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7 Attorneys for Plaintiff and Cross-Defendant,
ELLIE MOSSER

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
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11 ELLIE MOSSER, an individual;

12 Plaintiff,

13 vs.

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15 WYLDER'S HOLISTIC PET CENTER INC,
dba The Wagmor, a Delaware Corporation;
16 WAGMOR PETS, a California Nonprofit
Corporation; MELISSA BACELAR, an
17 individual; and DOES 1 through 50,

18 Defendants.

Case No.: 21STCV42715

**PLAINTIFF AND CROSS-DEFENDANT
ELLIE MOSSER'S ANSWER TO
WYLDER'S HOLISTIC PET CENTER
INC, WAGMOR PETS, AND MELISSA
BACELAR'S UNVERIFIED CROSS-
COMPLAINT**

Judge: Hon. John P. Doyle

Dept: 58

Action Filed: November 19, 2021

Trial Date: Not Set

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20 WYLDER'S HOLISTIC PET CENTER INC,
dba The Wagmor, a Delaware Corporation;
21 WAGMOR PETS, a California Nonprofit
Corporation; MELISSA BACELAR, an
22 individual,

23 Cross-Complainants,

24 vs.

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26 ELLIE MOSSER, an individual,

27 Cross-Defendant.
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1 Plaintiff and Cross-Defendant ELLIE MOSSER (“Cross-Defendant”) hereby answers the
2 unverified Cross-Complaint of Defendants and Cross-Complainants Wylder’s Holistic Pet Center
3 Inc dba The Wagmor, Wagmor Pets, and Melissa Bacelar (collectively, “Cross-Complainants”)
4 (“Cross- Complainant”).

5 **GENERAL DENIAL**

6 Pursuant to Code of Civil Procedure section 431.30(d), Cross-Defendant denies, generally
7 and specifically, each and every allegation contained in said Cross-Complaint and the whole
8 thereof, and each and every alleged cause of action thereof, and denies that Cross-Complainants are
9 entitled to the relief requested, or that Cross-Complainants sustained damages in the sum or sums
10 alleged, or any other sum, or at all, by reason of any act, breach or omission on the part of this
11 answering Cross-Defendant.

12 **AFFIRMATIVE DEFENSES**

13 In addition, Cross-Defendant asserts the following affirmative defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Good Faith, Frivolity)

16 Cross-Defendant is informed and believes and thereon alleges that Cross-Complainants’
17 Cross-Complaint and each purported cause of action therein were not brought in good faith and are
18 frivolous. Therefore, the relief requested is precluded and Cross-Defendant is entitled to recover her
19 reasonable expenses, including attorneys’ fees, incurred herein as a matter of law pursuant to this
20 Court’s inherent authority and California Code of Civil Procedure section 128.7.

21 **SECOND AFFIRMATIVE DEFENSE**

22 (Failure to State a Cause of Action)

23 Cross-Complainants’ Cross-Complaint and each and every claim contained therein fails to
24 state facts sufficient to state a claim upon which relief may be granted.

25 **THIRD AFFIRMATIVE DEFENSE**

26 (Failure to Plead with Certainty and Particularity)

1 The allegations of the Cross-Complaint, and each purported cause of action contained
2 therein, are not pled with sufficient particularity and are uncertain, vague, ambiguous, and
3 unintelligible.

4 FOURTH AFFIRMATIVE DEFENSE

5 (Statute of Limitations)

6 Cross-Defendant is informed and believes and thereon alleges that Cross-Complainants'
7 claims as contained in the Cross-Complaint are barred by the applicable statutes of limitations.

8 FIFTH AFFIRMATIVE DEFENSE

9 (Acts by Cross-Complainants)

10 The acts and damages alleged and in question were caused by the intentional conduct of
11 Cross-Complainants and other party(s).

12 SIXTH AFFIRMATIVE DEFENSE

13 (Offset as to Any Damages Awarded)

14 Cross-Defendant is entitled to offset any damages suffered by Cross-Complainants, if any,
15 against sums owed by Cross-Complainants to Cross-Defendant.

16 SEVENTH AFFIRMATIVE DEFENSE

17 (Comparative Fault and Contributory Liability)

18 If Cross-Complainants suffered any damages, which Cross-Defendant specifically denies,
19 said damages were the proximate result of the comparative and/or contributory bad faith of Cross-
20 Complainants and/or their agents and their representatives, and therefore, any right of Cross-
21 Complainants to recover must be barred, reduced or apportioned accordingly.

22 EIGHTH AFFIRMATIVE DEFENSE

23 (Speculative Damages)

24 Cross-Complainants are precluded from recovering any damages, which Cross-Defendant
25 specifically denies, because the damages are too vague, uncertain, and speculative to permit
26 recovery.

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NINTH AFFIRMATIVE DEFENSE

(No Injury or Damages)

Cross-Complainants have not sustained any damage or loss by reason of any act or omission on the part of Cross-Defendant.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Cross-Complainants have failed to mitigate its damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

(Negligence of Third Parties)

The Cross-Complainants and/or other third parties were careless and negligent in or about the matter alleged in the Cross-Complaint and said carelessness and negligence in whole or in part, proximately contributed to the happening of the incident, injuries, losses and damages complained of, if any.

TWELFTH AFFIRMATIVE DEFENSE

(Negligence of Others)

The damages, if any, allegedly suffered by Cross-Complainants were proximately caused and contributed to by the negligence of third parties, and that said third parties failed to exercise reasonable care at and prior to the time of said damages and, by reason thereof, any recovery by Cross-Complainants against the answering Cross-Defendant must be barred.

THIRTEENTH AFFIRMATIVE DEFENSE

(Acts of Others)

If Cross-Complainants suffered any damages, which Cross-Defendant specifically denies, said damages were the proximate result of the sole actions of persons and/or entities over whom Cross-Defendant had and has no control, and any recovery against Cross-Defendant must be barred or reduced.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Intervening/Superseding Acts of Others)

If Cross-Complainants suffered any damages, which Cross-Defendant specifically denies, said damages were the proximate result of the intervening and superseding actions of other parties, and not this answering Cross-Defendant, and that such intervening and superseding actions of other parties bars recovery herein on behalf of Cross-Complainant.

FIFTEENTH AFFIRMATIVE DEFENSE

(Reasonable Efforts to Mitigate or Minimize Damages)

If Cross-Complainants suffered any damages as a result of the facts alleged in its Complaint, which Cross-Defendant denies, Cross-Complainants are not entitled to recover the amount of damages alleged or any damages due to their failure to make reasonable efforts to mitigate or minimize the damages incurred.

SIXTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Inappropriate)

The Cross-Complaint and each purported cause of action alleged therein fails to allege facts sufficient to allow recovery of punitive damages or exemplary damages from Cross-Defendant.

SEVENTHEENTH AFFIRMATIVE DEFENSE

(Fourteenth Amendment)

Cross-Complainants' Cross-Complaint, to the extent that it seeks punitive or exemplary damages, violates the rights of Cross-Defendant to procedural due process under the Fourteenth Amendment to the United States Constitution and under the Constitution of the State of California and, therefore, fails to state a cause of action upon which punitive or exemplary damages may be awarded.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

Cross-Defendant is informed and believes and thereon alleges that Cross-Complainants are estopped by their own conduct from asserting any and all claims it may have had or has against

1 Cross-Defendant arising from the transactions and occurrences set forth in the Cross-Complaint.

2 NINETEENTH AFFIRMATIVE DEFENSE

3 (Unclean Hands)

4 Cross-Complainants are barred from maintaining the Cross-Complaint and each purported
5 cause of action therein as a result of their unclean hands with respect to the events upon which the
6 Cross-Complaint and purported causes of action allegedly are based.

7 TWENTIETH AFFIRMATIVE DEFENSE

8 (Waiver)

9 Cross-Complainants have waived whatever right they may have had to assert the purported
10 claims contained in the Cross-Complaint and each purported cause of action thereof against Cross-
11 Defendant.

12 TWENTY-FIRST AFFIRMATIVE DEFENSE

13 (Laches)

14 Cross-Complainants are barred by the doctrine of laches from pursuing their Cross-
15 Complaint and each purported cause of action therein by reason of their inexcusable and
16 unreasonable delay in filing the initial Cross-Complaint.

17 TWENTY-SECOND AFFIRMATIVE DEFENSE

18 (Privilege/Justification/Excuse)

19 Cross-Defendant's conduct with regard to Cross-Complainants was privileged, justified,
20 excused, and in good faith.

21 TWENTY-THIRD AFFIRMATIVE DEFENSE

22 (Consent)

23 Cross-Complainants' damages, if any, were caused by Cross-Complainants' own intentional
24 or negligent acts, thus barring or limiting Cross-Complainants' right of recovery.

25 TWENTY-FOURTH AFFIRMATIVE DEFENSE

26 (Mistake)

27 Cross-Complainants' claims are barred by either a mistake of fact, mistake of law, or both.
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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Privileges)

Cross-Defendant is entitled to all privileges available to them to the extent provided by the California Civil Code.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Causation)

Cross-Defendant is informed and believes and thereon alleges that any acts or omissions to act by Cross-Defendant was not the proximate cause of any injuries suffered by Cross-Complainants.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Indemnification)

Cross-Defendant alleges that all of the acts and/or omissions alleged in the Cross-Complaint were solely, entirely, and fully those of other parties named or unnamed herein other than Cross-Defendant, and that therefore such parties are fully and solely liable to Cross-Complainants, and that Cross-Defendant is entitled to total or complete indemnification from such parties, including, but not limited to, any and all damages, costs, and attorney’s fees that may be sustained as a result of Cross-Complainants’ claims.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Attorneys’ Fees)

The Cross-Complaint fails to allege facts sufficient to establish a claim for attorneys’ fees.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Full Accord and Satisfaction)

Cross-Defendant is informed and believes and thereon alleges that Cross-Complainants are barred from recovery from Cross-Defendant due to a full accord and satisfaction between Cross-Complainants and Cross-Defendant as to the damages allegedly incurred by Cross-Complainants.

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THIRTIETH AFFIRMATIVE DEFENSE

(No Duty)

Cross-Defendant is informed and believes and thereon alleges that Cross-Complainants are barred from recovery from Cross-Defendant due to there being no duty owed by Cross-Defendant to Cross-Complainants relative to the allegations of the Cross-Complaint.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Right to Amend)

Cross-Defendant alleges that she may have other separate and/or additional defenses of which she is not aware and hereby reserves the right to assert them by amendment to this Answer.

DATED: February 18, 2022

MARLIS PARK, P.C.

By: Tara Hattendorf
Young K. Park
Tara H. Hattendorf
Attorneys for Plaintiff and Cross-Defendant,
ELLIE MOSSER

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PROOF OF SERVICE
ELLIE MOSSER v. WYLDER'S HOLISTIC PET CENTER, INC., ET AL.
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3600 Wilshire Blvd., Suite 1815, Los Angeles, CA 90010.

On February 18, 2022 I served the foregoing document described as:

**PLAINTIFF AND CROSS-DEFENDANT ELLIE MOSSER'S ANSWER TO WYLDER'S HOLISTIC
PET CENTER INC, WAGMOR PETS, AND MELISSA BACELAR'S UNVERIFIED CROSS-
COMPLAINT**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in the State of California addressed as set forth below:

by placing a true copy thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

by electronically serving the document(s) listed above to:

mpate@raineslaw.com
lkatunich@raineslaw.com

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made

Executed on February 18, 2022 at Los Angeles, California.


Karen Arellano

MAILING LIST
Attorneys for Defendants.

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