

David R. Greifinger, Esq. (SBN 105242)
Calvin A. Marshall, Esq. (SBN 318587)
LAW OFFICES OF DAVID R. GREIFINGER
15515 W. Sunset Boulevard, Unit 214
Pacific Palisades, California 90272
Telephone: (424) 330-0193
Facsimile: (831) 920-4864
tracklaw@me.com
calvin@greifingerlaw.com

*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

**NOTICE OF MOTION AND MOTION
FOR:**

- 1. FINAL APPROVAL OF CLASS
ACTION AND PAGA
SETTLEMENT;**
- 2. MEMORANDUM OF POINTS
AND AUTHORITIES**

Filed concurrently with:

- 1. Declaration of David R. Greifinger,
Esq.**
- 2. Declaration of Denise Lai**
- 3. Declaration of Elim Yee**
- 4. Declaration of Kaylie O'Connor on
behalf of CPT Group, Inc.**
- 5. Motion for Attorneys' Fees, Costs,
and Expenses**
- 6. [Proposed] Order Granting Final
Approval of Class Action Settlement**
- 7. [Proposed] Judgment**

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

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 12, 2023, at 10:00, a.m., or as soon
3 thereafter as counsel may be heard, in SB Dept. 3 of the above-captioned court, located at
4 1100 Anacapa St., Santa Barbara, California 93101, the Honorable Thomas P. Anderle
5 presiding, Plaintiffs Denise Lai and Elim Yee (“Plaintiffs”) will, and hereby do, move this
6 Court for final approval of:

- 7 1. The November 17, 2022 Joint Stipulation of Class Action and PAGA
8 Settlement and Release, attached as EXHIBIT 5 to the Declaration of David R. Greifinger;
9 2. Settlement payments to Participating Class Members and the Labor
10 Workforce & Development Agency (“LWDA”); and
11 3. Costs and expenses to the settlement administrator, CPT Group, Inc.

12 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
13 Memorandum of Points and Authorities in Support of Motion for Final Approval of Class
14 Action and PAGA Settlement; (3) the concurrently filed Motion for Attorneys’ Fees, Costs
15 and Expenses and Class Representative Enhancement Payments, (4) the Declaration of
16 David R. Greifinger; (5) the Declarations of Denise Lai and Elim Yee; (6) the Declaration
17 of Kaylie O’Connor On Behalf Of CPT Group, Inc., the settlement administrator; (7) the
18 [Proposed] Order Granting Final Approval of Class Action and PAGA Settlement; (8) the
19 [Proposed] Judgment; (9) the records, pleadings, and papers filed in this action; and (10)
20 upon other documentary and oral evidence or argument that may be presented to the Court
21 at or prior to the hearing of this Motion.

22 As this Motion is unopposed, the Parties respectfully request relief from the page
23 limit requirement set by California Rules of Court, rule 3.1113(d). The argument in favor
24 of approval is approximately 15 pages, with the remainder of the motion being devoted to
25 background information necessary for the court’s evaluation of the motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 16, 2023

LAW OFFICES OF DAVID R. GREIFINGER

By: 
DAVID R. GREIFINGER
CALVIN A. MARSHALL
*Attorneys for Plaintiffs, DENISE LAI,
ELIM YEE and the putative Class*

TABLE OF CONTENTS

INTRODUCTION	9
FACTS AND PROCEDURE	12
A. Brief Overview of the Litigation.....	12
B. Plaintiffs’ counsel conducted a thorough investigation of the factual and legal issues and were thus able to objectively assess the Settlement’s reasonableness	13
C. The parties settled after mediation	15
D. The proposed settlement fully resolves Plaintiff’s claims.....	16
1. <i>Composition of the Settlement Class</i>	16
2. <i>Settlement Consideration</i>	17
3. <i>Formula for Calculating Payments from the Net Settlement Amount to Participating Class Members</i>	17
4. <i>Release by the Settlement Class</i>	19
5. <i>Release by the Plaintiffs</i>	20
E. The notice and settlement administration process were completed pursuant to the Court’s order	20
ARGUMENT	21
I. The court should grant final approval of the proposed Class Action Settlement	21
A. Courts review class action settlements to ensure that the terms are fair, adequate, and reasonable.	21
1. <i>Plaintiffs’ counsel conducted a thorough investigation of the factual and legal issues and were thus able to objectively assess the Settlement’s reasonableness.</i>	23
2. <i>The Settlement was reached through arm’s length bargaining during which all parties were represented by Experienced counsel</i>	23

1	A.	The consideration provided for the class claims is fair and reasonable in	
2		light of Defendants’ potential exposure and the risks of continued	
3		litigation.....	24
4	B.	The Settlement Class has responded positively to the Settlement	31
5	C.	The Court should approve the PAGA Settlement.....	32
6	D.	The requested payment to the Settlement Administrator is reasonable and	
7		should receive final approval.....	36

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TABLE OF AUTHORITIES**

2 **STATE CASES**

3 *7-Eleven Owners for Fair Franchising v. Southland Corporation*, 85 Cal.

4 App. 4th 1135 (2000)..... 21, 22, 31

5 *Carrington v. Starbucks Corporation*, 30 Cal. App. 5th 504 (2018)34

6 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110 (2009) 22

7 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996)22

8 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008)..... 24, 25

9 *Mallick v. Superior Court*, 89 Cal.App.3d 434 (1979).....22

10 *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399 (2010).....25

11 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576 (2010)35

12 *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884 (1992).....22

13 *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231 (1976)22

14 *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460 (1986)23

15 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112 (2012).....34

16 **FEDERAL CASES**

17 *Aguirre v. Genesis Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL

18 10936035 (C.D. Cal. Dec. 30, 2013)34

19 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit*

20 *Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D. Cal.

21 2009)33

22 *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945. (N.D. Cal.

23 July 21, 2014).....30

24 *Chu v. Wells Fargo Invst., LLC*, No. C 05–4526 MHP, 2011 WL 672645

25 (N.D. Cal Feb. 16, 2011)35

26 *Chun-Hoon v. McKee Foods Corporation*, 716 F.Supp.2d 848 (N.D.Cal. 2010)31

27 *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030 (N.D. Cal. 2016)34

1	<i>Cruz v. Sky Chefs, Inc.</i> , 2014 WL 7247065 (N.D.Cal. Dec. 19, 2014)	30
2	<i>D'Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001).....	24
3	<i>Dearaujo v. Regis Corporation</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL	
4	3549473 (E.D. Cal. June 29, 2016)	35
5	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL	
6	7563047 (C.D. Cal. Aug. 12, 2011)	34
7	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL	
8	5364575 (E.D. Cal. Oct. 31, 2012).....	35
9	<i>Garner v. State Farm Mutual Automobile Insurance Co.</i> , 2010 WL 1687832	
10	(N.D.Cal. Apr. 22, 2010)	31
11	<i>Hanlon v. Chrysler Corporation</i> , 150 F.3d 1011 (9th Cir. 1998).....	31
12	<i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS	
13	33900 (N.D. Cal. Apr. 3, 2009).....	35
14	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008	
15	U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)	24
16	<i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	30
17	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	24
18	<i>In re Cendant Corporation Litigation</i> , 264 F.3d 201 (3d Cir. 2001)	30
19	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....	25
20	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	25
21	<i>In re Omnivision Tech., Inc.</i> , 559 F.Supp.2d 1036 (N.D. Cal. 2008)	25,30
22	<i>In re LDK Solar Securities Litigation</i> , 2010 WL 3001384 (N.D. Cal. July 29, 2010)	30
23	<i>In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA)</i>	
24	<i>Litigation</i> 295 F.R.D. 438 (C.D.Cal. 2014).....	25
25	<i>In re Uber FCRA Litigation</i> , No. 14-cv-05200-EMC) 2017 U.S. Dist. LEXIS 10155	
26	(N.D.Cal. June 29, 2017)	30
27	<i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL	
28	2236752 (N.D. Cal. June 15, 2012)	31
	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal.	

1	2004)	25, 31
2	<i>Officers for Justice v. Civil Serv. Comm.</i> , 688 F. 2d 615 (C.A. Cal. 1982).....	25
3	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D.	
4	337 (E.D. Cal. 2014)	24
5	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> , 2015 WL 3776765 (N.D.Cal. June 17, 2015).....	30
6	<i>Trang v. Turbine Engine Components Technologies Corporation</i> 2012 WL 6618854	
7	(C.D.Cal. Dec. 19, 2012)	33
8	<i>Viceral v. Mistras Group, Inc.</i> , 2016 U.S. Dist. LEXIS 140759	
9	(N.D.Cal. Oct. 11, 2016)	30
10	<i>Villegas v. J.P. Morgan Chase & Co.</i> , 2012 WL 5878390	
11	(N.D. Cal. Nov.21, 2012)	24

12	RULES	
13	Cal. Rules of Court, rule 3.769	21
14	Cal. Rules of Court, rule 3.769(c)	22
15	Cal. Rules of Court, rule 3.769(d)	22
16	Cal. Rules of Court, rule 3.769(e)	22
17	Cal. Rules of Court, rule 3.769(f)	22
18	Cal. Rules of Court, rule 3.769(g)	22

20	TREATISES	
21	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	22, 23

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On December 21, 2022, this Court granted preliminary approval of the Joint
4 Stipulation of Class Action Settlement and Release (“Settlement Agreement” or
5 “Settlement”) and approved distribution of the Notice of Class Action Settlement to all
6 Class Members. Class members were given 45 days to opt out or object to the Settlement
7 (“Response Deadline”). Now that the Response Deadline has passed, Plaintiffs DENISE
8 LAI and ELIM YEE (“Plaintiffs”) are pleased to report that: (1) only six individuals, or .2
9 percent, opted out of the Settlement Class; (2) one only class member disputed their
10 workweek calculation; (3) no Class Members objected to the Settlement; and (4) the
11 average settlement payment will be \$3,022.03 to each participating Subclass A Member
12 and \$64.45 to each participating Subclass B Member, with the highest settlement payment
13 in Subclass A being \$7,091.86 and \$180.67 in Subclass B.¹

14 Plaintiffs now move for final approval of the Settlement. This motion is unopposed
15 by Defendants SAN ROQUE PET HOSPITAL, INC., GOLETA AIRPORT PET
16 HOSPITAL, INC., MONTECITO PET HOSPITAL, INC. and DAVID P. DAWSON,
17 (“Santa Barbara Entities”), and Defendant PETVET CARE CENTERS (CALIFORNIA),
18 INC. (“PetVet”) (collectively “Defendants” and with Plaintiffs, the “Parties”). The
19 principal terms of the Settlement Agreement provide for the following:

20 (1) Conditional certification of a Settlement Class defined as:

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

26 Subclass B: All persons who are or were hourly paid employees of PETVET CARE
27

28 ¹ Declaration of CPT Group, Inc. [“CPT Decl.”] ¶¶ 10, 11, 14-17.

CENTERS (CALIFORNIA), INC., in the State of California, at any time during the period commencing September 16, 2020, and ending on December 21, 2022 (the “Subclass B Class Period” and “Subclass B Members”) (Collectively “Class Periods”, “Class Members”, and “Settlement Class”).

(2) A **non-reversionary** Class Settlement Amount of \$875,000.00, of which \$437,500.00 shall be allocated to Subclass A and \$437,500.00 shall be allocated to Subclass B. Defendants will be separately responsible for any employer payroll taxes required by law, including but not limited to employer FICA, FUTA, and SDI contributions, which shall not be paid from the Class Settlement Amount. The Class Settlement Amount includes:

- (a) **A \$506,605.09 Net Settlement Amount that will be paid, without the need to submit claims for payment, to all Class Members who do not opt out of the Settlement Class.** The Net Settlement Amount is the remainder of the Class Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the Class Representative Enhancement Payments. The Net Settlement Amount will be apportioned between each Subclass then apportioned between Subclass Members on a proportional basis according to the number of weeks each Subclass Member worked during the Subclass Period.
- (b) Reasonable Attorneys’ fees totaling one-third of the Class Settlement Amount (or \$291,667.00), and litigation costs and expenses totaling \$17,227.91, to the Law Offices of David R. Greifinger (“Plaintiffs’ Counsel”).
- (c) Settlement administration costs of \$24,500.00.
- (d) A total amount of \$20,000.00, allocated to Subclass B, to resolve Plaintiffs’ claims on behalf of Subclass B, pursuant to the California Labor Code’s

Private Attorneys General Act of 2004 (“PAGA”), of which 75 percent (\$15,000.00) will be paid to the LWDA and 25 percent (\$5,000.00) will be included in Subclass B’s allocation of the Net Settlement Amount to Participating Subclass B Members.

- (e) A Class Representative Enhancement Payment of \$7,500.00 to Denise Lai and a Class Representative Enhancement Payment of \$7,500.00 to Elim Yee in recognition of their effort and work in prosecuting the Action on behalf of the Settlement Class, the risks they took in bringing the action on behalf of the class, **and importantly for the release of all of their substantial individual claims arising out of their employment with Defendants.**

An objective assessment of the Settlement affirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with guidance from Louis M. Marlin, Esq., an experienced and well-respected employment-law class action mediator. The Settlement confers substantial benefits to 87 participating Subclass A Members, whose average hourly rate of pay is \$18.54, and 3,769 participating Subclass B Members, whose average hourly rate of pay is \$18.71. This compensation—averaging approximately \$3,022.03 per Subclass A Member and \$64.45 per Subclass B Member—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

Given the Settlement’s favorable terms, the Court’s previous findings concerning the Settlement’s fairness and reasonableness, and the complete absence of objection to the Settlement, Plaintiffs respectfully request that the Court: (1) grant this Motion for Final Approval of the Class Action and PAGA Settlement; (2) grant final approval of the settlement administration costs/expenses; (3) enter judgment pursuant to the Settlement

1 Agreement; and, (4) retain jurisdiction to enforce the Settlement.

2 **FACTS AND PROCEDURE**

3 **A. Brief Overview of the Litigation**

4 The Santa Barbara Entities owned and operated three veterinary hospital facilities in
5 Santa Barbara, Goleta, and Montecito, California. PetVet operates veterinary hospital
6 facilities throughout the State of California. PetVet purchased the Santa Barbara Entities
7 and continued their operations as of August 25, 2020. During the statutory periods, the
8 Santa Barbara Entities employed 88 non-exempt hourly paid employees and PetVet
9 employed 3,774 non-exempt hourly paid employees. Those employees include, but are not
10 limited to registered veterinary technicians, veterinary assistants, doctor's assistants,
11 technician assistants, client-patient liaisons, receptionists, and other support and office
12 staff.

13 Ms. Lai worked for Defendants from approximately July 2017 to January 2021, as a
14 veterinary assistant. Ms. Lai's job duties included, among other duties, monitoring
15 veterinary patient vital signs, obtaining diagnostic samples, performing x-rays, assisting
16 with surgeries, scheduling, and handling inventory at Defendants' veterinary facility.

17 Ms. Yee worked for Defendants from approximately November 2015 to June 2021,
18 as a veterinary assistant. Ms. Yee's job duties were similar to those of Ms. Lai.

19 On October 28, 2021, Plaintiffs submitted separate Notice Letters pursuant to the
20 Private Attorneys General Act (Lab. Code, §§ 2698 et seq., "PAGA") to Defendants and
21 the California LWDA.² On January 13, 2022, Plaintiffs filed a class action complaint in
22 Santa Barbara Superior Court, seeking to bring employment wage-and-hour claims and
23 claims for penalties pursuant to PAGA, on behalf of all persons who are or were hourly
24 paid employees of Defendants, as well as all aggrieved employees of Defendants.³

25 On February 28, 2022, Plaintiffs filed their First Amended Complaint ("FAC"). The
26 FAC refined the Class definition into Subclass A, regarding the Santa Barbara Entities, and

27 ² Declaration of David R. Greifinger ["Greifinger Decl."] ¶ 7; EXHs. 3, 4 to Greifinger Decl.

28 ³ Greifinger Decl. ¶ 7.

Subclass B, regarding PetVet.⁴ Plaintiffs also desired to clarify that the Subclass B Class Period commenced on September 16, 2020, and continued thereafter.⁵ PetVet was a defendant in a similar wage and hour class action entitled *Amy Royse Orr v. PetVet Care Centers (California), Inc.* (Super. Ct. Santa Clara County, 2019, No. 19CV354063). (“Orr”). The class action settlement in the *Orr* matter released all of the claims asserted against PetVet by Plaintiffs here, up to the September 16, 2020, preliminary approval order in *Orr* (the “Orr Settlement”).⁶ Plaintiffs allege that PetVet’s wage and hour transgressions continued after the *Orr* Settlement.⁷ Additionally, the Santa Barbara Entities were not releasees in the *Orr* Settlement and, thus, the *Orr* Settlement did not affect Plaintiffs’ claims against the Santa Barbara Entities in any way.⁸

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.⁹

B. Plaintiffs’ counsel conducted a thorough investigation of the factual and legal issues and were thus able to objectively assess the Settlement’s reasonableness

Plaintiffs’ Counsel conducted a thorough year-long investigation of the factual and legal issues, starting shortly after Plaintiffs retained them and continuing until the parties

⁴ *Id.*

⁵ Greifinger Decl. ¶ 7-8; *Amy Royse Orr v. PetVet* (Super. Ct. Santa Clara County, 2019, No. 19CV354063), Docket August 19, 2020 [Exhibit A to Declaration of David Yeremian In Support of Plaintiff’s Motion for Preliminary Approval]; and, September 16, 2020 [Order RE: Motion for Preliminary Approval of Class Action Settlement].

⁶ Greifinger Decl. ¶ 8.

⁷ *Id.*

⁸ *Id.*

⁹ Greifinger Decl. ¶ 9.

1 reached a settlement in principle.¹⁰ At the outset of the litigation, Plaintiffs provided
2 Plaintiffs' Counsel with detailed summaries of their of experiences working for
3 Defendants, and the circumstances that gave rise to the alleged Labor Code violations.¹¹
4 Plaintiffs were able to share with Plaintiffs' Counsel their intimate knowledge of
5 Defendants' policies and practices, and how these policies and practices were implemented
6 on a daily basis.¹² In addition to establishing Plaintiffs' Counsel's initial evaluation of the
7 lawsuit, the information that Plaintiffs provided also influenced Plaintiffs' Counsels'
8 discovery efforts.¹³ Plaintiffs provided Plaintiffs' Counsel with documentation regarding
9 their employment with Defendants and introduced Plaintiffs' Counsel to various other
10 employees of Defendants.¹⁴

11 On February 3, 2022, Plaintiffs' counsel propounded an informal discovery request
12 to Defendants for the following information and documents: applicable insurance policies;
13 aggregate employee data for all non-exempt hourly employees during the putative class
14 period including total member of putative class members, employment dates for each class
15 member, and the average hourly rate of putative class members; and employment policy
16 documents including employee handbooks.¹⁵ Plaintiffs' counsel also requested, for a
17 random sampling of 25 percent of the putative class, all timekeeping data, payroll data,
18 time audit and adjustment reports, and scheduling data.¹⁶ Plaintiffs' Counsel received the
19 requested documentation for the Settlement Class, which included approximately 186 pages
20 of documents and 17 extensive spreadsheets of clock-in and clock-out records and
21 corresponding payroll records for the entirety of the Settlement Class.¹⁷ The document and
22 data exchange enabled Sean Berger of Berger Consulting Group to perform detailed,
23 comprehensive, and statistically significant damages analyses for the Settlement Class (the

24 ¹⁰ Greifinger Decl. ¶¶ 7-14.

25 ¹¹ Greifinger Decl. ¶ 10.

26 ¹² *Id.*

¹³ *Id.*

¹⁴ Greifinger Decl. ¶ 11.

27 ¹⁵ Greifinger Decl. ¶ 12.

¹⁶ Greifinger Decl. ¶ 13.

28 ¹⁷ Greifinger Decl. ¶ 14.

1 “Damages Analyses”).¹⁸ The documents and Damages Analyses enabled Plaintiffs’ Counsel
2 to fully assess the nature and scale of the claims being settled, as well as the obstacles to
3 recovery, and to make an independent assessment of the reasonableness of the terms to
4 which the parties have agreed.¹⁹

5 In summary, Plaintiffs’ Counsel performed a thorough investigation into the claims
6 at issue, which included: (1) determining Plaintiffs’ suitability as putative class
7 representatives and as private attorneys general through interviews and analyses of
8 employment files and related records; (2) drafting PAGA Notice Letters; (3) evaluating all
9 of Plaintiffs’ potential representative claims; (4) researching similar wage-and-hour class
10 actions as to the claims brought, the nature of the positions, and the type of employer; (5)
11 drafting the Complaint and First Amended Complaint; (6) propounding informal discovery
12 requests; (7) analyzing the Settlement Class’ time and wage records; (8) analyzing
13 Defendants’ employment policies and practices applicable to the Settlement Class; (9)
14 researching settlements in similar cases; (10) evaluating Plaintiffs’ claims and estimating
15 Defendants’ liability for purposes of settlement; (11) drafting the mediation brief; and (12)
16 participating in the mediation and subsequent negotiations facilitated by Louis M. Marlin,
17 Esq.²⁰

18 By engaging in such a thorough investigation and evaluation of Plaintiffs’ claims,
19 Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set
20 forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best
21 interests of Class Members in light of all known facts and circumstances, including the risk
22 of significant delay and uncertainty associated with litigation, and various defenses asserted
23 by Defendants.²¹

24 **C. The parties settled after mediation**

25 On September 14, 2022, the Parties participated in a mediation with Louis M.

26 ¹⁸ *Id.*

27 ¹⁹ *Id.*

28 ²⁰ Greifinger Decl. ¶ 19.

²¹ Greifinger Decl. ¶ 23.

Marlin, Esq., an experienced mediator of wage-and-hour class actions.²² The parties did not reach an agreement at the mediation.²³ The parties exchanged numerous demands and counter demands over the next weeks, and ultimately agreed to a variation of Mr. Marlin's mediator's proposal on September 22, 2022.²⁴ Mr. Marlin helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.²⁵ With Mr. Marlin's guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs' claims.²⁶ The terms of the Settlement are now set forth in the Joint Stipulation of Class Action Settlement and Release.²⁷ At all times, the Parties' negotiations were adversarial and non-collusive.²⁸ The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

D. The proposed settlement fully resolves Plaintiff's claims.

1. Composition of the Settlement Class

The proposed Settlement Class consists of:

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; 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 ending on December 21, 2022.²⁹ There are 87 participating Subclass A Members and 3,769 participating Subclass B Members.³⁰

²² Greifinger Decl. ¶ 20.; <https://marlinmediation.com/>

²³ Greifinger Decl. ¶ 20.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Greifinger Decl. ¶¶ 21; EXH. 5 to Greifinger Decl.

²⁸ Greifinger Decl. ¶ 20.

²⁹ Greifinger Decl. ¶ 22; EXH. 5 to Greifinger Decl. at ¶ 6,7

³⁰ Greifinger Decl. ¶ 24.

1 **2. *Settlement Consideration***

2 Plaintiffs and Defendants have agreed to settle the underlying class claims in
3 exchange for the Class Settlement Amount of \$875,000.00. The Class Settlement Amount
4 includes: (1) **automatic payments** to all Class Members except those who submitted timely
5 and valid Requests for Exclusion (“Participating Class Members”) from the Net Settlement
6 Amount; (2) \$291,667.00 in attorneys’ fees (one-third of the Class Settlement Amount) and
7 approximately \$18,000.00 in litigation costs to Plaintiff’s Counsel; (3) Settlement
8 Administration Costs of \$24,500.00; (4) A total amount of \$20,000.00, allocated to
9 Subclass B, to resolve Plaintiffs’ claims on behalf of Subclass B, under PAGA, of which 75
10 percent (\$15,000.00) will be paid to the LWDA and 25 percent (\$5,000.00) will be included
11 in the Net Settlement Amount to Participating Subclass B Members; and, (5) a Class
12 Representative Enhancement Payment of \$7,500.00 to Plaintiff Denise Lai and a Class
13 Representative Enhancement Payment of \$7,500.00 to Plaintiff Elim Yee in recognition of
14 each Plaintiffs’ effort and work in prosecuting the Action on behalf of the Settlement Class,
15 the risks they took in bringing their class claims, **and for their release of all individual**
16 **claims arising out of their employment with Defendants, both known and unknown.**³¹

17 Subject to the Court approving Attorneys’ Fees and Costs, Settlement
18 Administration Costs, the payment to the LWDA, and the Class Representative
19 Enhancement Payments, the Net Settlement Amount will be distributed to Participating
20 Class Members in full.³²

21 **3. *Formula for Calculating Payments from the Net Settlement Amount to***
22 ***Participating Class Members***

23 Each Class Member’s share of the Net Settlement Amount will be proportional to
24 the number of weeks he or she worked during the Class Period.³³ The Settlement
25 Administrator will calculate Individual Settlement Payments as follows:

- 26 • The Settlement Administrator will calculate the total number of Workweeks

27 ³¹ EXH. 5 to Greifinger Decl. at ¶¶ 3, 8-9, 14-15, 27, and 31-35.

28 ³² EXH. 5 to Greifinger Decl. at ¶ 36.

³³ EXH. 5 to Greifinger Decl. at ¶ 38.

1 worked by each Subclass Member during the Subclass Period and the
2 aggregate total number of Workweeks worked by all Subclass Members
3 during each Subclass Period.

- 4 • To determine each Subclass Member’s estimated “Individual Settlement
5 Payment,” the Settlement Administrator will use the following formula: The
6 Net Settlement Amount for each Subclass will be divided by the aggregate
7 total number of Workweeks for each Subclass, resulting in the “Workweek
8 Value.” Each Subclass Member’s “Individual Settlement Payment” will be
9 calculated by multiplying each individual Subclass Member’s total number of
10 Workweeks by the Workweek Value.
- 11 • The Individual Settlement Payment will be reduced by any required
12 deductions for each Participating Class Member as specifically set forth
13 herein, including employee-side tax withholdings or deductions.
- 14 • The entire Net Settlement Amount will be disbursed to all Participating Class
15 Members. If there are any valid and timely Requests for Exclusion, the
16 Settlement Administrator shall proportionately increase the Individual
17 Settlement Payment for each Participating Class Member according to the
18 number of Workweeks worked, so that the amount actually distributed to the
19 Settlement Class equals 100 percent of the Net Settlement Amount.³⁴

20 Given that there are 87 participating Subclass A Members, the average net recovery
21 will be approximately \$3,022.03 to participating Subclass A Members.³⁵ This recovery will
22 be a windfall for Subclass A Members, whose average hourly rate of pay is \$18.54.³⁶ Given
23 that there are 3,769 participating Subclass B Members, the average net recovery will be
24 approximately \$64.45 to Subclass B Members.³⁷ This recovery will also be a windfall to
25

26 ³⁴ *Id.*

27 ³⁵ Greifinger Decl. at ¶ 24.

28 ³⁶ Greifinger Decl. at ¶ 15.

³⁷ Greifinger Decl. at ¶ 24.

Subclass B Members, whose average hourly rate of pay is \$18.71.³⁸ Additionally, the Subclass B Class Period is limited to approximately 27 months and many Subclass B Members were already beneficiaries of the *Orr* settlement.³⁹ As discussed in the argument below, this average net recovery is *significantly greater* than many other wage and hour class action settlements approved by California state and federal courts.

4. *Release by the Settlement Class*

In exchange for the Class Settlement Amount, Participating Class Members will agree to a narrowly tailored release of the Released Claims during the Class Period:

“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.).⁴⁰

With the exception of the previously resolved *Orr* matter, Plaintiffs’ counsel is 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.⁴¹ A similar, but later filed, PAGA action: *Jessica Anaya v. PetVet Care Center (California), Inc.* (Super. Ct. Los Angeles County,

³⁸ Greifinger Decl. at ¶ 16.

³⁹ Greifinger Decl at ¶ 8.

⁴⁰ EXH. 5 to Greifinger Decl. at ¶ 23

⁴¹ Greifinger Decl at ¶ 28.

2022, No. 22STCV06369) existed.⁴² The *Anaya* PAGA complaint was submitted to the California Labor and Workforce Development Agency (“LWDA”) on December 13, 2022.⁴³ Plaintiffs’ PAGA complaints here were submitted to the LWDA earlier on October 28, 2021.⁴⁴ The *Anaya* Complaint was filed in the Los Angeles Superior Court on February 22, 2022.⁴⁵ Plaintiffs’ Complaint here was filed earlier on January 13, 2022.⁴⁶ On February 23, 2023, the *Anaya* PAGA claims were dismissed with prejudice by Hon. Christopher K. Lui of the Los Angeles Superior Court.⁴⁷

5. Release by the Plaintiffs

In addition to the Released Claims discussed, *supra*, Plaintiffs agree to release Defendants from any and all claims, known and unknown, asserted and not asserted which Plaintiffs have or may have against Defendants.⁴⁸ Plaintiffs also waive any and all rights conferred upon them by Civil Code section 1542.⁴⁹

E. The notice and settlement administration process were completed pursuant to the Court’s order

As authorized by the Court’s December 21, 2022, Order preliminarily approving the Settlement Agreement, the Parties engaged CPT Group, Inc. (“CPT”) to provide settlement administration services.⁵⁰ CPT’s duties have, and if the Court enters the final approval order, will include: (1) printing and mailing the Notice of Class Action Settlement, Objection Form, and Opt-Out Form (“Notice Packet”); (2) receiving and processing undeliverable Notice Packets and locating updated addresses for Class Members; (3) receiving and validating Opt-Out Forms and Objection Forms; (4) establishing and maintain a toll-free case hotline where Class Members can speak to representative regarding the case; (5) calculating and distributing the Class Settlement Amount; (6) providing necessary reports and declarations; and (7) performing

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ EXH. 5 to Greifinger Decl. at ¶ 66.

⁴⁹ *Id.*

⁵⁰ CPT Decl. ¶ 3.

1 other tasks set forth in the Settlement Agreement or as the Parties mutually agree or that the
2 Court orders.⁵¹

3 On December 23, 2023, CPT received the Notice Packet and Settlement Agreement
4 prepared jointly by Plaintiffs' Counsel and counsel for Defendant and approved by the Court.⁵²
5 The Class Notice summarized the Settlement's principal terms, provided Class Members with
6 estimates of how much they would be paid if the Settlement received final approval, and
7 advised Class Members about how to opt out of the Settlement and how to object.⁵³

8 Separately, counsel for Defendant provided CPT with a mailing list (the "Class List"),
9 which included each Subclass Member's full name, last known address, Social Security
10 Number, and information necessary to calculate payments.⁵⁴ The mailing addresses contained in
11 the Class List were processed and updated using the National Change of Address Database
12 maintained by the U.S. Postal Service.⁵⁵

13 On January 10, 2023, CPT mailed Class Notices to Class Members via First-Class
14 U.S. mail.⁵⁶ Class Members were given 45 days to opt out or object to the Settlement. Plaintiffs
15 are pleased to report that only six individuals, or .2 percent, opted out of the Settlement
16 Class, one only class member disputed their workweek calculation, and no Class Members
17 objected to the Settlement.⁵⁷

18 ARGUMENT

19 I. The court should grant final approval of the proposed Class Action Settlement

20 A. Courts review class action settlements to ensure that the terms are fair, 21 adequate, and reasonable.

22 "Public policy generally favors the compromise of complex class action litigation."
23 [Citations.]" *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118; see also 7-
24 *Eleven Owners for Fair Franchising v. Southland Corporation* (2000) 85 Cal.App.4th 1135,

25 ⁵¹ CPT Decl. ¶¶ 3,6, 9-11.

26 ⁵² CPT Decl. ¶ 4.

27 ⁵³ CPT Decl. ¶ 4; Exhibit A to CPT Decl.

28 ⁵⁴ CPT Decl. ¶ 5.

⁵⁵ CPT Decl. ¶ 6.

⁵⁶ CPT Decl. ¶ 7.

⁵⁷ CPT Decl. ¶¶ 10, 11, 13.

1 1151 [“voluntary conciliation and settlement are the preferred means of dispute resolution. This
2 is especially true in complex class action litigation....’ [Citation.]”].)

3 California Rules of Court, rule 3.769⁵⁸ requires litigants to obtain court approval of
4 class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by
5 the trial court; and (2) a subsequent “final” review after notice of the settlement has been
6 distributed to class members for their comments and objections. (Rule 3.769(c)-(g);
7 *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1118.)

8 “[T]he trial court has broad powers to determine whether a proposed settlement in a
9 class action is fair.” (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.)

10 Reasonableness and fairness are presumed where, as here: “(1) the settlement is reached
11 through arms-length bargaining; (2) investigation and discovery are sufficient to allow
12 counsel and the court to act intelligently; (3) counsel is “experienced in similar litigation;”
13 and (4) the percentage of objectors is small” (collectively, “Dunk Factors”). (*Dunk v. Ford*
14 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)⁵⁹ “Where the settlement terms are fair and
15 reasonable, the settlement is presumptively valid, subject only to objections that may be
16 raised at a final hearing.” (Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002) §
17 11.26 (Newberg).

18 By granting preliminary approval, this Court has already determined that the
19 Settlement Agreement is fair and reasonable, subject to objections. With no objections to
20

21 ⁵⁸ All subsequent references to rules are to the California Rules of Court unless otherwise specified.

22 ⁵⁹ The presumption of fairness is consistent with California’s public policy goal of favoring settlements.
23 *Stambaugh v. Superior Court* (1976) 62 Cal.App.3d 231, 236 [“The law wisely favors settlements.”];
24 *Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1118 [“Public policy generally favors the
25 compromise of complex class action litigation....”]; *7-Eleven Owners for Fair Franchising v. Southland*
26 *Corporation, supra*, 85 Cal.App.4th at p. 1151 [“Voluntary conciliation and settlement are the preferred
27 means of dispute resolution. This is especially true in complex class action litigation.”]; *Skulnick v. Roberts*
28 *Express, Inc.* (1992) 2 Cal.App.4th 884, 891 [“Public policy strongly discourages litigation and encourages
settlement. [Citation.] Settlements can produce peace and goodwill in the community while reducing the
expense and persistency of litigation.”].) Additionally, in reviewing the fairness of a class action settlement,
“Due regard should be given to what is otherwise a private consensual agreement between the parties.”
(*Cellphone Termination Fee Cases, supra*, 180 Cal.App.4th at p. 1117.) “The inquiry ‘must be limited to the
extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
and adequate to all concerned.’” (*Id.* at p. 1118.)

the Settlement, the Court’s preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

1. Plaintiffs’ counsel conducted a thorough investigation of the factual and legal issues and were thus able to objectively assess the Settlement’s reasonableness.

As set forth in greater detail above, based on their analysis of documents and class data produced by Defendants (including time and pay records and Defendants’ written labor policies and procedures), Plaintiffs’ Counsel were able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court.⁶⁰ By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by Defendant.⁶¹

The Settlement confers substantial benefits to 87 participating Subclass A Members, whose average hourly rate of pay is \$18.54, and 3,769 participating Subclass B Members, whose average hourly rate of pay is \$18.71. This compensation—averaging approximately \$3,022.03 per participating Subclass A Member and \$64.45 per participating Subclass B Member will be a welcome windfall for members of the Settlement Class.

2. The Settlement was reached through arm’s length bargaining during which all parties were represented by Experienced counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (*Newberg, supra*, § 11.51.)

⁶⁰ Greifinger Decl. ¶¶ 10-14.

⁶¹ Greifinger Decl. ¶ 23.

As explained above, the Parties did not reach an agreement at the mediation. The parties exchanged numerous demands and counter demands over the subsequent weeks, and ultimately agreed to a variant of Mr. Marlin’s mediator’s proposal on September 22, 2022. Mr. Marlin helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (See *In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 948 [the presence of a neutral mediator is a factor weighing in favor of finding of non-collusiveness]; *In re Apple Computer, Inc. Derivative Litigation* (N.D.Cal. Nov. 5, 2008, No. C 06-4128 JF (HRL)) 2008 U.S. Dist. LEXIS 108195 [mediator’s participation weighs considerably against any inference of a collusive settlement]; *D’Amato v. Deutsche Bank* (2d Cir. 2001) 236 F.3d 78, 85 “[A]mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”]; *Villegas v. J.P. Morgan Chase & Co.* (N.D.Cal. Nov. 21, 2012, No. 09–00261) 2012 WL 5878390 at *6 [participation in mediation “tends to support the conclusion that the settlement process was not collusive”]; accord *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.* (E.D.Cal. 2014) 303 F.R.D. 337, 350.) At all times, the Parties’ negotiations were adversarial and non-collusive.⁶²

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are represented by the Law Offices of David R. Greifinger. Plaintiffs’ Counsel are seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits and have considerable experience settling wage and hour class actions.⁶³ Defendants are represented by Fox Rothschild LLP, a respected and experienced defense firm.

A. The consideration provided for the class claims is fair and reasonable in light of Defendants’ potential exposure and the risks of continued litigation

In seeking approval, a settling party must provide sufficient information to “enable

⁶² Greifinger Decl. ¶ 20.

⁶³ Greifinger Decl. ¶¶ 3-6.

1 the court to make an independent assessment of the adequacy of the settlement terms.”
2 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 131-132 (*Kullar*).)
3 However, “It is well-settled law that a cash settlement amounting to only a fraction of the
4 potential recovery will not per se render the settlement inadequate or unfair.” (*Officers for*
5 *Justice v. Civil Service Commission of City & County of San Francisco* (9th Cir. 1982) 688
6 F.2d 615, 628.) “The proposed settlement is not to be judged against a hypothetical or
7 speculative measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.)
8 “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at
9 trial, the expense of litigating the case, and the expected delay in recovery (often measured
10 in years).” (*In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
11 *(FACTA) Litigation* (C.D.Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the
12 claims within a realistic *range* of outcomes, the settling plaintiff should discount the value
13 of the settled claims for risks such as changes in the law, the probability of success, and
14 other factors.⁶⁴

15 Settling parties are not, however, required to partake in a hypothetical accounting
16 exercise: *Kullar* does not require an explicit statement of maximum value, but rather a
17 record which allows “an understanding of the amount that is in controversy and the
18 realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of*
19 *Los Angeles* (2010) 186 Cal.App.4th 399, 409, quoting *Kullar, supra*, 168 Cal.App.4th at p.
20 120.) The most important factor in determining whether a settlement is fair and reasonable

21 ⁶⁴ Federal courts also recognize that there is an inherent “range of reasonableness” in determining whether to
22 approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the
23 concomitant risks and costs necessarily inherent in taking any litigation to completion.” (*Newman v. Stein*
24 (2d Cir. 1972) 464 F.2d 689, 693; see also *In re Omnivision Tech., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d
25 1036, 1042; *National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D.
26 523, 527 [“It is well-settled law that a proposed settlement may be acceptable even though it amounts to only
27 a fraction of the potential recovery.”]; *In re Global Crossing Sec. and ERISA Litigation* (S.D.N.Y. 2004) 225
28 F.R.D. 436, 460-461 [“settlement amount’s ratio to the maximum potential recovery need not be the sole, or
even dominant, consideration when assessing settlement’s fairness”]; *In re IKON Office Solutions, Inc.*
Securities Litigation (E.D.Pa. 2000) 194 F.R.D. 166, 183-184 [“[T]he fact that a proposed settlement
constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the
settlement; rather the percentage should be considered in light of strength of the claims.”]; *Officers for*
Justice v. Civil Service Commission, supra, 688 F.2d at p. 628 [“It is the complete package, taken as a whole
rather than the individual component parts, that must be examined for overall fairness.”].)

is the “‘strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.’” (*Munoz* at p. 409, fn. 6, quoting *Kullar*, at p. 130.)

As explained in detail below, the Class Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery. Given that there are 87 participating Subclass A Members, the average net recovery will be approximately \$3,022.03 to participating Subclass A Members. Beyond being reasonable, this recovery will be a windfall for Subclass A Members, whose average hourly rate of pay is \$18.54. Given that there are 3,769 participating Subclass B Members, the average net recovery will be approximately \$64.45 to participating Subclass B Members. This recovery will also be a windfall to Subclass B Members, whose average hourly rate of pay is \$18.71. Additionally, the Subclass B Class Period is limited to approximately 27 months and many Subclass B Members were already beneficiaries of the *Orr* settlement.

Plaintiff’s counsel, after reviewing the records and consulting with an expert, estimate Defendants’ maximum exposure as follows:

Santa Barbara Entities’ Exposure for the Subclass A Claims	
Invalid Alternative Workweek Schedule / Unpaid Overtime Wages Claim ⁶⁵	\$14,160.00
Unpaid Off The Clock Wages ⁶⁶	\$111,467.00
Liquidated Damages	\$125,057.00
Meal Period Claim ⁶⁷	\$94,903.00
Rest Period Claim ⁶⁸	\$333,737.00

⁶⁵ Plaintiffs allege that the Santa Barbara Entities failed to properly implement their alternative workweek schedule of 10-hour shifts, four days per week. Sean Berger’s Damages Analysis analyzed the time and corresponding pay records produced for Subclass A and found a potential for 2,007 unpaid overtime hours. Greifinger Decl. ¶ 15.

⁶⁶ Plaintiffs allege that the Santa Barbara Entities failed to account for and pay employees for approximately 15-20 minutes of administrative work, performed at home, twice per week. Sean Berger’s Damages Analysis analyzed the time records produced for Subclass A and estimated 4,596 unpaid regular and overtime hours. Greifinger Decl. ¶ 15.

⁶⁷ Plaintiffs allege that, the Santa Barbara Entities did not provide code-compliant meal periods on or before employees’ fifth hour of work. Mr. Berger’s Damages Analysis reflects 5,229 unique meal period violations and 24 meal period premium payments. Greifinger Decl. ¶ 15.

⁶⁸ Plaintiffs allege that the Santa Barbara Entities never provided code-complaint rest periods. When rest periods were provided, they were not provided at the appropriate times, were shorter in duration than 10 minutes or were interrupted. Mr. Berger’s analysis found 18,030 rest break violations, assuming 100% violation rate for shifts of at least 3.5 hours. Greifinger Decl. ¶ 15.

Final Pay Penalties ⁶⁹	\$129,890.00
Total Interest	\$52,224.00
Total	\$861,438.00

PetVet's Originally Assumed Exposure for the Subclass B Claims	
Invalid Alternative Workweek Schedule / Unpaid Overtime Wages Claim ⁷⁰	\$1,273,995.00*
Unpaid Off The Clock Wages ⁷¹	\$3,337,861.00*
Liquidated Damages	\$3,680,034.00*
Meal Period Claim ⁷²	\$1,137,473.00*
Rest Period Claim ⁷³	\$9,507,852.00*
Final Pay and Wage Statement Penalties ⁷⁴	\$12,496,193.00*
Total Interest	\$1,241,774.00*
Total	\$32,675,182.00*

As explained below, these estimates for PetVet do not account for significant mitigating factors that were reflected in the data. With respect to all Defendants, these estimates assume that each and every one of Plaintiffs' claims, as pled, would have been certified for class-wide resolution, that Plaintiffs would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. In other words, these estimates assume

⁶⁹ Plaintiffs allege that the Santa Barbara Entities failed to pay employees all of their wages due upon termination. Mr. Berger found that 31 employees were terminated during the applicable statute of limitations and data availability: 2/28/2019 through 9/25/2020. Greifinger Decl. ¶ 15.

⁷⁰ Plaintiffs allege that PetVet failed to properly implement their alternative workweek schedule of 10-hour shifts, four days per week. Sean Berger's Damages Analysis analyzed the time and corresponding pay records produced for Subclass B and found a potential for 117,577.2 unpaid overtime hours. Greifinger Decl. ¶ 16.

⁷¹ Plaintiffs allege that PetVet failed to account for and pay employees for approximately 15-20 minutes of administrative work, performed at home, twice per week. Sean Berger's Damages Analysis analyzed the time records produced for Subclass B and estimated 116,112 unpaid regular and overtime hours assumes that one hour per employee workweek reflected in PetVet's records was unpaid. Greifinger Decl. ¶¶ 16, 27.

⁷² Plaintiffs allege that PetVet did not provide code-compliant meal periods on or before employees' fifth hour of work. Mr. Berger's Damages Analysis reflects 9,856 unique meal period violations and 24 meal period premium payments. However, assuming that Defendant utilized valid meal break waivers, total meal period damages decrease to \$131,173.00. Greifinger Decl. ¶¶ 16, 27.

⁷³ Plaintiffs allege that PetVet never provided code-complaint rest periods. When rest periods were provided, they were not provided at the appropriate times, were shorter in duration than 10 minutes or were interrupted. Mr. Berger's analysis found 437,288 rest break violations, assuming 100% violation rate for shifts of at least 3.5 hours. Greifinger Decl. ¶ 16.

⁷⁴ Plaintiffs allege that PetVet failed to pay employees all of their wages due upon termination and provide employees with inaccurate wage statements. Mr. Berger found that 1,591 employees were terminated, and 54,847 pay periods during the applicable statute of limitations and data availability: 2/28/2019 through 9/14/2022. These penalties would be derivative of and reliant on a showing of unpaid overtime wage, minimum wage, meal period premium wage, and rest period premium wages. Greifinger Decl. ¶ 16.

1 complete and total victory.

2 In negotiating the Settlement, and with respect to the Santa Barbara Entities,
3 Plaintiffs' counsel took into account the potential difficulties associated with collecting a
4 judgment from three now-defunct entities.⁷⁵

5 With respect to PetVet, Plaintiffs' counsel took into account that the majority claim
6 for unpaid overtime wages and the resulting liquidated damages and penalties are based on
7 Defendants' alleged failure to implement a valid alternative workweek schedule.
8 Defendants produced evidence of 12 active and 17 former alternative workweek schedules
9 across its 104 California veterinary hospitals.⁷⁶ As such, Defendants would have been able
10 to mount a significant challenge to Plaintiffs' claims for Failure to Properly Institute an
11 Alternative Workweek Schedule, Failure to Pay Overtime Wages, and Failure to Pay
12 Minimum Wages in a motion for summary judgment or in opposition to a motion for class
13 certification.

14 Mr. Berger's estimate of \$3,337,861.00 in unpaid off-the-clock wages, and resulting
15 liquidated damages, assumes that one hour per employee workweek reflected in PetVet's
16 records was unpaid.⁷⁷

17 Similarly, Mr. Berger's \$9,507,852.00 estimate of rest break premiums assumes a
18 100% violation rate.⁷⁸ In other words, if a PetVet employee worked a shift, the analysis
19 assumes that they did not receive a rest period. Discovery has shown that PetVet
20 maintained and used a rest-period premium pay code when employees are were unable to
21 take their rest periods.⁷⁹

22 Additionally, Mr. Berger's \$1,137,473.00 estimate of meal period premiums is
23 based on an assumption that PetVet did not maintain valid meal period waivers for its
24 employees. However, discovery has shown that Defendants paid meal-period premium
25

26 ⁷⁵ Greifinger Decl. ¶ 25.

27 ⁷⁶ Greifinger Decl. ¶ 26.

28 ⁷⁷ Greifinger Decl. ¶ 16, 27.

⁷⁸ *Id.*

⁷⁹ Greifinger Decl. ¶ 26.

1 payments to class members for approximately 42,757 missed meal periods and obtained
2 meal period waivers from its employees.⁸⁰

3 Finally, Mr. Berger's \$12,496,193.00 estimate of final pay and wage statement
4 penalties are entirely derivative of and reliant on the assumed failure of PetVet to pay
5 overtime wages, minimum wages, rest period premium wages, and meal period premium
6 wages.⁸¹ As is discussed, *supra*, those assumptions are made liberally in favor of Subclass
7 B.

8 PetVet would have been able to challenge the commonality and typicality of all of
9 Plaintiffs' claims at summary judgment or class certification.⁸²

10 Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for
11 settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the
12 strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification
13 being denied; (iii) the risk of losing on any of a number of dispositive motions that could
14 have been brought between certification and trial (e.g., motions to decertify the class,
15 motions for summary judgment, and/or motions in limine) that might have eliminated all or
16 some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (iv) the
17 risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and
18 (vi) the difficulties attendant to collecting on a judgment (collectively, the "Discount
19 Factors").

20 With respect to the Santa Barbara Entities, after taking into account the Discount
21 Factors, Plaintiffs' Counsel determined that it would be reasonable to settle for a fraction of
22 Defendants' maximum potential exposure for the class claims (PAGA discussed in the
23 following section), or approximately 51 percent, which is essentially the product of the
24 probability of: (i) certification being granted on **all claims** ($\approx$ 80 percent); (ii) prevailing
25 on summary judgment/motions in limine/renewed motions to deny certification on **all**
26

27 ⁸⁰ *Id.*

28 ⁸¹ Greifinger Decl. ¶ 16, 27.

⁸² Greifinger Decl. ¶ 26.

1 **claims** (≈ 80 percent); (iii) prevailing at trial on **all of Plaintiffs' claims** (≈ 80 percent),
2 i.e., $0.80 \times 0.80 \times 0.80 = 0.51$, or 51 percent.

3 With respect to PetVet, after taking into account the Discount Factors, Plaintiffs'
4 Counsel determined that it would be reasonable to settle for a fraction of Defendants'
5 maximum potential exposure for the class claims (PAGA discussed in the following
6 section), or approximately one percent, which is essentially the product of the probability
7 of: (i) certification being granted on **all claims** (≈ 20 percent); (ii) prevailing on summary
8 judgment/motions in limine/renewed motions to deny certification on **all claims** (≈ 20
9 percent); (iii) prevailing at trial on **all of Plaintiffs' claims** (≈ 20 percent), i.e., 0.20×0.20
10 $\times 0.20 = 0.01$, or 1 percent.

11 Such discounts are inherently reasonable given that Plaintiffs would have had to
12 overcome **multiple, dependent** contingencies to prevail on their claims. If anything, the
13 projected odds for each of the above contingencies is generous to the class' position, since
14 plaintiffs in employment cases rarely prevail on **all of the claims** at any of these dispositive
15 stages. Courts routinely approve settlements that provide a similar discounted range of the
16 maximum potential recovery. (See, e.g., *In re Cendant Corporation Litigation* (3d Cir.
17 2001) 264 F.3d 201, 241 [range of recoveries from 1.6 percent to 14 percent of maximum
18 for securities class action settlements]; *In Re Armored Car Antitrust Litigation* (N.D.Ga.
19 1979) 472 F.Supp. 1357, 1373 [citing approval of settlements ranging from one percent to
20 eight percent of the estimated potential recovery]; *Balderas v. Massage Envy Franchising,*
21 *LLP* (N.D.Cal. July 21, 2014) 2014 WL 3610945 at *5 [settlement which amounted to eight
22 percent of maximum potential recovery "[fell] within the range of possible initial approval
23 based on the strength of plaintiff's case and the risk and expense of continued litigation"];
24 *In re Omnivision Technologies, Inc.* (N.D.Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving
25 settlement of over six percent of maximum potential recovery in shareholder class action
26 litigation].)⁸³

27
28 ⁸³ See also *In re Uber FCRA Litigation* (N.D.Cal. June 29, 2017, No. 14-cv-05200-EMC) 2017 U.S. Dist.

B. The Settlement Class has responded positively to the Settlement.

In evaluating the fairness of a Settlement, “The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” (*National Rural Telecommunications Cooperative v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D. 523, 529.) Here, only six individuals, or .2 percent, opted out of the Settlement Class, one only class member disputed their workweek calculation, and no Class Members objected to the Settlement.⁸⁴ The Class’s response is “overwhelmingly positive,” supporting approval of the Settlement. (See *7-Eleven Owners for Fair Franchising v. Southland Corporation, supra*, 85 Cal.App.4th at pp. 1152-1153 [response to proposed settlement overwhelmingly positive where 80 out of 5,454 class members elected to opt out and nine class members objected]; *Chun-Hoon v. McKee Foods Corporation* (N.D.Cal. 2010) 716 F.Supp.2d 848, 852 [zero objections and 16 opt-outs (4.86 percent of the class) from 329 class members “strongly” support settlement]; *Garner v. State Farm Mutual Automobile Insurance Co.* (N.D.Cal. Apr. 22, 2010, No. CV 08 1365 CW EMC) 2010 WL 1687832, at *15 (opt-outs of 101 out of 24,000 settlement class members [about 0.4 percent] indicated fairness of settlement)). In other words, “[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.” (*Hanlon v. Chrysler Corporation* (9th Cir. 1998) 150 F.3d 1011, 1027.)

The average settlement payment will be \$3,022.03 to each participating Subclass A

LEXIS 101552 at *23- 24 [granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5 percent or less of total possible verdict]; *Viceral v. Mistras Group, Inc.* (N.D.Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 U.S. Dist. LEXIS 140759 at *21 [granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3 percent of full verdict value]; *Stovall-Gusman v. W.W. Granger, Inc.* (N.D.Cal. June 17, 2015, No. 13-cv-02540-HSG) 2015 WL 3776765 at *4 [granting final approval to settlement with net recovery to Plaintiffs valued at 7.3 percent of potential maximum recovery]; *Cruz v. Sky Chefs, Inc.* (N.D.Cal. Dec. 19, 2014, No. 12-cv-02705-DMR) 2014 WL 7247065 at *5 [granting final approval where gross settlement amount represented 8.6 percent of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1 percent of maximum potential recovery]; *In re LDK Solar Securities Litigation* (N.D Cal. July 29, 2010, No. 07-cv-05182-WHA) 2010 WL 3001384 at *2 [granting final approving where proposed settlement amount was about five percent of the estimated damages before fee and costs—even before any reduction for attorney’s fees and costs]).

⁸⁴ CPT Decl. ¶¶ 10, 11, 14.

1 Member and \$64.45 to each participating Subclass B Member, with the highest settlement
2 payment in Subclass A being \$7,091.86 and \$180.67 in Subclass B.⁸⁵ This average net
3 recovery is within the range of other retail wage and hour class action settlements approved
4 by California state and federal courts and in fact exceeds them. (See, e.g., *Sandoval v.*
5 *Nissho of California, Inc.* (Super. Ct. San Diego, Dec. 3, 2010, No. 37-2009-00091861)
6 [average net recovery of approximately \$145.00]; *Fukuchi v. Pizza Hut* (Super. Ct. L.A.
7 County, Sept. 29, 2006, No. BC302589) [average net recovery of approximately \$120.00];
8 *Contreras v. United Food Group, LLC* (Super. Ct. L.A. County, Sept. 10 2009, No.
9 BC389253) [average net recovery of approximately \$120.00]; *Ressler v. Federated*
10 *Department Stores, Inc.* (Super. Ct. L.A. County, Jan. 2, 2009, Case No. BC335018)
11 [average net recovery of approximately \$90.00]; *Doty v. Costco Wholesale Corporation*
12 (C.D.Cal. May 14, 2007, No. CV05-3241 FMC-JWJx) [average net recovery of
13 approximately \$65.00]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. Dec. 17, 2018, No. 2:06-CV-
14 02674-JAM-DAD [average net recovery of approximately \$60.00]; *Lim v. Victoria's Secret*
15 *Stores, Inc.* (Super. Ct. Orange County, Jan. 20, 2006, No. 04CC00213) [average net
16 recovery of approximately \$35.00]; *Gomez v. Amadeus Salon, Inc.* (Super. Ct. L.A. County,
17 July 23, 2010, No. BC392297) [average net recovery of approximately \$20.00]; *Jones v.*
18 *Bath & Body Works, Inc.* (C.D.Cal. July 11, 2016, No. 2:13-cv-05206-FMO-AJW) [average
19 net recovery of approximately \$50.00]; *Palencia v. 99 Cents Only Stores* (Super. Ct.
20 Sacramento County, Nov. 5, 2012, No. 34-2010-00079619) [average net recovery of
21 approximately \$80.00].)

22 **C. The Court should approve the PAGA Settlement**

23 The Settlement Agreement includes a total amount of \$20,000.00, allocated to
24 Subclass B, to resolve Plaintiffs' PAGA claims, of which 75 percent (\$15,000.00) will be
25 paid to the LWDA and 25 percent (\$5,000.00) will be included in the Net Settlement
26 Amount to be paid to Participating Subclass B Members.⁸⁶ This result was reached through

27 ⁸⁵ CPT Decl. 14-17.

28 ⁸⁶ EXH. 5 to Greifinger Decl. at ¶ 15.

1 good-faith negotiation. Based on information and evidence provided by Defendants,
2 Plaintiffs determined that the Santa Barbara Entities did not employ anyone from October
3 28, 2020 forward (one year prior to Plaintiffs’ sending of their PAGA Notice Letters),
4 making them not subject to PAGA liability.⁸⁷ Plaintiffs further argued that between October
5 28, 2020, and September 14, 2022, (the “PAGA Period”) there were 67,452 pay periods in
6 the PAGA Period with unpaid wages, 10,656 pay periods in the PAGA Period with
7 overtime violations, 3,373 pay periods in the PAGA Period with meal period violations
8 assuming valid meal period waivers, 67,452 pay periods in the PAGA Period with rest
9 period violations, 67,452 pay periods in the PAGA Period with failure to reimburse
10 business expense claims, California Occupational Safety and Health Act of 1973 claims,
11 and failure to provide adequate seating claims, and 1,518 former employees with one pay
12 period of final pay claims.⁸⁸

13 Statutory penalties could be calculated according to Labor Code section 2699,
14 subdivision (f)(2). If, at the time of an alleged violation, the person employs one or more
15 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
16 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
17 employee per pay period for each subsequent violation. Using the most generous method of
18 calculation of penalties for the PAGA group, Mr. Berger estimates that PAGA penalties
19 total \$80,457,000.00.⁸⁹

20 However, some courts have interpreted Labor Code section 2699, subdivision (f)(2)
21 to impose the enhanced “subsequent violation penalty” or “heightened penalty” only after
22 an employer has been notified that its conduct violates the Labor Code. (E.g., *Trang v.*
23 *Turbine Engine Components Technologies Corporation* (C.D.Cal. Dec. 19, 2012, No. CV
24 12–07658 DDP (RZx)) 2012 WL 6618854 at *5 [“Under California law, courts have held
25 that employers are not subject to heightened penalties for subsequent violations unless and
26

27 ⁸⁷ Greifinger Decl. ¶ 17.

28 ⁸⁸ *Id.*

⁸⁹ *Id.*

1 until a court or commissioner notifies the employer that it is in violation of the Labor
2 Code.”]; *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services,*
3 *Inc.* (S.D.Cal. 2009, No. 05cv1199–IEG–CAB) 2009 WL 2448430 [finding that California
4 law imposes the “subsequent violation penalty” only after an employer has been notified its
5 conduct violates the Labor Code].) Defendant would also argue that penalties for claims
6 may not be stacked on top of one another (which Plaintiffs dispute), thus greatly reducing
7 the potential exposure.

8 It should be noted that PAGA gives the Court wide latitude to reduce the amount of
9 civil penalties “based on the facts and circumstances of a particular case” when “to do
10 otherwise would result in an award that is unjust, arbitrary and oppressive, or
11 confiscatory.” (Lab. Code, § 2699, subd. (h).) In reducing PAGA penalties, courts have
12 considered issues including whether the employees suffered actual injury from the
13 violations, whether the defendant was aware of the violations, and the employer’s
14 willingness to fix the violation. (*Carrington v. Starbucks Corporation* (2018) 30
15 Cal.App.5th 504, 529; see also *Cotter v. Lyft, Inc.* (N.D.Cal. 2016) 193 F. Supp. 3d 1030,
16 1037; *Fleming v. Covidien Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-01487 RGK
17 (OPX)) 2011 WL 7563047 at *4.)

18 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested
19 PAGA penalties in the amount of approximately \$70 million. (*Carrington v. Starbucks*
20 *Corporation, supra*, 30 Cal.App.5th at p. 517.) The trial court instead awarded only
21 \$150,000—**or 0.021 percent of the maximum**—and stated that this reduction was
22 warranted because imposing the maximum penalty would be “unjust, arbitrary, and
23 oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
24 obligations and because the court found the violations were minimal. (*Ibid.*) The Court of
25 Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. (*Id.*
26 at p. 529.)

27 Likewise, in *Fleming v. Covidien Inc.* (C.D.Cal. Aug. 12, 2011, No. ED CV 10-
28

01487 RGK (OPX)) 2011 WL 7563047, the court reduced the potential penalties by over 82 percent, awarding \$500,000.00 instead of maximum penalties of \$2.8 million. (2011 WL 7563047 at *4; see also *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1135-1136 [affirming 30 percent reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously]; *Li v. A Perfect Day Franchise, Inc.* (N.D.Cal. June 15, 2012, No. 5:10-CV-01189-LHK) 2012 WL 2236752 at *17 [denying PAGA penalties for violation of Labor Code section 226 as redundant with recovery on a class basis under Labor Code section 226, directly]; *Aguirre v. Genesis Logistics* (C.D.Cal. Dec. 30, 2013, No. SACV 12-00687 JVS (ANx)) 2013 WL 10936035 at *2-*3 [reducing penalty for past PAGA violations from \$1.8 million to \$500,000.00, after rejecting numerous other PAGA claims].)

The Plaintiffs here determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.⁹⁰ Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” the amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. 08-00844) 2009 U.S.

⁹⁰ See, e.g., *Dearaujo v. Regis Corporation* (E.D.Cal. June 29, 2016, No. 2:14-cv-01408-KJM-AC) 2016 WL 3549473 at *3 [preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500.00 paid to LWDA]; *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575 at *7 [approving \$3.7 million settlement containing \$10,000.00 PAGA penalties with \$7,500 paid to LWDA]; *Chu v. Wells Fargo Investments, LLC* (N.D.Cal. Feb. 16, 2011, No. C 05-4526 MHP) 2011 WL 672645 at *1 [approving \$6.9 million settlement containing \$10,000.00 PAGA penalties with \$7,500.00 paid to LWDA]; *Guerrero v. R.R. Donnelley & Sons Co.* (Super. Ct., Riverside County Super. Ct., July 16, 2013, No. RIC 10005196, Judge Matthew C. Perantoni) [gross settlement fund of \$1,100,000.00, of which \$3,000.00 (or 0.3 percent) was allocated to the settlement of PAGA penalties]; *Parra v. Aero Port Services, Inc.* (Super. Ct. L.A. County, April 20, 2015, No. BC483451, Judge Jane Johnson) [gross settlement fund of approximately \$1,458,900.00, of which \$5,000.00 (or 0.3 percent) was allocated to the settlement of PAGA penalties]; *Thompson v. Smart & Final, Inc.* (Super. Ct. L.A. County, Nov. 18, 2014, No. BC497198, Judge William F. Highberger) [gross settlement fund of \$3,095,000.00, of which approximately \$13,333.00 (or 0.4 percent) was allocated to the settlement of PAGA penalties]; *Chavez v. Vallarta Food Enterprises, Inc.* (Super. Ct. L.A. County, Nov. 10, 2014, No. BC490630, Judge William F. Highberger) [gross settlement fund of \$1,545,900.00, of which \$10,000.00 (or 0.6 percent) was allocated to the settlement of PAGA penalties]; *Coleman v. Estes Express Lines, Inc.* (Super. Ct. L.A. County, Oct. 3, 2013, No. BC429042, Judge Kenneth R. Freeman) [gross settlement fund of \$1,535,000.00, of which \$1,000.00 (or 0.1 percent) was allocated to the settlement of PAGA penalties].)

1 Dist. LEXIS 33900 at *24; see, also, *Nordstrom Commission Cases* (2010) 186 Cal.App.4th
2 576, 579 [Trial court did not abuse its discretion in approving class action settlement that
3 did not allocate any damages to PAGA claims.].)

4 **D. The requested payment to the Settlement Administrator is reasonable and**
5 **should receive final approval**

6 Plaintiffs request final approval of settlement administration costs in the amount of
7 \$24,500.00⁹¹ CPT has promptly and properly distributed the Class Notice to all Class Members
8 and completed its duties in accordance with the settlement terms and the Court's preliminary
9 approval Order.⁹² Accordingly, the \$24,500.00 payment is fair and reasonable and should be
10 accorded final approval along with the rest of the Settlement terms.

11 **CONCLUSION**

12 The Parties have negotiated a fair and reasonable settlement of the class claims that
13 likely would not have been brought, let alone successfully resolved, but for the effort and
14 resolve of Plaintiffs and their counsel. The Class Members' positive response indicates that
15 the Settlement is fair and reasonable. Accordingly, Plaintiffs respectfully request that this
16 Court grant final approval of the Settlement Agreement and enter judgment.

17 Dated: March 16, 2023

LAW OFFICES OF DAVID R. GREIFINGER

18
19 By: 
20 DAVID R. GREIFINGER
21 CALVIN A. MARSHALL
22 *Attorneys for Plaintiffs, DENISE LAI,*
23 *ELIM YEE, and the putative Class*

24
25
26
27 _____
28 ⁹¹ CPT Decl. ¶ 20.

⁹² CPT Decl. ¶¶ 3-18.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18
4 and not a party to the within lawsuit; my business address is 15515 W. Sunset Boulevard,
Unit 214, Pacific Palisades, CA 90272.

5 On **March 16, 2023** I served the foregoing document described as **NOTICE OF**
6 **MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND**
7 **PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**
on the interested parties in this action by placing [X] a true copy thereof on:

8 Nancy Yaffe
9 Daniel Kitzes
10 FOX ROTHSCHILD LLP
10250 Constellation Blvd., Suite 900
11 Los Angeles, CA 90067
nyaffe@foxrothschild.com
dkitizes@foxrothschild.com
12 *Attorneys for Defendants*
San Roque Pet Hospital, Inc., Goleta
13 *Airport Pet Hospital, Inc., Montecito Pet*
Hospital, Inc., PetVet Care Centers
14 *(California), Inc., and David P. Dawson*

- 15 [] (BY MAIL): as follows: I deposited the envelopes for mailing in the ordinary
16 course of business at Los Angeles County, California. I am "readily familiar" with
17 this firm's practice of collection and processing correspondence for mailing. Under
18 that practice, the sealed envelopes are deposited with the U.S. Postal Service that
same day in the ordinary course of business, with postage thereon fully prepaid at
Los Angeles County, California.
- 19 [] (BY OVERNIGHT DELIVERY): as follows: I am "readily familiar" with this
20 firm's practice of collection and processing correspondence for overnight delivery.
Under that practice, overnight packages are enclosed in a sealed envelope with a
packing slip attached thereto fully prepaid. The packages are picked up by the
carrier at our offices or delivered by our office to a designated collection site.
- 21 [X] BY E-MAIL ONLY PER AGREEMENT: I hereby certify that this document was
22 served from Los Angeles County, California, by e-mail delivery on the parties
23 listed herein at their most recent known e-mail address or e-mail of record in this
action.

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

25 Executed on **March 16, 2023** at Los Angeles County, California.

26 Calvin A. Marshall, Esq.

27 Type or Print Name



Signature