persons who are employed or have been employed by Defendants in the
26 State of California as hourly, non-exempt workers during the period of the relevant
27 statute of limitations, who received pay for one or more pay periods. (“Wage Statement
28 Class”)

1 38. This action is brought, and may properly be maintained, as a class action under
2 CCP §382 and/or a representative action under Business & Professions Code §§17200 et
3 seq. and Labor Code §2699 because there is a well-defined community of interest in the
4 litigation, and the proposed Classes and PAGA Class (collectively “Class”) are easily
5 ascertainable.

6 A. Numerosity. The Proposed Classes are so numerous that joinder of all
7 members is impractical. Plaintiff is informed and believes, and on that basis alleges, that
8 during the relevant time period, Defendants employed over 400 putative Class members
9 and aggrieved employees who are geographically dispersed and who satisfy the definition
10 of the proposed Class. As such, a class action is the only available method for the fair and
11 efficient adjudication of this controversy. Membership in the Proposed Classes can be
12 easily ascertained by an examination and analysis of employee and payroll records,
13 among other records within Defendants’ possession and control.

14 B. Typicality: Plaintiff’s claims are typical of the claims of members of the
15 putative Classes and aggrieved employees. Plaintiff, like others similarly situated, was
16 subjected to Defendants’ common, unlawful policies, practices, and procedures described
17 above. Plaintiff’s claims are typical of the claims of each Class Member because each
18 have sustained damages arising out of and caused by Defendants’ common patterns of
19 conduct, as alleged herein. As such, Plaintiff has the same interests in this matter as all
20 members of the Class. Although the amount of unpaid overtime, missed breaks, and
21 unreimbursed expenses may vary, such variance goes merely to the measure of damages,
22 which can be ascertained from Defendant’s records, and does not inure against typicality.

23 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the
24 members of the Classes. Plaintiff has retained counsel competent and experienced in
25 complex class actions and California labor and employment litigation.

26 D. Commonality: Common questions of law and fact exist, including but
27 not limited to the following:
28

- a. Whether Defendants violated wage and hour laws by frequently failing to pay employees for all hours worked;
- b. Whether Defendants properly calculated and compensated employees for all overtime hours worked;
- c. Whether Defendants' pattern of failing to authorize and permit rest periods was unlawful;
- d. Whether and to what extent Defendants' are liable for failing to authorize and permit rest periods;
- e. Whether Defendants were required to reimburse Plaintiff, the putative Classes, and aggrieved employees for use of their personal cell phones;
- f. Whether Defendants unlawfully failed to keep and furnish Class members and aggrieved employees with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- g. Whether Defendants' pattern of failing to pay employees wages owed twice per month violates Labor Code §204(a);
- h. Whether Defendants' pattern of failing to pay its employees' wages due within the time required by law after their employment ended violates the law and warrants waiting time penalties under Cal. Labor Code §§ 200, 201, 202, 203, and 204; and
- i. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, members of the putative Classes and aggrieved employees;
- j. Whether members of the putative Classes and aggrieved employees are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- k. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- l. Whether Defendants' conduct was willful and reckless;

- 1 m. The effect upon and the extent of injuries suffered by Plaintiff and the
2 Plaintiff Class and the appropriate amount of reimbursement, restitution,
3 damages, or other compensation;
- 4 n. What is the extent of liability of each Defendant, including DOE
5 defendants, to each Class member?
- 6 o. Although the amount of unpaid overtime, missed breaks, and unreimbursed
7 expenses may vary, such variance goes merely to the measure of damages,
8 which can be ascertained from Defendant's records, and does not inure
9 against commonality.

10 E. Superiority: A class action is superior to other available methods of the
11 fair and efficient adjudication of the controversy, particularly in the context of wage and
12 hour litigation where the damage suffered by individual plaintiffs, while not
13 inconsequential, makes individual actions impracticable given the expenses and burdens
14 associated with seeking individual relief. Prosecuting over 400 identical, individual or
15 substantially similar lawsuits does not promote judicial efficiency or equity and
16 consistency in judicial results. Moreover, the Classes are groups of hourly employees
17 who rely on their wages and requiring that each individual take time away from work to
18 prosecute individual actions would be inequitable and result in undue hardship for the
19 individual Class members and aggrieved employees and their families. Public policy
20 favors efficient resolution of their claims and uniform enforcement of California Labor
21 laws against entities skirting their legal obligations at the expense of a vulnerable
22 working population.

23 39. Manageability: Plaintiff is informed and believes that all allegations in this
24 Complaint are capable of being determined on the same evidence and based primarily on
25 review of corporate records and key testimony of Defendants' corporate representatives.
26 To the extent statistical analysis and representative evidence is necessary, Plaintiff and
27 proposed class counsel will employ competent experts and consultants in the field to
28

1 determine and review evidence for both issues of liability and damages in a scientifically
2 reliable manner.

3 40. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California
4 Rules of Court, that the absent Class members be notified by the best notice practicable
5 under the circumstances, including individual notice to all members who can be identified
6 through reasonable effort. The names and address of members of the putative Classes and
7 aggrieved employees are available from Defendants.

8 **FIRST CAUSE OF ACTION**

9 Failure to Pay for All Hours Worked, Including Overtime Hours Worked

10 Plaintiff and the Underpaid Wages and Overtime Classes Against Defendants and

11 Does 1-50

12 (Cal. Lab. Code §§204, 218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

13 41. Plaintiff incorporates by reference in this cause of action each allegation of the
14 preceding paragraphs as though fully set forth herein.

15 42. Section 2(G) of Wage Order 4 defines “hours worked” as “the time during which
16 an employee is subject to the control of an employer, and includes all the time the employee
17 is suffered or permitted to work, whether or not required to do so.”

18 43. Plaintiff, the putative class, and aggrieved employees were not paid for all
19 hours worked, including overtime hours worked because of Defendants’ pattern of failing
20 to properly and timely include pay increases in paychecks. Plaintiff, the putative Classes,
21 and aggrieved employees received numerous checks throughout her employment wherein
22 the income earned is identified as miscellaneous pay, which was back-pay that was
23 missed as a result of Defendants’ failure to timely implement and adjust pay owed.

24 44. Pursuant to Labor Code §510(a), “[e]ight hours of labor constitutes a day’s
25 work. Any work in excess of eight hours in one workday and any work in excess of 40
26 hours in any one workweek and the first eight hours worked on the seventh day of work
27 in any one workweek shall be compensated at the rate of no less than one and one-half
28 times the regular rate of pay for an employee.”

1 45. Defendants did not always pay employees at the correct hourly rate of pay.
2 This pattern has denied Plaintiff, the putative Classes, and aggrieved employees
3 significant amounts of wage and overtime compensation. Because the amount of
4 overtime hours worked by each class member varies, the amount of damages owed
5 necessarily varies. These amounts can be easily determined from Defendants' records.

6 46. As a result of Defendant's conduct, Plaintiff, Class members and aggrieved
7 employees have been deprived of payment for all hours worked and minimum wage for
8 all hours worked in an amount to be determined at trial, and are entitled to recovery of the
9 unpaid balance of the full amount of these wage, including interest thereon, reasonable
10 attorneys' fees, and costs of suit pursuant to Labor Code §1194, 218.5, and Cal. Code of
11 Civ. Pro. §1021.5; liquidated damages and interest thereon pursuant to Labor Code
12 §1194.2; and civil penalties, restitution of wages, and liquidated damages pursuant to
13 Labor Code §1197.1.

14 47. Plaintiff alleges on information and belief that Defendants' failure to pay
15 members of the putative Classes and aggrieved employees for all hours worked as alleged
16 in this cause of action, was willful, and thus entitles members of the putative Classes and
17 aggrieved employees to penalties under Labor Code § 203. Specifically, Labor Code §
18 203 provides that an employee's wages shall continue as a penalty until paid or for a
19 period of up to 30 days from the time they were due, whichever period is shorter.

20 48. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this
21 Court award civil penalties as set forth in § 558 for each pay period during which
22 Defendants failed to pay members of the putative Classes and aggrieved employees as
23 alleged above.

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Plaintiff and the Underpaid Wages and Overtime Classes Against Defendants and

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194,
1197, 1197.1, 1198, 2699 *et seq.*)

50. Pursuant to Labor Code §200(a) “Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

52. Defendants on many occasions failed to adjust overtime rates to incorporate the nondiscretionary bonuses, and this failure is reflected in paystubs that have been issued to Plaintiff, the Class, and aggrieved employees. Moreover, when employees like Plaintiff and her coworkers earning near minimum wage do not receive payment for all hours worked, including as a result of Defendants' practice of miscalculating overtime owed, the result is that many employees, including Plaintiff, the putative Classes, and aggrieved employees are earning less than the statutory minimum wages for all hours

1 worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 4-2001 §4.
2 Defendants have been engaged in many unlawful employment practices which resulted in
3 failure to pay minimum wage for all hours worked each pay period.

4 53. Plaintiff, the putative Classes, and aggrieved employees have been denied “the
5 unpaid balance of the full amount of this... overtime compensation” as required by Cal.
6 Labor Code. §1194. Additionally, Defendants have violated Cal. Labor Code §218 and
7 §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1)
8 for failure to pay overtime, as well as §1198 which makes it a violation of the labor code
9 to fail to comply with a wage order.

10 54. As a result of Defendant’s conduct, Plaintiff, the putative Classes and
11 aggrieved employees have been deprived of payment for all hours worked and minimum
12 wage for all hours worked in an amount to be determined at trial, and are entitled to
13 recovery of the unpaid balance of the full amount of these wage, including interest
14 thereon, reasonable attorneys’ fees, and costs of suit pursuant to Labor Code §1194,
15 218.5, and Cal. Code of Civ. Pro. §1021.5; liquidated damages and interest thereon
16 pursuant to Labor Code §1194.2; and civil penalties, restitution of wages, and liquidated
17 damages pursuant to Labor Code §1197.1.

18 55. Plaintiff alleges on information and belief that Defendants' failure to pay
19 members of the putative Classes and aggrieved employees for all hours worked as alleged
20 in this cause of action, was willful, and thus entitles members of the putative Classes and
21 aggrieved employees to penalties under Labor Code § 203. Specifically, Labor Code §
22 203 provides that an employee's wages shall continue as a penalty until paid or for a
23 period of up to 30 days from the time they were due, whichever period is shorter.

24 56. In addition, and pursuant to Labor Code § 558, Plaintiff requests that this
25 Court award civil penalties as set forth in § 558 for each pay period during which
26 Defendants failed to pay members of the putative Classes and aggrieved employees as
27 alleged above.

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1 and reasonable attorneys' fees, according to proof and to interest on all due and unpaid
2 wages at the legal rate of interest.

3 **FIFTH CAUSE OF ACTION**

4 Failure to Reimburse for Required Business Expenses

5 Plaintiff and the Business Expense Class Against Defendants and Does 1-50

6 (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

7 68. Labor Code §2802 requires employers to indemnify employees for necessary
8 expenditures or losses incurred by employees in direct consequence of the discharge of
9 duties.

10 69. Plaintiff, the putative Business Expense Class, and aggrieved employees are
11 frequently required to use their personal cell phones for work related communications,
12 although Defendants did not reimburse them for the expense of their personal cell phone
13 use as required by the Labor Code. Notably, employees are required to clock-in and out
14 numerous times during the day when they switch locations or job functions. This requires
15 employees to utilize their personal phones numerous times per day for the sole purpose of
16 serving their employers.

17 70. Defendants' behavior herein violates Labor Code sections 2802, 1198, and IWC
18 Wage Order 4. Plaintiff, the Business Expense Class are hereby entitled to compensation
19 and penalties as provided by law.

20 **SIXTH CAUSE OF ACTION**

21 Failure To Provide Accurate Itemized Wage Statements

22 Plaintiff and the Wage Statement Class Against Defendants and Does 1-50

23 (Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5)

24 71. Plaintiff incorporates by reference in this cause of action each allegation of the
25 preceding paragraphs as though fully set forth herein.

26 72. California Labor Code § 226(a) provides that "[e]very employer shall,
27 semimonthly or at the time of each payment of wages, furnish each of his or her
28 employees...an accurate itemized statement in writing showing (1) gross wages earned,

1 (2) total hours worked..., (3) the number of piece-rate units earned and any applicable
2 piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net
3 wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the
4 name of the employee and his or her social security number..., (8) the name and address
5 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
6 the pay period and the corresponding number of hours worked at each hourly rate by the
7 employee.”

8 73. California Labor Code § 226(e) provides that an employee suffering injury as
9 a result of a knowing and intentional failure by an employer to comply with Labor Code
10 § 226(a) is entitled to recover the greater of his or her actual damages or a penalty of \$50
11 for the initial pay period in which a violation occurs and \$100 per employee for each
12 violation in a subsequent pay period (up to a maximum of \$4,000), in addition to
13 attorneys’ fees and costs.

14 74. Labor Code § 1174 provides that “[e]very employer employing labor in this
15 state shall ... (c) [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at
17 the plants or establishments at which employees are employed, payroll records showing
18 the hours worked daily by and the wages paid to, and the number of piece-rate units
19 earned by and any applicable piece rate paid to, employees employed at the respective
20 plants or establishments. These records shall be kept in accordance with rules established
21 for this purpose by the commission, but in any case shall be kept on file for not less than
22 two years.”

23 75. Labor Code § 1174.5 provides that “[a]ny person employing labor who
24 willfully fails to maintain the records required by subdivision (c) of Section 1174 or
25 accurate and complete records maintained by subdivision (d) of Section 1174, or to allow
26 any member of the commission or employees of the division to inspect records pursuant
27 to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred
28 dollars (\$500).”

1 76. Defendants from time to time knowingly and intentionally failed to provide
2 timely, accurate, itemized wage statements to Plaintiff and Class members and aggrieved
3 employees in accordance with Labor Code §§ 226 and 1174. The statements provided to
4 Plaintiff and Class members and aggrieved employees have not always accurately
5 reflected actual gross wages earned, and overtime pay among other compensation, and
6 the total hours worked by employees. Such failures caused injury to Plaintiff and the
7 Wage Statement Class members and aggrieved employees, by, among other things,
8 impeding them from knowing the total hours worked and the amount of wages to which
9 they are and were entitled.

10 77. Defendants' violations of Labor Code section 226 are ongoing and will
11 continue until and unless this Court enters an injunction barring such violations.

12 78. Plaintiff and members of the Wage Statement Class and aggrieved employees
13 are therefore entitled to the damages and penalties, plus attorneys' fees and costs,
14 provided for under Labor Code §§ 226(e) and (g). Pursuant to Labor Code § 226(g),
15 injunctive relief requiring Defendants to comply with Labor Code 226(a) is also
16 appropriate. In addition, members of the putative Classes and aggrieved employees are
17 entitled to recover civil penalties under § 1174.5.

18 **SEVENTH CAUSE OF ACTION**

19 Unfair Practice Under The Unfair Competition Act ("UCL")

20 Plaintiff and the Classes Against Defendants and Does 1-50

21 (Bus. & Prof. Code §17200)

22 79. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 80. Defendants knowingly committed, and upon information and belief continue
25 to commit, ongoing unlawful business practices within the meaning of the UCL,
26 including, but not limited to unlawful practices as described in the causes of action
27 articulated above, and hereby incorporated herein.

1 81. Plaintiff and the putative Classes lost money and property as a result of
2 Defendants' unlawful business practices described above.

3 82. Pursuant to the UCL, Plaintiff and all Class are entitled to restitution of money
4 or property acquired by Defendants by means of such unlawful business practices, in
5 amounts not yet known, but to be ascertained at trial.

6 83. Pursuant to the UCL, Plaintiff and the Classes are entitled to injunctive relief
7 against Defendants' ongoing unlawful business practices. If an injunction does not issue
8 enjoining Defendants from engaging in the unlawful business practices described above,
9 Plaintiff and the general public will be irreparably injured.

10 84. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not
11 enjoined by this Court, will continue to engage in the unlawful business practices
12 described above in violation of the UCL, in derogation of the rights of Plaintiff and Class
13 members and of the general public.

14 85. Plaintiff's success in this action will result in the enforcement of important
15 rights affecting the public interest by conferring a significant benefit upon the general
16 public.

17 86. Defendants' numerous violations of local and California law, as well as the
18 other statutory and regulatory violations alleged herein, constitute unlawful business
19 actions and practices in violation of Business and Professions Code § 17200, et seq.

20 87. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and
21 members of the putative Classes are entitled to restitution of unpaid wages among other
22 relief alleged herein, that were withheld and retained by Defendants during a period that
23 commences four years prior to the filing of this action. Plaintiffs are further entitled to a
24 permanent injunction requiring Defendants to properly calculate and pay all hours
25 worked, timely pay wages upon discharge, maintain accurate wages statements and
26 payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of
27 Civil Procedure § 1021.5 and other applicable law, and costs.

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Plaintiff on behalf of Aggrieved Employees and State of California as Private Attorney
General against all Defendants

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1 91. As set forth above, Defendants have committed numerous violations for which
2 the Labor Code provides for penalties, including violations of all applicable Labor Code
3 provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the
4 aforementioned Labor Code provisions as statutes to which §2699.3's procedural
5 requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has
6 complied with the procedural requirements specified in §2699.3 by providing written
7 notice to the Defendants and the Labor & Workforce Development Agency ("LWDA").
8 See Exhibit 1 attached hereto, which is a true and correct copy of the Notice
9 correspondence showing compliance with §2699.3. No notice of intent to investigate the
10 alleged violations was provided within the statutory period. Consequently, Plaintiff has
11 exhausted administrative remedies, and on behalf of themselves and all other aggrieved
12 current and former employees of Defendants. Plaintiff, therefore, now pursues this cause
13 of action as permitted by §2698, *et seq.*

14 92. Enforcement of statutory provisions enacted to protect workers and to ensure
15 proper and prompt payment of wages due to employees is a fundamental public interest
16 in California. Consequently, Plaintiff's success in this action will result in the
17 enforcement of important rights affecting the public interest and will confer a significant
18 benefit upon the general public. Private enforcement of the rights enumerated herein is
19 necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial
20 burden in pursuing this action and it would be against the interests of justice to require
21 payment of attorneys' fees and costs from any recover that might be obtained herein,
22 pursuant to, *inter alia*, Labor Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

23 93. In addition to the causes of action alleged above, if Plaintiff succeeds in
24 enforcing these rights affecting the public interest, then attorneys' fees may be awarded
25 to Plaintiff and against Defendants under Code of Civil Procedure §1021.5 and other
26 applicable law in part, because:

- 27 A. A successful outcome in this action will result in the enforcement of
28 important rights affecting the public interest by requiring Defendants to

1 comply with the wage and hour laws and California's unfair business
2 practice law;

3 B. This action will result in a significant benefit to Plaintiff, Class members,
4 aggrieved employees, and the general public by bringing to a halt unlawful
5 and/or unfair activity;

6 C. Unless this action is prosecuted, aggrieved employees, members of the
7 Class and general public will not recover those moneys, and many of
8 Defendants' employees would not be aware that the acts and practices they
9 were subjected to by Defendants were wrongful;

10 D. Unless this action is prosecuted, Defendants will continue to mislead their
11 employees about the true nature of their rights and remedies under the wage
12 and hour laws; and

13 94. An award of attorneys' fees and costs is necessary for the prosecution of this
14 action and will result in a benefit to Plaintiff, aggrieved employees, and to consumers in
15 general, by preventing Defendants from continuing to circumvent the wage and hour
16 statutes and frustrate the long-standing recognition by the California legislature and the
17 courts that such statutes, as pled herein, are not merely a matter of private concern
18 between employer and employee to be eviscerated by considerations of waiver,
19 contributory negligence, good or bad faith, and private agreements. Rather, the wage and
20 hour statutes have been described as a matter of public concern, were designed to provide
21 minimum substantive guarantees to individual workers and are essential to public
22 welfare.

23 REQUEST FOR RELIEF

24 WHEREFORE, Plaintiff, on behalf of himself the Proposed Classes,
25 aggrieved employees, and the State of California as a Private Attorney General, requests
26 judgment and the following specific relief against Defendants as follows:

27 A. That the Court determine that this action may be maintained as a class
28 action under Code of Civil Procedure § 382;

1 B. Provision of class notice to all members of the Classes;

2 C. That Defendant is found to have violated the above-referenced
3 provisions of the Labor Code and IWC Wage Order 4-2001 as to Plaintiff, Class
4 members and aggrieved employees;

5 D. That Defendant's actions are found to be willful and/or in bad faith to
6 the extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for
7 willful failure to pay all compensation owed at the time of separation to aggrieved
8 employees no longer employed by Defendants,

9 E. That Defendant's actions are found to be willful and/or in bad faith to
10 the extent necessary under §226 and 1174 of the California Labor Code for willful failure
11 to provide the required accurate and itemized wage statements to Plaintiff, Class
12 members and aggrieved employees;

13 F. That Plaintiff and Class members and aggrieved employees receive an
14 award in the amount of unpaid wages owed, including interest thereon, and penalties as
15 provided in the Labor Code and Wage Order, including under Labor Code §§ 203, 510,
16 and 558, subject to proof at trial;

17 G. That Defendants be ordered to pay restitution to Plaintiff, Class
18 members and aggrieved employees for amounts acquired through Defendants' unlawful
19 activities pursuant to Business and Professions Code §§ 17200-05 and enjoined to cease
20 and desist from unlawful and unfair activities in violation of California Business and
21 Professions Code § 17200 et. seq.;

22 H. That Plaintiff, Class members and aggrieved employees receive an
23 award of reasonable attorneys' fees and costs pursuant to Code of Civil Procedure
24 §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable laws;

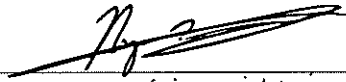
25 I. That the Court award penalties pursuant to Labor Code §2698 et seq.;

26 J. That the Court issue declaratory relief that Defendant's challenged
27 policies are unlawful; and
28

1 K. That the Court order further relief, in law and equity, as it deems
2 appropriate and just.

3 DATED: September 8, 2020

4 **KOUL LAW FIRM**

5 

6 BY: Nazo Koulloukian, Esq.
7 Attorneys for Plaintiff ERICKA
8 DOMINGUEZ, putative Class members, all
9 aggrieved employees, and the State of
10 California

11 ***DEMAND FOR JURY TRIAL***

12 Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the
13 full extent permitted by law.

14 DATED: September 8, 2020

15 **KOUL LAW FIRM**

16 

17 BY: Nazo Koulloukian, Esq.
18 Attorneys for Plaintiff ERICKA
19 DOMINGUEZ and putative class members
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

May 14, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Community Veterinary Clinics, LLC
5813 Skylane Blvd.
Windsor, CA 95492

VIP Petcare Holdings, Inc.
5813 Skylane Blvd.
Windsor, CA 95492

PetIQ, Inc.
923 S Bridgeway Pl.
Eagle, ID 83616

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Ericka Dominguez
Employer: PetIQ, Inc.
Community Veterinary Clinics, LLC
VIP Pet Care
VIP Petcare Holdings, Inc.

Dear Sir or Madam:

Ericka Dominguez (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Community Veterinary Clinics, LLC (hereafter “Employers”).

PetIQ provides health and wellness products and veterinary services to across the country. (<https://petiq.com/>) PetIQ recently acquired Community Veterinary Clinics LLC dba VIP Petcare. Claimant worked for Employers from 2012 until December of 2019.

Employers have violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Timely Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(K) or Wage Order 4 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employers failed to properly and timely include pay increases in paychecks. Claimant received numerous checks throughout her employment wherein the income earned is identified as miscellaneous pay, which was back-pay that was missed as a result of Employer’s failure to timely implement and adjust pay owed.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Such pay is must be paid timely pursuant to §204. (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) Based on Employers’ unlawful conduct described herein, Employers are liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Include Nondiscretionary Bonuses in Regular

Rate of Pay to Calculate Overtime and Penalty Pay

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194,
1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Section 2(K) or Wage Order 4 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.”

Employer has a policy and practice of issuing nondiscretionary bonuses to Claimant and aggrieved employees but fails to include bonuses when calculating the regular rate of pay for purposes of calculating overtime due. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Claimant and aggrieved employees received quarterly nondiscretionary bonuses which must be factored into the average rate of pay for purposes of calculating overtime. Her paystub, below, indicates that Claimant’s regular rate of pay is \$18.58/hour and overtime is \$27.87 (1.5 x \$18.58). The same paystub, however, also indicates that she has received bonuses (“Rig Bonus”) in the amount of \$514.64 under the column marked “year to date”. Bonuses are not included in the regular rate of pay for purposes of calculating overtime.

COMMUNITY VETERINARY CLINICS, LLC
5813 SKYLINE BLVD
WINDSOR, CA 95492
800 427-7973

Period Beginning: 10/19/2019
Period Ending: 11/01/2019
Pay Date: 11/07/2019

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 1

ERICKA DOMINGUEZ

Social Security Number: XXX-XX-8834

Earnings	rate	hours	this period	year to date
Regular	18.5800	32.00	594.56	7,875.55
Overtime	27.8700	12.52	348.93	4,551.60
Meal Penalty	18.5800	1.00	18.58	185.80
Ca Paid Sick				529.16
Rtg Bonus				514.64
Gross Pay			\$962.07	14,690.43

Other Benefits and

Information	this period	total to date
Ca Paid Sick		1.52

Important Notes

YOUR COMPANY'S PHONE NUMBER IS 800-427-7973

BASIS OF PAY: HOURLY

AS A REMINDER, IT IS YOUR RESPONSIBILITY TO PROPERLY REPORT YOUR HOURS WORKED.

PLEASE MAKE SURE YOU ARE CHECKING YOUR HOURS & PAY ACCURACY.

SHOULD YOU FIND ANY ERRORS, NOTIFY YOUR MANAGER IMMEDIATELY.

Deductions	Statutory		
	Federal Income Tax	-66.44	1,085.45
	Social Security Tax	-59.65	910.81
	Medicare Tax	-13.95	213.01
	CA State Income Tax	-7.99	193.12
	CA SUI/SDI Tax	-9.62	146.90
	Other		
	401K	-38.48*	572.23
	Net Pay	\$765.94	
	Checking	-765.94	11,568.91
	Net Check	\$0.00	

* Excluded from federal taxable wages
Your federal taxable wages this period are \$923.59

Employers did not make any adjustments to overtime rates to incorporate the nondiscretionary bonuses, and this failure is reflected in Claimant and aggrieved employees' paystubs.

When employees like Claimant and her coworkers earning near minimum wage do not receive payment for all hours worked, including as a result of Employer's practice of miscalculating overtime owed, the result is that many employees are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 4-2001 §4. Employer has been engaged in many unlawful employment practices which resulted in failure to pay minimum wage for all hours worked each pay period.

Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare

Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

As set forth herein, due to Employers' unlawful employment practices, Employers knowingly and willfully failed to pay all minimum, regular, overtime, and premium wages owed to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of unpaid minimum wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201-203 and 256, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of minimum wages in a timely manner as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and §256 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employers were required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employers failed to pay all minimum wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for all minimum wages owed, and this underpayment resulted in a failure to pay all wages owed twice per month.

§2699.3.

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employers have failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she and her coworkers were forced to miss 80% of their rest breaks as a result of Employers' staffing and business practices.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). According to Claimant, she was denied 80% of rest breaks, and this experience is consistent with that of other aggrieved employees. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Notably, employees are required to clock-in and out numerous times during the day when they switch locations or job functions. This requires employees to utilize their personal phones numerous times per day for the sole purpose of serving their employers. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

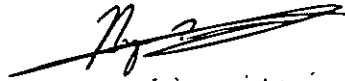
Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employers knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked. Employers issued and maintained inaccurate wage statements and records. Employers are liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant