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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO
HALL OF JUSTICE COURTHOUSE

LINDSAY GWIZDAK, an individual,

Plaintiff,

vs.

PETCO ANIMAL SUPPLIES STORES, INC., a
Delaware Corporation; MEGAN WHITE-
STEELE, an individual; and DOES 1 – 50,
inclusive,

Defendants.

Case No.: 37-2021-00000603-CU-OE-CTL

**PLAINTIFF'S VERIFIED COMPLAINT
FOR:**

1. Retaliation (Gov't Code § 12940(h); Lab. Code § 1102.5; Common Law);
2. Wrongful termination (Gov't Code § 12940(h); Common Law);
3. Failure to pay all wages owed at time of termination (Lab. Code §§ 201 and 203);
4. Failure to provide accurate, itemized wage statements (Lab. Code § 226(a));
5. Failure to provide rest periods (Wage Order No. 7-2001; Lab. Code §§ 226.7 and 512);
6. Failure to provide meal periods (Wage Order No. 7-2001; Lab. Code § 226.7);
7. Failure to produce employee records (Lab. Code § 226);
8. Failure to produce personnel records (Lab. Code § 1198.5);
9. Unlawful business practices (Bus. & Prof. Code §§ 17200 et seq.)
10. Civil penalties pursuant to the Private Attorneys General Act (Lab. Code §§ 2698 – 2699.6).

1 Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

2 1. The matters stated in this Complaint are true to the Plaintiff's knowledge, except the
3 matters which are therein stated on information and belief, and as to those matters Plaintiff believes
4 them to be true.

5 2. Plaintiff LINDSAY GWIZDAK an individual, hereby alleges against Defendants
6 PETCO ANIMAL SUPPLIES STORES, INC., a Delaware corporation, MEGAN WHITE-
7 STEELE, an individual; and DOES 1 – 50, inclusive (collectively, "Defendants") as follows:

8
9 **JURISDICTION AND VENUE**

10 3. Jurisdiction is conferred on this Court over Defendants named herein as residents of
11 the State of California and/or conductors of business in the State of California. Jurisdiction is
12 conferred on this Court as to all causes of action as they arise under state statute or common law.

13 4. Venue is proper in this Court because Plaintiff resides in this County, Defendants
14 reside and/or conduct business in this County, and a substantial part of the events and omissions
15 giving rise to Plaintiff's causes of action occurred in this County.

16
17 **PARTIES**

18 5. Plaintiff LINDSAY GWIZDAK (hereafter "Plaintiff") is an individual residing in
19 Ramona, California, in the County of San Diego.

20 6. Defendant PETCO ANIMAL SUPPLIES STORES, INC. (hereafter "Petco") is a
21 Delaware corporation with its principal place of business in San Diego, California. On information
22 and belief, Petco is a department store chain offering a variety of pets, pet food, supplies, and other
23 services, at multiple locations throughout the United States, including at 8290 Mira Mesa Blvd., San
24 Diego, CA 92126 (hereafter "Mira Mesa location"). Plaintiff is informed and believes and thereon
25 alleges that Petco is, and at all pertinent times alleged herein was, doing business in the County of
26 San Diego.

27 7. Defendant MEGAN WHITE-STEELE (hereafter "Ms. White-Steele") is an
28 individual who, on information and belief, is and at all relevant times alleged herein was a manager

1 at the Mira Mesa location and a resident of the County of San Diego. Ms. White-Steele's liability in
2 this case arises under Labor Code § 558.1, which states in pertinent part that:

3
4 (a) Any employer or other person acting on behalf of an employer, who violates, or
5 causes to be violated, any provision regulating minimum wages or hours and days of
6 work in any order of the Industrial Welfare Commission, or violates, or causes to be
7 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
8 employer for such violation.

9 (b) For purposes of this section, the term other person acting on behalf of an employer
10 is limited to a natural person who is an owner, director, officer, or managing agent of
11 the employer, and the term managing agent has the same meaning as in subdivision (b)
12 of Section 3294 of the Civil Code.

13
14 8. The true names, identities, or capacities, whether individual, corporate, associate, or
15 otherwise, of DOES 1 – 50, inclusive, are unknown to Plaintiff. When the true names, identities, or
16 capacities of such fictitiously designated Defendants are ascertained, Plaintiff will ask leave of this
17 Court to amend this Complaint to insert their true names, identities, and capacities, together with the
18 proper charging allegations. Plaintiff is informed and believes and thereon alleges that some or all
19 of the fictitiously designated Defendants are responsible in some manner for the occurrences alleged
20 herein, and that Plaintiff's damages as alleged herein were proximately caused by those defendants.

21 9. Plaintiff believes and therefore alleges that at all times herein mentioned, each of the
22 Defendants was the agent and employee of each of the other Defendants, and in doing the acts
23 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
24 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
25 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the other
26 said Defendants.

27 **FACTUAL ALLEGATIONS**

28 10. Beginning on or around April 18, 2010, Plaintiff started her nine-year employment
with Petco. As Plaintiff lived in Ramona, CA, she was hired at the Petco store located at 13375
Poway Road, Poway, CA 92064 (hereafter "Poway location"), which was a quick ten-minute drive
for her. After the Poway location closed, Plaintiff was transferred to the Mira Mesa location, which

ended up being a one-hour commute for her. However, because of the positive work environment, Plaintiff's good rapport with her coworkers, the opportunity to work with animals as the Animal Department Manager, and her commitment to Petco, Plaintiff was willing to take the long commute, if it meant staying a Petco employee.

11. During her first two years at the Mira Mesa location, Plaintiff worked under two different managers and had great relationships with both. It was only when Ms. White-Steele became Plaintiff's third manager that the difficulties began. In the nine years of Plaintiff's employment with Defendants (at both the Mira Mesa and Poway locations), Plaintiff got along well with all her managers except for Ms. White-Steele. Plaintiff observed Ms. White-Steele to behave condescendingly towards employees and heard her call them "children." Although Plaintiff initially was not the victim of the nicknames, she did feel uncomfortable with Ms. White-Steele's behavior.

12. In or around July 2019, approximately three months before Plaintiff's termination, an incident occurred that was orchestrated by Defendants to provide a pretext for Plaintiff's termination. An associate hung up a rainbow flag, known to be a symbol for the LGBTQ community, in the break room without consulting any of the managers. Although Plaintiff believed that the workplace was not an appropriate setting for people to discuss sensitive social issues, she did not mention anything to the associate. Ms. White-Steele used this opportunity to ask Plaintiff what she thought of the flag. Plaintiff responded simply that she thought it was not appropriate for a work environment but did not make any other comments. Plaintiff is a firm supporter of the LGBTQ community because she has family members and close friends who are homosexual. Ms. White-Steele instructed Plaintiff to talk with the assistant manager Jacob (surname unknown, hereafter "Jacob") about the flag, and she let the two of them decide whether to keep the flag or remove it, as they were both managers. Plaintiff and Jacob agreed that the flag should be removed.

13. Around the end of September 2019, as Plaintiff came to realize that Ms. White-Steele's condescending behavior towards the other Petco employees was not abating, she filed a complaint with Human Resources (hereafter "HR") regarding Ms. White-Steele's behavior towards the other associates. A few days after this complaint, HR called Plaintiff and informed her that she was being investigated for reported homophobic and racist comments during her suspension. This

1 was shocking for Plaintiff, especially since she was unaware that she was even on suspension.
2 Because Plaintiff was improperly informed about her suspension, she appeared at work on the
3 following Tuesday, October 15, 2019. Before she was able to clock in, she was called to the HR
4 office and was informed of her termination because she did not “follow the core values” of Petco.
5 The assistant manager attempted to escort Plaintiff out of the building through the back door, but
6 Plaintiff insisted on walking through the front to say goodbye to her colleagues. Most of Plaintiff’s
7 coworkers were dumbfounded and shocked to learn of her termination.

8 14. Plaintiff was devastated over her termination. She had dedicated almost ten years to
9 Petco and had been motivated to grow within the company, including applying for various positions
10 throughout the Animal Department. She particularly enjoyed working directly with the animals,
11 given her experience working at two veterinary hospitals and the San Diego Wild Animal Park.
12 Despite her strong background, Plaintiff had difficulty finding a job after her termination, and so she
13 filed for unemployment.

14 15. In addition to fraudulently inducing behavior that they could use to terminate her,
15 Defendants also inflicted upon Plaintiff multiple violations of the Labor Code.

16 16. Under California law, employees are entitled to a meal period when they work more
17 than five hours in a day. Additionally, employers are required to relieve their employees of any
18 employer control during their meal periods and allow them to come and go as they please.

19 17. Defendants failed to follow California’s meal period rules and required Plaintiff and
20 similarly situated employees to remain at the building during meal periods. Employees were not
21 permitted to leave the premises or to come and go as they pleased. Because Defendants failed to do
22 this, they are in violation of the meal period requirement.

23 18. Employees are also entitled to at least a ten-minute rest period for every four hours
24 worked, or major fraction thereof. Employees must be free to spend the rest period as they see fit,
25 as with the meal period rule. Similar to the control of the meal periods, Defendants required Plaintiff
26 and other similarly aggrieved employees to stay on the premises during rest periods. Employees
27 were not permitted to leave the premises or to come and go as they pleased. This is clearly an
28 unlawful exercise of control over rest periods. As a result, Plaintiff and other similarly aggrieved

employees did not receive proper rest periods, and Defendants are in violation of the rest period requirement.

19. Defendants terminated Plaintiff's employment on October 15, 2019, and so were required to pay Plaintiff all wages earned and unpaid on that date. The final paycheck Defendants provided to Plaintiff did not include all wages she earned in overtime hours, and so it failed to comply with the requirement of Labor Code § 201 that all outstanding wages be paid on the day of termination.

20. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties in the amount of up to thirty days' wages, together with interest thereon and reasonable attorneys' fees and costs, pursuant to Labor Code §§ 201, 203, and 218.5.

21. On October 30, 2019, Plaintiff's counsel sent correspondence to Defendants requesting Plaintiff's employee and personnel records pursuant to Labor Code §§ 226, 432, 1174, 1198.5, and 1775. Defendants produced Plaintiff's employee and personnel records on November 25, 2019, but with several deficiencies that rendered the document production incomplete. Specifically, Defendants failed to produce Plaintiff's paystubs or timesheets, as well as any applicable employee handbook(s) or arbitration agreement(s) and thus are in violation of Labor Code §§ 432, 1198.5, 226, 1174, and 1775. As a good faith attempt to mitigate these violations, Plaintiff's counsel sent letters to Defendants on December 11, 2019 and January 10, 2020, pointing out these deficiencies and inviting Defendants to supplement their records production. Defendants did not respond to these letters.

22. Civil Code § 3294(b) states that punitive damages may be imposed upon an employer for acts of an employee or agent if a managing agent of the corporation authorized or ratified the agent's or employee's wrongful acts. Flores v. Autozone West, Inc. (2008) 161 Cal. App. 4th 373, 386. A "managing agent" includes corporate employees vested with substantial discretionary authority over decisions that ultimately determine corporate policy regarding the matter as to which punitive damages are sought. White v. Ultramar, Inc. (1999) 21 Cal 4th 563, 566 – 567.

23. Defendants committed the acts alleged herein recklessly, maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff for an improper and evil motive

amounting to malice, and with a reckless and conscious disregard of Plaintiff's rights and emotional well-being. All actions of Defendants and their agents and employees were known, ratified, and approved by Defendants and each of them. Plaintiff is thus entitled to recover, and seeks to recover, punitive damages from Defendants for the wanton, obnoxious, and despicable acts in an amount according to proof.

24. Plaintiff has exhausted her administrative remedies under the Private Attorneys General Act (Labor Code §§ 2698 – 2699.6, hereafter "PAGA") and includes a cause of action for violations of the Labor Code, pursuant to that act.

**FIRST CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF GOVERNMENT
CODE §12940(h), LABOR CODE § 1102.5, AND CALIFORNIA COMMON LAW AGAINST
DEFENDANTS PETCO AND DOES 1 – 50, INCLUSIVE**

25. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

26. As used in this Cause of Action, "Defendants" means Defendants Petco and DOES 1 – 50, inclusive.

27. At all times relevant to this Complaint, Gov't Code § 12940(h) and Labor Code § 1102.5 were in effect and applicable to Defendants.

28. Gov't Code § 12940 (h), which is part of the Fair Employment and Housing Act (Gov't Code § 12900 – 12996, hereafter "FEHA"), makes it unlawful, "[f]or any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part."

29. Furthermore, Labor Code § 1102.5(b) states:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an

1 investigation, hearing, or inquiry, if the employee has reasonable cause to believe that
2 the information discloses a violation of state or federal statute, or a violation of or
3 noncompliance with a local, state, or federal rule or regulation, regardless of whether
4 disclosing the information is part of the employee's job duties.

5 30. When Plaintiff reported the behavior of Defendant Ms. White-Steele to Defendant
6 Petco, she was engaging in legally protected activity covered by Gov't Code § 12940 (h), and thus
7 was protected from employer retaliation.

8 31. Plaintiff is informed and believes, and thereon alleges, that her complaint against her
9 manager motivated the retaliation she suffered at the hands of Defendants.

10 32. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
11 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
12 such amount as general damages for mental and emotional distress and aggravation in an amount to
13 be proven at time of trial, together with pre-judgment interest pursuant to Civil Code § 3287 and/or
14 any provision of law providing for pre-judgment interest.

15 **SECOND CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION OF**
16 **GOV'T CODE §12940(h) AND COMMON LAW AGAINST DEFENDANTS PETCO AND**
17 **DOES 1 – 50, INCLUSIVE**

18 33. Plaintiff restates and incorporates by reference each and every allegation of the
19 foregoing paragraphs as though fully set forth herein.

20 34. As used in this Cause of Action, "Defendants" means Defendants Petco and DOES 1
21 – 50, inclusive.

22 35. In Tameny v. Atlantic Richfield Co., (1980) 27 Cal.3d 167, the Court laid out the
23 principle that while employers may end an employee's at-will employment for no reason, they may
24 not do so for reasons counter to public policy.

25 36. Gov't Code § 12940(h), which is part of FEHA, makes it unlawful for an employer,
26 labor organization, employment agency, or person to discharge, expel, or otherwise discriminate
27 against any person because the person has opposed any practices forbidden under the FEHA, or
28 because the person has filed a complaint, testified, or assisted in any proceeding under the FEHA.

37. Furthermore, Labor Code § 1102.5(b) states:

An employer, or any person acting on behalf of the employer, shall not retaliate against any employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

38. At all times relevant to this complaint, Gov't Code § 12940(h) and Labor Code § 1102.5 were in effect and applicable to Defendants.

39. When Plaintiff reported the behavior of Defendant Ms. White-Steele to Defendant Petco, she was engaging in legally protected activity covered by Gov't Code § 12940(h), and thus was protected from employer retaliation.

40. Plaintiff is informed and believes, and thereon alleges, that her complaint against her manager motivated the termination he suffered.

41. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims such amount as general damages for mental and emotional distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

**THIRD CAUSE OF ACTION FOR FAILURE TO PAY ALL WAGES OWED AT
TERMINATION IN VIOLATION OF LABOR CODE §§ 201 AND 203 AGAINST ALL
DEFENDANTS**

42. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

43. At all times relevant to this Complaint, Labor Code §201 was in effect and applicable to Defendant.

1 44. Labor Code § 201 states that if an employer discharges an employee, the wages
2 earned and unpaid at the time of discharge are due and payable immediately.

3 45. Defendants terminated Plaintiff's employment on October 15, 2019, and so were
4 required to pay Plaintiff all wages earned and unpaid on that date. Plaintiff's final paycheck did not
5 include payment for Plaintiff's overtime hours, and so it failed to comply with the requirement of
6 Labor Code § 201 that all outstanding wages be paid on the day of termination. As of January 6,
7 2021, Defendants still have not paid Plaintiff these wages.

8 46. Labor Code § 203 states that:

9
10 [i]f an employer willfully fails to pay, without abatement or reduction . . . any wages
11 of any employee who is discharged or who quits, the wages of the employee shall
12 continue as a penalty from the due date thereof at the same rate until paid or until an
13 action therefor is commenced; but the wages shall not continue for more than 30 days."

14 47. Accordingly, as a result of Defendants' conduct, Plaintiff is entitled to waiting time
15 penalties in the amount of up to thirty days' wages under Labor Code § 203, with interest thereon
16 and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194.

17 48. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
18 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
19 such amount as general damages for mental and emotional distress, aggravation, and physical harm,
20 in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287
21 and any other provision of law providing for pre-judgment interest.

22 **FOURTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED**
23 **STATEMENTS IN VIOLATION OF LABOR CODE § 226(a) AGAINST ALL**
24 **DEFENDANTS**

25 49. Plaintiff restates and incorporates by reference each and every allegation of the
26 foregoing paragraphs as though fully set forth herein.

27 50. Labor Code § 226(a) requires an employer to furnish its employees with an accurate
28 itemized statement in writing showing, among other things, gross wages earned, net wages earned,

1 all applicable hourly rates in effect during the pay period, and the corresponding number of hours
2 worked at each hourly rate by the employee.

3 51. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
4 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater of
5 all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for each
6 violation in a subsequent pay period, up to a maximum amount of \$4,000.

7 52. The time sheets and paystubs Defendants furnished to Plaintiff very often misstated
8 the number of overtime hours Plaintiff had worked. Therefore, they failed to state the gross wages
9 earned, net wages earned, all applicable hourly rates, and the number of hours worked at each hourly
10 rate.

11 53. As a direct and proximate result of Defendants' conduct, Plaintiff has been injured
12 by, among other things, not being paid all wages due, not knowing how many hours she worked and
13 at what rates and being required to file this action to recover her wages and determine the number
14 of hours worked and wages due.

15 54. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for
16 damages. Plaintiff is entitled to recover the damages or penalties provided by Labor Code § 226(e),
17 including interest thereon, and reasonable attorneys' fees and costs.

18
19 **FIFTH CAUSE OF ACTION FOR VIOLATION OF MEAL PERIOD REQUIREMENT IN**
20 **VIOLATION OF WAGE ORDER NO. 7-2001 AND LABOR CODE §§ 226.7 AND 512**
21 **AGAINST ALL DEFENDANTS**

22 55. Plaintiff restates and incorporates each and every allegation of the foregoing
23 paragraphs as though fully set forth herein.

24 56. At all times relevant to this Complaint, Wage Order No. 7-2001 (hereafter "Wage
25 Order") and Labor Code §§ 226.47 and 512(a) were applicable to Defendants.

26 57. Labor Code § 226.7 provides that no employer shall require an employee to work
27 during any meal period mandated by an applicable Wage Order.

28 58. Wage Order § 11 and Labor Code § 512(a) state that an employer shall not employ

1 an employee for a work period of more than five hours without a meal period of less than thirty
2 minutes, except that if a work period of not more than six hours will complete the day's work, the
3 meal period made be waived by mutual consent of the employer and employee.

4 59. Finally, the California Supreme Court has held that, "[e]mployers must afford
5 employees uninterrupted half-hour periods in which they are relieved of any duty or employer
6 control and are free to come and go as they please." Brinker Restaurant Corp. v. Superior Court
7 (2012) 53 Cal.4th 1004, 1037.

8 60. As alleged herein, Defendants required employees to remain onsite during their meal
9 periods. Employees were not permitted to leave the premises or to come and go as they pleased. As
10 a result, Plaintiff did not receive proper meal periods and Defendants are in violation of the meal
11 period requirement for every day on which Plaintiff was entitled to a meal period.

12 61. In addition, Defendants failed to pay Plaintiff the full meal period premium, in
13 violation of Wage Order § 11. Plaintiff is entitled to receive compensation in an amount to be proven
14 at trial, including reasonable attorney's fees and costs pursuant to Labor Code § 218.5.

15 62. Additionally, Wage Order § 20 provides for civil penalties:

16
17 In addition to any other civil penalties provided by law, any employer...who violates,
18 or causes to be violated, the provisions of this order, shall be subject to the civil penalty
19 of: (1) Initial Violation – \$50.00 for each underpaid employee for each pay period
20 during which the employee was underpaid in addition to the amount which is sufficient
21 to recover unpaid wages. (2) Subsequent Violations – \$100.00 for each underpaid
22 employee for each pay period during which the employee was underpaid in addition to
23 an amount which is sufficient to recover unpaid wages.

24
25 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

26 63. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
27 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
28 such amount as general damages for mental and emotional distress, aggravation, and physical harm,
in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287
and any other provision of law providing for pre-judgment interest.

1 **SIXTH CAUSE OF ACTION FOR VIOLATION OF REST PERIOD REQUIREMENT IN**
2 **VIOLATION OF WAGE ORDER NO. 7-2001 § 12 AND LABOR CODE § 226.7 AGAINST**
3 **ALL DEFENDANTS**

4 64. Plaintiff restates and incorporates each and every allegation of the foregoing
5 paragraphs as though fully set forth herein.

6 65. At all times relevant to this Complaint, the Wage Order and Labor Code § 226.7 were
7 in effect and applicable to Defendants.

8 66. Wage Order § 12 states that employers shall authorize and permit all employees to
9 take rest periods, which insofar as practicable shall be in the middle of each work period. The
10 authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes
11 net rest time per four hours or major fraction thereof.

12 67. Labor Code § 226.7 provides that no employer shall require an employee to work
13 during any rest period mandated by an applicable Wage Order. The Court has explained this to mean
14 that, “[d]uring rest periods, employers must relieve their employees of all duties and *relinquish any*
15 *control over how employees spend their break time.*” Augustus v. ABM Security Services, Inc.,
16 (2016) 2 Cal.5th 257, 260.

17 68. As alleged herein, Defendants required employees to remain onsite during their rest
18 periods. Employees were not permitted to leave the premises or to come and go as they pleased. As
19 a result, Plaintiff did not receive proper rest periods and Defendants are in violation of the rest period
20 requirement for every day on which Plaintiff was entitled to a rest period.

21 69. In addition, Defendants failed to pay Plaintiff the full rest period premium, in
22 violation of Wage Order § 12. Plaintiff is entitled to receive compensation in an amount to be proven
23 at trial, including reasonable attorney’s fees and costs pursuant to Labor Code § 218.5.

24 70. Additionally, Wage Order § 20 provides for civil penalties:

25
26 In addition to any other civil penalties provided by law, any employer...who violates,
27 or causes to be violated, the provisions of this order, shall be subject to the civil penalty
28 of: (1) Initial Violation – \$50.00 for each underpaid employee for each pay period
during which the employee was underpaid in addition to the amount which is sufficient
to recover unpaid wages. (2) Subsequent Violations – \$100.00 for each underpaid
employee for each pay period during which the employee was underpaid in addition to

1 an amount which is sufficient to recover unpaid wages.

2 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

3 71. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
4 lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims
5 such amount as general damages for mental and emotional distress, aggravation, and physical harm,
6 in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287
7 and any other provision of law providing for pre-judgment interest.
8

9
10 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PRODUCE PLAINTIFF'S**
11 **EMPLOYEE RECORDS IN VIOLATION OF LABOR CODE § 226(c) AGAINST ALL**
12 **DEFENDANTS**

13 72. Plaintiff reinstates and incorporates by reference each and every allegation of the
14 foregoing paragraphs as though fully set forth herein.

15 73. Labor Code § 226(b) requires an employer to “afford current and former employees
16 the right to inspect or receive a copy of records pertaining to their employment.” Labor Code §
17 226(c) states that “[a]n employer who receives a written or oral requests to inspect a copy of records
18 pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request
19 as soon as practicable, but not later than 21 calendar days from the date of the request.” Per Labor
20 Code § 226(f), an employer who fails “to permit a current or former employee to inspect or copy
21 records within the time set forth in subdivision (c) entitles the current or former employee or the
22 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

23 74. On October 30, 2019, Plaintiff's counsel sent correspondences to Defendants
24 requesting Plaintiff's employee and personnel records pursuant to Labor Code §§ 226, 432, 1174,
25 1198.5, and 1775. Defendants produced Plaintiff's employee and personnel records on November
26 25, 2019, but there were several deficiencies which rendered the document production incomplete.
27 Specifically, Defendants failed to produce Plaintiff's paystubs or timesheets, and so are in violation
28 of Labor Code §§ 432, 1198.5, 226, 1174, and 1775. As a good faith attempt to mitigate these

violations, Plaintiff's counsel sent two deficiency letters, dated December 11, 2019 and January 10, 2020, to which no responses were given.

75. Accordingly, Plaintiff is entitled to receive, and Defendants are required to pay, a penalty of \$750 as provided by Labor Code § 226(f).

EIGHTH CAUSE OF ACTION FOR FAILURE TO PRODUCE PLAINTIFF'S PERSONNEL

RECORDS IN VIOLATION OF LABOR CODE § 1198.5(b)(1) AGAINST DEFENDANTS

PETCO AND DOES 1 – 50, INCLUSIVE

76. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

77. As used in this Cause of Action, "Defendants" means Defendants Petco and DOES 1 – 50, inclusive.

78. Labor Code § 1198.5(b)(1) requires an employer to "make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request." Per Labor Code § 1198.5(k), an employer who fails to permit "a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, . . . the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer."

79. On October 30, 2019, Plaintiff's counsel sent correspondences to Defendants requesting Plaintiff's employee and personnel records pursuant to Labor Code §§ 226, 432, 1174, 1198.5, and 1775. Defendants produced Plaintiff's employee and personnel records on November 25, 2019, but there were several deficiencies which renders the document production incomplete. Specifically, the Defendants failed to produce any applicable employee handbook(s) or arbitration agreement(s) and are in violation of Labor Code §§ 432, 1198.5, 226, 1174, and 1775. As a good faith attempt to mitigate these violations, Plaintiff's counsel sent two deficiency letters, dated December 11, 2019 and January 10, 2020, to which no responses were given.

1 80. As a result, Plaintiff is entitled to receive, and Defendants are required to pay, a
2 penalty of \$750 as provided by Labor Code § 1198.5(b)(1).

3
4 **NINTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN VIOLATION**
5 **OF BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ. AGAINST DEFENDANTS**
6 **PETCO AND DOES 1-50, INCLUSIVE**

7 81. Plaintiff restates and incorporates each and every allegation of the foregoing
8 paragraphs as though fully set forth herein.

9 82. As used in this Cause of Action, “Defendants” means Defendants Petco and DOES 1
10 – 50, inclusive.

11 83. Defendants’ actions and conduct, as alleged herein, constitute unlawful, unfair,
12 deceptive, and misleading business practices, prohibited by Bus. & Prof. Code §§ 17200 *et seq.*

13 84. Plaintiff is informed and believes, and thereon alleges, that Defendants utilized
14 improper, unlawful, and tortious means to unjustly enrich themselves, and to cause deliberate injury
15 to Plaintiff.

16 85. Among other things, Plaintiff seeks restitution and a return of all moneys obtained by
17 Defendants through their wrongful conduct.

18
19 **TENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE PRIVATE**
20 **ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.6) AGAINST DEFENDANTS**

21 **PETCO AND DOES 1-50, INCLUSIVE**

22 86. Plaintiff restates and incorporates each and every allegation of the foregoing
23 paragraphs as though fully set forth herein.

24 87. As used in this Cause of Action, “Defendants” mean Defendants Petco and DOES 1-
25 50, inclusive.

26 88. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and
27 Workforce Development Agency (“LWDA”) and written notice by certified mail to Defendants of
28 the specific provisions of the Labor Code alleged to have been violated and the facts and theories to

1 support the alleged violations. These notices were sent on February 10, 2020. The LWDA did not
2 respond to the notice within sixty-five calendar days. Thus, under Labor Code § 2699.3(a)(2)(C),
3 Plaintiff is permitted to commence a civil action pursuant to Labor Code § 2699.

4 89. Defendants' conduct as set forth herein has caused injury to Plaintiff and all those
5 employees similarly aggrieved and has violated various provisions of the Labor Code. As such,
6 Plaintiff brings this claim as a representative action on behalf of herself and those similarly
7 aggrieved.

8 90. Under Labor Code § 2699(f), "[f]or all provisions of this code except those for which
9 a civil penalty is specifically provided, there is established a civil penalty for a violation of these
10 provisions, as follows:...(2) If, at the time of the alleged violation, the person employs one or more
11 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
12 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
13 period for each subsequent violation."

14 91. As alleged herein, Plaintiff and all those similarly situated seek, and Defendants are
15 liable for, penalties for the violations of Labor Code, including the following:

- 16 - Violation of Labor Code § 201 and 203 for failure to pay all wages due to Plaintiff
17 and other similarly situated employees at the time of termination;
- 18 - Violation of Labor Code § 226(a) for failing to provide accurate, itemized wage
19 statements to Plaintiff and other similarly situated employees;
- 20 - Violation of Labor Code § 226.7 for failing to provide valid rest periods to Plaintiff
21 and other similarly situated employees;
- 22 - Violation of Labor Code §§ 226.7 and 512 for failing to provide valid meal periods
23 to Plaintiff and other similarly situated employees;
- 24 - Violation of Labor Code §§ 6310 and 6399.7 for retaliating against Plaintiff and other
25 similarly situated employees for making complaints about the unlawful harassment being
26 committed by Defendant's managers against employees;
- 27 - Violation of Labor Code § 232.5(c) for terminating Plaintiff and other similarly
28 situated employees in retaliation for the employees' reporting harassing work conditions;

1 and

2 - Violation of Labor Code § 1102.5 for retaliating against Plaintiff and other similarly
3 situated employees for disclosing Defendants' harassing and discriminatory actions
4 against employees.

5 92. Plaintiff is also entitled to seek, on behalf of herself and all others similarly situated,
6 all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

7
8 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as
9 follows:

- 10 1. For general damages in an amount no less than \$900,000;
11 2. For special damages in an amount no less than \$100,000;
12 3. For punitive damages;
13 4. For pre-judgment interest to the extent allowed by law;
14 5. For costs of suit incurred herein;
15 6. For attorneys' fees; and
16 7. For such other and further relief as the Court deems just and proper.

17
18 Dated: January 6, 2021

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for
LINDSAY GWIZDAK

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

3
4 Dated: January 6, 2021

JAFARI LAW GROUP, INC.

5 

6 David V. Jafari
7 Saul Acherman
8 Attorneys for Plaintiff
9 LINDSAY GWIZDAK
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VERIFICATION

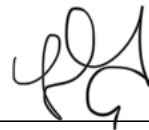
I am a party to this action. I am authorized to make this verification for and on behalf of myself and make this verification for this reason.

I have examined the foregoing Complaint and know its contents.

The matters stated in the foregoing Complaint are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

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

Executed at _Irvine, CA_____, California on _____9/15/2020_____.

A handwritten signature in black ink, appearing to be 'FG', is written above a horizontal line.