

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445

Attorneys for Plaintiff and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KARINA MORALES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VPET USA, LLC, a Delaware Limited
Liability Company; WORKFORCE
PERSONNEL, INC., a California
Corporation; and DOES 1 through 20,
inclusive.

Defendants.

Case No.: CIVSB2108161
*[Assigned to Hon. Judge David Cohn, Dept S26,
for all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: July 29, 2022
Time: 10:00 a.m.
Dept.: S26

Complaint filed: March 10, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Karina Morales in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled approximately 500 employee vs. employer litigation matters
7 during my 21 years in practice. Over the last 15 years, my practice has almost entirely consisted
8 of representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled approximately 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$200
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of 2018, my team and I held the record for the largest
17 known PAGA-only case in California’s history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last few years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.

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Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel's application for a reasonable award of attorneys' fees not to exceed one-third of the Settlement Amount, Class Counsel's litigation expenses not to exceed \$15,000, settlement administrator costs not to exceed \$7,000, PAGA penalties of \$25,000 (of which \$18,750 or 75% will be paid to the LWDA and the remaining \$6,250 or 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment not to exceed \$7,500 for Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$112,166.67 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 250,000
Attorneys' Fees (1/3)	\$ 83,333.33
Litigation Costs	\$ 15,000
Administrator Costs	\$ 7,000
PAGA Penalties	\$ 25,000
Class Representative's Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 112,166.67

8. Assuming 150 Class Members, the average payment to each class member will be approximately \$747.77 each (\$112,166.67 / 150). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks Worked by each Class Member. Assuming an estimated 7,500 weeks worked, each Workweek will have a value of approximately \$14.95/week on average. In addition, approximately 140 Aggrieved Employees (*i.e.*, individuals who worked during the PAGA Period starting on March 5, 2020, will receive a pro rata share of the \$6,250 PAGA Penalties (accounting for 25% of the total \$25,000 allocation). Moreover, the Aggrieved Employees collectively worked approximately 7,000 weeks during the PAGA Period.

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Work Weeks he/she is credited with working during the Class and PAGA Periods (attached hereto as **Exhibit B**).

PROCEDURAL BACKGROUND

10. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case at mediation. Because of the risks involved in litigating the case and the contested legal and factual issues, I believe this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff, we sent a March 5, 2021, letter to Defendant requesting the production of her personnel file and timekeeping records in order to further evaluate her wage and hour claims. That same day, we submitted a letter to the California Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private Attorney General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit C**.

12. Thereafter, Plaintiff filed a complaint that alleges class and PAGA claims, including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3)

1 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final
2 wages, (6) failure to provide accurate itemized wage statements, (7) unfair and unlawful
3 competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims
4 under PAGA.

5 13. Defendant retained counsel and vehemently disputed the claims. However, prior
6 to taking depositions, conducting discovery, and filing a disputed motion for class certification,
7 the parties agreed to explore a resolution through mediation. In preparation for the mediation,
8 the Parties informally exchanged documents and information that allowed both sides to calculate
9 the potential damages and evaluate potential risk, including policies and procedures pertaining to
10 each claim alleged, and statistics relating to the number of current and former employees,
11 number of shifts, weeks worked and other things. In this regard, Defendant provided a sampling
12 of timekeeping and payroll records of the Class Members. This robust sampling enabled both
13 parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her
14 counsel analyzed, researched, and investigated the potential issues, including matters related to
15 the calculation of damages, trial, and appellate issues and risks.

16 14. The Parties mediated on April 4, 2022 with Jeff Krivis, who is one of the most
17 respected wage and hour mediators in California. At the conclusion of mediation, Mr. Krivis
18 issued a mediator's proposal calling for a class-wide settlement for \$250,000 as to employees
19 hired directly by Defendant VPET. The Parties accepted the mediator's proposal and
20 memorialized the terms of the settlement in a long-form Settlement Agreement. The Parties now
21 seek the Court's preliminary approval of the Settlement.

22 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

23 15. The settlement was the product of extensive arm's length negotiations, facilitated
24 by an experienced mediator. Though cordial and professional, the settlement negotiations were
25 adversarial and non-collusive in nature. The settlement reached is the product of substantial
26 effort by the parties and their counsel. Although we believed that there was a possibility of
27 certifying the claims, we recognized the potential risk, expense, and complexity posed by
28 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or

1 on the damages awarded, and/or on an appeal that can take several more years to litigate.

2 16. The settlement will result in a fair payment to each class member based on the
3 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiff and his
4 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
5 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
6 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
7 further litigation described above and weighing them against the benefits of a known
8 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
9 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
10 reasonable resolution of the claims alleged.

11 17. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
12 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
13 and investigation, making it possible to exercise informed judgment throughout the settlement
14 process, including significant document review (e.g. documents pertaining to Defendant's
15 policies and procedures, personnel documents, among others), and conducted an extensive
16 analysis of the detailed class-wide data provided by Defendant.

17 18. Based on my experience in other cases, including wage and hour matters, I
18 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
19 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
20 settlement at this time is in the best interests of the class. The settlement provides each class
21 member with compensation for the alleged violations when viewed in relation to the costs and
22 risks inherent in obtaining class certification and proceeding to trial.

23 19. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
24 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

25 20. Of course, the settlement amount represents a compromise figure, taking into
26 account the various risks surrounding class certification and the merits of Defendant's asserted
27 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
28 members, with no reversion to Defendant.

1 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENTS**

2 21. Plaintiff seeks an enhancement payment of \$7,500, which I believe is fair and
3 warranted given the time and effort she devoted to this case. Her efforts included providing
4 factual background for the Class and PAGA complaint; providing documents and information
5 about Defendant’s compensation plan; participating in phone calls to discuss litigation and
6 settlement strategy; making herself available throughout the litigation to assist with analyzing the
7 claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
8 settlement documents. The Class Representative also assumed significant risk in bringing this
9 litigation—namely, had she lost, she could have been ordered to pay Defendant’s costs.

10 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
11 **REQUESTED FEES AND COSTS**

12 22. As set forth above, I have handled over 250 class and representative actions, have
13 been appointed as class counsel and have successfully resolved over half of those class actions,
14 and many others remain pending and will successfully resolve in the future.

15 23. When this case was taken on a contingency fee basis, with my firm agreeing to
16 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
17 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
18 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

19 24. It is my experience that attorney fee awards of one-third of a common fund
20 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
21 of the Settlement Amount for attorneys’ fees. Defendant does not oppose this fee request. The
22 fee is further warranted because it is within the range of reasonableness typically awarded in
23 class actions. My firm’s costs are reasonably capped at \$15,000 and will be based on the actual
24 amount of costs incurred at the time of final approval.

25 **SETTLEMENT ADMINISTRATOR**

26 25. The parties request that the Court appoint ILYM Group to serve as the Settlement
27 Administrator. ILYM is experienced in administering class action settlements, and has provided
28 a flat-fee proposal to administer this settlement for \$7,000.

1 CONCLUSION

2 26. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
3 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

4 27. For the foregoing reasons, it is respectfully requested that the Court grant
5 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
6 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
7 payment to the Class Representative.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct. Executed on July 7, 2022, at Riverside, California.

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11 By: 
12 Brian J. Mankin, Esq.
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EXHIBIT “A”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY MANKIN LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Karina Morales and all others similarly situated

MORGAN, LEWIS & BOCKIUS LLP
Kathryn T. McGuigan [Bar No. 232112]
kathryn.mcguigan@morganlewis.com
300 South Grand Avenue, Twenty-second Floor
Los Angeles, California 90071-3132
Tel: (213) 612-2500 | Fax: (213) 612-2501

MORGAN, LEWIS & BOCKIUS LLP
Sarah Zenewicz [Bar No. 258068]
sarah.zenewicz@morganlewis.com
One Market, Spear Street Tower
San Francisco, California 94105
Tel: (415) 442-1000 | Fax: (213) 612-2501

Attorneys for Defendant VPET USA, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

KARINA MORALES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VPET USA, LLC, a Delaware Limited
Liability Company; WORKFORCE
PERSONNEL, INC., a California
Corporation; and DOES 1 through 20,
inclusive.

Defendants.

Case No.: CIVSB2108161
*[Assigned to Honorable Judge David Cohn,
Dept S26, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Karina Morales, individually and on behalf of all others similarly situated, and
3 Defendant VPET USA, LLC, and is approved by their respective counsel of record, subject to the
4 terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 1. "Action" or "Lawsuit" means and refers to the case entitled *Karina Morales v.*
7 *VPET USA, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVSB2108161.

8 2. "Agreement," "Settlement Agreement" or "S.A." or shall mean this Class Action
9 Settlement Agreement and Release of Claims, including any attached Exhibits.

10 3. "Aggrieved Employees" means all current and former nonexempt employees
11 employed directly by Defendant VPET USA, LLC, and who worked at the VPET Facility at any
12 time during the PAGA Period.

13 4. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby Mankin
14 Lauby LLP.

15 5. "Class Data" means a complete list that Defendant VPET will diligently and in
16 good faith compile from its records and provide to the Settlement Administrator on one
17 spreadsheet and shall include the Settlement Class Members' full names; last known addresses;
18 telephone numbers; Social Security Numbers; the total Weeks Worked during the PAGA Period
19 for each Aggrieved Employee, and the total Weeks Worked during the Class Period for each
20 Settlement Class Member.

21 6. "Class Period" is deemed to be any time during the period of September 19, 2019
22 through the Preliminary Approval Date or July 31, 2022, whichever is earlier.

23 7. "Class Representative" or "Plaintiff" means and refers to Karina Morales.

24 8. "Complaint" refers to the operative complaint on file alleging class and
25 representative PAGA claims, filed in the San Bernardino County Superior Court on March 10,
26 2021, in the matter of *Karina Morales v. VPET USA, LLC, et al.*, San Bernardino County
27 Superior Court Case No. CIVSB2108161.

28 9. "Court" (or "Judge") means the California Superior Court, County of San

Bernardino.

10. “Defendant VPET” means and refers to VPET USA, LLC.

11. “Defendant Counsel” or “Defense Counsel” means and refers to Morgan, Lewis & Bockius LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, then the date of the Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Excluded Employers” refers to Workforce Personnel, Inc., VPET USA, Inc., LL Continental, Inc., and/or the individuals Henry Lee and Wenhao Wang and their officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent and subsidiary corporations, subsidiaries, divisions, affiliates, attorneys of VPET USA, Inc., and LL Continental, Inc., and/or the individuals Henry Lee and Wenhao Wang.

14. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

15. “Final Settlement Class” means, collectively, all Participating Class Members.

16. “Individual Settlement Payment” shall have the meaning ascribed to it in Paragraph 49(c) below.

17. “Maximum Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(a) below.

18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)

below.

19. “Notice” means the notice of settlement of class action that will be sent to the Settlement Class Members.

20. “Notice Response Deadline” is 30 calendar days from the date the Notice is mailed to the Settlement Class Members.

21. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 71(c) below.

22. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each Aggrieved Employee.

23. “PAGA Period” is deemed to be any time during the period of March 5, 2020 through the Preliminary Approval Date or July 31, 2022, whichever is earlier.

24. “PAGA Released Claims” upon Final Approval of the Settlement will include means any and all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in Plaintiff’s Complaint and in Plaintiff’s LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint. The time period governing the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employee’s claims for wages or statutory penalties.

25. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate and receive an Individual Settlement Payment and do not opt-out by

submitting timely valid Requests for Exclusion.

26. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and Defendant VPET, collectively.

27. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Defendant VPET will be provided with an opportunity to review and comment upon the motion for preliminary approval at least five days before it is filed. Thereafter, Defendant VPET will not object to the motion.

29. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Final Settlement Class, and from which the settlement payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue Code Sec. 468.

30. “Released Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include any and all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

31. “Released Parties” means Defendant VPET and its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations,

1 subsidiaries, divisions, affiliates, attorneys, successors and assigns. The Released Parties
2 specifically exclude the Excluded Employers.

3 32. “Release Period” shall be the time period governing the Released Class Claims
4 which shall be the same as the Class Period.

5 33. “Release” shall mean the release and discharge of the Released Class Claims by
6 Plaintiff and all of the Participating Class Members. The *res judicata* effect of the Judgment will
7 be the same as that of the Release.

8 34. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 71(a)
9 below.

10 35. “Service Payment” or “Service Award” means the amount approved by the Court
11 to be paid to the Class Representative, Karina Morales, in addition to her Individual Settlement
12 Payment as a Participating Class Member.

13 36. “Settlement Administrator” means and refers to ILYM Group, the third-party
14 class action settlement administrator agreed to by the Parties, that will provide the Notice Packet
15 to the Class Members and distribute the settlement amounts as described in this Agreement.

16 37. “Settlement Administration Costs” means the costs payable from the Maximum
17 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
18 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
19 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
20 due diligence, reporting and remittance obligations, distributing the Maximum Settlement
21 Amount, and providing necessary reports and declarations, as requested by the Parties. The
22 Settlement Administration Costs shall be paid from the Settlement Amount, including, if
23 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
24 being the maximum costs necessary to administer the Settlement.

25 38. “Settlement Class” consists of all current and former nonexempt employees
26 employed directly by Defendant VPET USA, LLC, and who worked at the VPET Facility at any
27 time during the Class Period.

28 39. “Settlement Class Member” or “Class Member(s)” refers to individual members

1 of the Settlement Class.

2 40. “VPET Facility” refers to VPET facility located at 12925 Marlay Avenue,
3 Fontana, CA 92337.

4 41. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means
5 any and all weeks during the Class Period in which the Settlement Class Member worked at least
6 one shift during the week at the VPET Facility under the *direct* hire and employment of
7 Defendant VPET. In other words, Weeks Worked excludes any and all weeks in which an
8 individual worked at the VPET Facility as a temporary or staffed employee for an Excluded
9 Employer or other entity.

10 **B. General Terms**

11 42. On March 10, 2021, Plaintiff filed a class and representative PAGA action
12 complaint in the Court against Defendants VPet USA, LLC, Workforce Personnel, Inc., and
13 DOES 1 through 20. The operative Complaint alleges class and representative PAGA claims,
14 including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3)
15 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final
16 wages, (6) failure to provide accurate itemized wage statements, (7) unfair and unlawful
17 competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims
18 under PAGA.

19 43. Defendant VPET denied Plaintiff’s claims and allegations, and contends that the
20 Action is not suitable for class certification or manageable as a class or representative action.

21 44. The Class Representative believes she can proceed with her representative and
22 class claims, that the Action is meritorious, and that class certification is appropriate.

23 45. The Settling Parties have conducted a thorough investigation into the facts of the
24 Action, including an extensive exchange of informal discovery, including Defendant VPET’s
25 written policies and practices and the production of a sampling of payroll and timekeeping
26 records for Settlement Class Members. Class Counsel is both knowledgeable about and has done
27 extensive research with respect to the applicable law and potential defenses to the claims of the
28 Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members’

claims against Defendant VPET. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant VPET for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant VPET, and numerous potential appellate issues.

46. On April 4, 2022, Plaintiff and Defendant VPET participated in mediation before Jeff Krivis, a highly experienced wage and hour class action mediator. The matter resolved as to Settlement Class pursuant to a mediator's proposal. Notably, Defendant Workforce Personnel, Inc., also attended mediation, but in light of its failure to exchange information and data prior to mediation, no meaningful settlement talks could occur with respect to temporary employees that Workforce Personnel, Inc., assigned to the VPET Facility.

47. The Settling Parties agree that neither their Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement and Agreement, shall be construed as an admission by Defendant VPET of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

48. Stipulation for Class Certification. For settlement purposes only, Defendant VPET will stipulate that the Settlement Class Members described herein who do not submit a Request for Exclusion from the Settlement Class may be conditionally certified as a settlement class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement and resolving the administration of the Settlement. Should, for whatever reason, the Court fail to issue Final Approval, the Settling Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant VPET expressly reserves its rights and declare that it would continue to oppose class certification and the

substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will continue to pursue class certification and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

49. The financial terms of the Settlement are as follows:

(a) Maximum Settlement Amount: The Settling Parties agree to settle this Action for Two Hundred and Fifty Thousand Dollars (\$250,000) (“the Maximum Settlement Amount”). The Maximum Settlement Amount is the maximum amount that will be paid by Defendant VPET, and includes Individual Settlement Payments, Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, and PAGA Penalties. Defendant VPET shall separately pay the employers’ share of their payroll tax obligations, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The “Net Settlement Amount” is defined as the Maximum Settlement Amount less the Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs Award, Service Award, or Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and allocated to the Settlement Class.

(c) Individual Settlement Payments for the Settlement Class: Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of eligible Work Weeks a Settlement Class Member is credited with working during the Class Period (meaning the one Work Week will be credited for each week in which a Settlement Class Member worked at least one shift at the VPET Facility under the *direct* hire and employment of Defendant VPET). Specific calculations of Individual Settlement Payments will be made as follows:

- Defendant VPET will calculate the total number of eligible Work Weeks worked by each Settlement Class Member during the Class Period and the aggregate total number of eligible Work Weeks worked by all Settlement

Class Members during the Class Period.

- To determine each Settlement Class Member's estimated Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of eligible Work Weeks, resulting in the "Work Week Value." Each Settlement Class Member's Individual Settlement Payment will be calculated by multiplying his or her total number of eligible Work Weeks during the Class Period by the Work Week Value.
- Individual Settlement Payments will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions.
- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of eligible Work Weeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: The Individual Settlement Payments will be allocated based on the allegations in the Action as follows: one-third (33.34%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining two-thirds (66.66%) will be allocated equally between interest (33.33%) and as penalties (33.33%) (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to

1 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
2 exceed \$7,500, in exchange for the services Plaintiff performed on behalf of the Class and for
3 entering into the general release against Defendant VPET, as discussed hereinafter. Defendant
4 VPET agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of the
5 Maximum Settlement Amount. The Class Representative will be issued IRS Form 1099 in
6 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
7 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
8 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
9 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
10 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
11 Class Members.

12 (f) Attorneys' Fees and Costs Award: Defendant VPET agree to not oppose a
13 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
14 Maximum Settlement Amount (\$83,333.33), plus reasonable litigation costs not to exceed
15 \$15,000 ("Attorney's Fees and Cost Award"). Defendant VPET agrees not to oppose any
16 contention by Class Counsel that attorneys' fees should be based on the common fund theory.
17 The Attorney's Fee and Cost Award shall be paid from the Maximum Settlement Amount, and
18 except for this award, Defendant VPET shall have no further obligation to pay any attorneys'
19 fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is
20 sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be
21 distributed to the Participating Class Members. Any Court order awarding less than the amount
22 sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise
23 void the Settlement. The Settlement Administrator shall issue to Class Counsel an IRS Form
24 1099 reflecting the amount of attorneys' fees and costs awarded by the Court.

25 (g) Settlement Administration Costs: The fees and other charges of the
26 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
27 \$7,000 unless approved by all Parties and the Court.

28 (h) PAGA Penalties: The Settling Parties agree that \$25,000 is allocated to

1 PAGA Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court
2 approval. Of this amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of civil
3 penalties under the Private Attorney General Act of 2004 ("PAGA") and \$6,250 (25%) will be
4 paid to the Aggrieved Employees based on the percentage of Weeks Worked during the PAGA
5 Period (as generally set forth in paragraph 49(c) above), which will be treated entirely as civil
6 penalties and shall be reported as required on an IRS form 1099. Class Counsel shall give proper
7 notice to the LWDA of the Settlement.

8 (i) Tax Liability: Class Counsel and Defendant VPET make no
9 representations as to the tax treatment or legal effect of Settlement Amounts called for
10 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
11 representation by Class Counsel or Defendant VPET in this regard. Plaintiff and Participating
12 Class Members understand and agree that they will be solely responsible for the payment of any
13 taxes and penalties assessed on their respective Settlement Amounts described herein. The
14 amount of federal income tax withholding will be based upon a flat withholding rate for
15 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
16 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
17 local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at
18 times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
19 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
20 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
21 Section may be modified in a manner to bring Defendant into compliance with any such changes.
22 Plaintiff and Participating Class Members understand and agree that they will be solely
23 responsible for the payment of any taxes assessed on their respective payments described herein.

24 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
25 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
26 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
27 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
28 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR

1 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
2 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
3 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
4 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
5 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
6 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, his OR ITS
7 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
8 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
9 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
10 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
11 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
12 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
13 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
14 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
15 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
16 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
17 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
18 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
19 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
21 Participating Class Members under this Agreement, as well as any other payments made
22 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
23 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
24 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
25 vacation plans, sick leave plans, PTO plans, ESOP plans, and any other benefit plan. The Parties
26 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are
27 not included toward any regular rate of pay calculation, or any benefit vesting or accrual
28 purpose.

1 51. “Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under
2 no circumstances will any portion of the Maximum Settlement Amount revert to Defendant
3 VPET. Participating Class Members will not have to make a claim in order to receive an
4 Individual Settlement Payment, nor will Aggrieved Employees need to make a claim in order to
5 receive their share of the PAGA Penalties. Distributions, in the form of Individual Settlement
6 Payments and PAGA Penalties, will be made directly to each Participating Class Member and/or
7 Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and
8 timely reporting and remittance obligations with respect to unclaimed funds as a result of a
9 Participating Class Member or Aggrieved Employee not their check by the check cashing
10 deadline, as set forth herein.

11 52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
12 adequate, and will so represent same to the Court.

13 **D. Release by Plaintiff, the Aggrieved Employees and the Settlement Class**

14 53. Upon entry of the Final Approval Order and Defendant VPET’s funding of the
15 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
16 Agreement, the Participating Class Members will forever completely release and discharge the
17 Released Parties from the Released Class Claims for the Release Period.

18 54. Upon entry of the Final Approval Order and Defendant VPET’s funding of the
19 Settlement Amount, the State of California and Aggrieved Employees shall completely release
20 and discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

21 55. Each Settlement Class Member will be deemed to have made the foregoing
22 Release as if by manually signing it.

23 56. Plaintiff and Defendant VPET intend that the Settlement described in this
24 Agreement will release and preclude any further claim, whether by lawsuit, administrative claim
25 or action, arbitration, demand, or other action of any kind, by each and all of the Participating
26 Class Members to obtain a recovery against the Released Parties based on, arising out of, and/or
27 related to any and all of the Released Class Claims. The Class Members shall be so notified in
28 the Notice. This paragraph does not apply to any Class Member who timely and validly opts out

1 of the Settlement.

2 57. The Released Class Claims and Released Parties specifically exclude the
3 Excluded Employers. Likewise, the Released PAGA Claims and Released Parties specifically
4 exclude the Excluded Employers. Accordingly, any and all releases set forth herein shall not
5 include any release of claims against Defendant Workforce Personnel, Inc., (or any Excluded
6 Employer) involving employees who were hired by Workforce Personnel, Inc. (or any Excluded
7 Employer) and worked at the VPET Facility after March 10, 2017. Moreover, nothing herein
8 shall limit or impact Plaintiff's standing or ability to pursue the Action against the Excluded
9 Employers as to any and all workers who were hired by Workforce Personnel, Inc. (or any
10 Excluded Employer) and worked at the VPET Facility after March 10, 2017.

11 58. Class Representative, on behalf of herself and the Settlement Class, acknowledges
12 and agrees that the claims for unpaid wages are disputed, and that the payments set forth herein
13 constitute payment of all sums allegedly due to them. Class Representative, on behalf of herself
14 and the Settlement Class, acknowledges and agrees that California Labor Code Section 206.5 are
15 not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

16 An employer shall not require the execution of any release of any claim or
17 right on account of wages due, or to become due, or made as an advance
18 on wages to be earned, unless payment of those wages has been made.

19 **E. Release by Class Representative**

20 59. Class Representative does hereby, for herself and for her respective spouse, heirs,
21 successors, beneficiaries, and assigns forever and completely release and discharge the Released
22 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
23 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
24 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
25 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
26 from the beginning of time through the execution of this Stipulation, whether known or
27 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
28 upon, or relating to Class Representative's employment with Defendant or the remuneration for

1 or termination of such employment (collectively, the “Class Representative’s Claims”).

2 60. Without limiting the generality of the foregoing, this general release by Class
3 Representative includes all federal, state and local statutory claims, federal and state common
4 law claims (including but not limited to those for contract, tort and equity), including without
5 limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
6 VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair
7 Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California
8 Constitution, the California Fair Employment and Housing Act, the California Unfair
9 Competition Act (California Business and Professions Code section 17200 et seq.), and the
10 California Labor Code, except for the Individual Claims.

11 61. Class Representative agrees that there is a risk that any injury that she may have
12 suffered by reason of the Released Parties’ relationship with her might not now be known, and
13 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
14 Agreement, might possibly become progressively worse, and that as a result thereof further
15 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully
16 release and discharge the Released Parties, and understands that by the execution of this
17 Settlement Agreement no further claims for any such injuries that existed at the time of the
18 execution of this Settlement Agreement may ever be asserted by Class Representative with
19 respect to claims arising in the time period from the beginning of time to the execution of this
20 Settlement Agreement.

21 62. As to the Released Parties, Class Representative expressly waives and
22 relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of
23 California and does so understanding and acknowledging the significance of the waiver of
24 Section 1542. Section 1542 of the Civil Code of the State of California states:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
27 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
28 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

1
2 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
3 full and complete release and discharge of all parties, Class Representative and Class Counsel
4 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
5 without limitation, all claims that Class Representative knew of, as well as all claims that she
6 does not know or suspect to exist in his favor against the Released Parties, or any of them, for the
7 time period from the beginning of time to the execution of this Settlement Agreement, and that
8 this Settlement Agreement contemplates the extinguishment of any such Class Representative's
9 claims. Notwithstanding the above, the general release by Class Representative shall not extend
10 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
11 that may not be released by law.

12 **F. Interim Stay of Proceedings**

13 63. Pending completion of all of the prerequisites necessary to effectuate this
14 Settlement, the Settling Parties agree, subject to Court approval, to a stay of all proceedings in
15 the Action between the Settling Parties, except as necessary to effectuate the Settlement.
16 However, this shall not limit Plaintiff's ability to continue with litigation against the Excluded
17 Employers.

18 **G. Notice Process**

19 64. Appointment of Settlement Administrator. The Parties have agreed to the
20 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
21 including mailing the Notice, using standard devices to obtain forwarding addresses,
22 independently reviewing and verifying documentation associated with any claims or opt-out
23 requests, resolving any disputes regarding the calculation or application of the formula for
24 determining the Individual Settlement Payments and individual portions of the PAGA Penalties
25 for Aggrieved Employees, drafting and mailing the settlement checks to Participating Class
26 Members and Aggrieved Employees, issuing W-2 and 1099 Tax Forms, unclaimed funds due
27 diligence, reporting and remittance obligations, and performing such other tasks as set forth
28 herein or as the Parties mutually agree or that the Court orders.

65. Disputes Regarding Settlement Administration. Any and all disputes relating to

1 administration of the Settlement by the Settlement Administrator (except for disputes regarding
2 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
3 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
4 the Court that all payments and obligations contemplated by this Settlement Agreement have
5 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
6 confer in good faith to resolve the dispute without the necessity of Court intervention. The
7 Settlement Administrator shall also be responsible for issuing to Plaintiff, Settlement Class
8 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
9 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
10 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
11 penalties to the appropriate government authorities.

12 66. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
13 Defendant VPET shall provide the Class Data to the Settlement Administrator. The Settlement
14 Administrator will run a check of the Class Members' addresses against those on file with the
15 U.S. Postal Service's National Change of Address List. The Class Data provided to the
16 Settlement Administrator will remain confidential, shall be used solely to administer the
17 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax
18 authorities, pursuant to Defendant VPET's express written consent, or by order of the Court.
19 Although Class Counsel will not be provided with the list of Class Data, nothing herein shall
20 prevent Class Counsel from communicating with Class Members regarding the Action and
21 Settlement.

22 67. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
23 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
24 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
25 The Settlement Administrator shall use standard devices, including a skip trace, to obtain
26 forwarding addresses of Settlement Class Members if any envelopes are returned.

27 68. Returned Notices. The Settlement Administrator will take steps to ensure that the
28 Notice is received by all Settlement Class Members, including utilization of the National Change

of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice shall be identical to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

69. Disputes Regarding Information on Notices. Class Members are deemed to participate in the Settlement, unless they opt-out, except that no Aggrieved Employee may opt out of the settlement of the PAGA Release Claims. The Notice will inform Class Members and Aggrieved Employees of his/her estimated Individual Settlement Payment and the number of eligible Weeks Worked he/she is credited with working during the Class Period and PAGA Period. They may dispute their Weeks Worked if they feel they should be credited with more Work Weeks than Defendant VPET's records show by timely submitting evidence to the Settlement Administrator. The Notice will also inform each Class Member who is also an Aggrieved Employee of his/her estimated portion of the PAGA Penalties and the number if eligible Weeks Worked he/she is credited with working during the PAGA Period. Class Members who are also Aggrieved Employees may dispute their Weeks Worked during the PAGA Period if they feel they should be credited with more Work Weeks than Defendant VPET's records show by timely submitting evidence to the Settlement Administrator. Defendant VPET's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks during the Class Period and/or PAGA Period and estimated Individual Settlement Payment and/or portion of the PAGA Penalties, where applicable. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a final decision. Class Members will have until the Notice Response

1 Deadline to dispute Weeks Worked, object or opt out of the non-PAGA portion of the
2 Settlement, unless extended by the Court. In the event that the Settlement Administrator
3 increases the number of Weeks Worked in either the Class Period or PAGA Period for any
4 Settlement Class Member, then the Settlement Administrator will recalculate the Individual
5 Settlement Payments or individual portions of the PAGA Penalties, as applicable; accordingly, in
6 no event will Defendant VPET be required to increase the Maximum Settlement Amount.

7 70. Declaration of Due Diligence. The Settlement Administrator shall provide
8 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
9 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

10 71. Settlement Class Members' Rights. Each Settlement Class Member will be fully
11 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
12 request exclusion from the non_PAGA portions of the Settlement. All Parties, signatories and
13 their counsel shall not encourage opt-outs or objections to this Agreement. The Parties
14 specifically agree not to solicit opt-outs, directly or indirectly, through any means. The Notice
15 will inform the Settlement Class Members of the Court-established deadlines for filing
16 objections or requesting exclusion from the non-PAGA portions of the Settlement in accordance
17 with the following guidelines:

18 (a) Requests for Exclusion from non-PAGA Portion of Settlement. Any
19 Settlement Class Member, other than Plaintiff, may request to be excluded from the non-PAGA
20 portion of the Settlement by submitting a "Request for Exclusion" to the Settlement
21 Administrator, postmarked on or before the Notice Response Deadline. The Request for
22 Exclusion should state:

23 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
24 CLASS IN THE VPET LAWSUIT. I UNDERSTAND THAT IF I
25 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
26 MAY NOT RECEIVE ANY MONEY FROM THE
27 SETTLEMENT OF THIS LAWSUIT."

28 To be valid, any Request for Exclusion must include the full name, address, telephone

1 number, last four digits of the social security number or date of birth, and signature of the
2 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
3 mail to the Settlement Administrator at the specified address. Any such Request must be made
4 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
5 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
6 Any Settlement Class Member who timely requests exclusion of the non-PAGA portion of the
7 Settlement in compliance with these requirements: (i) will not have any rights under this
8 Agreement, including the right to object, appeal or comment on the non-PAGA portion of the
9 Settlement; (ii) will not be entitled to receive an Individual Settlement Payment under this
10 Agreement; and (iii) will not be bound by the non-PAGA portions this Agreement, or the
11 Judgment. Any Aggrieved Employee who requests timely exclusion will still be subject to the
12 PAGA Released Claims to the fullest extent permitted by law and receive a share of PAGA
13 Penalties.

14 (b) Binding Effect on Final Settlement Class Members. Except for those
15 Settlement Class Members who exclude themselves in compliance with the procedures set forth
16 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
17 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
18 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
19 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
20 reasonableness, and adequacy of the Settlement. Any Aggrieved Employee who requests timely
21 exclusion will still be subject to the PAGA Released Claims to the fullest extent permitted by
22 law and receive a share of PAGA Penalties.

23 (c) Objections to Settlement. Any Settlement Class Member, other than
24 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall
25 inform the Settlement Administrator, in writing, of his or her objection which must be
26 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
27 objection shall include the objecting Settlement Class Member's full name, address, telephone
28 number, and dates of employment with Defendant VPET, the case name and number, the basis

1 for the objection, including any legal support and each specific reason in support of the
2 objection, as well as any documentation or evidence in support thereof, and, if the Objecting
3 Settlement Class Member is represented by counsel, the name and address of his or her counsel.
4 The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense
5 Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach
6 the same to its declaration of due diligence and file with the Court prior to the Final Approval
7 Hearing. Any Participating Class Member who files an objection remains eligible to receive
8 monetary compensation from the Settlement. Plaintiff and Defendant VPET shall not be
9 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
10 counsel related to any objections to the Settlement. Submitting an objection does not preserve
11 the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party
12 of record by timely and properly intervening or filing a motion to vacate the judgment under
13 Code of Civil Procedure § 663.

14 (d) Failure to Object. Any Settlement Class Member who desires to object
15 but fails to timely submit a written objection or in person objection at the Final Approval
16 Hearing waives any right to object and will be foreclosed from making any objection to this
17 Settlement. Any Settlement Class Member who does not timely and properly become a party of
18 record by intervening or filing a motion to vacate the judgment waives any and all rights to
19 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
20 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
21 Code of Civil Procedure section 473, and extraordinary writs.

22 (e) Responses to Objections. Counsel for the Parties may file a response to
23 any objections submitted by objecting Settlement Class Members at least five (5) court days
24 before the date of the Final Approval Hearing.

25 (f) Settlement Class Members will have until the Notice Response Deadline
26 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
27 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
28 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the

request of Class Counsel or Defense Counsel.

(g) Defective Submissions. If a Settlement Class Member's Request for Exclusion or objection is defective as to the requirements listed herein, that Settlement Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class Member a cure letter within three (3) business days of receiving the defective submission to advise the Settlement Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion or objection valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or received by fax within that period, it will be deemed untimely.

72. Funding of the Settlement Amount. Defendant VPET shall make a one-time deposit into the QSF of the Maximum Settlement Amount (including the employers' share of the payroll taxes) within thirty (30) calendar days after the Effective Date. Once Defendant VPET has complied with its obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms and conditions of this Agreement, shall be entitled to all the protections afforded it under the Agreement, and shall have no further obligations under the Agreement, regardless of what occurs with respect to the further administration of the Settlement. The Settlement Administrator (and not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the Class Members.

73. Distribution of Funds. No later than ten (10) calendar days after the deposit of the payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments and individual portions of the PAGA Penalties to the Participating Class Members and Aggrieved Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement Administration Costs.

74. Deadline for Cashing Settlement Checks. Participating Class Members and Aggrieved Employees shall have 180 calendar days after mailing by the Settlement

1 Administrator to cash their settlement checks. If any Participating Class Member and/or
2 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
3 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
4 California State Controller's Office in the name of the Class Member and/or Aggrieved
5 Employee. The release will be binding upon all Participating Class Members and Aggrieved
6 Employees who do not cash their checks within the 180-day period. In the event that any
7 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
8 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
9 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
10 Counsel of the results. If a new address is located by these means, the Administrator will have
11 ten (10) business days to re-issue the check. Neither Defendant VPET, Defense Counsel, Class
12 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
13 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
14 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
15 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
16 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
17 payment on such check. If the check in question has not been negotiated prior to the stop
18 payment order, the Settlement Administrator will issue a replacement check.

19 75. No person shall have any claim against Defendant VPET (or their designees),
20 Defendant's Counsel, Plaintiff or Class Counsel based on mailings, distributions, payments or
21 reports made in accordance with or pursuant to this Agreement. This provision does not,
22 however, prevent a Party from seeking enforcement of this Agreement.

23 76. Without prejudice to any other remedies, the Settlement Administrator shall agree
24 to be responsible for any breach of its obligations (whether committed by the Settlement
25 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
26 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
27 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.
28

1 **H. Duties of the Parties Prior to the Court's Approval**

2 77. Promptly after execution of this Settlement Agreement, Plaintiff will move the
3 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
4 accomplishing the following:

5 (a) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
7 and a hearing on fees, costs and the Service Payment;

8 (b) Approving as to form and content the proposed Notice;

9 (c) Directing the mailing of the Notice by first class mail to the Settlement
10 Class Members;

11 (d) Preliminarily approving this Settlement; and

12 (e) Preliminarily certifying the class for purposes of this Settlement.

13 **I. Duties of the Parties Following Court's Final Approval**

14 78. In connection with the Final Approval Hearing provided for in this Settlement
15 Agreement, Class Counsel shall submit a proposed Final Approval Order:

16 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
17 adequate, and directing consummation of its terms and provisions;

18 (b) Approving Class Counsel's application for an award of attorneys' fees and
19 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
20 and the payment to the Settlement Administrator for costs of administering the settlement; and

21 (c) Entering judgment approving settlement, thereby permanently barring all
22 Settlement Class Members from prosecuting any Released Class Claims against any of the
23 Released Parties.

24 79. Final Judgment. Class Counsel shall provide the Settlement Administrator with a
25 copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator
26 shall post the Final Judgment to its website within three (3) business days of receipt.

27 **J. Voiding the Agreement**

28 80. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will

1 have no further obligations under the Settlement, including any obligation by Defendant to pay
2 the Maximum Settlement Amount, or any amounts that otherwise would have been owed under
3 this Settlement.

4 81. Defendant VPET may withdraw from Settlement if 10% or more of Class
5 Members submit a valid Request for Exclusion of the Settlement by giving written notice to the
6 Settlement Administrator within 10 days of the Notice Response Deadline. Defendant VPET
7 may also withdraw from the Settlement if the Settlement is construed in such a fashion that
8 Defendant VPET is required to pay more than the Maximum Settlement Amount, or if the Court
9 does not certify the Settlement Class or does not certify a class releasing the claims set forth in
10 this MOU and/or the long form settlement agreement, or otherwise makes an order inconsistent
11 with any of the terms of this Agreement. In the event Defendant VPET elects to withdraw from
12 the Settlement, Defendant VPET shall bear any costs already incurred by the Settlement
13 Administrator up to the point Defendant VPET gives notice of its intent to withdraw.

14 82. If the Settlement is voided or fails for any reason, any costs incurred by the
15 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
16 specified in this Agreement.

17 **K. Other Terms**

18 83. Waiver. The waiver by one Party of any breach of this Agreement by another
19 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

20 84. Parties' Authority. The signatories hereto represent that they are fully authorized
21 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
22 hereof.

23 85. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
24 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
25 such documents and to take such other action as may reasonably be necessary to implement the
26 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
27 best efforts, including all efforts contemplated by this Settlement Agreement and any other
28 efforts that may become necessary by order of the Court, or otherwise, to effectuate this

1 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
2 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
3 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
4 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
5 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
6 Motion for review at least three business days prior to the filing deadline.

7 86. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
8 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
10 cause of action or rights released and discharged by this Settlement Agreement.

11 87. No Admission. Defendant VPET denies any and all liability to Plaintiff and/or
12 any Settlement Class Member in this Action, as to any and all causes of action that were asserted
13 or that might have been asserted in this Action. Nonetheless, Defendant VPET wishes to settle
14 and compromise the matters at issue in the Complaint to avoid further substantial expense and
15 the inconvenience and distraction of protracted and burdensome litigation. Defendant VPET has
16 taken into account the uncertainty and risks inherent in litigation, and without conceding any
17 infirmity in the defenses that it has asserted or could assert against Plaintiff, and has determined
18 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
19 terms and conditions set forth in this Agreement.

20 88. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
21 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
22 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
23 of Defendant VPET or any of the other Released Parties. Each of the Parties hereto has entered
24 into this Settlement Agreement with the intention of avoiding further disputes and litigation with
25 the attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
26 and it, along with all related documents such as the notices, and motions for preliminary and
27 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
28 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to

1 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
2 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
3 for any reason the settlement is not approved, the stipulation will be of no force or effect.

4 89. Notices. Unless otherwise specifically provided herein, all notices, demands or
5 other communications given hereunder shall be in writing and shall be deemed to have been duly
6 given as of the third business day after mailing by United States registered or certified mail,
7 return receipt requested, addressed:

8
9 To the Settlement Class:

10 Brian Mankin
11 *brian@LMLfirm.com*
12 Lauby Mankin Lauby LLP
13 4590 Allstate Drive
14 Riverside, CA 92501
15 Tel: (951) 320-1444 | Fax: (951) 320-1445

16 To Defendant VPET:

17 Kathryn T. McGuigan
18 *kathryn.mcguigan@morganlewis.com*
19 Morgan, Lewis & Bockius LLP
20 300 South Grand Avenue, Twenty-second Floor
21 Los Angeles, California 90071-3132
22 Tel: (213) 612-2500 | Fax: (213) 612-2501

23 90. Construction. The Parties hereto agree that the terms and conditions of this
24 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
25 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
26 by reason of the extent to which any Party or his or its counsel participated in the drafting of this
27 Settlement Agreement. Plaintiff and Defendant VPET expressly waive the common-law and
28 statutory rule of construction that ambiguities should be construed against the drafter of an
agreement and further agree, covenant, and represent that the language in all parts of this
Agreement shall be in all cases construed as a whole, according to its fair meaning.

91. Captions and Interpretations. Paragraph titles or captions contained herein are

1 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
2 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
3 Settlement Agreement is contractual and not merely a recital.

4 92. Modification. This Settlement Agreement may not be changed, altered, or
5 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
6 Settlement Agreement may not be discharged except by performance in accordance with its
7 terms or by a writing signed by all of the Parties hereto.

8 93. Choice of Law. This Settlement Agreement shall be governed by and construed,
9 enforced and administered in accordance with the laws of the State of California.

10 94. Integration Clause. This Settlement Agreement contains the entire agreement
11 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
12 or contemporaneous agreements, understandings, representations, and statements, whether oral
13 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
14 hereunder may be waived except in writing.

15 95. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
16 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
17 successors and assigns.

18 96. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
19 because the members of the Settlement Class are numerous, it is impossible or impractical to
20 have each Class member execute this Settlement Agreement. The Notice will advise all
21 Settlement Class Members of the binding nature of the release provided herein and such shall
22 have the same force and effect as if this Settlement Agreement were executed by each Settlement
23 Class Member.

24 97. Invalidity of Any Provision. Before declaring any provision of this Settlement
25 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
26 extent possible consistent with applicable precedents so as to define all provisions of this
27 Settlement Agreement valid and enforceable.

28 98. Confidentiality. The Parties will not publicize this settlement or disclose it to third

1 parties prior to the Preliminary Approval Date, except as required or necessary to effectuate its
2 terms and comply with law, including the payment of taxes. Plaintiff and her Counsel agree not
3 to disclose the terms of this settlement except in court papers or if required by legal process.
4 Plaintiff and her Counsel shall not issue a press release, hold a press conference, publish
5 information about the settlement on any website, or otherwise publicize the settlement. Plaintiff
6 and her Counsel agree not to respond to any press inquiries except to refer reporters to the papers
7 filed with the Court.

8 99. Counterparts. This Settlement Agreement may be executed in counterparts, and
9 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
10 deemed an original, and, when taken together with other signed counterparts, shall constitute one
11 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
12 Electronic signatures shall have the same force and effect as an original.

13
14 Dated: 07/07, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

15 Karina Morales
16 Karina Morales (Jul 7, 2022 11:26 PDT)

Karina Morales

17 Dated: July 7, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

19 Brian Mankin
20 Brian Mankin
21 Attorneys for Plaintiff
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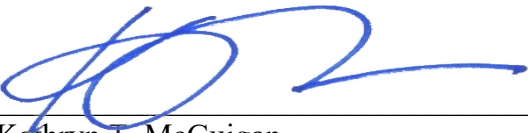
1 Dated: _____, 2022

DEFENDANT:
VPET USA, LLC

2
3
4 By: _____
5 Title: _____

6 Dated: **July 7** _____, 2022

DEFENDANT'S COUNSEL:
MORGAN, LEWIS & BOCKIUS LLP

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9
10 

11 Kathryn T. McGuigan
Attorneys for Defendant VPET USA, LLC

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EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS ACTION

Karina Morales v. VPET USA, LLC

Superior Court of the State of California, County of San Bernardino

Case No. CIVSB2108161

To: all current and former nonexempt (hourly) employees employed directly by Defendant VPET USA, LLC, and who worked at the VPET Facility (located at 12925 Marlay Avenue, Fontana, CA 92337) at any time at any time between, September 19, 2019 and [REDACTED], 2022 (the “Class” or “Class Members”):

THIS NOTICE is of a proposed settlement of a class action lawsuit, and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on [REDACTED], 2022 to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed settlement you are estimated to receive approximately \$[REDACTED] as your share of the settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share of the settlement may be more or less than this estimate. Your estimate is based on the number of eligible weeks you worked at the VPET Facility under the *direct* hire and employment of VPET USA, LLC, (“VPET”) between September 19, 2019 and [REDACTED], 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

Note to Temporary or Staffed Employees: If you were employed by a staffing company, such as Workforce Personnel, Inc., you will not be credited with any weeks you were assigned to work at VPET by the staffing company. This settlement is strictly limited to the time that individuals were directly employed by VPET and worked at the VPET Facility (i.e., “direct hires” of VPET). If you transitioned from a staffing company and became a direct hire of VPET, you will be credited with the weeks you worked at VPET as a direct hire. Please note that there is a separate ongoing class action against Workforce Personnel on behalf of temporary/staffing employees that it assigned to work at the VPET Facility, and that action has not settled. Contact Class Counsel below if you want further information.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Claims described in Section IV.
EXCLUDE YOURSELF	If you do not wish to participate in the settlement, you may “opt-out” of the settlement, except for that portion of the settlement allocated to PAGA penalty payments. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2022 (see Section V for more details on how to opt-out). Except for the PAGA release (described below), if you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive any settlement payment, but you will preserve your right to pursue the Released Claims described in Section IV subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement.
OBJECT	If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement by [REDACTED], 2022 (see Section V for more details on how to object).
DISPUTE YOUR NUMBER OF WORK WEEKS	If you believe that your number of Work Weeks used to calculate any portion of your estimated payment listed below is incorrect, you may contact the Settlement Administrator to dispute your Work Week calculation (see Section IV for more details on how to dispute your Work Weeks). You may provide evidence to the Settlement Administrator showing that your Work Week calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Morales v. VPET USA, LLC*, San Bernardino County Superior Court Case No. CIVSB2108161 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

VPET's records show that you were directly hired and employed by VPET and worked at the VPET Facility in California as a non-exempt employee (meaning you were paid hourly or otherwise eligible for overtime pay) at some point between September 19, 2019 and [REDACTED], 2022 ("Class Period"). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by VPET as a non-exempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On March 10, 2021, Plaintiff and Class Representative Karina Morales, through her attorneys ("Class Counsel"), filed a class and representative action complaint against Defendants VPET and Workforce Personnel, Inc., for alleged wage and hour violations on behalf of all current and former non-exempt employees who worked at the VPET Facility in California. Plaintiff alleges that Defendants violated various Labor Code sections by failing to pay wages for all hours worked, provide all required meal and rest breaks, timely pay final wages, provide accurate and complete wage statements, and other related claims. All of these claims are called the "Class Claims." The Lawsuit also sought civil penalties on behalf of the California Labor Workforce Development Agency ("LWDA"). The civil penalty claims are called "PAGA Claims" and the relevant period for PAGA claims is March 5, 2020 through [REDACTED], 2022 (the "PAGA Period").

VPET has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, VPET is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. VPET has agreed to settle the case as part of a compromise with Plaintiff and the Class Members. As noted, the class action against Workforce Personnel is ongoing as to temporary employees that it assigned to work at the VPET Facility.

The Court has not ruled on the merits of Plaintiff's claims against VPET. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, VPET and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm's length mediation. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to VPET, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by VPET, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, VPET will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member's participation or decision not to participate in this Settlement. If a Class Member does not participate, his/her share will be paid to those who do participate.

III. Who are the Class Members' attorneys?

Attorneys for the Class Members:

Brian Mankin, Esq.
brian@LMLfirm.com
Peter Carlson, Esq.
peter@LMLfirm.com
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed directly by VPET in California and who worked at the VPET Facility at any time between September 19, 2019 and [REDACTED], 2022 (the "Settlement Class"). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, ("Participating Class Members") will be mailed Settlement checks and in exchange be bound by the Settlement and release of certain wage and penalty claims against VPET. All individuals who worked during the PAGA period will be included in the settlement and will receive a share of the PAGA penalties and will release the PAGA Claims, regardless whether they opt out of the Settlement Class.

Without admitting any wrongdoing, VPET has agreed to pay \$250,000 (the "Maximum Settlement Amount") to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Maximum Settlement Amount:

Settlement Administration Costs. The Court has approved [REDACTED] to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$[REDACTED] will be paid from the Maximum Settlement Amount to pay the Settlement Administration Costs.

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (PAGA) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$25,000 of the Maximum Settlement Amount will be allocated to Plaintiff's claim under the Private Attorneys General Act of 2004 ("PAGA"). Of this amount, \$18,250 will be paid to the California Labor Workforce Development Agency (LWDA) in satisfaction of the claims for penalties under PAGA, and the remaining \$6,750 will be divided between all Aggrieved Employees on a Workweek basis. Aggrieved Employees includes "all current and former non-exempt employees employed directly by VPET and who worked at the VPET Facility at any time during the period of March 5, 2020 through [REDACTED], 2022." Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$6,750 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award Class Representative a Service Payment in the amount of \$7,500 to Karina Morales to compensate her for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also may receive a share of the Settlement as a Class Member.

Attorneys' Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel's attorneys' fees or costs. Class Counsel will ask for fees of one-third (\$83,333.33) of the common fund Maximum Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$15,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Maximum Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$[REDACTED]. Compensable work weeks will be all Work Weeks that a Settlement Class Member worked in California during the Class Period. A Work Week includes any week in which a Class Member worked at least one shift/day during the week at the VPET Facility as a *direct hire of VPET* (time worked for any staffing company is excluded from this Settlement, as noted above). To calculate each Individual Settlement Payment, the Settlement Administrator will divide the total Work Weeks of all Settlement Class Members into the Net Settlement Amount to determine a per "Work Week Value". The Workweek Value will be multiplied by the number of Work Weeks worked by each Settlement Class Member during the Class Period to determine the Individual Settlement Payment, prior to legal deductions, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	\$INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Workweeks Worked (i.e., meaning you worked at least one shift/day during a workweek as a direct hire of VPET) during the Class Period and PAGA Period will be calculated from Defendant's records. If you disagree with the numbers reported above, you may submit the enclosed Dispute Form to the Settlement Administrator on or before [INSERT DATE 30 Days After Mailing], with documentation to establish the number of weeks you claim to have worked as a

direct hire for VPET at the VPET Facility between September 19, 2019 and [REDACTED], 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member. If the Parties are unable to agree, the Court will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded and to all Aggrieved Employees. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller's Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, VPET and its counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon Final Approval of the Settlement, all Participating Class Members will release and discharge, for the time period from September 19, 2019 and [REDACTED], 2022, Defendant VPET and the Released Parties (defined below) of all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint ("Released Class Claims"). "Released Parties" means Defendant VPET and its past and present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, successors and assigns. The Released Parties excludes Workforce Personnel, Inc., VPET USA, Inc., LL Continental, Inc., and/or the individuals Henry Lee and Wenhao Wang and all of their officers, directors, shareholders, agents, etc.

Release of PAGA Claims. Upon Final Approval of the Settlement, Plaintiff on behalf of herself and on behalf of Aggrieved Employees, the State of California and the LWDA shall release the Released Parties from all claims based on the facts stated in the operative Complaint in the Action and in the LWDA notice letter(s), including all PAGA claims seeking civil penalties that were premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint ("PAGA Released Claims"). The time period governing the PAGA Released Claims shall be any time during the PAGA Period of March 5, 2020 through [REDACTED], 2022.

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. **Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Weeks Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by the VPET and VPET will not take any adverse employment action against you based on your participation in the Settlement.

- B. **Exclude Yourself from the Settlement.** If you **do not** wish to take part in the Settlement of the Class Claims, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2022 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE VPET LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2022. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to settlement of the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive payments under this Settlement related to the Class Claims; and (3) will not be bound by the release of Class Claims, or the Judgment with respect to the Class Claims. No Aggrieved Employee may exclude themselves from the settlement of the PAGA Claims.

- C. **Object to Settlement.** You also have the right to object to the terms of the Settlement if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object, you must submit a written objection stating your full name, address, telephone number, dates of employment at VPET, the case name and number, the name and address of your attorney(s) if you are represented, each specific reason in support of your objection, and any legal support for each objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2022. Objections that do not include all required information, or that are not submitted timely, will not be considered. **You need not object to the Settlement if you only dispute the number of Weeks Worked.**

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2022, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2022. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by VPET in California while performing nursing duties at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, except for the release of PAGA Claims, you will be deemed to have entered into this Release and to have released the above-described Released Claims. If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, and Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs and the Service Payment to the Class Representative on [REDACTED], 2022 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement (the Settlement Agreement) at Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact Class Counsel or the Settlement Administrator using the contact information listed above for more information.

IX. Reminder as to time limits.

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion is [REDACTED], 2022. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2022. These deadlines will be strictly enforced.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “C”



LAUBY, MANKIN & LAUBY LLP

March 5, 2021

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

VPet USA, LLC
3811 W. Chester Pike, Bldg 2 - Ste. 200
Newtown Square, PA 19073

CSC – Lawyers Incorporating Service
Agent of Service for VPet USA, LLC
2710 Gateway Oaks Drive, Ste. 150N
Sacramento, CA 95833

Workforce Personnel, Inc.
7349 Milliken Ave., Suite 14010
Rancho Cucamonga, CA 91730

Anselmo Soriano
Agent of Service for Workforce Personnel, Inc.
7349 Milliken Ave., Suite 14010
Rancho Cucamonga, CA 91730

Re: PAGA Civil Penalty Claim
Karina Morales v. VPet USA, LLC, et al.

To the Labor and Workforce Development Agency, VPet USA, LLC, Workforce Personnel, Inc., Anselmo Soriano, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Karina Morales (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s) VPet USA, LLC, Workforce Personnel, Inc. and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately 2018 through November 2020. Claimant alleges that, at all relevant times, she and all other employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Also, at all relevant times, the Company failed to pay overtime at the required rate (*i.e.*, time and one-half of the regular rate of pay).

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours. Moreover, although the Company’s policy provided Claimant with 30 minutes for meal periods, this 30-minute period was inclusive of Claimant leaving the work area and walking a long distance to the break room and back at the end of lunch. Due to this walking time, Claimant and other similarly situated employees were regularly not provided with uninterrupted meal periods of at least 30 minutes, as required by California law.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. For instance, the Company did not schedule Claimant’s rest breaks, employees had to take their rest breaks in the break room and supervisors included the walk to and from the break room as part of the 10 minutes or rest, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Additionally, the Company failed to pay Claimant and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimant and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano acted as a single employer of Claimant and the Aggrieved Employees.

Furthermore, on information and belief, VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano are an integrated enterprise and should be treated as a single employer because VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano share an interrelation of operations, with common human resources and

personnel policies and shared common offices and facilities. Upon information and belief VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano share common management, a centralized control of labor operations, and common ownership or financial control. Claimant also alleges that VPet USA, LLC, Workforce Personnel, Inc., and Anselmo Soriano were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Anselmo Soriano is liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. *See Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (holding the same)

As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked as well as the failure properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, overtime wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day, and/or forty hours per week without receiving proper payment of the requisite overtime and/or doubletime wages for all hours worked pursuant to Labor Code §§ 204 and 510 and/or the applicable IWC Wage Order. Claimants and the Aggrieved Employees were also not paid all earned wages to which they were entitled at the rates agreed upon by the Company, including, but not limited to shift differential pay.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

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**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state total hours worked; failure to accurately state all deductions; failure to state the start and end date of the pay period; failure to accurately state net wages earned; failure to state the name and address of the legal entity that is the employer; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO PROVIDE SUITABLE SEATING

(Labor Code § 1198; IWC Wage Order § 14)

Section 14 of the applicable IWC Wage Order states: "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Furthermore, "When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

Here, the Company failed to provide suitable seating for Claimant and the Aggrieved Employees, in violation of IWC Wage Order § 14, and penalties for such violations can be enforced both through Labor Code §§ 1199 (below) and 1198 ("The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful").

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Sincerely,



By: Misty M. Lauby, Esq.

E-mail: Misty@LMLfirm.com

EXHIBIT “D”