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*Attorneys for Plaintiffs,
DENISE LAI and ELIM YEE
and the putative Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – SOUTH COUNTY**

DENISE LAI, an individual, on behalf of
herself, on behalf of all persons similarly
situated, and on behalf of all aggrieved
employees; and ELIM YEE, an individual,
on behalf of herself, on behalf of all persons
similarly situated, and on behalf of all
aggrieved employees

Plaintiffs,

vs.

SAN ROQUE PET HOSPITAL, INC., a
California corporation; GOLETA AIRPORT
PET HOSPITAL, INC., a California
corporation; MONTECITO PET
HOSPITAL, INC., a California corporation;
PETVET CARE CENTERS
(CALIFORNIA), INC., a Delaware
corporation; DAVID P. DAWSON, an
individual; and DOES 1 through 50 inclusive

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
3/16/2023 11:19 AM
By: Narzralli Baksh , Deputy

Case No. 22CV00150

CLASS ACTION

**DECLARATION OF DAVID R.
GREIFINGER IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND MOTION
FOR ATTORNEYS' FEES, COSTS, AND
EXPENSES, AND CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENTS**

Date: April 12, 2023
Time: 10:00 a.m.
Dept.: SB Dept. 3

DECLARATION OF DAVID GREIFINGER

I, David R. Greifinger, declare as follows:

1. I am an attorney of record in the above-captioned case. I am admitted, in good standing, to practice as an attorney before all courts in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central and Eastern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness, I would testify fully to the matters stated in this declaration. All of these matters are within my personal knowledge, except those matters that are stated to be upon information and belief, and as to those matters, I believe them to be true.

2. I submit this declaration in support of Denise Lai and Elim Yee's ("Plaintiffs") Motion for Final Approval of Class Action and PAGA Settlement and Plaintiffs' Motion for Attorneys' Fees, Costs and Expenses, and Representative Enhancement Payments in *Denise Lai, et al. v. San Roque Pet Hospital, Inc, et al.* – Santa Barbara Superior Court Case No. 22CV00150.

3. I have practiced law since 1982 and been engaged in representing plaintiffs in class action lawsuits in the employment, telecommunications, insurance, banking, consumer fraud, antitrust, civil rights, and mass and toxic tort fields since 2000.

4. During that time, I have been involved in representing plaintiffs in class action cases in state and federal court and have been certified to act as class counsel in the Superior Court of the State of California, County of Los Angeles, in the County of Orange, in the County of Riverside, and the County of Santa Barbara. A list of those cases is attached to this declaration as EXHIBIT 1. In class action matters, I have jointly obtained published appellate decisions from the Ninth Circuit Court of Appeals, in *Douglas v. Talk America, Inc.* (9th Cir. 2007) 495 F.3d 1062 and the California Court of Appeal in *Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508.

5. I am a member of the appellate panel for the California Appellate Project Los Angeles and Appellate Defenders, Inc. in San Diego. I have filed appellate briefs in

1 over 100 cases and am counsel of record in numerous cases that have resulted in published
2 appellate decisions.

3 6. My associate, Calvin A. Marshall, Esq. has practiced law since 2017. Mr.
4 Marshall's practice focuses on representing plaintiffs in employment and consumer class
5 actions. Mr. Marshall has assisted in the prosecution of numerous class actions that were
6 deemed complex. Mr. Marshall's assistance has included investigation, drafting of complaints,
7 motions, pleadings, and settlement agreements, propounding and responding to discovery, and
8 attending court appearances. A list of those cases is attached to this declaration as EXHIBIT 2.

9 7. On October 28, 2021, Plaintiffs submitted separate Notice Letters under the
10 Private Attorneys General Act (Lab. Code, §§ 2698 et seq., "PAGA") to Defendants and
11 the California LWDA. On January 13, 2022, Plaintiffs filed a class action complaint in
12 Santa Barbara Superior Court, seeking to bring employment wage and hour claims on
13 behalf of all persons who are or were hourly paid employees of Defendants. On February
14 28, 2022, Plaintiffs filed their First Amended Complaint ("FAC"). The FAC refined the
15 Class definition into Subclass A, regarding Defendants SAN ROQUE PET HOSPITAL,
16 INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC.
17 and DAVID P. DAWSON (the "Santa Barbara Entities"), and Subclass B, regarding
18 PETVET CARE CENTERS (CALIFORNIA), INC. ("PetVet"). A true and correct copy of
19 Ms. Lai's October 28, 2021, PAGA Notice Letter is attached hereto as EXHIBIT 3. A true
20 and correct copy of Ms. Yee's October 28, 2021, PAGA Notice Letter is attached hereto as
21 EXHIBIT 4.

22 8. PetVet was a defendant in a wage and hour class action similar to Plaintiffs'
23 entitled *Amy Royse Orr v. PetVet* (Super. Ct. Santa Clara County, 2019, No. 19CV354063).
24 ("Orr"). The class action settlement in the *Orr* matter released all of the claims asserted
25 against PetVet by Plaintiffs here, up to the September 16, 2020, preliminary approval order
26 in *Orr* (the "*Orr* Settlement"). Plaintiffs allege that PetVet's wage and hour transgressions
27 continued after the *Orr* Settlement. Additionally, the Santa Barbara Entities were not
28 releasees in the *Orr* Settlement and, thus, the *Orr* Settlement did not affect Plaintiffs'

claims against the Santa Barbara Entities in any way. The FAC clarified that the Subclass B Class Period commenced on September 16, 2020, and continued thereafter.

9. Plaintiffs' FAC asserts claims against Defendants for the following violations of the Labor Code and Business & Professions Code: (1) failure to properly institute an alternative workweek schedule; (2) failure to pay overtime compensation; (3) failure to pay minimum wages; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to provide itemized statements and maintain accurate payroll records; (7) violations of the California Occupational Safety and Health Act of 1973; (8) failure to timely pay wages upon termination of employment (Lab. Code, § 203), (9) failure to reimburse business expenses, (10) failure to provide adequate seating; (11) for violations of Business and Professions Code sections 17200 et seq.; and (12) PAGA.

10. At the outset of the litigation, Plaintiffs provided my office with detailed summaries of their experiences working for Defendants, and the circumstances that gave rise to the alleged Labor Code violations. Plaintiffs were able to share their intimate knowledge of Defendants' policies and practices with my office, and how these policies and practices were implemented on a daily basis. In addition to establishing my office's initial evaluation of the lawsuit, the information that Plaintiffs provided also influenced and informed my office's discovery efforts. Of no importance, is the fact that pursuant to the settlement agreement, Plaintiffs are relinquishing their individual claims, which my office believes have significant merit.

11. Plaintiffs also provided my office with documentation regarding their employment with Defendants and introduced my office to various other employees of Defendants. Plaintiffs also meaningfully participated in the mediation of this matter and the settlement negotiation process.

12. My office engaged in significant discovery in this matter. On February 3, 2022, my office propounded an informal discovery request to Defendants for the following information and documents:

- applicable insurance policies;

- aggregate employee data for all non-exempt hourly employees during the putative class period including total member of putative class members;
- employment dates for each putative class member;
- the average hourly rate of putative class members; and
- all employment policy documents including employee handbooks.

13. My office also requested, for a random sampling of 25 percent of the entire putative class:

- all timekeeping data;
- payroll data;
- time audit and adjustment reports; and,
- scheduling data.

14. My office received the requested documentation for the Settlement Class, which included approximately 186 pages of documents and 17 extensive excel spreadsheets of clock in and clock out records and corresponding payroll records for the entirety of the Settlement Class. The document and data exchange enabled Sean Berger of Berger Consulting Group to perform detailed, comprehensive, and statistically significant damages analyses for the Settlement Class (the “Damages Analyses”). The documents and Damages Analyses allowed Plaintiffs’ Counsel to fully assess the nature and scale of the claims being settled, as well as the obstacles to recovery, such as to make an independent assessment of the reasonableness of the terms to which the parties have agreed.

15. Based on information and evidence provided by Defendants, the Subclass A Damages Analysis reveals that the average hourly rate of pay for Subclass A Members is \$18.54. There were approximately 90 Subclass A Members. The Subclass A Damages Analysis indicates that the Santa Barbara Entities’ maximum exposure for the class claims is as follows:

Santa Barbara Entities' Exposure for the Subclass A Claims	
Invalid Alternative Workweek Schedule / Unpaid Overtime Wages Claim	\$14,160.00
Unpaid Off The Clock Wages	\$111,467.00
Liquidated Damages	\$125,057.00
Meal Period Claim	\$94,903.00
Rest Period Claim	\$333,737.00
Final Pay Penalties	\$129,890.00
Total Interest	\$52,224.00
Total	\$861,438.00

The damages analysis indicates that there were approximately 2,007 unpaid overtime hours, 4,596 unpaid "off the clock" regular and overtime hours, 5,229 unique meal period violations, 18,030 rest period violations, and 31 employees terminated during the applicable statute of limitations and data availability.

16. Based on information and evidence provided by Defendants, the Subclass B Damages Analysis reveals that the average hourly rate of pay for Subclass B Members is \$18.71. There were approximately 3,249 Subclass B Members. The Subclass B Damages Analysis indicates that PetVet's maximum exposure for the class claims is as follows:

PetVet's Originally Assumed Exposure for the Subclass B Claims	
Invalid Alternative Workweek Schedule / Unpaid Overtime Wages Claim	\$1,273,995.00*
Unpaid Off The Clock Wages	\$3,337,861.00*
Liquidated Damages	\$3,680,034.00*
Meal Period Claim	\$1,137,473.00*
Rest Period Claim	\$9,507,852.00*
Final Pay Penalties	\$12,496,193.00*
Total Interest	\$1,241,774.00*
Total	\$32,675,182.00*

The damages analysis indicates that there were approximately 117,577.2 unpaid overtime hours, 116,112 unpaid "off the clock" regular and overtime hours, 9,856 unique meal period violations, 437,288 rest period violations, and 1,591 employees terminated during the applicable statute of limitations and data availability.

17. Based on information and evidence provided by Defendants, the Santa Barbara Entities did not employ anyone from October 28, 2020, forward (one year prior to

1 Plaintiffs' sending of their PAGA Notice Letters). The Subclass B Damages Analysis
2 reveals that, between October 28, 2020, and September 14, 2020, (the "PAGA Period")
3 there were 67,452 pay periods in the PAGA Period with unpaid wages, 10,656 pay periods
4 in the PAGA Period with overtime violations, 3,373 pay periods in the PAGA Period with
5 meal period violations assuming valid meal period waivers, 67,452 pay periods in the
6 PAGA Period with rest period violations, 67,452 pay periods in the PAGA Period with
7 failure to reimburse business expense claims, California Occupational Safety and Health
8 Act of 1973 claims, and failure to provide adequate seating claims, and 1,518 former
9 employees with one pay period of final pay claims. Mr. Berger estimates that PAGA
10 penalties total \$80,457,000.00.

11 18. I am ready, willing and able to commit the resources – both human and
12 financial – that are required to litigate this case vigorously and take it to trial if necessary
13 on behalf of the class.

14 19. I have committed significant time and effort to the research, investigation
15 and discovery conducted to date in this action, and we will continue to do so as the case
16 progresses. During the course of this litigation, I have actively prosecuted the claims
17 asserted on behalf of the Class. The involvement of the attorneys at my firm included: (1)
18 determining Plaintiffs' suitability as putative class representatives and as private attorneys
19 generals through interviews and analyses of employment files and related records; (2)
20 drafting PAGA Notice Letters; (3) evaluating all of Plaintiffs' potential representative
21 claims; (4) researching similar wage and hour class actions as to the claims brought, the
22 nature of the positions, and the type of employer; (5) drafting the Complaint and First
23 Amended Complaint; (6) propounding informal discovery requests; (7) analyzing the
24 Settlement Class' time and wage records; (8) analyzing Defendants' employment policies
25 and practices applicable to the Settlement Class; (9) researching settlements in similar
26 cases; (10) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of
27 settlement; (11) drafting the mediation brief; and (12) participating in the mediation and
28 subsequent negotiations facilitated by Louis M. Marlin, Esq.

1 20. The Settlement Agreement is the product of many hours of arm's-length
2 negotiations. At all times, the Parties' negotiations were adversarial and non-collusive. On
3 September 14, 2022, the parties participated in a mediation session before Louis M. Marlin,
4 Esq. of Marlin Mediations, located in Irvine, California. Mr. Marlin is an experienced
5 mediator of wage-and-hour class actions. The parties did not reach an agreement at that
6 time but bridged the gap considerably. The parties exchanged numerous demands and
7 counter demands over the next weeks with the assistance of Mr. Marlin, and ultimately
8 agreed to a variation of Mr. Marlin's mediator's proposal on September 22, 2022.

9 21. On November 17, 2022, the parties agreed to the terms of the Joint
10 Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement"),
11 which Plaintiffs move this court to approve. A true and correct copy of the Settlement
12 Agreement is attached hereto as EXHIBIT 5.

13 22. The proposed Settlement Class consists of:

14 Subclass A: All persons who are or were hourly paid employees of SAN ROQUE PET
15 HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET
16 HOSPITAL, INC. and / or DAVID P. DAWSON, in the State of California, at any time during
17 the period commencing on January 13, 2018, and ending on August 25, 2020; and,

18 Subclass B: All persons who are or were hourly paid employees of PETVET CARE
19 CENTERS (CALIFORNIA), INC., in the State of California, at any time during the period
20 commencing September 16, 2020, and ending on December 21, 2022.

21 23. I believe that the Settlement, for the consideration and on the terms set forth
22 in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of
23 Class Members in light of all known facts and circumstances, including the risk of
24 significant delay and uncertainty associated with litigation, and various defenses asserted
25 by Defendants.

26 24. Given that there are 87 participating Subclass A Members, the average net
27 recovery will be approximately \$3,022.03 to Subclass A Members. Given that there are
28

1 3,769 participating Subclass B Members, the average net recovery will be approximately
2 \$64.45 to Subclass B Members.

3 25. In negotiating the Settlement, and with respect to the Santa Barbara Entities,
4 Plaintiffs' counsel took into account the potential difficulties associated with collecting a
5 judgment from three now defunct entities.

6 26. In negotiating the Settlement, and with respect to PetVet, Plaintiffs' counsel
7 took into account that the majority claim for unpaid overtime wages and the resulting
8 liquidated damages and penalties are based on Defendants' alleged failure to implement a
9 valid alternative workweek schedule. Defendants produced evidence of 12 active and 17
10 former alternative workweek schedules across its 104 California veterinary hospitals. As
11 such, Defendants would have been able to mount a significant challenge to Plaintiffs'
12 claims for Failure to Properly Institute an Alternative Workweek Schedule, Failure to Pay
13 Overtime Wages, and Failure to Pay Minimum Wages in a motion for summary judgment
14 or in opposition to a motion for class certification. Also, Defendants paid meal period
15 premium payments to class members for approximately 42,757 missed meal periods and
16 obtained meal period waivers from its employees. PetVet also maintained and used a rest
17 period premium pay code when employees are unable to take their rest periods. PetVet
18 would have been able to challenge the commonality and typicality of all of Plaintiffs'
19 claims at summary judgment or class certification. Accordingly, in evaluating the adequacy
20 of the Settlement, Plaintiffs' counsel have discounted the maximum possible recovery for
21 each Subclass as explained in the supporting memorandum for the Motion for Preliminary
22 Approval of Class Action and PAGA Settlement.

23 27. Additionally, Plaintiffs' counsel considered that with respect to PetVet, Mr.
24 Berger's damages estimate made various assumptions liberally in favor of Subclass B. Mr.
25 Berger's estimate of unpaid off the clock wages assumes that one hour per employee
26 workweek reflected in PetVet's records was unpaid. Mr. Berger's estimate of rest break
27 premiums is entirely assumes a 100 percent violation rate. Mr. Berger's estimate of meal
28 period premiums assumes that PetVet did not maintain valid meal period waivers for its

employees. Finally, Mr. Berger's estimate of final pay and wage statement penalties are entirely derivative and reliant on the assumed failure of PetVet to pay overtime wages, minimum wages, rest period premium wages, and meal period premium wages.

28. With the exception of the *Orr* matter, I am not aware of any class action in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals who would also be members of the class defined in this action. A similar, but later filed, PAGA action: *Jessica Anaya v. PetVet Care Center (California), Inc.* (Super. Ct. Los Angeles County, 2022, No. 22STCV06369) existed. The *Anaya* PAGA complaint was submitted to the California Labor and Workforce Development Agency ("LWDA") on December 13, 2022. Plaintiffs' PAGA complaints here were submitted earlier to the LWDA on October 28, 2021. The *Anaya* Complaint was filed in the Los Angeles Superior Court on February 22, 2022. Plaintiffs' Complaint here was filed earlier on January 13, 2022. On February 23, 2023, the *Anaya* PAGA claims were dismissed with prejudice by Hon. Christopher K. Lui of the Los Angeles Superior Court.

29. I have reviewed a summary of the billing records for this action, which are maintained during the regular course of business and billed contemporaneously. The bill for attorneys' fees is summarized in the chart below:

Lawyer / Staff	CA Bar Yr.	Rate	Hours	Fees
David R. Greifinger	1982	\$725	75.6	\$54,810.00
Calvin A. Marshall	2017	\$500	188.2	\$94,100.00
Total				\$148,910.00

30. As summarized in the table below, The Law Offices of David R. Greifinger has incurred a total of \$17,227.91 in litigation costs and expenses to date:

Cost & Expense Categories	Amount
Court Filing Fees, Attorney Service Fees, & Service of Process	\$3,260.65
Mediation Fees	\$8,000.00
Berger Consulting Group – Consultancy	

1	Fees	\$5,700.00
2	Research Services Expenses	\$51.60
3	Postage	\$25.67
4	Software Related Expenses For Email Conversion	\$39.99
5	Labor and Workforce Development Agency – PAGA Filing Fees	\$150.00
6	Total	\$17,227.91

7 31. I declare under penalty of perjury, under the laws of the State of California,
8 that the foregoing is true and correct.

9 Executed on March 16, 2023, at Pacific Palisades, California.

10
11 
12 DAVID R. GREIFINGER

EXHIBIT 1

David R. Greifinger Class Action Cases

Case No.	Case Title
LOS ANGELES COUNTY SUPERIOR COURT	
BC242430	Armenderez, et. al. v. Six Flags, Inc.
BC308986	Smith, et. al. v. Legacy Partners Management Ltd.
BC383754	Sankey, et. al. v. Los Angeles Unified School District
BC394875	Gomez v. AHIS
BC413434	Ortega v. L.A. Grand Club, Inc.
BC437103	Stone v. Four Seasons Hotels Limited
BC456729	Ozzello v. Mr. Paul's Buggy Whip, Inc.
BC466880	Everett v. Mountains Recreation & Conservation Authority
BC481956	Guzman v. Affordable Wireless Technologies
BC616783	Timberlake v. Fusione, Inc.
BC705659	Stone v. Chatsworth Fitness, LLC
19STCV19845	Byson v. Buffalo Club Corp.
20STCV18526	Townsend v. Ro-Al, Inc., et. al.
20STCV34343	Guerra v. Mercado Buenos Aires, Inc.
21STCV15380	Ehlers v. McLaren Industries, Inc.
22STCV00612	Sanchez, et al. v Greatdane Catering and Events, LLC
ORANGE COUNTY SUPERIOR COURT	
05CC00109	Gomez, et. al. v. Lincare, Inc.
RIVERSIDE COUNTY SUPERIOR COURT	
RIC1508918	Rich v. EOS Fitness Brands, LLC
SANTA BARBARA SUPERIOR COURT	
20CV03056	Checketts, et al. v. Advanced Veterinary Specialty, Inc.
22CV00150	Lai, et al. v. San Roque Pet Hospital, Inc.
VENTURA COUNTY SUPERIOR COURT	
56-2022-00568691-CU-OE-VTA	Nunes v. Assignment America, LLC

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA	
5:12-cv-00367-PSG-PLA	Dalton v. JPMorgan Chase Bank
CV06-3809 GAF (RCx)	Douglas v. Talk America, Inc.
8:08-cv-00659-AHM-VBK	Klein v. Avis Rent-A-Car System, Inc.
01701-DMG-JCG	Calzada, et. al. v. Time Warner Cable, LLC
2:21-cv-01903 DSF (SKx)	Houriani v. Buck Knives, Inc.
UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON	
C09-0189 MJP	Alvarado v. Microsoft Corporation

EXHIBIT 2

Calvin A. Marshall – Class Action Cases

Case No.	Case Title.
LOS ANGELES COUNTY SUPERIOR COURT	
BC712861	Luke Byson, et. al. v. 861 N La Cienega Associates, LLC
19STCV19845	Byson v. Buffalo Club Corp.
20STCV18526	Townsend v. Ro-Al, Inc., et. al.
20STCV34343	Guerra v. Mercado Buenos Aires, Inc.
21STCV15380	Ehlers v. McLaren Industries, Inc.
22STCV00612	Sanchez, et al. v Greatdane Catering and Events, LLC
SANTA BARBARA SUPERIOR COURT	
20CV03056	Checketts, et al. v. Advanced Veterinary Specialty, Inc.
22CV00150	Lai, et al. v. San Roque Pet Hospital, Inc.
VENTURA COUNTY SUPERIOR COURT	
56-2022-00568691-CU-OE-VTA	Nunes v. Assignment America, LLC
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA	
2:21-cv-01903 DSF (SKx)	Houriani v. Buck Knives, Inc.

EXHIBIT 3

LAW OFFICES OF
DAVID R. GREIFINGER

15515 Sunset Blvd., No. 214 • Pacific Palisades, California 90272
Telephone (424) 330-0193 • Facsimile (831) 920-4864 • E-mail: tracklaw@me.com

October 28, 2021

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

San Roque Pet Hospital, Inc.
c/o David P. Dawson
3034 State Street
Santa Barbara, CA 93105

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

David P. Dawson
3034 State Street
Santa Barbara, CA 93105

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Goleta Airport Pet Hospital, Inc.
c/o David P. Dawson
300 Storke Road
Goleta, CA 93117

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Montecito Pet Hospital, Inc.
c/o David Dawson
1252 Coast Village Circle
Santa Barbara, CA 93108

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

PetVet Care Centers (California), Inc.
One Gorham Island, Suite 300
Westport, CT 06880
and
PetVet Care Centers (California), Inc.
c/o CT Corporation System
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Denise Lai v. San Roque Pet Hospital, Inc., et al.
Private Attorney General Act Notice Letter

Dear Analyst:

The purpose of this letter is to inform you that Denise Lai, as an aggrieved employee, on her own behalf and on behalf of other aggrieved employees of San Roque Pet Hospital, Inc., David P. Dawson, Goleta Airport Pet Hospital, Inc., Montecito Pet Hospital, Inc., PetVet Care Centers (California), Inc.; and any other affiliated entity (collectively referred to herein as “SRPH”), intends to avail herself of the protections granted by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL. LABOR CODE §2698 *et. seq.*). Additionally, this correspondence will serve to satisfy the notice requirements of the Act.

Ms. Lai intends to file a representative action against **SRPH** for its violations of the CALIFORNIA LABOR CODE, the CALIFORNIA BUSINESS & PROFESSIONS CODE, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order.

SRPH is the owner and operator of veterinary facility in Santa Barbra, California and Goleta, California. **SRPH's** business has employed between 45 and 90 non-exempt hourly paid employees including, but not limited to veterinary technicians, veterinary assistants, technician assistants, janitors, receptionists, and other support and office staff. Upon information and belief, **SRPH** implements uniform, standardized policies and practices affecting all of its non-exempt, hourly paid employees in California, including Ms. Lai and other aggrieved employees.

SRPH jointly employed Ms. Lai from about July 2017, to January 2021, as a veterinary assistant. While employed by **SRPH**, from July 2017 to September 2019, Ms. Lai worked eight-hour shifts, five days per week at San Roque Pet Hospital. Additionally, Ms. Lai worked an eight-hour shift each week at another pet hospital owned and operated by **SRPH** without being paid at an overtime rate. Ms. Lai would also work approximately 15-20 minutes at home, twice per week, unpaid. Beginning in September 2019, **SRPH** implemented an alternative workweek schedule and Ms. Lai began to work 10-hour shifts, four days per week at San Roque Pet Hospital. Beginning in August 2020, Ms. Lai was no longer required to work an additional eight-hour shift each week at another pet hospital owned and operated by **SRPH**. **SRPH** paid Ms. Lai \$14.00 per hour in or about 2017, \$16.00 per hour in or about 2018, \$18.00 per hour in or about 2019, and \$27.00 per hour in or about 2020. Ms. Lai's job duties included, without limitation, monitoring veterinary patient vital signs, obtaining diagnostic samples, performing X-rays, assisting with surgeries, scheduling, and handling inventory at **SRPH's** veterinary facilities.

During Ms. Lai's employment, **SRPH** exercised complete and unfettered control over Ms. Lai's work schedules; her hours worked; her rate of pay and method of payment; dictated how Ms. Lai would actually perform her job; and dictated if and when Ms. Lai could take lunch or rest breaks. During Ms. Lai's employment with **SRPH**, she could not exercise discretion and independent judgment regarding the tasks she performed. Ms. Lai had to obtain approval on any action taken in the course of assisting **SRPH's** doctors. Additionally, **SRPH** failed to pay Ms. Lai a salary twice the state minimum wage for full-time employment. Therefore, under Cal. Code Regs. § 11050(1)(A), the provisions of the applicable California Wage Order apply to Ms. Lai, and Ms. Lai was not an exempt employee.

In addition to jointly employing Ms. Lai and other aggrieved employees, **SRPH** represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization, and approval of each of the other Defendants. Additionally, it is on information and belief that PetVet Care Centers (California), Inc. ("PetVet") acquired an ownership interest in San Roque Pet Hospital, Goleta Airport Pet Hospital, and Montecito Pet Hospital in August 2020. At that time, in addition to PetVet, Mr. Dawson and other entities continued to be joint employers of Ms. Lai and all aggrieved employees, as all Defendants participated in the operations of San Roque Pet Hospital, Goleta Airport Pet Hospital, and Montecito Pet Hospital and exercised control over the wages, days and hours worked by all aggrieved employees, and the working conditions of all aggrieved employees. Additionally, PetVet

will be subject to successor liability of **SRPH** prior to its acquisition of an ownership interest in **SRPH** pursuant to Cal. Lab. Code § 200.3. Successor liability is established upon meeting of any of the following criteria:

- (1) Uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.
- (2) Has substantially the same owners or managers that control the labor relations as the judgment debtor.
- (3) Employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor. The term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.
- (4) Operates a business in the same industry and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.

It is on information and belief that PetVet uses substantially the same facilities or substantially the same workforce to offer substantially the same services as all other Defendants. Additionally, it is on information and belief that PetVet utilizes substantially the same owners or managers that control the labor relations as other Defendants. Additionally, it is on information and belief that PetVet continues to employ, as a managing agent, a person who directly controlled the wages, hours, or working conditions of all aggrieved employees as did other Defendants.

SRPH failed to properly implement a compliant alternative workweek schedule by, *inter alia*, failing to properly provide notice to affected employees of the effects of an alternative workweek schedule prior to the required secret-ballot election, failing to conduct a secret- ballot election where **SRPH** would need to obtain two thirds approval from affected employees in any identifiable work unit, and failing to report the results of any secret-ballot election to the Department of Labor Standards Enforcement. **SRPH** required Ms. Lai and other aggrieved employees to work more than eight (8) hours in a day or more than forty (40) hours per week without proper overtime compensation. Additionally, **SRPH** required that Ms. Lai and other aggrieved employees work hours without paying compensation at the minimum wage. In doing so, **SRPH** failed to provide Ms. Lai and other aggrieved employees with proper wage compensation. **SRPH** did not provide Ms. Lai or other aggrieved employees with code-compliant ten (10) minute rest periods or thirty (30) minute meal periods. Ms. Lai and other aggrieved employees were not accurately compensated for the missed rest and meal periods and, therefore, for the total hours worked. As a result, Ms. Lai and other aggrieved employees did not receive accurate wage statements from **SRPH**. **SRPH** violated The California Occupational Safety and Health Act of 1973 by, *inter alia*, forcing Ms. Lai and other aggrieved employees to work in unsafe and unhealthy conditions, and without proper personal protective equipment. **SRPH** failed to provide Ms. Lai and other aggrieved employees with adequate seating when they were performing their job duties.

Finally, **SRPH** failed to pay Ms. Lai and other aggrieved employees all wages due upon termination of employment.

FAILURE TO PROPERLY INSTITUTE AN ALTERNATIVE WORKWEEK SCHEDULE (CAL. LABOR CODE § 511)

CALIFORNIA LABOR CODE § 511(a) provides that, in order for an alternative work-week schedule, such as a work-week schedule that includes ten-hour work days without the payment of overtime wages, to be valid, an employer must follow a precise implementation procedure including notice to employees, and a secret employee ballot:

- (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of Section 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of Section 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

CALIFORNIA LABOR CODE § 511(e) provides that the results of an alternative work-week election shall be reported by the employer to the Division of Labor Standards Enforcement within thirty after the results are final.

8 CAL. CODE REGS. § 11050(3)(B)(1) provides, “No employer shall not be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation...”

8 CAL. CODE REGS. § 11050(3)(C) provides the various alternative workweek schedule election procedures that an employer must follow in order for an alternative workweek schedule to be compliant:

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

- (1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in

which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

...

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

While employed by **SRPH**, Ms. Lai and other aggrieved employees worked 10-hour shifts, four days per week. **SRPH** implemented non-compliant alternative workweek schedules without following the procedures required by the CALIFORNIA LABOR CODE or the CAL. CODE REGS. **SRPH** did not make a proper disclosure to affected employees regarding the effects of the proposed alternative workweek schedule prior to the required secret-ballot election. **SRPH**'s secret-ballot election did not seek two-thirds approval from all affected employees. Additionally, **SRPH** failed to report the results of a secret-ballot election affecting other aggrieved employees to the Department of Labor Standards Enforcement.

As a result of **SRPH**'s failures to properly implement compliant alternative workweek schedules for Ms. Lai and other aggrieved employees, **SRPH**'s alternative workweek schedules are invalid and **SRPH** has violated all applicable daily overtime wage and minimum wage payment requirements. Additionally, Ms. Lai and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon under Labor Code sections 551 and/or 2699(a) & (f)-(g).

FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED DAMAGES (CAL. LABOR CODE §§ 510, 1194, 1194.2, AND 1198)

CALIFORNIA LABOR CODE § 510 provides that employees in California shall not be employed for more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. 8 CAL. CODE REGS. § 11050(3)(A)(3) provides that overtime hours shall be compensated at:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, overtime compensation, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

While employed by **SRPH**, from July 2017 to September 2019, Ms. Lai worked eight-hour shifts, five days per week at San Roque Pet Hospital. Additionally, Ms. Lai worked an eight-hour shift each week at another pet hospital owned and operated by **SRPH** without being paid at an overtime rate. Ms. Lai would also work approximately 15-20 minutes at home, twice per week, unpaid. Beginning in September 2019, **SRPH** implemented an alternative workweek schedule and Ms.

Lai began to work 10-hour shifts, four days per week at San Roque Pet Hospital. Beginning in August 2020, Ms. Lai was no longer required to work an additional eight-hour shift each week at another pet hospital owned and operated by **SRPH**. **SRPH** paid Ms. Lai \$14.00 per hour in 2017, \$16.00 per hour in 2018, \$18.00 per hour in 2019, and \$27.00 per hour in 2020.

Ms. Lai and other aggrieved employees routinely worked more than eight (8) hours per day and more than forty (40) hours in a work week for **SRPH**. Additionally, Ms. Lai and other aggrieved employees were not subject to compliant or valid alternative workweek schedules. As a result, Ms. Lai and other hourly paid employees were entitled to overtime compensation from **SRPH** at a rate of 1.5 times each employee's regular rate of pay for all hours worked in excess of 8 hours per day or 40 hours per week and 2 times the regular rate of pay for all hours worked in excess of 12 hours per day.

Because of these violations, Ms. Lai and other aggrieved employees are entitled to unpaid overtime wages, liquidated damages, civil penalties, attorneys' fees, costs, and interest thereon, under Labor Code sections 558, 1194, 1194.2, and 1198. Additionally, Ms. Lai and other aggrieved employees are entitled to liquidated damages in an amount equal to the amount of overtime wages owed under Labor Code section 1194.2.

FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES (CAL. LABOR CODE §§ 1182.12, 1194; 1194.2; 1197.1; 1198)

California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Cal. Code. Regs. tit. 8, § 11050(2)(K) [defining "Hours Worked"].) CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

The applicable wage order, IWC Wage Order 5-2001(4)(C), additionally provides, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and

interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

As discussed above, Ms. Lai and other aggrieved employees were required to work hours by **SRPH** without being compensated at the minimum wage.

While employed by **SRPH**, from July 2017 to September 2019, Ms. Lai worked eight-hour shifts, five days per week at San Roque Pet Hospital. Additionally, Ms. Lai worked an eight-hour shift each week at another pet hospital owned and operated by **SRPH** without being paid at an overtime rate. Ms. Lai would also work approximately 15-20 minutes at home, twice per week, unpaid. Beginning in September 2019, **SRPH** implemented an alternative workweek schedule and Ms. Lai began to work 10-hour shifts, four days per week at San Roque Pet Hospital. Beginning in August of 2020, Ms. Lai was no longer required to work an additional eight-hour shift each week at another pet hospital owned and operated by **SRPH**. **SRPH** paid Ms. Lai \$14.00 per hour in 2017, \$16.00 per hour in 2018, \$18.00 per hour in 2019, and \$27.00 per hour in 2020.

Ms. Lai and other aggrieved employees were therefore entitled to state minimum wage for the hours that they were “on call.” Ms. Lai and other aggrieved employees are entitled to unpaid minimum wages, civil penalties, attorney’s fees, costs, and interest thereon, under Labor Code sections 558, 1194, 1197, 1197.1, and/or 2699(a), (f)-(g). Ms. Lai and other aggrieved employees are also entitled to liquidated damages in an amount equal to the amount of wages owed.

FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§ 226.7 512(a), 516, and 1198)

CALIFORNIA LABOR CODE §§ 226.7, 512(a), 516, and 1198 and 8 CAL. CODE REGS. § 11050 subd. 11 provide that an employee who works more than five (5) hours in a day is entitled to a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30) minutes if he or she works more than ten (10) hours in a work day. In addition, the employer must relinquish control over the employee’s activities, permit the employee a reasonable opportunity to take an uninterrupted 30-minute meal period, and not impede or discourage an employee from doing so. Employers must also keep and record accurate time records “showing when the employee begins and ends each work period.” (8 CAL. CODE REGS. § 11050, subd. 7(a)(3); *see also* CAL. LAB. CODE § 1174.)

An employer that fails to provide a meal period (and as discussed *infra* a rest period) that satisfies the requirements of the applicable IWC Wage Order 5 must pay a premium to the employee of one additional hour of pay at the employee’s regular rate for each day that a meal period was not provided. (See CAL. LAB. CODE § 226.7(c).)

SRPH regularly completely failed to provide Ms. Lai and other aggrieved employees with compliant thirty (30) minute meal periods during shifts in excess of five (5) hours, and a second compliant thirty (30) minute meal period during shifts in excess of ten (10) hours. Where meal periods were provided, they were either not provided

on or before the fifth hour of work, were shorter in duration than 30 minutes, or were interrupted. **SRPH** effectively maintained control over Ms. Lai and other aggrieved employees during the meal periods that were provided. On each day where a compliant thirty (30) minute meal period was not provided to Ms. Lai and other aggrieved employees, **SRPH** failed to pay aggrieved employees one additional hour of pay at the aggrieved employees' regular rate of pay.

Ms. Lai and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, under Labor Code sections 558 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§ 226.7, 516, and 1198)

CALIFORNIA LABOR CODE § 226.7 and 8 CAL. CODE REGS. § 11050(12)(A) provide that employers shall authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work. The rest period must be duty-free. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237, disapproved on other grounds in *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15.) Additionally, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." (*Augustus, et al. v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273).

CALIFORNIA LABOR CODE § 226.7 and 8 CAL. CODE REGS. § 11050(12)(B) provide that if an employer fails to provide an employee with rest periods in accordance with those statutes, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided. The Wage Order provides a separate remedy for violations of meal period requirements and violations of rest period requirements and section 226.7 allows recovery of up to two premium payments per work day – one for each type of violation. (*United Parcel Service, Inc., v. Superior Court* (2011) 196 Cal.App.4th 57, 69)

SRPH regularly failed to provide Ms. Lai and other aggrieved employees with a compliant ten (10) minute net rest period for every four (4) hours or major fraction thereof worked. When rest periods were provided, they were shorter in duration than ten (10) minutes, were interrupted, or were not provided every four (4) hours or major fraction thereof worked. **SRPH** effectively maintained control over Ms. Lai and other aggrieved employees during rest periods that were provided. On each day where compliant ten (10) minute rest periods were not provided to Ms. Lai and other aggrieved employees, **SRPH** failed to pay aggrieved employees one additional hour of pay at the aggrieved employee's regular rate of pay.

Ms. Lai and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND
MAINTAIN ACCURATE PAYROLL RECORDS (CAL. LABOR CODE § 226(a),
1174(d), and 1198)**

CALIFORNIA LABOR CODE § 226(a) requires employers to provide non-exempt employees with detailed and accurate wage statements (*i.e.* “pay stubs”). Specifically, the statute provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and total hours worked for each temporary services assignment.

CALIFORNIA LABOR CODE § 226(e)(2)(B) provides that a wage statement is incomplete if it does not list the additional meal and rest break premium hours. If a violation occurs, CALIFORNIA LABOR CODE § 226(e) provides that an employee: (a) is entitled to recover the greater of all actual damages or minimum statutory damages of \$50 for the initial pay period in which a violation occurs and \$100 for each subsequent violation, up to a maximum of \$4,000. The employee is also entitled to reasonable attorneys’ fees and costs. An employee asserting a claim under either section 226 or the Private Attorney General Act is no longer required to show that the violations caused injury or resulted from “knowing and intentional” conduct. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 784.)

SRPH’s wage statements for Ms. Lai and other aggrieved employees did not conform with CALIFORNIA LABOR CODE § 226. The wage statements failed to accurately reflect Ms. Lai’s and other aggrieved employees’ hours worked, including overtime wages, minimum wages, missed meal periods and rest periods, and failed to state the correct rate of pay.

California Labor Code section 1174(d) provides, “Every person employing labor in this state shall...(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors” and “(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments....” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), **SRPH** willfully failed to maintain accurate payroll records for Ms. Lai and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to properly record each employees’ overtime wages, minimum wages, and missed meal periods and rest periods.

Ms. Lai and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon under Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

VIOLATIONS OF THE CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973 (CAL. LABOR CODE §§ 6300, *et. seq*)

CALIFORNIA LABOR CODE sections 6400(a), 6402, and 6404 state that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein and that no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful or occupy or maintain a place of employment that is not safe and healthful.

In order to ensure a safe and healthy working environment for employees, CALIFORNIA LABOR CODE section 6401 states:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

CALIFORNIA LABOR CODE section 6401.7 requires that an employer establish, implement, and maintain a written and effective injury prevention program, correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard, and train employees on occupational hazards.

Additionally, CALIFORNIA LABOR CODE section 6403 requires employers: (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; (b) to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and, (c) to do every other thing reasonably necessary to protect the life, safety, and health of employees.

CALIFORNIA CODE OF REGULATIONS section 3380(f), entitled “Hazard assessment and equipment selection,” requires an employer to assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: (A) select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment; (B) communicate selection decisions to each affected employee; and, (C) select PPE that properly fits each affected employee.

Finally, the California Supreme Court in *Bendix Forest Products Corporation v. Division of Occupational Safety and Health* (1979) 25 Cal.3d 465 held that an employer is required to pay for personal protective equipment if the law requires that the employer to provide the equipment. (*Id.* at p. 473.)

SRPH forced Ms. Lai and other aggrieved employees to work in unsafe, and unhealthy conditions, and without proper personal protective equipment, all in violation of California Occupational Safety and Health Act of 1973 and the CALIFORNIA CODE OF REGULATIONS. **SRPH** exposed Ms. Lai and other aggrieved employees to other hazardous conditions including loud noises from many dogs barking in confined spaces. **SRPH** never provided its employees with hearing protection to help mitigate these deafening noises. Additionally, **SRPH** utilized anesthetic gasses within **SRPH**’s buildings without any form of ventilation or recapture of these gasses. This practice exposed all **SRPH** employees to these hazardous gases.

As evidenced by the conduct discussed, *supra*, **SRPH** clearly failed to properly assess its workplace for hazardous conditions and implement a proper and effective written injury-prevention program to protect Ms. Lai and other aggrieved employees from workplace hazards.

SRPH’s conduct was in flagrant violation of, among other laws, the California Occupational Safety and Health Act of 1973 (CALIFORNIA LABOR CODE §§ 6300, *et. seq.*) and the CALIFORNIA CODE OF REGULATIONS. As such, Ms. Lai and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, under Labor Code sections 256 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE ADEQUATE SEATING (CAL. LABOR CODE § 1198; Cal. Code Regs. § 11050(14))

CALIFORNIA LABOR CODE § 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(14)(A) provides, “All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides, “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.”

SRPH violated CALIFORNIA LABOR CODE § 1198 and California Code of Regulations, Title 8, section 11050(14) because it failed to provide adequate seating to Ms. Lai and other aggrieved employees while on and off duty. Ms. Lai and other aggrieved employees, who were otherwise required to work standing at all times, were forced to continue to stand during times when they were not engaged in the active duties of their employment. SRPH's break room was very small and, often time, there was standing room only in the break room. Additionally, Ms. Lai and other aggrieved employees spent a substantial portion of their days taking notes while doctors performed exams. The nature of the work of an employee performing these clerical duties can reasonably be accomplished from a seated position. However, **SRPH** did not provide seats or stools for its employees, forcing employees, including Ms. Lai and other aggrieved employees, to stand throughout their work shifts.

Ms. Lai and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and to seek injunctive relief to bring **SRPH** into compliance with California's seating requirements, under Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT **(CAL. LABOR CODE §§ 201, 202, and 203)**

CALIFORNIA LABOR CODE § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Under CALIFORNIA LABOR CODE § 202(a), when an employee not having a written contract for a definite period is terminated, his or her wages become immediately due and payable. CALIFORNIA LABOR CODE § 203(a) provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections [201 and 202], 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 therefore is commenced; but the wages shall not continue for more than 30 days.

SRPH willfully failed to pay Ms. Lai and other aggrieved employees who are no longer employed by **SRPH** all of their wages earned including minimum wages, overtime wages, and meal and rest period wages. Under CALIFORNIA LABOR CODE § 203, Ms. Lai and other aggrieved employees are entitled to one day's wages for each day they were not timely paid all wages due, up to a maximum of 30 days' wages. Because **SRPH** never paid minimum wages, overtime wages, or meal and rest period wages to Ms. Lai and other aggrieved employees, each of these individuals whose employment has been terminated during the applicable statutory period, is entitled to 30 days' wages.

Ms. Lai and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, under Labor Code sections 256 and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE § 558

CALIFORNIA LABOR CODE § 558(a) provides, “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code section 558(d) provides, “The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

SRPH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Lai and other aggrieved employees’ rights by violating various sections of the California Labor Code. Ms. Lai seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees.

CONCLUSION

Ms. Lai alleges on behalf of herself and all of the aggrieved hourly paid employees as set forth herein, that **SRPH** violated the California Industrial Wage Order, the CALIFORNIA LABOR CODE, the CALIFORNIA CODE OF REGULATIONS, and CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, et seq. by its misconduct. She seeks monetary relief on behalf of herself and the other aggrieved employees. It is estimated that PAGA penalties for all of **SRPH**’s aggrieved employees’ total \$2,322,500.00

Senate Bill 1809 was approved as emergency legislation by the Governor and Chaptered by the Secretary of State. Senate Bill 1809 amended certain provisions of the Act. Specifically, CALIFORNIA LABOR CODE § 2699(a) now imposes a procedural “notice” requirement on any aggrieved employee intending to pursue an action under the Act. This notice provision is codified in CALIFORNIA LABOR CODE §2699.3 and requires that the aggrieved employee or representative to give written notice to the Labor and Workforce Development Agency and the employer of the CALIFORNIA LABOR CODE violations. This notice must include the facts and theories to support the alleged violations. By sending this correspondence, Ms. Lai is complying with the statutory notice requirement.

SRPH, in violation of the CALIFORNIA LABOR CODE §§ 201, 202, 203, 226, 226.7, 510, 511, 512, 516, 1182.12, 1194, 1194.2, 1197.1, 1198, 6400(a), 6401, 6401.7, 6402, 6403, and 6404, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order No. 5-2001 (as amended), deprived its employees of statutory overtime compensation, minimum wage compensation, meal periods, rest periods, accurate wage statements, a safe and healthy workplace in conformance with the Occupational Safety and Health Act of 1973, adequate seating, and wages due upon termination of employment. Furthermore, in violation of the CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, et seq., **SRPH** engaged in unlawful, deceptive, and unfair business

practices. Put simply, **SRPH** operates to maximize profits at the expense of its employees through multiple schemes that violate the CALIFORNIA LABOR CODE, the CALIFORNIA BUSINESS & PROFESSIONS CODE, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order.

As a result of **SRPH's** failure to provide its employees with overtime compensation, minimum wage compensation, compliant meal periods, compliant rest periods, accurate wage statements, a safe and healthy workplace in conformance with the Occupational Safety and Health Act of 1973, adequate seating, and wages due upon termination of employment, Ms. Lai, and others similarly situated, are entitled to invoke the protections of the Act. As a result, Ms. Lai, on her own behalf and on behalf of all aggrieved employees, seeks all applicable penalties related to these violations of the CALIFORNIA LABOR CODE under THE PRIVATE ATTORNEY GENERAL ACT.

Ms. Lai has placed **SRPH** on notice by mailing a copy of this correspondence by certified mail to its listed agents for process of service.

Very Truly Yours,

LAW OFFICES OF DAVID R. GREIFINGER

David Greifinger

David Greifinger

EXHIBIT 4

LAW OFFICES OF
DAVID R. GREIFINGER

15515 Sunset Blvd., No. 214 • Pacific Palisades, California 90272
Telephone (424) 330-0193 • Facsimile (831) 920-4864 • E-mail: tracklaw@me.com

October 28, 2021

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

San Roque Pet Hospital, Inc.
c/o David P. Dawson
3034 State Street
Santa Barbara, CA 93105

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

David P. Dawson
3034 State Street
Santa Barbara, CA 93105

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Goleta Airport Pet Hospital, Inc.
c/o David P. Dawson
300 Storke Road
Goleta, CA 93117

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Montecito Pet Hospital, Inc.
c/o David Dawson
1252 Coast Village Circle
Santa Barbara, CA 93108

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

PetVet Care Centers (California), Inc.
One Gorham Island, Suite 300
Westport, CT 06880
and
PetVet Care Centers (California), Inc.
c/o CT Corporation System
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Elim Yee v. San Roque Pet Hospital, Inc., et al.
Private Attorney General Act Notice Letter

Dear Analyst:

The purpose of this letter is to inform you that Elim Yee, as an aggrieved employee, on her own behalf and on behalf of other aggrieved employees of San Roque Pet Hospital, Inc., David P. Dawson, Goleta Airport Pet Hospital, Inc., Montecito Pet Hospital, Inc., PetVet Care Centers (California), Inc.; and any other affiliated entity (collectively referred to herein as “SRPH”), intends to avail herself of the protections granted by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL. LABOR CODE §2698 *et. seq.*). Additionally, this correspondence will serve to satisfy the notice requirements of the Act.

Ms. Yee intends to file a representative action against **SRPH** for its violations of the CALIFORNIA LABOR CODE, the CALIFORNIA BUSINESS & PROFESSIONS CODE, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order.

SRPH is the owner and operator of veterinary facility in Santa Barbra, California and Goleta, California. **SRPH's** business has employed between 45 and 90 non-exempt hourly paid employees including, but not limited to veterinary technicians, veterinary assistants, technician assistants, janitors, receptionists, and other support and office staff. Upon information and belief, **SRPH** implements uniform, standardized policies and practices affecting all of its non-exempt, hourly paid employees in California, including Ms. Yee and other aggrieved employees.

SRPH jointly employed Ms. Yee from, on or about October 2014 to August 2014, and about November 2015, to present, as a veterinary assistant. While employed by **SRPH**, from November 2015 to September 2019, Ms. Yee worked eight-hour shifts, five days per week at San Roque Pet Hospital. Additionally, Ms. Yee worked an eight-hour shift each week at another pet hospital owned and operated by **SRPH** without being paid at an overtime rate. Beginning in September 2019, **SRPH** implemented an alternative workweek schedule and Ms. Yee began to work ten-hour shifts, four days per week at San Roque Pet Hospital. Beginning in August 2020, Ms. Yee was no longer required to work an additional eight-hour shift each week at another pet hospital owned and operated by **SRPH**. In February 2021, **SRPH** began to employ Ms. Yee for approximately one shift every two weeks for **SRPH**. Prior to about September 2018, **SRPH** paid Ms. Yee \$17.00 per hour. From about September 2018 through about October 2019, **SRPH** paid Ms. Yee \$18.00 per hour. From about October 2019 through about January 2020, **SRPH** paid Ms. Yee \$21.00 per hour. From about January 2020 to present, **SRPH** paid Ms. Yee \$24.00 per hour. Ms. Yee's job duties included, without limitation, monitoring veterinary patient vital signs, obtaining diagnostic samples, performing x-rays, assisting with surgeries, scheduling, and handling inventory at **SRPH's** veterinary facilities.

During Ms. Yee's employment, **SRPH** exercised complete and unfettered control over Ms. Yee's work schedules; her hours worked; her rate of pay and method of payment; dictated how Ms. Yee would actually perform her job; and dictated if and when Ms. Yee could take lunch or rest breaks. During Ms. Yee's employment with **SRPH**, she could not exercise discretion and independent judgment regarding the tasks she performed. Ms. Yee had to obtain approval on any action taken in the course of assisting **SRPH's** doctors. Additionally, **SRPH** failed to pay Ms. Yee a salary twice the state minimum wage for full-time employment. Therefore, under Cal. Code Regs. § 11050(1)(A), the provisions of the applicable California Wage Order apply to Ms. Yee, and Ms. Yee was not an exempt employee.

In addition to jointly employing Ms. Yee and other aggrieved employees, **SRPH** represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants. Additionally, it is on information and belief that PetVet Care Centers (California), Inc. ("PetVet") acquired an ownership interest in San Roque Pet Hospital, Goleta Airport Pet Hospital, and Montecito Pet Hospital in August 2020. At that time, in addition to PetVet, Mr. Dawson and other entities continued to be joint employers of Ms. Yee and all aggrieved employees, as all Defendants participated in the

operations of San Roque Pet Hospital, Goleta Airport Pet Hospital, and Montecito Pet Hospital and exercised control over the wages, days and hours worked by all aggrieved employees, and the working conditions of all aggrieved employees. Additionally, PetVet will be subject to successor liability of **SRPH** prior to its acquisition of an ownership interest in **SRPH** pursuant to Cal. Lab. Code § 200.3. Successor liability is established upon meeting of any of the following criteria:

- (1) Uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. This factor does not apply to employers who maintain the same workforce pursuant to Chapter 4.5 (commencing with Section 1060) of Part 3.
- (2) Has substantially the same owners or managers that control the labor relations as the judgment debtor.
- (3) Employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor. The term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.
- (4) Operates a business in the same industry and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.

It is on information and belief that PetVet uses substantially the same facilities or substantially the same workforce to offer substantially the same services as all other Defendants. Additionally, it is on information and belief that PetVet utilizes substantially the same owners or managers that control the labor relations as other Defendants. Additionally, it is on information and belief that PetVet continues to employ, as a managing agent, a person who directly controlled the wages, hours, or working conditions of all aggrieved employees as did other Defendants.

SRPH failed to properly implement a compliant alternative workweek schedule by, *inter alia*, failing to properly provide notice to affected employees of the effects of an alternative workweek schedule prior to the required secret-ballot election, failing to conduct a secret- ballot election where **SRPH** would need to obtain two thirds approval from affected employees in any identifiable work unit, and failing to report the results of any secret-ballot election to the Department of Labor Standards Enforcement. **SRPH** required other aggrieved employees to work more than eight (8) hours in a day or more than forty (40) hours per week without proper overtime compensation. Additionally, **SRPH** required other aggrieved employees work hours without paying compensation at the minimum wage. In doing so, **SRPH** failed to provide Ms. Yee and other aggrieved employees with proper wage compensation. **SRPH** did not provide Ms. Yee or other aggrieved employees with code-compliant ten (10) minute rest periods or thirty (30) minute meal periods. Ms. Yee and other aggrieved employees were not accurately compensated for the missed rest and meal periods and, therefore, for the total hours worked. As a result, Ms. Yee and other aggrieved employees did not receive accurate wage statements from **SRPH**. **SRPH** violated The California Occupational Safety and Health Act of 1973 by, *inter alia*, forcing Ms. Yee and other aggrieved employees to work in unsafe and unhealthy conditions, and without proper personal protective equipment. **SRPH** failed to provide Ms. Lai and other aggrieved employees with adequate seating when these employees were on and off duty.

Finally, **SRPH** failed to pay other aggrieved employees all wages due upon termination of employment.

FAILURE TO PROPERLY INSTITUTE AN ALTERNATIVE WORKWEEK SCHEDULE (CAL. LABOR CODE § 511)

CALIFORNIA LABOR CODE § 511(a) provides that, in order for an alternative work-week schedule, such as a work-week schedule that includes ten-hour work days without the payment of overtime wages, to be valid, an employer must follow a precise implementation procedure including notice to employees, and a secret employee ballot:

- (a) Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted only if it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of Section 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of Section 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

CALIFORNIA LABOR CODE § 511(e) provides that the results of an alternative work-week election shall be reported by the employer to the Division of Labor Standards Enforcement within thirty after the results are final.

8 CAL. CODE REGS. § 11050(3)(B)(1) provides, “No employer shall not be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation...”

8 CAL. CODE REGS. § 11050(3)(C) provides the various alternative workweek schedule election procedures that an employer must follow in order for an alternative workweek schedule to be compliant:

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees' work site. For purposes of this subsection, "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

...

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Division of Labor Statistics and Research within 30 days after the results are final, and the report of election results shall be a public document. The

report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

While employed by **SRPH**, Ms. Yee and other aggrieved employees worked 10-hour shifts, four days per week. **SRPH** implemented non-compliant alternative workweek schedules without following the procedures required by the CALIFORNIA LABOR CODE or the CAL. CODE REGS. **SRPH** did not make a proper disclosure to affected employees regarding the effects of the proposed alternative workweek schedule prior to the required secret-ballot election. **SRPH**'s secret-ballot election did not seek two thirds approval from all affected employees. Additionally, **SRPH** failed to report the results of a secret-ballot election affecting other aggrieved employees to the Department of Labor Standards Enforcement.

As a result of **SRPH**'s failures to properly implement compliant alternative workweek schedules for Ms. Yee and other aggrieved employees, **SRPH**'s alternative workweek schedules are invalid and **SRPH** has violated all applicable daily overtime wage and minimum wage payment requirements. Additionally, Ms. Yee and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon under Labor Code sections 551 and/or 2699(a) & (f)-(g).

FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED DAMAGES (CAL. LABOR CODE §§ 510, 1194, 1194.2, AND 1198)

CALIFORNIA LABOR CODE § 510 provides that employees in California shall not be employed for more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law. 8 CAL. CODE REGS. § 11050(3)(A)(3) provides that overtime hours shall be compensated at:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, overtime compensation, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

Ms. Yee and other aggrieved employees routinely worked more than eight (8) hours per day and more than forty (40) hours in a work week for **SRPH**. Additionally,

Ms. Yee and other aggrieved employees were not subject to compliant or valid alternative workweek schedules. As a result, Ms. Yee and other hourly paid employees were entitled to overtime compensation from **SRPH** at a rate of 1.5 times each employee's regular rate of pay for all hours worked in excess of 8 hours per day or 40 hours per week and 2 times the regular rate of pay for all hours worked in excess of 12 hours per day.

Because of these violations, Ms. Yee and other aggrieved employees are entitled to unpaid overtime wages, liquidated damages, civil penalties, attorneys' fees, costs, and interest thereon, under Labor Code sections 558, 1194, 1194.2, and 1198. Additionally, Ms. Yee and other aggrieved employees are entitled to liquidated damages in an amount equal to the amount of overtime wages owed under Labor Code section 1194.2.

FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES (CAL. LABOR CODE §§ 1182.12, 1194; 1194.2; 1197; 1197.1; 1198)

California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Cal. Code. Regs. tit. 8, § 11050(2)(K) [defining "Hours Worked"].) CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

The applicable wage order, IWC Wage Order 5-2001(4)(C), additionally provides, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

CALIFORNIA LABOR CODE § 1194 establishes an employee's right to recover unpaid minimum wages, interest thereon, together with the costs of suit, and attorneys' fees. CALIFORNIA LABOR CODE § 1194.2 further establishes an employee's right to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon in an action for payment of a wage less than the minimum wage fixed by the Industrial Welfare Commission or by statute.

Ms. Yee is aware that other aggrieved employees were required to work hours by **SRPH** without being compensated at the minimum wage. Other aggrieved employees were therefore entitled to state minimum wage for the hours that they were "on call." Other aggrieved employees are entitled to unpaid minimum wages, civil penalties, attorney's fees, costs, and interest thereon, under Labor Code sections 558, 1194, 1197, 1197.1, and/or 2699(a), (f)-(g). Other aggrieved

employees are also entitled to liquidated damages in an amount equal to the amount of wages owed.

FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE §§ 226.7, 512(a), 516, and 1198)

CALIFORNIA LABOR CODE §§ 226.7, 512(a), 516, and 1198 and 8 CAL. CODE REGS. § 11050 subd. 11 provide that an employee who works more than five (5) hours in a day is entitled to a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30) minutes if he or she works more than ten (10) hours in a work day. In addition, the employer must relinquish control over the employee's activities, permit the employee a reasonable opportunity to take an uninterrupted 30-minute meal period, and not impede or discourage an employee from doing so. Employers must also keep and record accurate time records "showing when the employee begins and ends each work period." (8 CAL. CODE REGS. § 11050, subd. 7(a)(3); *see also* CAL. LAB. CODE § 1174.)

An employer that fails to provide a meal period (and as discussed *infra* a rest period) that satisfies the requirements of the applicable IWC Wage Order 5 must pay a premium to the employee of one additional hour of pay at the employee's regular rate for each day that a meal period was not provided. (See CAL. LAB. CODE § 226.7(c).)

SRPH regularly completely failed to provide Ms. Yee and other aggrieved employees with compliant thirty (30) minute meal periods during shifts in excess of five (5) hours, and a second compliant thirty (30) minute meal period during shifts in excess of ten (10) hours. Where meal periods were provided, they were either not provided on or before the fifth hour of work, were shorter in duration than 30 minutes, or were interrupted. **SRPH** effectively maintained control over Ms. Yee and other aggrieved employees during the meal periods that were provided. On each day where a compliant thirty (30) minute meal period was not provided to Ms. Yee and other aggrieved employees, **SRPH** failed to pay aggrieved employees one additional hour of pay at the aggrieved employees' regular rate of pay.

Ms. Yee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, under Labor Code sections 558 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§ 226.7, 516, and 1198)

CALIFORNIA LABOR CODE § 226.7 and 8 CAL. CODE REGS. § 11050(12)(A) provide that employers shall authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work. The rest period must be duty-free. (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 237, disapproved on other grounds in *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 986, fn. 15.) Additionally, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." (*Augustus, et al. v. ABM Security Services, Inc.* (2016)

2 Cal.5th 257, 273).

CALIFORNIA LABOR CODE § 226.7 and 8 CAL. CODE REGS. § 11050(12)(B) provide that if an employer fails to provide an employee with rest periods in accordance with those statutes, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided. The Wage Order provides a separate remedy for violations of meal period requirements and violations of rest period requirements and section 226.7 allows recovery of up to two premium payments per work day – one for each type of violation. (*United Parcel Service, Inc., v. Superior Court* (2011) 196 Cal.App.4th 57, 69)

SRPH regularly failed to provide Ms. Yee and other aggrieved employees with a compliant ten (10) minute net rest period for every four (4) hours or major fraction thereof worked. When rest periods were provided, they were shorter in duration than ten (10) minutes, were interrupted, or were not provided every four (4) hours or major fraction thereof worked. **SRPH** effectively maintained control over Ms. Yee and other aggrieved employees during rest periods that were provided. On each day where compliant ten (10) minute rest periods were not provided to Ms. Yee and other aggrieved employees, **SRPH** failed to pay aggrieved employees one additional hour of pay at the aggrieved employee's regular rate of pay.

Ms. Yee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND
MAINTAIN ACCURATE PAYROLL RECORDS (CAL. LABOR CODE § 226(a),
1174(d), and 1198)**

CALIFORNIA LABOR CODE § 226(a) requires employers to provide non-exempt employees with detailed and accurate wage statements (*i.e.* "pay stubs"). Specifically, the statute provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as

defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and total hours worked for each temporary services assignment.

CALIFORNIA LABOR CODE § 226(e)(2)(B) provides that a wage statement is incomplete if it does not list the additional meal and rest break premium hours. If a violation occurs, CALIFORNIA LABOR CODE § 226(e) provides that an employee: (a) is entitled to recover the greater of all actual damages or minimum statutory damages of \$50 for the initial pay period in which a violation occurs and \$100 for each subsequent violation, up to a maximum of \$4,000. The employee is also entitled to reasonable attorneys' fees and costs. An employee asserting a claim under either section 226 or the Private Attorney General Act is no longer required to show that the violations caused injury or resulted from "knowing and intentional" conduct. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 784.)

SRPH's wage statements for Ms. Yee and other aggrieved employees did not conform with CALIFORNIA LABOR CODE § 226. The wage statements failed to accurately reflect Ms. Yee's and other aggrieved employees' hours worked, including overtime wages, minimum wages, missed meal periods and rest periods, and failed to state the correct rate of pay.

California Labor Code section 1174(d) provides, "Every person employing labor in this state shall...(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors" and "(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), **SRPH** willfully failed to maintain accurate payroll records for Ms. Yee and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to properly record each employees' overtime wages, minimum wages, and missed meal periods and rest periods.

Ms. Yee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon under Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

VIOLATIONS OF THE CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT OF 1973 (CAL. LABOR CODE §§ 6300, *et. seq*)

CALIFORNIA LABOR CODE sections 6400(a), 6402, and 6404 state that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein and that no employer shall require, or permit any employee to go or be

in any employment or place of employment which is not safe and healthful or occupy or maintain a place of employment that is not safe and healthful.

In order to ensure a safe and healthy working environment for employees, CALIFORNIA LABOR CODE section 6401 states:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

CALIFORNIA LABOR CODE section 6401.7 requires that an employer establish, implement, and maintain a written and effective injury prevention program, correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard, and train employees on occupational hazards.

Additionally, CALIFORNIA LABOR CODE section 6403 requires employers: (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe; (b) to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; and, (c) to do every other thing reasonably necessary to protect the life, safety, and health of employees.

CALIFORNIA CODE OF REGULATIONS section 3380(f), entitled “Hazard assessment and equipment selection,” requires an employer to assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall: (A) select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment; (B) communicate selection decisions to each affected employee; and, (C) select PPE that properly fits each affected employee.

Finally, the California Supreme Court in *Bendix Forest Products Corporation v. Division of Occupational Safety and Health* (1979) 25 Cal.3d 465 held that an employer is required to pay for personal protective equipment if the law requires that the employer to provide the equipment. (*Id.* at p. 473.)

SRPH forced Ms. Yee and other aggrieved employees to work in unsafe, and unhealthy conditions, and without proper personal protective equipment, all in violation of California Occupational Safety and Health Act of 1973 and the CALIFORNIA CODE OF REGULATIONS. **SRPH** exposed Ms. Yee and other aggrieved employees to other hazardous conditions including loud noises from many dogs barking in confined spaces. **SRPH** never provided its employees with hearing protection to help mitigate these deafening noises. Additionally, **SRPH** utilized anesthetic gasses within **SRPH**'s buildings without any form of ventilation or recapture of these gasses. This practice exposed all **SRPH** employees to these hazardous gases.

As evidenced by the conduct discussed, *supra*, **SRPH** clearly failed to properly assess its workplace for hazardous conditions and implement a proper and effective written injury-prevention program to protect Ms. Yee and other aggrieved employees from workplace hazards.

SRPH's conduct was in flagrant violation of, among other laws, the California Occupational Safety and Health Act of 1973 (CALIFORNIA LABOR CODE §§ 6300, *et seq.*) and the CALIFORNIA CODE OF REGULATIONS. As such, Ms. Yee and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, under Labor Code sections 256 and/or 2699(a), (f)-(g).

FAILURE TO PROVIDE ADEQUATE SEATING (CAL. LABOR CODE § 1198; Cal. Code Regs. § 11050(14))

CALIFORNIA LABOR CODE § 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(14)(A) provides, "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." California Code of Regulations, Title 8, section 11050(14)(B) provides, "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."

SRPH violated CALIFORNIA LABOR CODE § 1198 and California Code of Regulations, Title 8, section 11050(14) because it failed to provide adequate seating to Ms. Yee and other aggrieved employees while on and off duty. Ms. Yee and other aggrieved employees, who were otherwise required to work standing at all times, were forced to continue to stand during times when they were not engaged in the active duties of their employment. **SRPH's** break room was very small and, often time, there was standing room only in the break room. Additionally, Ms. Yee and other aggrieved employees spent a substantial portion of their day taking notes while doctors performed exams. The nature of the work of an employee performing these clerical duties can reasonably be accomplished from a seated position. However, **SRPH** did not provide seats or stools for its employees, forcing employees, including Ms. Yee and other aggrieved employees, to stand throughout their work shifts.

Ms. Yee and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and to seek injunctive relief to bring **SRPH** into compliance with California's seating requirements, under Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT (CAL. LABOR CODE §§ 201, 202, and 203)

CALIFORNIA LABOR CODE § 201(a) provides that a discharged employee's unpaid wages are due and payable immediately. Under CALIFORNIA LABOR CODE § 202(a), when an employee not having a written contract for a definite period is terminated,

his or her wages become immediately due and payable. CALIFORNIA LABOR CODE § 203(a) provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections [201 and 202], 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Ms. Yee is aware that SRPH willfully failed other aggrieved employees who are no longer employed by **SRPH** all of their wages earned including minimum wages, overtime wages, and meal and rest period wages. Under CALIFORNIA LABOR CODE § 203, Ms. Yee and other aggrieved employees are entitled to one day's wages for each day they were not timely paid all wages due, up to a maximum of 30 days' wages. Because **SRPH** never paid minimum wages, overtime wages, or meal and rest period wages to other aggrieved employees, each of these individuals whose employment has been terminated during the applicable statutory period, is entitled to 30 days' wages.

As a result, other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, under Labor Code sections 256 and/or 2699(a), (f)-(g).

VIOLATION OF CALIFORNIA LABOR CODE § 558

CALIFORNIA LABOR CODE § 558(a) provides, "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(d) provides, "The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

SRPH, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Yee and other aggrieved employees' rights by violating various sections of the California Labor Code. Ms. Yee seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees.

CONCLUSION

Ms. Yee alleges on behalf of herself and all of the aggrieved hourly paid employees as set forth herein, that **SRPH** violated the California Industrial Wage Order, the CALIFORNIA LABOR CODE, the CALIFORNIA CODE OF REGULATIONS, and CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, et seq. by its misconduct. She seeks monetary relief on

behalf of herself and the other aggrieved employees. It is estimated that PAGA penalties for all of **SRPH's** aggrieved employees' total \$2,322,500.00

Senate Bill 1809 was approved as emergency legislation by the Governor and Chaptered by the Secretary of State. Senate Bill 1809 amended certain provisions of the Act. Specifically, CALIFORNIA LABOR CODE § 2699(a) now imposes a procedural "notice" requirement on any aggrieved employee intending to pursue an action under the Act. This notice provision is codified in CALIFORNIA LABOR CODE §2699.3 and requires that the aggrieved employee or representative to give written notice to the Labor and Workforce Development Agency and the employer of the CALIFORNIA LABOR CODE violations. This notice must include the facts and theories to support the alleged violations. By sending this correspondence, Ms. Yee is complying with the statutory notice requirement.

SRPH, in violation of the CALIFORNIA LABOR CODE §§ 201, 202, 203, 226, 226.7, 510, 511, 512, 516, 1182.12, 1194, 1194.2, 1197.1, 1198, 6400(a), 6401, 6401.7, 6402, 6403, and 6404, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order No. 5-2001 (as amended), deprived its employees of statutory overtime compensation, minimum wage compensation, meal periods, rest periods, accurate wage statements, a safe and healthy workplace in conformance with the Occupational Safety and Health Act of 1973, adequate seating, and wages due upon termination of employment. Furthermore, in violation of the CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, *et seq.*, **SRPH** engaged in unlawful, deceptive, and unfair business practices. Put simply, **SRPH** operates to maximize profits at the expense of its employees through multiple schemes that violate the CALIFORNIA LABOR CODE, the CALIFORNIA BUSINESS & PROFESSIONS CODE, the CALIFORNIA CODE OF REGULATIONS, and the applicable Industrial Wage Order.

As a result of **SRPH's** failure to provide its employees with overtime compensation, minimum wage compensation, compliant meal periods, compliant rest periods, accurate wage statements, a safe and healthy workplace in conformance with the Occupational Safety and Health Act of 1973, adequate seating, and wages due upon termination of employment, Ms. Yee, and others similarly situated, are entitled to invoke the protections of the Act. As a result, Ms. Yee, on her own behalf and on behalf of all aggrieved employees, seeks all applicable penalties related to these violations of the CALIFORNIA LABOR CODE under THE PRIVATE ATTORNEY GENERAL ACT.

Ms. Yee has placed **SRPH** on notice by mailing a copy of this correspondence by certified mail to its listed agents for process of service.

Very Truly Yours,

LAW OFFICES OF DAVID R. GREIFINGER

David Greifinger

David Greifinger

EXHIBIT 5

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – SOUTH COUNTY**

DENISE LAI, an individual, on behalf of herself, on behalf of all persons similarly situated, and on behalf of all aggrieved employees; and ELIM YEE, an individual, on behalf of herself, on behalf of all persons similarly situated, and on behalf of all aggrieved employees

Plaintiffs,

vs.

SAN ROQUE PET HOSPITAL, INC., a California corporation; GOLETA AIRPORT PET HOSPITAL, INC., a California corporation; MONTECITO PET HOSPITAL, INC., a California corporation; PETVET CARE CENTERS (CALIFORNIA), INC., a Delaware corporation; DAVID P. DAWSON, an individual; and DOES 1 through 50 inclusive

Defendants.

Case No. 22CV00150

JOINT STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT (PAGA) SETTLEMENT AND RELEASE

**JOINT STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT (PAGA)
SETTLEMENT AND RELEASE**

**JOINT STIPULATION OF CLASS ACTION AND PRIVATE ATTORNEYS GENERAL
ACT (PAGA) SETTLEMENT AND RELEASE**

This Joint Stipulation of Class Action and Private Attorneys General Act Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs DENISE LAI and ELIM YEE (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others similarly situated, on the one hand, and Defendants SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC., DAVID P. DAWSON, and PETVET CARE CENTERS (CALIFORNIA), INC., (“Defendants”), on the other hand, (Defendants collectively with Plaintiffs, the “Parties” or individually a “Party”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Denise Lai, et al. v San Roque Pet Hospital, Inc., et al.* - Santa Barbara Superior Court Case No. 22CV00150.
2. “Agreement,” “Stipulation,” “Settlement,” “Settlement Agreement” or “Release” shall mean this Joint Stipulation of Class Action and PAGA Settlement and Release, including any attached Exhibits.
3. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to the mediator’s fees, fees and expenses of experts, investigation expenses, postage, telephone, and photocopying charges, costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement Amount, or Two Hundred Ninety One Thousand Six Hundred Sixty Seven Dollars and Zero Cents (\$291,667.00). The Attorneys’ Fees and Costs will also

mean and include the additional reimbursement of any costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount of approximately Eighteen Thousand Dollars and Zero Cents (\$18,000.00), subject to the Court's approval. Defendants have agreed not to oppose Class Counsel's request for fees and reimbursement of costs as set forth above.

4. "Class Counsel" means The Law Offices of David R. Greifinger.

5. "Class List" means a complete list of all Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator within five (5) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member's full name; most recent mailing address, telephone number; Social Security number; and dates of employment.

6. "Class Member(s)", "Settlement Classes", or "Subclass Members" means:

Subclass A: All persons who are or were hourly paid employees of SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC. and / or DAVID P. DAWSON, in the State of California, at any time during the period commencing on January 13, 2018, and ending on August 25, 2020, (the "Subclass A Class Period"); and,

Subclass B: All persons who are or were hourly paid employees of PETVET CARE CENTERS (CALIFORNIA), INC., in the State of California, at any time during the period commencing September 16, 2020, and continuing until the date the Court grants preliminary approval of the settlement (the "Subclass B Class Period").

7. "Class Periods" or "Subclass Periods" means:

Subclass A Period: January 13, 2018, and ending on August 25, 2020, for all persons who are or were hourly paid employees of SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC. and / or DAVID P. DAWSON, in the State of California; and,

Subclass B Period: September 16, 2020, and continuing until the date the Court grants

1 preliminary approval of the Settlement for all persons who are or were hourly paid employees of
2 PETVET CARE CENTERS (CALIFORNIA), INC., in the State of California.

3 8. "Class Representative Enhancement Payments" means the amounts to be paid to
4 the named Class Plaintiffs in recognition of their effort and work in prosecuting the Action on
5 behalf of Class Members, and for their general release of claims. Subject to the Court granting
6 final approval of this Settlement Agreement and subject to the exhaustion of any and all appeals,
7 Plaintiffs will request Court approval of Class Representative Enhancement Payments of Seven
8 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to DENISE LAI and Seven
9 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to ELIM YEE.

10 9. "Class Settlement Amount" means the Class Settlement Amount of Eight
11 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00), to be paid by
12 Defendants in full satisfaction of all Released Claims arising from the Action, which includes all
13 Individual Settlement Payments to Participating Class Members, Attorneys' Fees and Costs to
14 Class Counsel, the Class Representative Enhancement Payments to Plaintiffs, the Labor and
15 Workforce Development Agency Payment, and Settlement Administration Costs to the
16 Settlement Administrator. \$437,500.00 of the Class Settlement Amount shall be allocated to
17 Subclass A and \$437,500.00 of the Class Settlement Amount shall be allocated to Subclass B
18 (including PAGA Penalties). The allocation among Subclass A and Subclass B shall be
19 expressly disclosed in the motion for preliminary approval and in the notice to the Class and
20 Subclasses if the matter is preliminarily approved. This Class Settlement Amount has been
21 agreed to by Plaintiffs and Defendants based on the aggregation of the agreed-upon settlement
22 value of individual claims. In no event will Defendants be liable for more than the Class
23 Settlement Amount. There will be no reversion of the Class Settlement Amount to Defendants.
24 Defendants will be separately responsible for any employer payroll taxes required by law,
25 including but not limited to the employer FICA, FUTA, and SDI contributions, which shall not
26 be paid from the Class Settlement Amount.

27 10. "Court" means the Santa Barbara County Superior Court.

28 11. "Defendants" means Defendants SAN ROQUE PET HOSPITAL, INC.,

GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC., PETVET
CARE CENTERS (CALIFORNIA), INC., and DAVID P. DAWSON.

12. “Effective Date” means the later of:

(i) if no timely objections are filed, or are withdrawn prior to Final
Approval, then the date of Final Approval; or

(ii) if a Class Member files an objection to the Settlement, and intervenes into
the action pursuant to California Code of Civil Procedure section 387, the
Effective Date shall be the sixty-five (65) calendar days after the date of
Final Approval, provided no appeal is initiated by an objector; or

(iii) if a timely appeal is initiated by an objector, then the Effective Date will
be twenty (20) calendar days after 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. “Final Approval” means the date on which the Court enters an order granting
final approval of the Settlement Agreement.

14. “Individual Settlement Payment” means each Participating Class Member’s
respective share of the Net Settlement Amount.

15. “Labor and Workforce Development Agency Payment” means the amount that
the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in
connection with the Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et
seq., “PAGA”). The Parties have agreed that Twenty Thousand Dollars and Zero Cents
(\$20,000.00) of the Class Settlement Amount will be allocated to the resolution of Subclass B’s
claims arising under PAGA, Seventy-Five Percent (75%) of which, or Fifteen Thousand Dollars
and Zero Cents (\$15,000.00), will be paid to the LWDA, and Twenty-Five Percent (25%), or
Five Thousand Dollars and Zero Cents (\$5,000.00), will be included in the Net Settlement
Amount.

16. “Net Settlement Amount” means the Class Settlement Amount, less Attorneys’
Fees and Costs, the Class Representative Enhancement Payments, the Labor and Workforce

Development Agency Payment, and Settlement Administration Costs. The Attorneys' Fees and Costs, the Class Representative Enhancement Payments, and Settlement Administration Costs approved by the Court shall be apportioned equally between Subclass A and Subclass B. The Labor and Workforce Development Agency Payment approved by the Court shall be apportioned entirely to Subclass B. The Net Settlement Amount will be distributed to Participating Class Members in each Subclass according to the respective allocation to each Subclass. There will be no reversion of the Net Settlement Amount to Defendants.

17. "Notice of Objection" means a Class Member's valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include:

- (i) the objector's full name, signature, address, and telephone number;
- (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection;
- (iii) copies of any papers, briefs, or other documents upon which the objection is based; and
- (iv) a statement whether the objector intends to appear at the final fairness and approval hearing. Any Class Member who does not submit a timely written objection to the Settlement, or who fails to otherwise comply with the specific and technical requirements of this section, will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

18. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

19. "Parties" means Plaintiffs and Defendants collectively.

20. "Participating Class Members" means all Class Members who do not submit timely and valid Requests for Exclusion.

21. "Plaintiffs" means Plaintiffs DENISE LAI and ELIM YEE.

22. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement Agreement.

23. “Released Claims” means all claims, rights, demands, liabilities, and causes of action under California law, state law, the federal Fair Labor Standards (FLSA), federal law, or local law, whether statutory, common law or administrative law, including all associated claims for penalties, premium pay, liquidated damages, injunctive relief, restitution, punitive damages, interest, attorneys’ fees and costs that were asserted or could have been asserted based on or related to the facts alleged in the operative complaint during the Class Period, including allegations of: (1) failure to properly institute an alternative workweek schedule; (2) unpaid overtime; (3) unpaid minimum wages; (4) meal period violations; (5) rest period violations; (6) failure to provide itemized statements and maintain accurate payroll records; (7) violations of the California Occupational Safety and Health Act of 1973; (8) failure to timely pay wages upon termination of employment (California Labor Code section 203); (9) failure to reimburse business expenses; (10) failure to provide adequate seating; (11) violation of California Business & Professions Code sections 17200 et seq., based on the preceding claims; and (12) civil penalties asserted under PAGA (California Labor Code section 2698 et seq.).

24. “Released Parties” means Defendants, their respective affiliates and subsidiaries, and each of their predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and assigns, and each and all of their current or former subsidiaries, parents, affiliates, predecessors, insurers, agents, servants, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, registered representatives, executors, members, principals, heirs, administrators, fiduciaries, trustees, accountants, auditors, consultants, insurers, reinsurers, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries, and any other persons acting by, through, under or in concert with any of them.

25. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must:

- (i) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion;

- (ii) be signed by the Class Member;
- (iii) be returned to the Settlement Administrator;
- (iv) clearly state that the Class Member does not wish to be included in the Settlement; and
- (v) be faxed or postmarked on or before the Response Deadline.

26. “Response Deadline” means the deadline by which Class Members must postmark or fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the Settlement Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or state holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

27. “Settlement Administration Costs” means the costs payable from the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary, any Settlement Administration costs in excess of the amount represented by the Settlement Administrator as being the maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of approximately 3503 Class Members, the Settlement Administration Costs are currently estimated to be \$24,500.00. In the event that Defendants exercise their right of rescission pursuant to Paragraph 67 of the Agreement, Defendants will be solely responsible for all Settlement Administration Costs incurred by the Parties and / or the Settlement Class.

28. “Settlement Administrator” means CPT Group, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

29. “Workweeks” means the number of days of employment by SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC., PETVET CARE CENTERS (CALIFORNIA), INC., and/or DAVID P. DAWSON for each Class Member during the Class Periods based on the Class Member’s dates of employment, dividing by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Workweek. The Settlement Administrator will be responsible for calculating all Class Members’ Workweeks after receiving the Class List.

TERMS OF AGREEMENT

The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as follows:

30. Funding of the Class Settlement Amount. Within ten (10) business days of Final Approval, Defendants will make a one-time deposit of the Class Settlement Amount of Eight Hundred Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00) into a Qualified Settlement Account to be established by the Settlement Administrator. If the deadline to fund the settlement falls on a Saturday, Sunday, or holiday, the deadline to fund the Settlement shall be extended to the next business day. Defendants will pay the employer’s share of payroll taxes separately. After the Effective Date, the Class Settlement Administrator will be charged with distributing: (i) Individual Settlement Payments paid from the Net Settlement Amount; (ii) the Labor and Workforce Development Agency Payment; (iii) the Class Representative Enhancement Payments; (iv) Attorneys’ Fees and Costs; and (v) Settlement Administration Costs.

31. Attorneys’ Fees and Costs. Defendants agree not to oppose or impede any application or motion by Class Counsel for Attorneys’ Fees and Costs of not more than Two Hundred Ninety-One Thousand Six Hundred Sixty-Seven Dollars and Zero Cents (\$291,667.00), plus the reimbursement of all out-of-pocket costs and expenses associated with Class Counsel’s litigation and settlement of the Action (including expert fees, investigations expenses, photocopying, etc.), which are approximately Eighteen Thousand Dollars and Zero Cents (\$18,000.00), both of which will be paid from the Class Settlement Amount.

32. Class Representative Enhancement Payments. In exchange for a general release, and in recognition of their effort and work in prosecuting the Action on behalf of Class Members, Defendants agree not to oppose or impede any application or motion for Class Representative Enhancement Payments of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to DENISE LAI and Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to ELIM YEE. The Class Representative Enhancement Payments will be paid from the Class Settlement Amount and will be in addition to Plaintiffs' Individual Settlement Payments paid pursuant to the Settlement. Plaintiffs will be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payments. The Class Representatives agree to indemnify and hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payments. Should the Court reduce the Class Representative Enhancement Payments, any such reduction shall revert to the Net Settlement distributed to Class Members.

33. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Class Settlement Amount, which is currently estimated to be \$24,500.00. These costs, which will be paid from the Class Settlement Amount, will include, inter alia, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing the Class Settlement Amount, and providing necessary reports and declarations.

34. Acknowledgment of Potential Settlement Administration Cost Increases. The Parties acknowledge that Settlement Administration Costs may increase above the current estimate of \$24,500.00 and that any such additional Settlement Administration Costs will be paid out of the Class Settlement Amount. Any portion of the estimated or designated Settlement Administration Costs which are not in fact required to fulfill the administration of the Settlement shall become part of the Net Settlement Amount.

35. Labor and Workforce Development Agency Payment. Subject to Court approval, the Parties agree that the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00)

from the Class Settlement Amount will be designated for satisfaction of Plaintiffs' and Class Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or Fifteen Thousand Dollars and Zero Cents (\$15,000.00), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Five Thousand Dollars and Zero Cents (\$5,000.00), will be included in the Net Settlement Amount.

36. Net Settlement Amount. The entire Net Settlement Amount will be distributed to Participating Class Members as Individual Settlement Payments. No portion of the Net Settlement Amount will revert to or be retained by Defendants.

37. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (i) twenty percent (20%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; (ii) sixty percent (60%) will be allocated as non-wages (penalties) for which IRS Forms 1099-MISC will be issued; and, (iii) twenty percent (20%) will be allocated as non-wages (pre-judgment interest) for which IRS Forms 1099-MISC will be issued.

38. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount for each Subclass based on the number of Workweeks a Subclass Member worked during the Subclass Period. The Settlement Administrator shall calculate Individual Settlement Payments as follows:

38(a) The Settlement Administrator will first calculate the total number of Workweeks worked by each Subclass Member during the Subclass Period and the aggregate total number of Workweeks worked by all Subclass Members during each Subclass Period.

38(b) To determine each Subclass Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount for each Subclass will be divided by the aggregate total number of Workweeks for each Subclass, resulting in the "Workweek Value." Each Subclass Member's "Individual Settlement Payment" will be calculated by

1 multiplying each individual Subclass Member's total number of
2 Workweeks by the Workweek Value. Each Subclass Member's
3 Individual Settlement Payment will then be apportioned pursuant to
4 the percentages listed in Paragraph 37.

5 38(c) The Individual Settlement Payments will be reduced by any required
6 deductions for each Participating Class Member as specifically set
7 forth herein, including employee-side tax withholdings or deductions.

8 38(d) The entire Net Settlement Amount will be disbursed to all Class
9 Members who do not submit timely and valid Requests for Exclusion.
10 If there are any valid and timely Requests for Exclusion, the
11 Settlement Administrator shall proportionately increase the Individual
12 Settlement Payment for each Participating Class Member according to
13 the number of Workweeks worked, so that the amount actually
14 distributed to the Settlement Class equals 100 percent of the Net
15 Settlement Amount.

16 38(e) Individual Settlement Payment checks will contain the following
17 printed notice advising Class Members that by cashing, depositing or
18 otherwise negotiating their Individual Settlement Payment checks,
19 they are affirmatively opting into the settlement for purposes of the
20 FLSA: "BY CASHING THIS CHECK YOU ARE AGREEING TO
21 THE TERMS OF THE SETTLEMENT REACHED IN LAI, ET AL.
22 V. SAN ROQUE PET HOSPITAL, INC., ET AL., CASE NO.
23 22CV00150, AND AGREE TO OPT-IN TO THE SETTLEMENT
24 AND TO RELEASE CLAIMS UNDER THE FAIR LABOR
25 STANDARDS ACT PURSUANT TO THE SETTLEMENT."

26 39. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
27 Participating Class Members under this Settlement, as well as any other payments made
28 pursuant to this Settlement, will not be utilized to calculate any additional benefits under any

benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

40. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

41. Delivery of the Class List. Within five (5) business days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. If the deadline to provide the Class List falls on a Saturday, Sunday, or holiday, the deadline to fund the Settlement shall be extended to the next business day.

42. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

43. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent via regular First-Class U.S. Mail to the forwarding address affixed thereto, within 10 days, and the Settlement Administrator will indicate the date of the re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved and will then perform a single re-mailing within 10 days of the date that the Notice Packet was returned. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response

1 Deadline, whichever is later, to submit a Request for Exclusion or an objection to the
2 Settlement.

3 44. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
4 Packet will provide:

- 5 (i) information regarding the nature of the Action;
- 6 (ii) a summary of the Settlement's principal terms;
- 7 (iii) the Settlement Class definition;
- 8 (iv) the total number of Workweeks each respective Class Member worked
9 for Defendant during the Class Period;
- 10 (v) each Class Member's estimated Individual Settlement Payment and the
11 formula for calculating Individual Settlement Payments;
- 12 (vi) the dates that comprise the Class Period;
- 13 (vii) instructions on how to submit Requests for Exclusion or Notices of
14 Objection;
- 15 (viii) the deadlines by which the Class Member must postmark or fax Request
16 for Exclusions, or postmark Notices of Objection to the Settlement; and
17 (ix) the claims to be released.

18 45. Disputed Information on Notice Packets. Class Members will have an
19 opportunity to dispute the information provided in their Notice Packets. To the extent Class
20 Members dispute their employment dates or the number of Workweeks on record, Class
21 Members may produce evidence to the Settlement Administrator showing that such information
22 is inaccurate. The Settlement Administrator will decide all disputes over the number of
23 Workweeks for Class Members. Defendants' records will be presumed correct, but the
24 Settlement Administrator will evaluate the evidence submitted by the Class Member and will
25 make the final decision as to the merits of the dispute. All disputes will be decided by the
26 Settlement Administrator within ten (10) business days of the Response Deadline and the
27 Settlement Administrator's decision shall be final and not subject to appeal.

28 46. Defective Submissions. If a Class Member's Request for Exclusion is defective
Page 13

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

47. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement Administrator by the Response Deadline. For Requests for Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted.

48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims during the Class Period, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.

49. Releases by Participating Class Members. Upon the Effective Date, and except as to rights or claims that may be created by this Settlement Agreement, each Participating Class Member, together and individually, on their behalf and on behalf of their respective spouses, heirs, executors, administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the Released Claims during the Class Period.

50. Subject to and in accordance with the provisions of the Settlement Agreement, even if Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Class Members shall be deemed to have and by operation of the Final Judgment shall have,

1 fully, finally and forever settled and released any and all Released Claims. This is true whether
2 the Released Claims are known or unknown, suspected or unsuspected, which now exist or
3 heretofore have existed under any theory of law or equity now existing or coming into existence
4 in the future, including but not limited to conduct that is negligent, intentional, with or without
5 malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or
6 existence of such different or additional facts.

7 51. Class Members will be deemed to have acknowledged and agreed that their
8 claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement
9 Payments constitute payment of all sums allegedly due to them. Class Members will be deemed
10 to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to
11 the Individual Settlement Payments. That section provides in pertinent part as follows:

12 **“An employer shall not require the execution of a release of a claim or right on account of**
13 **wages due, or to become due, or made as an advance on wages to be earned, unless**
14 **payment of those wages has been made.”**

15 52. Objection Procedures. To object to the Settlement Agreement, a Class Member
16 must postmark a valid Notice of Objection to the Settlement Administrator on or before the
17 Response Deadline. The Notice of Objection must be signed by the Class Member and contain
18 all information required by this Settlement Agreement. The postmark will be deemed the
19 exclusive means for determining that the Notice of Objection is timely. Class Members who fail
20 to object in the manner specified above will be deemed to have waived all objections to the
21 Settlement and will be foreclosed from making any objections, whether by appeal or otherwise,
22 to the Settlement Agreement. Class Members who postmark timely Notices of Objection will
23 have a right to appear at the Final Approval Hearing in order to have their objections heard by
24 the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise
25 encourage Class Members to submit written objections to the Settlement Agreement or appeal
26 from the Order and Judgment. Class Counsel will not represent any Class Members with respect
27 to any such objections to this Settlement.

28 53. Certification Reports Regarding Individual Settlement Payment Calculations.

1 The Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly
2 report that certifies the number of Class Members who have submitted valid Requests for
3 Exclusion, objections to the Settlement, and whether any Class Member has submitted a
4 challenge to any information contained in their Notice Packet. Additionally, the Settlement
5 Administrator will provide to counsel for both Parties any updated reports regarding the
6 administration of the Settlement Agreement as needed or requested.

7 54. Distribution Timing of Individual Settlement Payments. Within thirty (30)
8 business days of the Effective Date, the Settlement Administrator will issue payments to:

- 9 (i) Participating Class Members;
10 (ii) the Labor and Workforce Development Agency;
11 (iii) Plaintiffs; and
12 (iv) Class Counsel. The Settlement Administrator will also issue a payment
13 to itself for Court-approved services performed in connection with the
14 Settlement.

15 55. Un-cashed Settlement Checks. Funds represented by Individual Settlement
16 Payment checks returned as undeliverable and Individual Settlement Payment checks remaining
17 un-cashed for more than one hundred and twenty (120) calendar days after issuance will be
18 tendered to the State Controller's Office, Unclaimed Property Division. Uncashed Individual
19 Settlement Payment checks will not be reissued.

20 56. Certification of Completion. Upon completion of administration of the
21 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
22 the completion to the Court and counsel for all Parties.

23 57. Administration of Taxes by the Settlement Administrator. The Settlement
24 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and
25 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
26 pursuant to this Settlement. The Settlement Administrator will also be responsible for
27 forwarding all payroll taxes and penalties to the appropriate government authorities.

28 58. Administration Costs if Settlement Fails. If the Settlement is voided or rejected
Page 16

1 by the Court, any costs incurred by the Settlement Administrator will be paid by Defendants,
2 unless otherwise specified in this Agreement.

3 59. Tax Liability. Defendants make no representation as to the tax treatment or legal
4 effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are
5 not relying on any statement, representation, or calculation by Defendants or by the Settlement
6 Administrator in this regard. Class Representatives, Class Members, and Class Counsel
7 understand and agree that they will be solely responsible for the payment of any taxes and
8 penalties assessed on the payments described herein and will defend, indemnify, and hold
9 Defendants free and harmless from and against any claims resulting from treatment of such
10 payments as non-taxable damages.

11 60. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
12 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
13 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
14 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
15 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
16 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
17 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
18 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
19 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
20 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
21 RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND
22 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
23 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
24 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
25 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
26 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
27 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
28 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER

PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

61. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

62. Nullification of Settlement Agreement. In the event that: (i) the Court does not grant final approval of the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

63. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for:

- (i) conditional certification of the Settlement Class for settlement purposes only,
- (ii) preliminary approval of the proposed Settlement Agreement,
- (iii) setting a date for a final-fairness hearing.

The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval and agrees to provide drafts of all documents it intends to file with the Court in support of Plaintiffs'

1 motion for Preliminary Approval to Defendants' counsel for their review and comment at least
2 five (5) calendar days before filing same with the Court.

3 64. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
4 the deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement,
5 and with the Court's permission, a final fairness hearing will be conducted to determine the
6 Final Approval of the Settlement Agreement along with the amounts properly payable for:

7 (i) Attorneys' Fees and Costs;

8 (ii) the Class Representative Enhancement Payments;

9 (iii) Individual Settlement Payments;

10 (iv) the Labor and Workforce Development Agency Payment;

11 (v) all Settlement Administration Costs.

12 The final-fairness hearing will not be held earlier than thirty (30) calendar days after the
13 Response Deadline. Class Counsel will be responsible for drafting all documents necessary to
14 obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and
15 costs application to be heard at the final approval hearing.

16 65. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
17 the Court or after the final fairness hearing, the Parties will present the Judgment to the Court
18 for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely
19 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement,
20 (ii) Settlement administration matters, and (iii) post-Judgment matters that are appropriate under
21 court rules or as set forth in this Settlement Agreement.

22 66. Release by Plaintiffs. Upon the Effective Date, in addition to the claims being
23 released by all Participating Class Members, the named Plaintiffs will release and forever
24 discharge the Released Parties, to the fullest extent permitted by law, of and from any and all
25 claims, known and unknown, asserted and not asserted, which Plaintiffs have or may have
26 against the Released Parties as of the Preliminary Approval date. To the extent the foregoing
27 release is a release to which Section 1542 of the California Civil Code or similar provisions of
28 other applicable law may apply, Plaintiffs expressly waive any and all rights and benefits

1 conferred upon them by the provisions of Section 1542 of the California Civil Code or similar
2 provisions of applicable law which are as follows:

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

9 Plaintiffs each understand fully the statutory language of Civil Code section 1542 and,
10 with this understanding, nevertheless each elect to, and do, assume all risks for claims that have
11 arisen, whether known or unknown, which they ever had, or hereafter may claim to have, arising
12 on or before the date of their respective signatures to this Agreement, and specifically each
13 waive all rights each may have under California Civil Code section 1542.

14 67. Rescission of Settlement Agreement (by Defendants). If more than ten percent
15 (10%) of the Class Members opt-out of the Settlement by submitting Request for Exclusion
16 forms, Defendants may, at their sole option, rescind and void the Settlement and all actions
17 taken in furtherance of it will thereby be null and void. Defendants must exercise this right of
18 rescission, in writing, to Class Counsel within thirty (30) calendar days after the expiration of
19 the Response Deadline. In the event that Defendants exercise their right of rescission,
20 Defendants will be solely responsible for all Settlement Administration Costs incurred by the
21 Parties and / or the Settlement Class.

22 68. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
23 include the terms set forth in any attached Exhibits, which are incorporated by this reference as
24 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
25 the Settlement.

26 69. Entire Agreement. This Settlement Agreement and any attached Exhibits
27 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
28 written or oral agreements may be deemed binding on the Parties. The Parties expressly

1 recognize California Civil Code section 1625 and California Code of Civil Procedure Section
2 1856, subdivision (a), which provide that a written agreement is to be construed according to its
3 terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no
4 such extrinsic oral or written representations or terms will modify, vary or contradict the terms
5 of this Settlement Agreement.

6 70. Amendment or Modification. No amendment, change, or modification to this
7 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their
8 counsel.

9 71. Authorization to Enter into Settlement Agreement. Counsel for all Parties
10 warrant and represent they are expressly authorized by the Parties whom they represent to
11 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
12 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
13 execute any other documents required to effectuate the terms of this Settlement Agreement. The
14 Parties and their counsel will cooperate with each other and use their best efforts to effect the
15 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
16 content of any document needed to implement the Settlement, or on any supplemental
17 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
18 seek the assistance of the Court to resolve the disagreement.

19 72. Binding on Successors and Assigns. This Settlement Agreement will be binding
20 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
21 defined.

22 73. Plaintiffs' Waiver of Right to Be Excluded and Object. Plaintiffs each agree to
23 sign this Settlement Agreement and, by signing this Settlement Agreement, are hereby bound by
24 the terms herein. For good and valuable consideration, Plaintiffs further agree that they will not
25 request to be excluded from the Settlement Agreement, nor object to any terms herein. Any such
26 request for exclusion or objection by Plaintiffs will be void and of no force of effect. Any efforts
27 by Plaintiffs to circumvent the terms of this paragraph will be void and of no force or effect.

28 74. Termination of Settlement. Subject to the obligations of cooperation set forth
Page 21

herein, either Party may terminate this Settlement if the Court declines to enter a Preliminary Approval Order, a Final Approval Order or a final judgment in substantially the form submitted by the Parties, or the Settlement Agreement as agreed upon does not become final because of an appellate court order or decision. The terminating Party or Parties shall give to the other Party or Parties (through their counsel) written notice of the decision to terminate no later than ten (10) business days after receiving notice that one of the enumerated events has occurred.

Termination shall have the following effects:

74(a) The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms;

74(b) Defendants shall have no obligations to make any payment to any Party, Class Member, Class Representative, the Labor and Workforce Development Agency or Class Counsel, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified the Settlement has been terminated;

74(c) The Preliminary Approval Order, Final Approval Order and Judgment, including an order of class certification, shall be vacated;

74(d) The Settlement Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement; and

74(e) Neither this Settlement Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of Settlement (including all matters associated with mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

The Parties further agree that in the event the Court declines to enter a Preliminary Approval Order, a Final Approval Order or a final judgment in substantially the form submitted by the Parties, or the Settlement Agreement as agreed upon does not become final because of an

1 appellate court order or decision, the Parties shall engage their best efforts in good faith to
2 negotiate a solution, and to amend the Agreement consistent with the ruling and/or guidance
3 from the Court in order to proceed with settlement.

4 75. 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
6 duly given as of the third business day after mailing by United States registered or certified
7 mail, return receipt requested, *and* email notifications, as follows:

8 **To Plaintiffs and the Class:**

9 David R. Greifinger
10 Calvin A. Marshall
11 Law Offices of David R. Greifinger
12 15515 W. Sunset Boulevard, Unit 214
13 Pacific Palisades, California 90272
14 tracklaw@me.com
15 calvin@greifingerlaw.com

16 **To Defendants:**

17 Nancy Yaffe
18 Daniel Kitzes
19 FOX ROTHSCHILD LLP
20 10250 Constellation Blvd., Suite 900
21 Los Angeles, CA 90067
22 nyaffe@foxrothschild.com
23 dkitzes@foxrothschild.com

24 76. Other Lawsuits. To the fullest extent permissible under applicable law, and
25 solely for the purposes of this Settlement Agreement and not for any other purpose, counsel for
26 Plaintiffs represent and warrant on behalf of themselves and all others acting on their behalf,
27 that they: (i) have not been retained by any other individuals with claims against Defendants
28 (other than those of which Defendants and/or their counsel have been advised); (ii) are not
aware of, and have not been informed of, any other plaintiff, Class Member, or attorney who
intends to bring a claim against Defendants including, but not limited to any claim based on the
subject matter of the Action; and (iii) do not currently intend to bring any other claims against
Defendants. Nothing in the foregoing is intended to limit or restrict Plaintiffs' counsel's ability

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1 to practice law, or to otherwise violate California Rules of Professional Conduct, Rule 1-500.

2 To the extent any portion of this paragraph is found to violate Rule 1-500, or any other Rule of
3 Professional Conduct, such offending language will be deemed stricken and will be treated as if
4 of no force and effect.

5 77. California Law Governs. All terms of this Settlement Agreement and Exhibits
6 hereto will be governed by and interpreted according to the laws of the State of California,
7 without regard for its conflict-of-laws principles.

8 78. Execution and Counterparts. This Settlement Agreement is subject only to the
9 execution of all Parties. However, the Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign),
11 facsimile, and scanned copies of the signature page, will be deemed to be one and the same
12 instrument.

13 79. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
14 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
15 and have arrived at this Settlement after arm's-length negotiations and in the context of
16 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
17 further acknowledge that they are each represented by competent counsel and that they have had
18 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
19 Settlement.

20 80. Invalidity of Any Provision. Before declaring any provision of this Settlement
21 Agreement invalid, the Parties agree that the Court should first attempt to construe the provision
22 as valid to the fullest extent possible consistent with applicable precedents so as to define all
23 provisions of this Settlement Agreement valid and enforceable.

24 81. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
25 class certification for purposes of this Settlement only; except, however, that Plaintiffs or Class
26 Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they
27 request from the Court, and any Party may appeal any court order that materially alters the
28 Settlement Agreement's terms.

82. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement is not an admission that class action certification is proper under the standards applied to contested certification motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendants are liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

83. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that they violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

84. No Public Comment: Plaintiffs agree not to publicize the Settlement in any way, including but not limited to communications with other class members by text, social media, or otherwise. Counsel for Plaintiffs agree not to publicize this settlement in any way, such as on their firm's website, or in any firm promotional materials, settlement periodicals, or social media posts.

85. Waiver. No waiver of any condition or covenant contained in this Settlement

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1 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
2 considered to imply or constitute a further waiver by such party of the same or any other
3 condition, covenant, right or remedy.

4 86. Enforcement Actions. In the event that one or more of the Parties institutes any
5 legal action or other proceeding against any other Party or Parties to enforce the provisions of
6 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
7 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
8 fees and costs, including expert witness fees incurred in connection with any enforcement
9 actions.

10 87. Mutual Preparation. The Parties have had a full opportunity to negotiate the
11 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement
12 will not be construed more strictly against one party than another merely by virtue of the fact
13 that it may have been prepared by counsel for one of the Parties, it being recognized that,
14 because of the arms-length negotiations between the Parties, all Parties have contributed to the
15 preparation of this Settlement Agreement.

16 88. Representation By Counsel. The Parties acknowledge that they have been
17 represented by counsel throughout all negotiations that preceded the execution of this
18 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
19 and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are
20 no liens on the Settlement Agreement.

21 89. All Terms Subject to Final Court Approval. All amounts and procedures
22 described in this Settlement Agreement herein will be subject to final Court approval.

23 90. Cooperation and Execution of Necessary Documents. All Parties will cooperate
24 in good faith and execute all documents to the extent reasonably necessary to effectuate the
25 terms of this Settlement Agreement.

26 91. Binding Agreement. The Parties warrant that they understand and have full
27 authority to enter into this Settlement Agreement, and further intend that this Settlement
28 Agreement will be fully enforceable and binding on all Parties and agree that it will be

admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

92. Preliminary and Permanent Injunction. Except as to Class Members who timely submit Requests for Exclusion, the Preliminary Approval Order and Final Judgment will contain provisions enjoining Plaintiffs and the Class Members from prosecuting the Released Claims and enjoining Plaintiffs and the Class Members from initiating or continuing other proceedings regarding the Released Claims, including but not limited to filing any claims for monetary relief of the Released Claims before the Division of Labor Standards and Enforcement (“DLSE”) or in any forum whatsoever. Inclusion of these provisions in the Order of Preliminary Approval Order and Final Judgment and Order of Final Approval is a material part of the consideration for this Settlement.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: Nov 1, 2022


Elim Yee (Nov 1, 2022 14:14 EDT)

ELIM YEE

PLAINTIFF

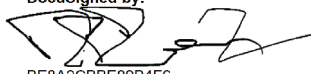
Dated: Nov 1, 2022


Denise Lai (Nov 1, 2022 09:06 EDT)

DENISE LAI

**DEFENDANT SAN ROQUE PET
HOSPITAL, INC.**

Dated: 11/17/22

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Authorized Signatory:

**DEFENDANT GOLETA AIRPORT PET
HOSPITAL, INC.**

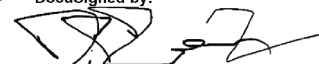
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Authorized Signatory:

**DEFENDANT MONTECITO PET
HOSPITAL, INC.**

Dated: 11/17/22

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Authorized Signatory:

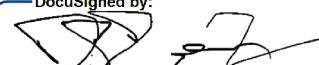
**DEFENDANT PETVET CARE CENTERS
(CALIFORNIA), INC.**

Dated: _____

Authorized Signatory: _____

DEFENDANT

Dated: 11/17/22

DocuSigned by:

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DAVID P. DAWSON, DVM

APPROVED AS TO FORM

**THE LAW OFFICES OF DAVID R.
GREIFINGER**

Dated: November 1, 2022

By: 
David R. Greifinger
Calvin A. Marshall
Attorneys for Plaintiffs DENISE LAI and ELIM
YEE

**DEFENDANT GOLETA AIRPORT PET
HOSPITAL, INC.**

Dated: _____

Authorized Signatory:

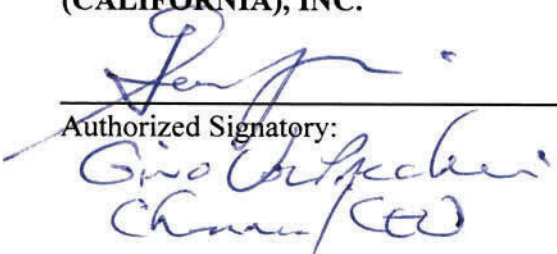
**DEFENDANT MONTECITO PET
HOSPITAL, INC.**

Dated: _____

Authorized Signatory:

**DEFENDANT PETVET CARE CENTERS
(CALIFORNIA), INC.**

Dated: November 7, 2022



Authorized Signatory:

DEFENDANT

Dated: _____

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YEE

FOX ROTHSCHILD LLP



Dated: November 7, 2022

By: _____

Nancy Yaffe

Daniel Kitzes

Attorneys for Defendants *San Roque Pet Hospital, Inc., Goleta Airport Pet Hospital, Inc., Montecito Pet Hospital, Inc., PetVet Care Centers (California), Inc., David P. Dawson, and PetVet Care Centers (California), Inc.*

EXHIBIT A

Denise Lai, et al. v San Roque Pet Hospital, Inc., et al – 22CV00150
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA BARBARA
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: Subclass A: All persons who are or were hourly paid employees of SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET HOSPITAL, INC., MONTECITO PET HOSPITAL, INC. and / or DAVID P. DAWSON, in the State of California, at any time during the period commencing on January 13, 2018, and ending on August 25, 2020 (the “Subclass A Subclass Period”); and / or

Subclass B: All persons who are or were hourly paid employees of PETVET CARE CENTERS (CALIFORNIA), INC., in the State of California, at any time during the period commencing September 16, 2020, to [the date of Preliminary Approval] (the “Subclass B Subclass Period”) (Subclass A Members and Subclass B Members are collectively “Class Members”).

On _____, the Honorable Thomas P. Anderle of the Santa Barbara County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants’ records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 120 days—checks that are not cashed within 120 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members’ name.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 ____m. on _____, 2023 in SB Dept. 3 of the Santa Barbara County Superior Court located at 1100 Anacapa St. Santa Barbara, CA 93101. You are not required to attend the hearing.

Summary of the Litigation

Plaintiffs DENISE LAI and ELIM YEE (“Plaintiffs”), on their behalf and on behalf of other current and former hourly paid employees of Defendants, allege that Defendants violated California state labor laws including: failure to properly institute an alternative workweek schedule, failure to pay overtime compensation, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide itemized statements and maintain accurate payroll records, violations of the California Occupational Safety and Health Act of 1973, failure to timely pay wages upon termination of employment, failure to reimburse business expenses, failure to provide adequate seating, and for violations of the California Business & Professions Code §§ 17200, et seq. Plaintiffs also seek to recover civil penalties under the Private Attorneys General Act (“PAGA”) for alleged violations of the California Labor Code. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. Following weeks of negotiations, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, The Law Offices of David R. Greifinger (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendants are 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. Defendants have agreed to settle the case as part of a compromise with Plaintiffs.

The Court has not made any determination on the merits of Plaintiffs' claims.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$875,000 of which \$437,500 is allocated to Subclass A and \$437,500 is allocated to Subclass B. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$7,500 to DENISE LAI and \$7,500 to ELIM YEE for their services on behalf of the class and for general releases of all claims; (3) \$291,667 in attorneys' fees and approximately \$18,000 in litigation costs and expenses to Class Counsel; (4) a \$20,000 payment to the California Labor and Workforce Development Agency ("LWDA"), Seventy-Five Percent (75%) of which, or \$15,000, will be paid to the LWDA, and Twenty-Five Percent (25%), or \$5,000, of which will be included in the Net Settlement Amount in connection and accordance with PAGA, and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$24,500. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, and the Settlement Administrator's fees and expenses, which are allocated equally between Subclass A and Subclass B, and after deducting the payment to the LWDA, which is allocated entirely to Subclass B, a total of approximately \$505,833 ("Net Settlement Amount") will be allocated to Class Members who do not opt out of the settlement. Approximately \$262,916.50 of the Net Settlement Amount will be allocated to Subclass A and approximately \$242,916.50 of the Net Settlement Amount will be allocated to Subclass B.

Each Subclass Member's settlement payment will be based on the number of Workweeks each Subclass Member worked during the Subclass A Subclass Period and / or Subclass B Subclass Period ("Subclass Periods"). The formula for calculating individual settlement payments is as follows:

- (a) The Settlement Administrator will calculate the total number of Workweeks worked by each Subclass Member based upon their dates of employment during each Subclass Period and the aggregate total number of Workweeks worked by all Subclass Members during each Subclass Period
- (b) Each Subclass Member's share of the Net Settlement Amount will be calculated according to the following formula: $\text{Subclass Member's Workweeks} \div \text{Entire Subclass' aggregate Workweeks} \times \text{Subclass's allocation of Net Settlement Amount}$.
- (c) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendants' records, you worked during a total of ____ Workweeks during the Subclass A Subclass Period and a total of ____ Workweeks during the Subclass B Subclass Period. Accordingly, your estimated payment is approximately \$ ____ for the Subclass A Subclass Period and \$ ____ for the Subclass B Subclass Period. Your estimated payment totals approximately \$ _____. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes should be postmarked or faxed on or before [insert date of Response Deadline] to:

CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax: (949) 419-3446

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

If you dispute the information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, the Individual Settlement Payments will be allocated as follows: twenty percent (20%) as wages for which IRS Forms W-2 will be issued, sixty percent (60%) as non-wages penalties, for which IRS Forms 1099-MISC will be issued, and twenty percent (20%) as pre-judgment interests, for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – *Automatically Receive a Payment from the Settlement*

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Settlement Class Members' Released Claims"): Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 226, 226.7, 510, 511, 512, 558, 1174, 1182.12, 1194; 1194.2; 1197; 1197.1 1198, 2800, 2802, 2698 et seq., and 6300 et seq.; Cal. Code of Regulations, tit. 8, § 11050; California Business and Professions Code sections 17200 et seq.; and any other similar California state or federal law claims, whether statutory, common law, or administrative, including those available under the federal Fair Labor Standards Act (FLSA), for failure to properly institute an alternative workweek schedule, failure to pay overtime compensation, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide itemized statements and maintain accurate payroll records, violations of the California Occupational Safety and Health Act of 1973, failure to timely pay wages upon termination of employment, failure to reimburse business expenses, failure to provide adequate seating, PAGA penalties, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest. Settlement Class Members' Released Claims do not include claims that, as a matter of law cannot be released. The Settlement Class Members' Released Claims are released from January 13, 2018 to August 25, 2020, for Subclass A and from September 22, 2016, through [preliminary approval of this Settlement] for Subclass B.

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature (even if you have counsel), address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax: (949) 419-3446

The written request to be excluded must be postmarked not later than _____, 2023. If you submit a request for exclusion which is not postmarked by _____, 2023, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not give up any legal rights, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement.

Written objections must provide: (1) your full name, signature (even if you have counsel), address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for your objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than _____, 2023. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Santa Barbara and discuss your objection with the Court and the Parties at your own expense. You may appear at the Final Fairness Hearing in person at:

Superior Court of California
County of Santa Barbara
SB Dept. 3
1100 Anacapa Street
Santa Barbara, CA 93101

You may instead appear at the Final Fairness Hearing virtually by obtaining current Zoom login information for SB Dept. 3 at the following link: <https://www.sbcourts.org/gi/notices/ZoomMeetingCodes.pdf>

You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Settlement Class Members' Released Claims.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

David R. Greifinger, Esq. (SBN 105242)

Calvin A. Marshall, Esq. (SBN 318587)

LAW OFFICES OF DAVID R. GREIFINGER

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Pacific Palisades, California 90272

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tracklaw@me.com

calvin@greifingerlaw.com

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

