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individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF ALAMEDA**

KEVIN FORD, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

ENTIRELYPETS PHARMACY, LLC;
HEALTHYPETS, INC. and DOES 1
through 20, inclusive,

Defendant.

Case No. RG20064561

Assigned for All Purposes to:
Hon. Stephen Kaus
Dept. 19

SECOND AMENDED CLASS ACTION COMPLAINT FOR:

1. Failure to Provide Meal Periods;
2. Failure to Permit Rest Breaks;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Failure to Pay All Wages Due Upon Separation of Employment; and
6. Violation of Business and Professions Code §§ 17200, *et seq.*
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

FILED
Superior Court of California
County of Alameda
08/24/2022
Clad File, Executive Officer / Clerk of the Court
By: *Cheryl Clark* Deputy
C. C. Clark

1 Plaintiff Kevin Ford, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kevin Ford (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 against defendants EntirelyPets Pharmacy, LLC and HealthyPets, Inc.; and DOES 1 through
7 20, inclusive (collectively, “Defendants”), on behalf of himself individually and on behalf of
8 non-exempt employees employed by Defendants throughout California.

9 2. Defendants are in the business of providing pet pharmacy products.

10 3. Through this action, Plaintiff alleges that Defendants has engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendant’s deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to provide meal periods or compensation in lieu thereof;
17 (b) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
18 (c) Failing to pay all overtime wages;
19 (d) Failing to provide accurate itemized wage statements; and
20 (e) Failing to pay all wages due upon separation of employment.

21 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on
22 behalf of himself and all others similarly situated in California to recover, among other things,
23 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant
24 to Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198,
25 and 2698, *et seq.*

26 **JURISDICTION AND VENUE**

27

28

6. This is a class action, pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county or the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the Class Period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendant sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendant once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
2 are legally attributable to the other defendant. Furthermore, defendant in all respects acted as
3 the employer and/or joint employer of Plaintiff and the class members.

4 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the
5 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
6 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
7 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
8 the official policy of Defendants.

9 15. At all relevant times, Defendants, and each of them, acted within the scope of
10 such agency or employment, or ratified each and every act or omission complained of herein.
11 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
12 each and all the other Defendants in proximately causing the damages herein alleged.

13 16. Plaintiff is informed and believes, and thereon alleges, that each of said
14 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
15 omissions, occurrences and transactions alleged herein.

16 **CLASS ACTION ALLEGATIONS**

17 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
18 himself and all others similarly situated who were affected by Defendant's Labor Code,
19 Business and Professions Code §§ 17200 and IWC Wage Order violations.

20 18. All claims alleged herein arise under California law for which Plaintiff seeks
21 relief authorized by California law.

22 19. Plaintiff's proposed Class consists of and is defined as follows:

23 Class

24 All California citizens currently or formerly employed as non-exempt employees
25 by Defendants in the State of California at any time between April 6, 2016¹ and
the date of class certification.

26 20. Plaintiff also seeks to certify the following Subclass of employees:

27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 Waiting Time Subclass

2 All members of the Class who separated their employment from Defendants at
3 any time between April 6, 2017 and the date of class certification.

4 21. Members of the Class and Subclass described above will be collectively referred
5 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or
6 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
7 specific theories of liability.

8 22. This action has been brought and may properly be maintained as a class action
9 under the California Code of Civil Procedure § 382 because there are common questions of law
10 and fact as to the Class that predominate over questions affecting only individual members
11 including, but not limited to:

- 12 (a) Whether Defendants deprived Plaintiff and class members of timely meal periods;
- 13 (b) Whether Defendants deprived Plaintiff and class members of rest breaks;
- 14 (c) Whether Defendants failed to pay Plaintiff and class members all overtime wages
15 for all hours worked by Plaintiff and class members;
- 16 (d) Whether Defendants failed to timely pay Plaintiff and former class members all
17 wages due upon termination or within 72 hours of resignation;
- 18 (e) Whether Defendants failed to furnish Plaintiff and class members with accurate,
19 itemized wage statements; and
- 20 (f) Whether Defendants engaged in unfair business practices in violation of Business
21 & Professions Code §§ 17200, *et seq.*

22 23. There is a well-defined community of interest in this litigation and the Class is
23 readily ascertainable:

- 24 (a) Numerosity: The members of the Class are so numerous that joinder of all
25 members is impractical. Although the members of the Class are unknown
26 to Plaintiff at this time, on information and belief, the Class is estimated to
27 be greater than 100 individuals. The identity of the class members are
28 readily ascertainable by inspection of Defendants’ employment and payroll
 records.

1 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
2 claims (or defenses, if any) of the Class because Defendant's failure to
3 comply with the provisions of California wage and hour laws entitled each
4 class member to similar pay, benefits and other relief. The injuries
5 sustained by Plaintiff are also typical of the injuries sustained by the Class
6 because they arise out of and are caused by Defendant's common course of
7 conduct as alleged herein.

8 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
9 and protect the interests of all members of the Class because it is in his best
10 interest to prosecute the claims alleged herein to obtain full compensation
11 and penalties due to him and the Class. Plaintiff's attorneys, as proposed
12 class counsel, are competent and experienced in litigating large
13 employment class actions and are versed in the rules governing class action
14 discovery, certification and settlement. Plaintiff has incurred and,
15 throughout the duration of this action, will continue to incur attorneys' fees
16 and costs that have been and will be necessarily expended for the
17 prosecution of this action for the substantial benefit of each class member.

18 (d) Superiority: The nature of this action makes the use of class action
19 adjudication superior to other methods. A class action will achieve
20 economies of time, effort and expense as compared with separate lawsuits,
21 and will avoid inconsistent outcomes because the same issues can be
22 adjudicated in the same manner and at the same time for each Class. If
23 appropriate this Court can, and is empowered to, fashion methods to
24 efficiently manage this case as a class action.

25 (e) Public Policy Considerations: Employers in the State of California and
26 other states violate employment and labor laws every day. Current
27 employees are often afraid to assert their rights out of fear of direct or
28 indirect retaliation. Former employees are fearful of bringing actions

1 because they believe their former employers might damage their future
2 endeavors through negative references and/or other means. Class actions
3 provide the class members who are not named in the complaint with a
4 type of anonymity that allows for the vindication of their rights at the
5 same time as affording them privacy protections.

6 **GENERAL ALLEGATIONS**

7 24. At all relevant times mentioned herein, Defendants employed Plaintiff and other
8 persons as non-exempt employees.

9 25. Plaintiff was employed in a non-exempt position at Defendant's California
10 business location(s).

11 26. Defendants continue to employ non-exempt employees within California.

12 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants were advised by skilled lawyers, employees and other professionals
14 who were knowledgeable about California's wage and hour laws, employment and personnel
15 practices and the requirements of California law.

16 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive all required meal
18 periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular
19 rate of pay when they did not receive a timely meal period. In violation of the Labor Code and
20 IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or
21 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
22 when they did not receive a timely meal period.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive all rest breaks or
25 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay
26 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
27 and class members did not receive all rest breaks or payment of one (1) additional hour of pay
28 at Plaintiff and class members' regular rate of pay when a rest break was missed.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to wages at the overtime rate of pay for hours worked on any seventh consecutive day in a workweek. In violation of the Labor Code and IWC Wage Orders, Defendants failed to pay overtime wages when Plaintiff and class members worked up to 8 hours on the seventh consecutive days in a workweek and double-time wages when they worked over 8 hours on the seventh consecutive day.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive itemized wage statements that accurately showed their gross and net wages earned, inclusive dates of pay periods, total hours worked and all applicable hourly rates in effect and the number of hours worked at each hourly rate in accordance with California law. In violation of the Labor Code, Plaintiff and class members were not provided with accurate itemized wage statements.

32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Waiting Time Subclass members were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and Waiting Time Subclass members did not receive payment of all wages within permissible time periods.

33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and class members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

34. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

35. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

1 36. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
2 any person for a work period of more than five (5) hours without a meal period of not less than
3 30 minutes, except that when a work period of not more than six (6) hours will complete the
4 day’s work the meal period may be waived by mutual consent of the employer and the
5 employee.”

6 37. Labor Code § 512(a) provides that an employer may not require, cause or permit
7 an employee to work for a period of more than five (5) hours per day without providing the
8 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
9 the total work period per day of the employee is not more than six (6) hours, the meal period
10 may be waived by mutual consent of both the employer and the employee.

11 38. Labor Code § 512(a) also provides that an employer may not employ an
12 employee for a work period of more than ten (10) hours per day without providing the employee
13 with a second meal period of not less than thirty (30) minutes, except that if the total hours
14 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
15 consent of the employer and the employee only if the first meal period was not waived.

16 39. During the relevant time period, Plaintiff and class members did not receive
17 compliant meal periods for each five hours worked per day.

18 40. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
19 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
20 compensation for each work day that a meal period is not provided.

21 41. At all relevant times, Defendants failed to pay Plaintiff and class members meal
22 period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section 11
23 of the applicable IWC Wage Order.

24 42. As a result of Defendants’ failure to pay Plaintiff and class members an
25 additional hour of pay for each day a meal period was not provided, Plaintiff and class members
26 suffered and continue to suffer a loss of wages and compensation.

27 **SECOND CAUSE OF ACTION**

28 **FAILURE TO PERMIT REST BREAKS**

1 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

2 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
3 though fully set forth herein.

4 44. Labor Code § 226.7(a) provides that no employer shall require an employee to
5 work during any rest period mandated by the IWC Wage Orders.

6 45. Section 12 of the applicable IWC Wage Order states “every employer shall
7 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
8 the middle of each work period” and the “authorized rest period time shall be based on the total
9 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
10 fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

11 46. During the relevant time period, Plaintiff and class members did not receive a ten
12 (10) minute rest period for every four (4) hours or major fraction thereof worked.

13 47. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
14 requires an employer to pay an employee one additional hour of pay at the employee’s regular
15 rate of compensation for each work day that the rest period is not provided.

16 48. At all relevant times, Defendants failed to pay Plaintiff and class members rest
17 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of
18 the applicable IWC Wage Order.

19 49. As a result of Defendants’ failure to pay Plaintiff and class members an
20 additional hour of pay for each day a rest period was not provided, Plaintiff and class members
21 suffered and continue to suffer a loss of wages and compensation.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME WAGES**

24 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order § 3)**

25 50. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

27 51. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
28 unlawful to employ persons without compensating them at a rate of pay either one and one-half

1 or two times the person's regular rate of pay, depending on the number of hours worked by the
2 person on a daily or weekly basis.

3 52. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
4 period, Defendants were required to compensate Plaintiff and class members for all overtime
5 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours
6 worked for the first eight (8) hours of the seventh consecutive work day, with double time after
7 eight (8) hours on the seventh day of any work week, or after twelve (12) hours in any work
8 day.

9 53. Plaintiff and class members were non-exempt employees entitled to the
10 protections of California Labor Code §§ 510 and 1194.

11 54. During the relevant time period, Defendants failed to pay Plaintiff and class
12 members overtime wages because they failed to pay overtime wages when Plaintiff and class
13 members worked up to 8 hours on the seventh consecutive work day and double time wages
14 when they worked over 8 hours on the seventh consecutive work day.

15 55. In violation of state law, Defendants have knowingly and willfully refused to
16 perform their obligations and compensate Plaintiff and class members for all wages earned as
17 alleged above.

18 56. Defendants' failure to pay Plaintiff and class members the unpaid balance of
19 overtime compensation, as required by California law, violates the provisions of Labor Code
20 §§ 510 and 1198, and is therefore unlawful.

21 57. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to
22 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

25 **(Violation of Labor Code § 226)**

26 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.
28

1 59. Labor Code § 226(a) requires Defendants to provide each employee with an
2 accurate wage statement in writing showing nine pieces of information, including: (1) gross
3 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units
4 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee may be
6 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and the last four digits of his or
8 her social security number or an employee identification number other than a social security
9 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at
11 each hourly rate by the employee.

12 60. During the relevant time period, Defendants have knowingly and intentionally
13 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
14 and class members. The deficiencies include, among other things, the failure to correctly state
15 accurate inclusive dates of the pay period for Plaintiff and class members.

16 61. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
17 and class members have suffered injury and damage to their statutorily protected rights.
18 Specifically, Plaintiff and class members have been injured by Defendants' intentional
19 violation of California Labor Code § 226(a) because they were denied both their legal right to
20 receive, and their protected interest in receiving, accurate itemized wage statements under
21 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the
22 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.
23 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants
24 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and
25 recover the underpayment of wages from Defendants.

26 62. California Labor Code § 226(a) requires an employer to pay the greater of all
27 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
28 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,

1 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
2 comply with California Labor Code § 226(a).

3 63. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
4 and class members from knowing, understanding and disputing the wages paid to them, and
5 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
6 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
7 class members have suffered an injury, and the exact amount of damages and/or penalties is all
8 in an amount to be shown according to proof at trial.

9 64. Plaintiff and class members are also entitled to injunctive relief under California
10 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
11 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

12 **FIFTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

14 **WITHIN THE REQUIRED TIME**

15 **(Violation of Labor Code §§ 201, 202 and 203)**

16 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein.

18 66. California Labor Code §§ 201 and 202 provide that if an employer discharges an
19 employee, the wages earned and unpaid at the time of discharge are due and payable
20 immediately, and that if an employee voluntarily leaves his employment, his wages shall
21 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
22 has given seventy-two (72) hours previous notice of his intention to quit, in which case the
23 employee is entitled to his wages at the time of quitting.

24 67. During the relevant time period, Defendants willfully failed to pay Plaintiff and
25 Waiting Time Subclass members all their earned wages upon termination including, but not
26 limited to, proper minimum wages and overtime compensation, either at the time of discharge
27 or within seventy-two (72) hours of their leaving Defendants' employ.
28

68. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

69. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

70. Plaintiff and Waiting Time Subclass members are entitled to recover from Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass members' regular daily wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

72. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and class members. Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

73. Defendants’ activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

74. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law.

75. Defendants' policies and practices have violated state law in at least the following respects:

- 1 (a) Failing to provide timely meal periods without paying Plaintiff and class
2 members premium wages for every day said meal periods were not
3 provided in violation of Labor Code §§ 226.7 and 512;
- 4 (b) Failing to authorize or permit rest breaks without paying Plaintiff and
5 class members premium wages for every day said rest breaks were not
6 authorized or permitted in violation of Labor Code § 226.7;
- 7 (c) Failing to pay all overtime wages at the proper rate to Plaintiff and class
8 members in violation of Labor Code §§ 510, 1194 and 1198;
- 9 (d) Failing to provide Plaintiff and class members with accurate itemized
10 wage statements in violation of Labor Code § 226; and
- 11 (d) Failing to timely pay all earned wages to Plaintiff and Waiting Time
12 Subclass members upon separation of employment in violation of Labor
13 Code §§ 201, 202 and 203.

14 76. Defendants intentionally avoided paying Plaintiff and class members' wages and
15 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
16 undercut their competitors and establish and gain a greater foothold in the marketplace.

17 77. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
18 members are entitled to restitution of the wages unlawfully withheld and retained by
19 Defendants during a period that commences four years prior to the filing of the Complaint; an
20 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable
21 laws; and an award of costs.

22 **SEVENTH CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 78. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
25 though fully set forth herein.

26 79. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
28 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 80. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 81. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201-204, 210, 510, 1194, and 1198 for failure
12 to timely pay all earned wages (including overtime wages) owed to
13 Plaintiff and other aggrieved employees during employment and upon
14 separation of employment as herein alleged;
- 15 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
16 periods to Plaintiff and other aggrieved employees and failure to pay
17 premium wages for missed meal periods as herein alleged;
- 18 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
19 Plaintiff and other aggrieved employees and failure to pay premium wages
20 for missed rest periods as herein alleged;
- 21 d. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
22 itemized wage statements to Plaintiff and other aggrieved employees as
23 herein alleged;
- 24 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
25 accurate and complete records showing, among other things, the hours
26 worked daily by and the wages paid to aggrieved employees.

82. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

83. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

84. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

85. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;

2. For appointment of Kevin Ford as the class representatives;

3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code § 226(e), and 2698 *et seq.*;

7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

1 9. For an order requiring Defendants to restore and disgorge all funds to each
2 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
3 or fraudulent and, therefore, constituting unfair competition under Business and Professions
4 Code §§ 17200, *et seq.*;

5 10. For an award of damages in the amount of unpaid compensation including, but
6 not limited to, unpaid wages, benefits and penalties, including interest thereon;

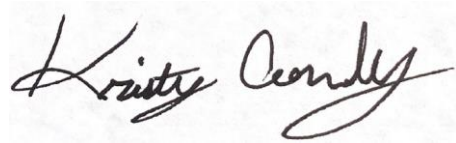
7 11. For pre-judgment interest;

8 12. For civil penalties; and

9 13. For such other relief as the Court deems just and proper.

10
11 Dated: August 3, 2022

AEGIS LAW FIRM, PC

12
13
14 

15 By: _____

Kristy R. Connolly
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On August 24, 2022, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**
6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Jacqueline Loveless
8 Richard Rybicki
9 **RYBICKI & ASSOCIATES, P.C**
10 10 Executive Court, Suite 204
11 Napa, CA 94558
Telephone: 707.222.6361
jl@rybickiassociates.com
rrybicki@rybickiassociates.com
e-service@rybickiassociates.com

12 *Attorneys for Defendant:*
13 ENTIRELYPETS PHARMACY, LLC; HEALTHYPETS INC.

14 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S.
15 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
in the ordinary course of business. I am aware that on motion of the party served, service
16 is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc. § 1013(a); Fed.*
R. Civ. Proc. 5(a); Fed. R. Civ. Proc. 5(c).)

17 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
18 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
19 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); Fed. R. Civ. Proc. 5(c).)

20 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
21 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); Fed. R. Civ. Proc. 5(b)(2)(E); Fed. R. Civ. Proc. 5(b)(3).)

22 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
23 the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc.*
5(b)(2)(A).)

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on August 24, 2022, at Irvine, California.

27 
28 Delaney Graves